RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
11:08 am, Dec 07, 2015

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	)	
	)	
Total Gas & Power North America, Inc., and Therese Tran,	)	**CFTC Docket No. 16 -03**
	)	
Respondents.	)	

ORDER INSTITUTING PROCEEDINGS PURSUANT TO 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 Total Gas & Power North America, Inc. ("TGPNA") and Therese Tran ("Tran") (collectively "Respondents") violated the Commodity Exchange Act (the "Act") and Commission Regulations ("Regulations"). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry and acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order").[1]

[1] Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

During the monthly settlement periods (also known as "bid-week") for September 2011, October 2011, March 2012, and April 2012 (the "Relevant Period"), TGPNA, through Tran and the West Desk (defined below), attempted to manipulate monthly index settlement prices of natural gas at four major trading locations in the southwestern and Texas regions of the United States through its physical fixed-price trading during bid-week. Respondents executed this manipulative scheme at four hubs, including El Paso Natural Gas Co., Permian Basin ("Permian"), El Paso San Juan Basin ("San Juan"), Southern California Gas Co. ("SoCal"), and West Texas, Waha ("Waha") (referred to hereinafter as "relevant hubs").

During the Relevant Period, Respondents' fixed price trading during bid-week accounted for a substantial percentage of the total market by volume at the relevant hubs even though TGPNA had no material customers, assets, or transportation in the region. As the largest player in the fixed-price market during these periods, Respondents attempted to favorably affect the monthly index settlement prices to benefit TGPNA's related financial or "paper" positions, including basis swap and index swap positions (collectively, "financial position(s)").

B. RESPONDENTS

Total Gas & Power North America, Inc. is a natural gas trading and marketing firm headquartered in Houston, Texas and incorporated in Delaware. TGPNA is an indirect, wholly-owned subsidiary of Total S.A., a French oil and gas company that is among the largest firms worldwide in its industry. TGPNA or its predecessors have been engaged in natural gas physical and financial trading and marketing activities in the U.S. since 1990.

Therese Tran is a TGPNA natural gas trader in Houston, Texas. Tran, formerly known as Therese Nguyen, was the manager of TGPNA's trading desk operating in the southwestern and Texas regions of the U.S. ("West Desk") during the Relevant Period. At all relevant times herein, Tran was acting as an agent of TGPNA. References herein to the "West Desk" refer primarily to Tran, or other TGPNA employees acting at her direction.

C. FACTS

1. Natural Gas Trading

Natural gas is a commodity that is typically transported in interstate commerce through a network of pipelines across the United States. Natural gas can be traded as a physical commodity or as financial instruments without the buyer or seller taking physical delivery. Natural gas market participants, including TGPNA, enter into and execute physical trades and financial transactions through direct or brokered negotiations with other market participants and through electronic trading facilities. The Intercontinental Exchange ("ICE") is an electronic trading platform that offers trading in physical natural gas contracts for over 100 natural gas hubs

in North America, including the four relevant hubs. In addition to physical trading, ICE offers trading in a number of financial products, including basis swaps and index swaps.

2. TGPNA's Physical Trading

During the Relevant Period, TGPNA's West Desk traded both financial and physical products, primarily on ICE and through direct negotiations with other market participants in the over-the-counter bilateral market. TGPNA, however, had no material customer business, physical assets, or transportation at the relevant hubs during the Relevant Period.

TGPNA's West Desk priced its monthly physical transactions using one of two methods, "fixed-price" or "index." Both pricing methods call for the delivery of natural gas for the prompt month at a specified delivery location. Fixed-price transactions are negotiated by the buyer and seller and priced at the time of the transaction. The prices for index transactions, on the other hand, are determined each month by trade publications, such as Platts' *Inside FERC Gas Market Report* ("Platts") and Natural Gas Intelligence ("NGI") (collectively, "trade publications").

Both Platts and NGI publish monthly index prices based on the volume-weighted average price of all reported fixed-price transactions occurring during the monthly settlement period known as "bid-week." Bid-week refers to the natural gas industry's monthly settlement period and consists of all reported fixed-price transactions occurring during the last five business days of each month.

During the Relevant Period, bid-week was an important component of TGPNA's trading strategy, and TGPNA was an active participant, both as a seller and purchaser, in the southwestern and Texas regions' natural gas markets. TGPNA's West Desk reported its physical fixed-price bid-week transactions to Platts and NGI. Natural gas market participants, including producers and end-users, use monthly index prices to market their gas and to determine their risk.

3. TGPNA's Financial Trading

During the Relevant Period, TGPNA's West Desk primarily traded financial basis swaps and financial index swaps. For financial basis swaps, the buyer pays the seller the NYMEX final settlement price plus or minus a differential, and the seller pays the buyer the monthly index price at a particular location. For financial index swaps, the buyer pays the monthly index settlement price plus or minus a premium or discount in exchange for the daily index price. For the purpose of Respondents' scheme, financial basis and index swaps were the intended beneficial positions.

4. TGPNA's Print Risk

During the Relevant Period, TGPNA monitored its overall risk by assessing its combined physical and financial positions in each region. TGPNA grouped its monthly risk or exposure into three risk categories: (1) Basis Risk, also called "paper" risk, represents the locational risk of a position, relative to the settlement price of the NYMEX futures contract; (2) Index Risk, which reflects the pricing risk associated with trading fixed price relative to physical index at a

particular location; and (3) NYMEX Risk, which represents the risk derived from exposure to the NYMEX futures price.

From this information, Respondents were able to track TGPNA's "print risk" or exposure to the monthly index settlement prices published by Platts and NGI. TGPNA measured its print risk by subtracting its net index position from its net financial position. TGPNA stood to benefit from this exposure depending on the outcome of the monthly index settlement price at a particular location. During the Relevant Period, TGPNA reported its bid-week trades, so these trades contributed to the monthly index settlement prices published by Platts and NGI.

During the Relevant Period, the West Desk maintained and updated a sophisticated spreadsheet ("bid-week spreadsheet") to track its physical and financial positions the day before and during bid-week. Through the bid-week spreadsheets, the West Desk was able to track periodically throughout the day the total market volume known to the West Desk versus the estimated total volume for bid-week, and was able to track the West Desk's print risk.

5. TGPNA's Bid-Week Trading

During the Relevant Period, Respondents traded fixed-price natural gas in a manner designed to benefit TGPNA's related financial positions. Specifically, the West Desk acquired large print risk exposure prior to the start of bid-week. Depending on the direction of their print risk exposure (*i.e.*, long or short), Respondents executed enough fixed-price trades during bid-week with the intent to favorably affect monthly index settlement prices at the relevant hubs. Transaction data obtained from ICE and TGPNA shows that the West Desk's fixed price trades accounted for well over half of the total market by volume during the Relevant Period even though TGPNA had no material customer business, physical assets, or transportation at the relevant hubs during this period. In addition, TGPNA's own transaction data shows a strong correlation between increased print risk and increased fixed-price market share during bid-week.

a. TGPNA Management's Response to Bid-Week Activity

TGPNA's management was aware of TGPNA's high market share during bid-week and its possible impact on monthly index settlement prices and TGPNA's profit & loss. For example, prior to and throughout the Relevant Period, TGPNA's Risk Control group issued daily and monthly reports entitled, "Inside FERC/NGI Review" and "TGPNA Share in Index Settlement" (hereinafter, "market share reports"). These market share reports highlighted TGPNA's high market share at various hub locations throughout the United States. TGPNA's market share reports were routinely emailed to management and traders, including Tran, after each bid-week.

TGPNA's market share reports also included a comment on "Platts methodology," that reveals its understanding of how the trade publications calculate bid-week volume:

> If a reported deal is included in the published report, there is no discount or premium on level of volumes or deals published. If we report 10 on an index and our counterparty reports 10, the volume published is 20 and the deal count is two.

If we report 10 and our counterparty reports nothing, the volume published is 10 and the deal count is one.

Accordingly, it was TGPNA's understanding that the trade publications factor in the reported volumes of both counterparties to a transaction in estimating total fixed-price volume traded during bid-week. Assuming all counterparties report, the highest percentage that any one market participant could achieve is 50% of a market. It follows that a market participant that has 50% of the volume in a market where all counterparties report would be a party to 100% of the transactions reported to Platts.

In a February 2007 email, a TGPNA manager noted the compliance benefit of the market share reports:

> This report constitutes a reliable monitoring of trading activity during bid week. In light of the recent development of the CFTC and their increased scrutiny, we need to be more accountable of our activity in places where TGPNA holds a substancial [sic] share of the overall volume traded at one single point.
>
> Therefore, I suggest that the middle/back office enquires [sic] about the specific reason which have [sic] prompted TGPNA to trade more than 40% of the overall volumes traded at one single point. This should be a written exercise where the concerned trader will be able to explain his/her motivation.

TGPNA's management, however, never questioned or disciplined traders, including Tran, for having high market share at any particular hub location. From February 2009 through February 2011, TGPNA's compliance officer performed an in-depth analysis of TGPNA's monthly price reporting and its impact on published index prices as well as its impact on TGPNA's profit and loss. In February 2009, TGPNA's compliance officer issued the first report to management recommending:

> TGPNA Management may wish to contemplate ramping down its fixed price and physical basis trading in the markets in which it has a large share. Consider compliance both in terms of fact and appearance.

Again, TGPNA's management never questioned or disciplined any traders, including Tran, in connection with their large presence in the physical price setting market during bid-week.

b. September 2011 Bid-Week Trading

Prior to bid-week for September 2011, Respondents knowingly and/or recklessly employed a scheme intended to manipulate the monthly index settlement prices at SoCal and Permian to benefit a related financial spread position established by the West Desk at the same hub locations. As of August 25, 2011, the first day of bid-week, the West Desk had acquired a print risk position of 259,981 MMBtus/day (long) at SoCal and 460,563 MMBtus/day (short) at Permian.

TGPNA's market share report showed that the West Desk's fixed price trading during bid-week accounted for approximately 42% of the total reported NGI market volume at SoCal and 45% of the total reported Platts market volume at Permian.[2] The West Desk's bid-week trading was ultimately intended to benefit TGPNA's financial spread position by increasing the spread between the monthly index settlement price at SoCal and Permian.

c. October 2011 Bid-Week Trading

Prior to bid-week for October 2011, Respondents knowingly and/or recklessly employed a scheme intended to manipulate the monthly index settlement price at San Juan to benefit a short financial position established by the West Desk prior to bid-week. According to TGPNA's risk report, as of September 26, 2011— the first day of bid-week — the West Desk had acquired a print risk position of approximately 304,952 MMBtus/day (short) at San Juan. TGPNA's market share report showed that the West Desk executed approximately 41% of the total reported market volume of fixed-price transactions to benefit this position. The West Desk's bid-week trading was ultimately intended to benefit TGPNA's short financial position held at San Juan by narrowing the spread between the NYMEX settlement price and the monthly index price at San Juan.

d. March 2012 Bid-Week Trading

Prior to bid-week for March 2012, Respondents knowingly and/or recklessly employed a scheme intending to manipulate the monthly index settlement price at SoCal to benefit a short financial position established by the West Desk prior to bid-week. According to TGPNA's risk report, as of February 23, 2012 — the first day of bid-week — the West Desk had acquired a print risk position of approximately 100,028 MMBtus/day (short) at SoCal. During bid-week, Tran encouraged another West Desk trader to execute fixed-price trades in a manner that was intended to benefit TGPNA's related short financial position established by the West Desk prior to bid-week. Tran also executed some fixed price trades during bid-week.

Tran's and the West Desk trader's fixed-price trades combined for approximately 53% of the total ICE market volume traded at SoCal during bid-week.[3] Respondents' bid-week trading was ultimately intended to benefit TGPNA's short financial position held at SoCal by narrowing the spread between the NYMEX settlement price and the monthly index price at SoCal.

---

[2] TGPNA calculates this market share percentage by dividing its daily volume traded during bid-week by the total volume published by Platts and NGI. For this bid-week, TGPNA arrived at the 42% by dividing its daily volume by the total volume reported by NGI (i.e., 305,000 MMBtus/day ÷719,000 MMBtus/day). Assuming all counterparties report, if TGPNA is on half of every single reported fixed-price trade, then it would be 50% of the index; thus, no market participant could be more than 50% of the index.

[3] TGPNA's records did not have a total volume figure for SoCal Needles location so this market share figure instead reflects the total volume traded on ICE during this month (i.e., total volume of all of Total's trades divided by the total volume traded on ICE). ICE data does not reflect bilateral transactions not executed on ICE. TGPNA's transaction data shows that the majority of its fixed-price transactions (144,516 MMBtus/day of 145,516 MMBtus) occurred at Needles, one of several sub-locations at SoCal. The West Desk trader described the Needles location as the "discounted" SoCal sub-location, and noted that TGPNA focused its trading at this discounted sub-location to amplify TGPNA's effect on the index.

The West Desk trader stated that when Tran initially asked him to participate in bid-week, he understood that he was to "flatten" TGPNA's physical position by trading fixed-price during bid-week. The trader also stated that, during the March 2012 bid-week, Tran began to "encourage" him to do more than simply "flatten" the physical position but also to trade more by buying and selling fixed-price natural gas. This "buying and selling" of fixed-price in volume during bid-week affected the monthly index price.

e. April 2012 Bid-Week Trading

Prior to the start of bid-week for April 2012, Respondents knowingly and/or recklessly employed a scheme intended to manipulate the monthly index settlement prices at SoCal and San Juan to benefit a related financial spread position established by the West Desk at the same hub locations. According to TGPNA's risk report, as of March 26, 2012 — the first day of bid-week — the West Desk had acquired a print risk position of 306,658 MMBtus/day (long) at SoCal and 306,097 MMBtus/day (short) at San Juan.

TGPNA's market share report showed that the West Desk's fixed price trading accounted for approximately 18% of the total reported market volume at SoCal during bid-week. In addition, the West Desk trader, supervised by Tran, executed fixed price transactions that accounted for approximately 29% of the total reported market volume at San Juan during bid-week. Respondents' bid-week trading was ultimately intended to benefit TGPNA's financial spread position by increasing the spread between the monthly index settlement price at SoCal and San Juan.

The West Desk trader acknowledged that for the April 2012 bid-week, he was responsible for preparing the West Desk's bid-week spreadsheet and therefore was aware of the desk's positions going into bid-week and, as a result, TGPNA's impact on the monthly index.

IV.

LEGAL DISCUSSION

A. By Attempting to Manipulate Natural Gas Prices, Respondents Violated Sections 9(a)(2) and 6(c)(3) of the Act, and Regulation 180.2

Together, Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2012), 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 "attempted 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 otherwise "is violating or has violated . . . any other provisions of [the] Act." Similarly, Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012), makes it 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."

For conduct occurring on or after August 15, 2011, Section 6(c)(3) of the Act, 7 U.S.C. § 9(3) (2012), prohibits manipulation or attempted manipulation of the price of any commodity in interstate commerce. Moreover, Regulation 180.2, 17 C.F.R. § 180.2 (2015), which also became effective on August 15, 2011, in relevant part, makes it "unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce."

Two elements are required to prove an attempted manipulation: (1) an intent to affect the market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.*, [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Bradley*, 408 F. Supp. 2d 1214, 1220 (N.D. Okla. 2005). To prove the intent element of attempted manipulation, it must be shown that Respondents "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 Coop. Ass'n*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796, at 27,289 (CFTC Dec. 17, 1982). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido*, [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970, at 62,484 (CFTC Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 21,478)), *aff'd*, 364 Fed. Appx. 657, No. 08-5559-ag, 2009 WL 3326624 (2d. Cir. 2009). It is also not necessary that there be an actual effect on price. *See CFTC v. Amaranth Advisors*, LLC, 554 F. Supp. 2d 523, 533 (S.D.N.Y. 2008).

Here, as evidenced by TGPNA's trading data and the facts set forth above, Respondents specifically intended to execute enough fixed-price trades during bid-week to affect the monthly index settlement prices of natural gas in the September 2011, October 2011, March 2012, and April 2012 bid-weeks, at the relevant hubs. Respondents' intent is also made clear by the evidence that their primary motive was to benefit the West Desk's related financial positions, whose value was derived from the published index price at each of the relevant locations. TGPNA, through Tran, took overt acts in furtherance of the intent to affect the monthly index settlement prices at the relevant hubs by establishing financial positions prior to bid-week at the relevant hub locations and by actively trading in the fixed-price market during bid-week, despite having no material customers, assets, or transportation in these regions. By this conduct, Respondents violated Sections 9(a)(2) and 6(c)(3) of the Act, 7 U.S.C. §§ 13(a)(2), 9(3) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2015).

B. <u>By Employing a Manipulative Device, Respondents Violated Section 6(c)(1) of the Act and Regulation 180.1</u>

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides, among other things, that it is unlawful for any person to "use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce . . . any manipulative or deceptive device or contrivance, in contravention of [Commission rules and regulations]." Pursuant to this authority, the Commission promulgated Regulation 180.1(a), 17 C.F.R. § 180.1 (2015), which, with respect to conduct on or after August 15, 2011, makes it "unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery . . . to intentionally or recklessly: (1) Use or employ, or attempt to use

or employ, any manipulative device, scheme, or artifice to defraud." 17 C.F.R. § 180.1(a)(1) (2015).[4] *See* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, 41,401 (July 14, 2011). "Section 6(c)(1) and [] Rule 180.1 augment the Commission's existing authority to prohibit fraud and manipulation." 76 Fed. Reg. at 41,401 (July 14, 2011).

The phrase "manipulative or deceptive device or contrivance" is not defined by the Act or Regulations, but precedent applying very similar provisions in the Securities and Exchange Commission regime provides guidance: "The language of CEA section 6(c)(1), particularly the operative phrase 'manipulative or deceptive device or contrivance,' is virtually identical to the terms used in section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act")." 76 Fed. Reg. at 41,399. Indeed, when the Commission promulgated Rule 180.1, the Commission observed that "[g]iven the similarities between CEA section 6(c)(1) and Exchange Act section 10(b), the Commission deems it appropriate and in the public interest to model final Rule 180.1 on SEC Rule 10b-5." *Id.* Accordingly, case law developed under Section 10(b) of the Exchange Act and SEC Rule 10b-5 is instructive in construing CEA Section 6(c)(1) and Commission Regulation 180.1(a). The Commission explained, however, that because of "the differences between the securities markets and the derivatives markets, the Commission will be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b-5." 76 Fed. Reg. at 41,399.

Under long-standing Commission precedent regarding Section 9(a)(2), manipulation has been described as "any and every operation or transaction or practice, the purpose of which is not primarily to facilitate the movement of the commodity at prices freely responsive to the forces of supply and demand; but, on the contrary, is calculated to produce a price distortion of any kind in any market either in itself or in relation to other markets." *In re Indiana Farm Bureau Coop. Ass'n, Inc.*, CFTC No. 75-14, 1982 WL 30249, at *4 (citing *Volkart Bros., Inc. v. Freeman*, 311 F.2d 52, 58 (5th Cir. 1962)). Under securities law, courts have found that "[t]he gravamen of manipulation is deception of [market participants] into believing that prices at which they purchase and sell securities are determined by the natural interplay of supply and demand, not rigged by manipulators." *Gurary v. Winehouse*, 190 F.3d 37, 45 (2d Cir. 1999); *see also SEC v. Sierra Brokerage Servs., Inc.*, 608 F. Supp. 2d 923, 961 (S.D. Ohio 2009) (quoting *SEC v. Resch-Cassin & Co.*, 362 F. Supp. 964, 975 (S.D.N.Y. 1973)); *SEC v. Kwak*, No. 3:04-cv-1331, 2008 WL 410427, at *4 (D. Conn. Feb. 12, 2008) (finding violation of Section 10(b) for scheme that tricked investors into believing that stock prices were "solely the product of independent forces of supply and demand"); *In re Koch, SEC Release No. 3836*, 2014 WL 1998524, at *14 (May 16, 2014) (finding Section 10(b) manipulation in a "marking the close" case when parties "were not participating in the market to find the best available prices but with the intent to raise

[4] The plain language of Section 6(c)(1) and Regulation 180.1 establishes that these provisions were intended to prohibit two distinct categories of conduct: (1) manipulative devices and (2) deceptive devices (*i.e.*, an "artifice to defraud"). In the Commission's Notice of Final Rules for Regulation 180.1, the Commission rejected requests that it interpret Section 6(c)(1) as simply extending the Commission's prior anti-fraud and anti-manipulation authority to swaps, noting that Section 6(c)(1) "granted the Commission broad new authority to prohibit 'any manipulative device or contrivance.'" 76 Fed. Reg. at 41,401. The Commission also confirmed that Regulation 180.1 "requires a fraud ***or*** manipulation, or attempted fraud ***or*** manipulation," suggesting, consistent with the plain language of Section 6(c)(1), that these words prohibit distinctly different conduct. *Id.* (emphasis added).

the price of the stocks"). As with market manipulation under Section 9(a)(2) of the Act and Section 10(b) of the Exchange Act, the prohibition on the use of any manipulative or deceptive device under Section 6(c)(1) is also concerned with protecting markets from illegitimate pricing forces.[5]

1. **Manipulative Device**

Here, Respondents' attempt to manipulate the monthly index prices at the relevant hub locations, as described above, also constitutes a violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1, 17 C.F.R. § 180.1 (2015). Specifically, Respondents intentionally employed a manipulative device by purchasing and/or selling large volumes of fixed-price natural gas at the relevant hubs before and during bid-week that were intended to benefit TGPNA's related financial positions. *See In re Pia*, ¶ 32,014, CFTC No. 11-17, 2011 WL 3228315, at *2 (CFTC July 25, 2011) (settlement order) (describing scheme in which a trader executed large volumes in the final ten seconds before the end of trading day); *SEC v. Ficeto*, 839 F. Supp. 2d 1101, 1104 (S.D.N.Y. 2011) (describing similar scheme in securities context); *In re JPMorgan Chase Bank, N.A.*, CFTC Docket No. 14-01, 2013 WL 6057042, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,838 (CFTC Oct. 16, 2013) (settlement order) (Commission found that selling an abnormally large volume of a particular swap in a "short period of time at month-end" constituted a manipulative device).

2. **Scienter**

As described above, circumstantial evidence establishes Respondents' specific intent to manipulate natural gas prices at the relevant hubs. *See, e.g., CFTC v. Amaranth Advisors, LLC*, 554 F. Supp. 2d 523, 532 (S.D.N.Y. 2008) ("Because 'proof of intent will most often be circumstantial in nature, manipulative intent must normally be shown inferentially from the conduct of the accused'") (quoting *In re Indiana Farm Bureau Coop. Ass'n*, 1982 WL 30249, at *6); *Valicenti Adv. Servs., Inc. v. SEC*, 198 F.3d 62, 65 (2d Cir. 1999) (holding proof of scienter under securities laws need not be direct but may be inferred from circumstantial evidence). However, under Commission Regulation 180.1, the Commission need only find recklessness. *See* Prohibition on Manipulative and Deceptive Devices, 76 Fed. Reg. at 41,404, & n. 87 (quoting *Drexel Burnham Lambert*, 850 F.2d at 748). Consistent with long-standing precedent under the commodities and securities laws, the Commission defines recklessness as an act or omission that "departs so far from the standards of ordinary care that is very difficult to believe the actor was not aware of what he or she was doing." *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988); *see also First Commodity Corp. v. CFTC*, 676 F.2d 1, 7 (1st Cir. 1982). Under this standard, a showing of actual knowledge is not required, *see Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569-70 (9th Cir. 1990), nor is proof that the defendant's motive or primary motive was to interfere with the forces of supply and demand, *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 111 (2d Cir. 1998). For example, "[e]ven if [a trader] were motivated by a desire to obtain compensation rather than by a desire" to affect a market price, if the trader recklessly "effected the manipulative trades," he will be held liable. *Id.* at 112; *see also*

[5] *See In re Indiana Farm Bureau Coop. Ass'n, Inc.*, CFTC No. 75-14, 1982 WL 30249, at *4; *see also Frey v. CFTC*, 931 F.2d 1171, 1175 (7th Cir. 1991) (finding that manipulation under Section 9(a)(2) of the Act is "an intentional exaction of a price determined by forces other than supply or demand").

JPMorgan Chase Bank, N.A., 2013 WL 6057042, at *11 (settlement order) (selling a massive volume of swaps during a "concentrated period" while recognizing position size "had the potential to affect or influence the market" demonstrates the scienter required by Regulation 180.1).

Respondents at a minimum acted recklessly or with reckless disregard for the potential impact of their trading on natural gas prices and the integrity of the natural gas market. "[I]t is very difficult to believe that [Respondents] were not aware" of the possible impact of their physical fixed-price trading on their related financial positions. *See Drexel Burnham Lambert Inc.,* 850 F.2d at 748. Respondents knew that their fixed-price trading during bid-week had the potential to affect the monthly index prices and they carried out their bid-week trading in an attempt to influence their concurrently held financial positions. In fact, Tran monitored in real-time the relationship between her bid-week trading activities and related financial positions through TGPNA's bid-week spreadsheets. TGPNA's trade data shows that Tran acted on her understanding that bid-week trading activities affect financial positions, structuring her trades in a manner that was intended to take advantage of the relationship.

Moreover, as early as 2007, TGPNA's management issued monthly market share reports highlighting locations where Respondents had high market share in the fixed price market. TGPNA's compliance officer also conducted monthly reviews, from 2009 through early 2011, of TGPNA's reporting impact on the monthly index price and TGPNA's P&L. TGPNA's compliance officer also warned TGPNA management that it should "contemplate ramping down its fixed price ... in the markets in which it has a large share." Despite these warnings and the understanding that TGPNA reporting impacted the monthly index, Respondents continued their manipulative trading.

It is difficult to believe that Respondents were not aware of their impact on the monthly index at the relevant hub locations during the Relevant Period given the monthly share reports, compliance officer warnings, and the fact that TGPNA had no material customers, assets, or transportation in these regions to otherwise justify the bid-week trading.[6] Accordingly, Respondents acted with the requisite intent.

C. <u>TGPNA Is Liable for the Violations of its Agents</u>

TGPNA is liable as a principal for the acts, omissions, or failures of any TGPNA employee or agent in relation to the conduct described above. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), as well as Regulation 1.2, 17 C.F.R. § 1.2 (2015), a principal is strictly liable for the violations of its agents made within the scope of the agents' employment. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.3d 963, 966 (7th Cir. 1986); *Dohmen-Rameirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988). Accordingly, TGPNA is liable for Tran's violations of Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), and 13(a)(2) (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1 and 180.2 (2015), as set forth above.

[6] As the Commission has observed, "[a] market or price effect may well be indicia of the use or employment of a manipulative or deceptive device or contrivance; nonetheless, a violation of final Rule 180.1 may exist in the absence of any market or price effect." Prohibition on Manipulative and Deceptive Devices, 76 Fed. Reg. at 41,401.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), and 13(a)(2) (2012), and Commission Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1 and 180.2 (2015).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

A. Acknowledge receipt of service of this Order;

B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent(s) has/have consented in the Offer;

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondents violated Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13(a)(2) (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1 and 180.2 (2015);

2. Orders Respondents to cease and desist from violating Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13(a)(2) (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1 and 180.2 (2015);

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of three million and six-hundred thousand dollars ($3,600,000) within ten (10) business days of the date of entry of this Order, plus post-judgment interest;

4. Orders Respondents, and their successors and assigns, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents shall cease and desist from violating Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13(a)(2) (2012), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1 and 180.2 (2015).

B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of Three Million and Six Hundred Thousand Dollars ($3,600,000) within ten (10) business days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) business days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondents shall pay the CMP obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and

C. Respondents and their successors and assigns shall comply with the following undertakings:

1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Consent Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

D. Respondents and their successors and assigns shall also comply with the following undertakings set forth below for a period of two (2) years from the date of this Order. Respondents agree and undertake:

1. Trading Limitation: Respondents TGPNA and Tran shall not trade physical basis or physical fixed-price natural gas for next month delivery during bid-week at hub locations when TGPNA also holds, prior to and during bid-week, any financial natural gas position whose value is derived in any material part from natural gas bid-week index prices. This trading limitation, however, shall not affect (1) Respondents' marketing of TGPNA affiliate Total E&P USA, Inc.'s physical bid-week natural gas in the Barnett Shale or Utica Shale regions, or Respondents' financial trading related to such purchases or sales; or (2) Respondents' physical bid-week trading of natural gas or Respondents' financial trading, in connection with the Sabine Pass LNG terminal.

   The trading limitation set forth above shall begin no later than sixty (60) days from the date of entry of this Order.

2. Reporting: Respondent TGPNA shall provide to the Division, on a quarterly basis: (i) a full listing (or record) of its bid-week trading, including all physical and related financial trading; (ii) a report of TGPNA's monthly purchases and sales of natural gas in the Barnett Shale and Utica Shale regions, and TGPNA's fixed-price monthly sales of those purchased volumes, including the volumes of fixed-price natural gas sales, the trading hubs specific to those sales, and TGPNA's financial trading in connection with such purchases and sales; and (iii) a report of TGPNA's total withdrawals from the Sabine Pass LNG terminal for export, including the volumes of fixed-price monthly natural gas purchases and sales, the trading hubs specific to those purchases and sales, and TGPNA's financial trading in connection with the exports from the Sabine Pass LNG terminal.

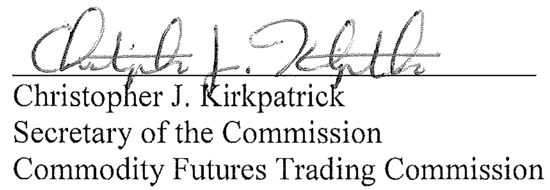
   The reporting obligation set forth above shall begin no later than sixty (60) days from the date of entry of this Order.

3. Preservation of Documents and Communications: Respondent TGPNA shall record and maintain all written documents and communications, whether created or stored electronically, on paper, or in any other manner, related to TGPNA's domestic natural gas trading. Upon request, TGPNA shall provide these documents and communications, or a portion thereof, to the Division.

   The preservation of documents and communications set forth above shall begin no later than sixty (60) days from the date of entry of this Order.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 7, 2015