

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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<b>In the Matter of:</b>	)	CFTC Docket No. <u>08-14</u>
	)	
	)	<b>ORDER INSTITUTING</b>
<b>Sempra Energy Trading LLC, formerly</b>	)	<b>PROCEEDINGS PURSUANT TO</b>
<b>known as Sempra Energy Trading Corp.</b>	)	<b>SECTIONS 6(c) AND 6(d) OF</b>
	)	<b>THE COMMODITY EXCHANGE</b>
	)	<b>ACT, MAKING FINDINGS AND</b>
	)	<b>IMPOSING REMEDIAL</b>
<b>Respondent.</b>	)	<b>SANCTIONS</b>
	)	

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**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Sempra Energy Trading LLC, formerly known as Sempra Energy Trading Corp. (“Sempra”) has violated Commission Regulation (“Regulation”) 1.35(d), 17 C.F.R. §§ 1.35(d) (2008). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Sempra has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of this administrative proceeding, Sempra has submitted an *Offer of Settlement* (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the findings herein, Sempra 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”).<sup>1</sup>

<sup>1</sup> Sempra consents 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 Sempra does not consent to the use of the *Offer*, or the findings 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 does Sempra consent to the use of the *Offer* or this *Order*, or the findings consented to in the *Offer* or this *Order*, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

On certain trading days between August and November, 2004, Sempra's employee floor brokers violated Regulation 1.35(d) by failing to properly and to accurately prepare trading cards in order to process trades that were made after the contract was no longer trading. The trades were "EFS" trades, which involve an exchange of futures for, or in connection with, a swap.<sup>2</sup> Each of the trades was called to the floor on the business day after the expiration of the natural gas futures contract and after the time EFS trades are permitted. Trading cards submitted in connection with these trades reflected inaccurately that the trades had been made prior to the expiration of the natural gas futures contract.

Because the floor brokers were members of the New York Mercantile Exchange ("NYMEX") who undertook their actions within the scope of their employment, Sempra is liable for the violations of Regulations 1.35(d) pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, 7 U.S.C. § 2(a)(1)(B).

#### B. RESPONDENT

**Sempra Energy Trading LLC, formerly known as Sempra Energy Trading Corp.** is a Delaware limited liability corporation with its principal place of business located at 58 Commerce Road, Stamford, CT 06902. Sempra has a floor operation on the NYMEX and employs registered floor brokers who are members of NYMEX.

#### C. FACTS

On certain trading days between August and November, 2004, Sempra's employee floor brokers failed to prepare trading cards consistent with the requirements of Regulation 1.35(d). Each of the trading cards purportedly reflected EFS trades called to the floor during the time period allowed under the trading rules for the natural gas futures contracts. Collectively these trades involved positions of several hundred lots. However, on each of the trading dates at issue the trades took place outside of the permitted time period. The trading cards did not accurately reflect the actual trade dates or trades were entered on the trading cards out of exact chronological order.

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<sup>2</sup> In an EFS trade, the buyer and seller of the futures are, respectively, the seller and buyer of a swap involving an approximately equivalent quantity of the commodity underlying the futures contract. *See NYMEX Rule 6.21A*. An EFS trade allows market participants to exchange a position in the Henry Hub natural gas futures contract for a cash-settled swap contract. An EFS trade also gives market participants the ability to liquidate a swaps position in a market that may have limited liquidity. The parties to an EFS trade are allowed to privately negotiate the execution of an OTC swap and related futures transaction on their own pricing terms. The transaction must involve approximately equal but opposite side-of-market quantities of futures and swap exposures in the same or related commodities.

#### D. LEGAL DISCUSSION

Regulation 1.35(d)(1) provides that each member of a contract market who executes, purchases or sells any commodity for future delivery on a contract market shall prepare regularly and promptly a trading card that shall show the member's name, the name of the clearing member, transaction date, time, quantity, and price. Such trading card shall also identify the opposite floor broker with whom the transaction was executed. Regulation 1.35(d)(2) provides that the purchases and sales shall be recorded in exact chronological order of execution on sequential lines of the trading card. In this matter, Sempra's employees committed the following violations:

By the conduct described above, on certain trading days Sempra's employee floor brokers violated Regulation 1.35(d)(1) by failing to enter the actual EFS transaction dates on their trading cards. On other trading days Sempra's employee floor brokers violated Regulation 1.35(d)(2) by improperly entering trades on their last trading cards on the last trading day for natural gas futures contracts which were out of exact chronological order of execution.

Under Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7<sup>th</sup> Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9<sup>th</sup> Cir. 1988). Because Sempra's employee floor brokers were acting as its agents when they violated the Regulations, Sempra is liable for their violations of Regulation 1.35(d).

#### IV.

#### FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that Sempra violated Regulations 1.35(d)) 17 C.F.R. §§ 1.35(d) (2008).

#### V.

#### OFFER OF SETTLEMENT

Sempra has submitted the *Offer* in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of the *Order*;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this *Order*;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the *Offer*; any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R.

§§ 148.1, *et seq.*, (2008) relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March 29, 1996), relating to, or arising from, this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulates that the record upon which this *Order* is entered shall consist solely of the findings contained in this *Order* to which the Respondent has consented; and
- E. Consents, solely on the basis of the *Offer*, to entry of this *Order* that:
  - 1. makes findings by the Commission that Sempra violated Regulation 1.35(d), 17 C.F.R. §§ 1.35(d) (2008);
  - 2. orders Sempra and its successors and assigns to cease and desist from violating Regulations 1.35(d), 17 C.F.R. §§ 1.35(d) (2008);
  - 3. orders Sempra to pay a civil monetary penalty in the amount of one hundred, seventy-five thousand dollars (\$175,000.00) within ten (10) days of the date of the entry of this *Order*; and
  - 4. orders Sempra and its successors and assigns to each comply with its undertakings consented to in its *Offer* and set forth below in Part VI of this *Order*.

Upon consideration, the Commission has determined to accept Sempra's *Offer*.

## VI.

### ORDER

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

- A. Sempra and its successors and assigns shall cease and desist from violating Regulation 1.35(d), 17 C.F.R. §§ 1.35(d) (2008);
- B. Sempra shall pay a civil monetary penalty in the amount of one hundred, seventy-five thousand dollars (\$175,000.00) within ten (10) days of the date of the entry of this *Order*. Sempra shall pay its civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, 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: Marie Bateman – AMZ-300

DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone 405-954-6569

If payment by electronic transfer is chosen, Sempra shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Sempra shall accompany payment of the penalty with a cover letter that identifies Sempra, and the name and docket number of this proceeding. Sempra shall simultaneously submit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. §9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, Sempra shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

C. Sempra and its successors and assigns shall comply with the following undertakings set forth in its *Offer*:

- a. neither Sempra nor any of its successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the *Order*, or creating, or tending to create, the impression that the *Order* is without a factual basis; provided, however, that nothing in this provision affects Sempra's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. Sempra and its successors and assigns shall take all steps necessary to assure that all of their agents and employees under their authority and/or actual or constructive control understand and comply with this undertaking.
- b. Sempra shall continue to cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement (the "Division") in this proceeding and in any civil or criminal investigation, litigation, or administrative matter related to the subject matter of this proceeding. As part of such cooperation with the Commission, Sempra agrees to:
  - (1) preserve all records that have been previously identified by Respondent to the staff of the Commission as relevant to the subject matter of this proceeding (including records copies of which have been previously provided to the staff of the Commission in connection with the investigation that led to 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;

(2) comply fully, promptly, completely, and truthfully with any inquiries or requests for information or documents;

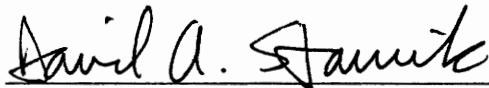
(3) provide authentication of documents and other evidentiary material;

(4) produce any current (as of the time of the request) officer, director, employee, or agent of Sempra, regardless of the individual's location and at such location that minimizes Commission travel expenditures, 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

(5) assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of Sempra.

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

By the Commission.



David A. Stawick  
Secretary to the Commission  
Commodity Futures Trading Commission

Dated: September 4, 2008