



December 2015

CFTC Settles with Total Gas for Attempted Market Manipulation, And What Says FERC Enforcement?

Yesterday, the United States Commodity Futures Trading Commission (CFTC) announced that it had simultaneously filed and settled charges against Total Gas & Power North America, Inc. (Total Gas) and Therese Tran (Tran), for violations of Section 6(c) and 9(a)(2) of the Commodity Exchange Act and CFTC Regulations 180.1 and 180.2, which prohibit manipulating or attempting to manipulate the price of any swap or commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity. The CFTC alleged that Total Gas and Tran attempted to manipulate monthly index settlement prices of natural gas at four major trading locations in September 2011, October 2011, March 2012, and April 2012. Total Gas and Tran's alleged fixed-price trading during the relevant time periods accounted for a substantial percentage of the total market by volume at the four trading locations, notwithstanding that Total Gas had no material customers, assets, or transportation near the locations. CFTC alleged that Total Gas and Tran attempted to manipulate the settlement prices in order to benefit their financial basis swap and index swap positions. Specifically, CFTC claimed that Total Gas and Tran's trading during bid-week was designed to increase or decrease monthly index settlement prices, or the spread between settlement prices at different locations, depending on the swaps positions Total Gas held.

Based on Total Gas and Tran's Offer of Settlement, CFTC entered an Order requiring Total Gas and Tran to cease and desist from future violations of Sections 6(c)(1), 6(c)(3), and 9(a)(2) of the Commodity Exchange Act and CFTC Regulations 180.1 and 180.2. Additionally, Total Gas and Tran jointly and severally agreed to pay a civil monetary penalty in the amount of \$3.6 million. Total Gas and Tran also agreed to a bar for two years on trading physical basis or physical fixed-price natural gas for next-month delivery during bid-week at hub locations where Total Gas holds a financial natural gas position whose value derives from natural gas bid-week index prices. Finally, Total Gas and Tran agreed to certain position reporting and document preservation obligations.

The full text of the CFTC Order may be found [here](#).

Prior to CFTC's action, on Sept. 21, 2015, the Office of Enforcement (OE) of the United States Federal Energy Regulatory

Commission (FERC) issued a notice that it has preliminarily determined that Total Gas and its West Desk traders and supervisors Tran (then known as Therese Nguyen) and Aaron Hall (Hall), violated section 4A of the Natural Gas Act and the Commission's Anti-Manipulation Rule by devising and executing a scheme to manipulate the price of natural gas in the southwest United States between June 2009 and June 2012.

Staff alleges that the scheme involved making largely uneconomic trades for physical natural gas during bid-week designed to move indexed market prices in a way that benefited the company's related positions. Staff also alleges that the West Desk implemented the bid-week scheme on at least 38 occasions during the period of interest. Staff further alleges that Tran and Hall each implemented and directed the scheme. No civil penalties or disgorgement have been described yet. CEO Patrick Pouyanné has denied the allegations. The parties likely will attempt to settle the matter, otherwise the investigation and review will continue.

Over the last few years, FERC's OE has pursued several alleged electricity and natural gas manipulation schemes involving uneconomic trading in one market to benefit positions in another market. A recent Greenberg Traurig alert on the topic may be found [here](#).

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