

190 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang

Total Gas & Power North America, Inc., Total,
S.A., Total Gas & Power, Ltd., Aaron Hall, and
Therese Tran f/k/a Nguyen

Docket No. IN12-17-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 8, 2025)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and TotalEnergies Gas & Power North America, Inc. (TGPNA).¹ This order is in the public interest because the Agreement resolves on fair and equitable terms all claims and allegations: (1) in Commission Docket No. IN12-17, including the alleged violations in the Commission's April 28, 2016 Order to Show Cause and Notice of Proposed Penalty and the Commission's July 21, 2021 Order Establishing Hearing (the FERC Enforcement Matter), and (2) in the proceeding initiated by TGPNA, Aaron Hall (Hall) and Therese Tran f/k/a Nguyen (Tran) in the United States District Court for the Southern District of Texas, *TotalEnergies Gas & Power N.A., Inc. et al. v. Federal Energy Regulatory Commission, et al.*, 4:22-cv-4318 (S.D. Tex., Dec. 13, 2022) (the Federal Court Litigation).

2. To fully resolve the claims and allegations, TGPNA will pay \$5,000,000 in restitution to certain agreed-upon non-governmental organizations (NGOs) pursuant to a non-public schedule attached to the Agreement and, upon payment, will move jointly to dismiss with prejudice the Federal Court Litigation on behalf of all parties to the litigation. The Commission agrees to dismiss with prejudice its claims and allegations in the FERC Enforcement Matter in accordance with the terms set forth in the Agreement. TGPNA

¹ TGPNA, along with TotalEnergies SE, and TotalEnergies Gas and Power, Ltd. (together, the Foreign TotalEnergies Entities) each underwent a name change since 2009. These entities were formerly known respectively as Total Gas & Power North America, Inc.; Total, S.A.; and Total Gas & Power, Ltd. All references to these entities include the entities under their prior names.

stipulates to the facts in section II of the Agreement but neither admits nor denies the alleged violations in section III of the Agreement.

I. Factual and Procedural Background

3. Since 2009, TGPNA has been a corporation organized under the laws of Delaware with its principal place of business in Houston, Texas. Between at least 2009 and 2012, TGPNA traded physical and financial natural gas products. TotalEnergies SE and TotalEnergies Gas and Power, Ltd. are, and have been since 2009, the ultimate corporate parent and corporate affiliate, respectively, of TGPNA.

4. In 2012, Enforcement began an investigation of TGPNA and other entities and individuals to determine whether they may have engaged in manipulation in violation of Natural Gas Act (NGA) section 4A and the Commission's Anti-Manipulation Rule.²

5. On April 28, 2016, the Commission issued an Order to Show Cause and Notice of Proposed Penalty directing TGPNA and other entities and individuals to respond to Enforcement's claims and allegations.

6. On July 15, 2021, the Commission issued an Order Establishing Hearing regarding Enforcement's allegations.³ The hearing was scheduled to commence before a Commission Administrative Law Judge on January 23, 2023.

7. On December 13, 2022, TGPNA, among others, filed a complaint in the United States District Court, Southern District of Texas, Houston Division seeking injunctive and declaratory relief to bar the Commission from proceeding with the FERC Enforcement Matter.⁴ On December 16, 2022, TGPNA, among others, moved the District Court for the FERC Enforcement Matter to be preliminarily enjoined.

8. On December 21, 2022, the Commission issued an Order Holding Proceeding in Abeyance in order to allow for briefing and a decision on the December 16, 2022 motion for a preliminary injunction in the Federal Court Litigation.⁵

² 15 U.S.C. § 717c-1; 18 C.F.R. § 1c.1.

³ *Total Gas & Power N. Am., Inc.*, 176 FERC ¶ 61,026 (2021).

⁴ *TotalEnergies Gas & Power N.A., Inc. v. FERC*, Complaint, No. 4:22-cv-04318 (S.D. Tex. Dec. 13, 2022).

⁵ *Total Gas & Power N. Am., Inc.*, 181 FERC ¶ 61,252 (2022).

9. On March 10, 2023, the District Court issued a stay of the FERC Enforcement Matter and the Federal Court Litigation, pending the Supreme Court's resolution of *Axon Enterprise, Inc. v. FTC*, No. 21-86, and *SEC v. Cochran*, No. 21-1239.⁶ The Supreme Court decided the cases on April 14, 2023.⁷ On October 19, 2023, the District Court continued its stay of the FERC Enforcement Matter and the Federal Court Litigation, pending the Supreme Court's resolution of *SEC v. Jarkesy*, No. 22-859.⁸ The Supreme Court decided *Jarkesy* on June 27, 2024.⁹

10. In light of the *Jarkesy* decision, on September 19, 2024, the Commission issued an Order Terminating Hearing and Holding Proceeding in Abeyance that terminated the then-stayed hearing before a FERC Administrative Law Judge.¹⁰ The Commission clarified that it was not terminating the FERC Enforcement Matter in its entirety, and anticipated issuing a further order.

11. The public orders and filings in the FERC Enforcement Matter are available in Docket No. IN12-17-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>). The public orders and filings in the Federal Court Litigation are available on Pacer (<https://pacer.gov>).

II. Stipulation and Consent Agreement

12. Enforcement and TGPNA have resolved the FERC Enforcement Matter and the Federal Court Litigation by means of the attached Agreement.

13. TGPNA stipulates to the facts set forth in section II of the Agreement, but neither admits nor denies the alleged violations set forth in section III of the Agreement.

14. TGPNA agrees to pay \$5,000,000 in restitution to certain agreed-upon NGOs pursuant to a non-public schedule attached to the Agreement. Upon payment, and in accordance with the terms set forth in the Agreement, TGPNA will move jointly to dismiss with prejudice the Federal Court Litigation on behalf of all parties to the litigation. The Commission agrees to dismiss with prejudice its claims and allegations in the FERC

⁶ *TotalEnergies Gas & Power N.A., Inc. v. FERC*, Order, ECF No. 52, No. 4:22-cv-04318 (S.D. Tex. Mar. 10, 2023).

⁷ *Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023).

⁸ *TotalEnergies Gas & Power N.A., Inc., v. FERC*, Order, ECF No. 77, No. 4:22-cv-04318 (S.D. Tex. Oct. 19, 2023).

⁹ *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024).

¹⁰ *Total Gas & Power N. Am., Inc.*, 188 FERC ¶ 61,197 (2024).

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Enforcement Matter in accordance with the terms set forth in the Agreement.

III. Determination of Appropriate Sanctions and Remedies

15. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, and recognizes the specific considerations stated above and in the Agreement.

16. The Commission directs TGPNA to pay restitution as required by the Agreement within 10 business days of the Effective Date of the Agreement.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Total Gas & Power North America, Inc., Total, Docket No. IN12-17-000
S.A., Total Gas & Power, Ltd., Aaron Hall, and
Therese Tran f/k/a Nguyen

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. TotalEnergies Gas & Power North America, Inc. ("TGPNA")¹ along with the Office of Enforcement ("Enforcement") of the Federal Energy Regulatory Commission ("Commission") (TGPNA and Enforcement collectively, the "Parties") enter into this Stipulation and Consent Agreement ("Agreement").² The Parties enter into the Agreement to resolve all claims and allegations (1) in Commission Docket No. IN12-17, including the alleged violations in the Commission's April 28, 2016 Order to Show Cause and Notice of Proposed Penalty and the Commission's July 21, 2021 Order Establishing Hearing (the "FERC Enforcement Matter"), and (2) in the proceeding initiated by TGPNA, Aaron Hall ("Hall") and Therese Tran f/k/a Nguyen ("Tran") in the United States District Court for the Southern District of Texas, *TotalEnergies Gas & Power N.A., Inc. et al. v. Federal Energy Regulatory Commission, et al.*, 4:22-cv-4318 (S.D. Tex., Dec. 13, 2022) (the "Federal Court Litigation"). TGPNA agrees to pay restitution in the amount of \$5,000,000 and, upon payment, will move jointly to dismiss with prejudice the Federal Court Litigation on behalf of all parties to that lawsuit; the Commission agrees to dismiss with prejudice its claims and allegations in the FERC Enforcement Matter in accordance with the terms set forth herein and to never pursue or assert such claims in any other forum.

II. STIPULATED FACTS

2. For purposes of this Agreement, the Parties admit and stipulate to the following facts.

¹ TGPNA, along with TotalEnergies SE, and TotalEnergies Gas and Power, Ltd. (together, the "Foreign TotalEnergies Entities") each underwent a name change since 2009. These entities were formerly known respectively as Total Gas & Power North America, Inc.; Total, S.A.; and Total Gas & Power, Ltd. All references to these entities include the entities under their prior names.

² This Agreement is entered into solely between TGPNA and Enforcement.

3. Since 2009, TGPNA has been a corporation organized under the laws of Delaware with its principal place of business in Houston, Texas. Between at least 2009 and 2012, TGPNA traded physical and financial natural gas products. TotalEnergies SE and TotalEnergies Gas and Power, Ltd. are, and have been since 2009, the ultimate corporate parent and corporate affiliate, respectively, of TGPNA.
4. In 2012, Enforcement began an investigation of TGPNA and other entities and individuals to determine whether they may have engaged in manipulation in violation of Natural Gas Act ("NGA") section 4A, 15 U.S.C. § 717c-1, and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1.
5. On April 28, 2016, the Commission issued an Order to Show Cause and Notice of Proposed Penalty directing TGPNA and other entities and individuals to respond to Enforcement's claims and allegations.
6. On July 15, 2021, the Commission issued an Order Establishing Hearing regarding Enforcement's allegations. *Total Gas & Power N. Am., Inc.*, 176 FERC ¶ 61,026 (2021). The hearing was scheduled to commence before a Commission Administrative Law Judge on January 23, 2023.
7. On December 13, 2022, TGPNA, among others, filed a complaint in the United States District Court, Southern District of Texas, Houston Division seeking injunctive and declaratory relief to bar the Commission from proceeding with the FERC Enforcement Matter. *TotalEnergies Gas & Power N.A., Inc. v. FERC*, Complaint, No. 4:22-cv-04318 (S.D. Tex., Dec. 13, 2022). On December 16, 2022, TGPNA, among others, moved the District Court for the FERC Enforcement Matter to be preliminarily enjoined.
8. On December 21, 2022, the Commission issued an Order Holding Proceeding in Abeyance in order to allow for briefing and a decision on the December 16, 2022 motion for a preliminary injunction in the Federal Court Litigation. *Total Gas & Power N. Am., Inc.*, 181 FERC ¶ 61,252 (2022).
9. On March 10, 2023, the District Court issued a stay of the FERC Enforcement Matter and the Federal Court Litigation, pending the Supreme Court's resolution of *Axon Enterprise, Inc. v. FTC*, No. 21-86, and *SEC v. Cochran*, No. 21-1239. *TotalEnergies Gas & Power N.A., Inc. v. FERC*, Order, ECF No. 52, No. 4:22-cv-04318 (S.D. Tex., Mar. 10, 2023). The Supreme Court decided the cases on April 14, 2023. 598 U.S. 175 (2023). On October 19, 2023, the District Court continued its stay of the FERC Enforcement Matter and the Federal Court Litigation, pending the Supreme Court's resolution of *SEC v. Jarkesy*, No. 22-859. *TotalEnergies Gas & Power N.A., Inc. v. FERC*, Order,

ECF No. 77, No. 4:22-cv-04318 (S.D. Tex., Oct. 19, 2023). The Supreme Court decided *Jarkesy* on June 27, 2024. 144 S. Ct. 2117 (2024).

10. In light of the *Jarkesy* decision, on September 19, 2024, the Commission issued an Order Terminating Hearing and Holding Proceeding in Abeyance that terminated the then-stayed Hearing before a FERC Administrative Law Judge. *Total Gas & Power N. Am., Inc.*, 188 FERC ¶ 61,197 (2024). The Commission clarified that it was not terminating the FERC Enforcement Matter in its entirety, and anticipated issuing a further order.
11. The public orders and filings in the FERC Enforcement Matter are available in Docket No. IN12-17-000 in the Commission's eLibrary system (<https://elibrary.ferc.gov>). The public orders and filings in the Federal Court Litigation are available on Pacer (<https://pacer.gov>).

III. ENFORCEMENT ALLEGATIONS

12. Enforcement alleged that TGPNA violated NGA section 4A and the Anti-Manipulation Rule, but the Commission did not make any findings on Enforcement's allegations.

IV. REMEDIES

13. This Agreement is made in settlement and compromise of disputed claims, and is neither an admission of liability by TGPNA nor a concession by Enforcement that its claims are not well-founded. For purposes of settling the FERC Enforcement Matter, TGPNA agrees to pay restitution of \$5,000,000 within 10 business days of the Effective Date of this Agreement. TGPNA shall make payments to certain agreed-upon NGOs pursuant to a non-public schedule attached to this agreement. TGPNA shall promptly notify Enforcement when it makes the payments by providing proof of payment by email to the Director of the Office of Enforcement. Enforcement shall promptly confirm the receipt of such communications from TGPNA.
14. Within five business days of receiving Enforcement's notification of confirmation of payment, TGPNA, along with any other necessary entity, shall file on behalf of the Parties a Joint Stipulation of Dismissal with Prejudice in the Federal Court Litigation, the purpose of which is to dismiss, withdraw and fully and finally resolve all aspects of the Federal Court Litigation.
15. All parties to the Federal Court Litigation each agree to bear their own costs and fees from the FERC Enforcement Matter and the Federal Court Litigation and neither party shall pursue a claim of costs or fees against the other.

V. TERMS

16. The Effective Date of this Agreement ("Effective Date") shall be the date on which the Commission issues an order approving this Agreement without material modification or conditions. When effective, this Agreement shall resolve the matters addressed herein that arose on or before the Effective Date as to TGPNA and any directly or indirectly affiliated entities, and their respective agents, officers, directors, and employees, both past and present, and any successors in interest.
17. Commission approval of the Agreement without material modification shall release TGPNA, the Foreign TotalEnergies Entities, Hall and Tran and forever bar the Commission from holding TGPNA and any directly or indirectly affiliated entities, and their respective agents, officers, directors, and employees, both past and present, and any successors in interests, liable for any and all administrative or civil claims arising out of the conduct addressed in the FERC Enforcement Matter, which occurred on or before the Agreement's Effective Date. The Commission shall issue an order dismissing the FERC Enforcement Matter with prejudice, and commit to never pursuing or asserting such claims and allegations in any other forum, the purpose of which is to dismiss, withdraw and fully and finally resolve all aspects of the FERC Enforcement Matter. To be clear, while they are not Parties to this Agreement, this release and the referenced Commission order shall explicitly apply to Hall, Tran and the Foreign TotalEnergies Entities in addition to TGPNA.
18. TGPNA's failure to (a) make the payments set forth in section IV above, or (b) comply with the other provisions of this Agreement, shall be deemed a breach of this Agreement and a violation of a final order of the Commission issued pursuant to the NGA. TGPNA acknowledges and agrees that such failure may subject TGPNA and any successors to additional action under the enforcement and penalty provisions of the NGA, which in turn may result in additional remedies separate and apart from the payments set forth in section IV.
19. If TGPNA fails to make the payments set forth in section IV by the deadline set forth in this Agreement, interest shall accrue from the date the payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose. Interest under this paragraph shall be calculated using the rates and methodology set forth in the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii)(A).
20. This Agreement binds TGPNA and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on TGPNA or any affiliated entity, agents, officers, directors, or employees, past or present, other than the obligations identified in this Agreement.

21. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer, or promise of any kind by any member, employee, officer, director, agent, or representative of Enforcement or TGPNA has been made to induce the signatories or any other party to enter into the Agreement.
22. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor TGPNA shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by both TGPNA and Enforcement.
23. In connection with the payments provided for herein, TGPNA agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order. TGPNA waives findings of fact and conclusions of law, rehearing of any Commission order approving this Agreement without material modification, and judicial review by any court of any Commission order approving this Agreement without material modification.
24. Enforcement takes no position on whether the restitution payment set forth in section III of this Agreement is a "monetary sanction" as that term is used in 17 CFR Part 165.
25. The Commission agrees to make such submissions under 26 U.S.C. § 6050X as are required to effectuate the provisions of 26 U.S.C. § 162(f)(2) in the time and in the manner specified in 26 U.S.C. § 6050X. The Commission shall timely complete IRS form 1098-F and include the full amount agreed to in section IV in boxes 1 and 3 of that form.
26. In light of the particular procedural history of this case, TGPNA and Enforcement agree that this Agreement does not constitute a basis for a "prior history enhancement" under the Commission's Penalty Guidelines. *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010). The Commission further agrees that this Agreement shall not be used to support any civil penalty amounts or modifications thereto in any future Commission proceeding or action taken by the Commission in a court of law, other than to resolve the matters specifically addressed in this Agreement.
27. This Agreement can be modified only if in writing and signed by Enforcement and TGPNA, and any modifications will not be effective unless approved by the Commission.


28. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts this Agreement on the entity's behalf.
29. The undersigned representative of TGPNA affirms that TGPNA has read this Agreement; that all the matters set forth in this Agreement are true and correct to the best of its knowledge, information and belief; and that TGPNA understands that this Agreement is entered into by Enforcement in express reliance on those representations.
30. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Agreed to and Accepted:



Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Dated: 12/17/24



William S. Scherman
Vinson & Elkins LLP
Attorney for TGPNA

Dated: 12/17/24

Document Content(s)

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