

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

JAN 29 2009

Michael N. Milby, Clerk

UNITED STATES OF AMERICA)
)
 v.)
)
 MARK DAVID RADLEY,)
 JAMES WARREN SUMMERS,)
 CODY DEAN CLABORN)
 and)
 CARRIE KIENENBERGER,)
)
 Defendants.)
 _____)

Criminal Number: H-08-411

VIOLATIONS:

18 U.S.C. § 371 (Conspiracy)

18 U.S.C. § 1343 (Wire Fraud)

7 U.S.C. § 13(a)(2) (Price Manipulation
and Corner)

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

18 U.S.C. § 371 – Conspiracy

Unless specified otherwise, at all relevant times:

I. Introduction

1. From on or about February 5, 2004 through at least March 29, 2004, defendants **MARK DAVID RADLEY, JAMES WARREN SUMMERS, CODY DEAN CLABORN,** and **CARRIE KIENENBERGER** (collectively “defendants”), and other employees of BP America Inc. and its subsidiaries (collectively “BP”), conspired to corner and manipulate the price of propane stored and transported in the TEPPCO system (“TET propane”).

2. Defendants used BP’s resources to acquire control of the supply of propane stored and transported in the TEPPCO system in February 2004 (“February 2004 TET propane”).

Defendants purchased large quantities of February 2004 TET propane contracts throughout the month, withheld February 2004 TET propane contracts from other traders for a period of time, and used specific bidding tactics, all to artificially inflate the price of February 2004 TET propane. Defendants thereafter sold propane at artificial prices and caused these prices to be communicated to other market participants. Defendants also cornered February 2004 TET propane by acquiring control of the supply of the commodity.

3. Furthermore, defendants engaged in fraudulent bidding tactics, made numerous purchases of propane to increase the benchmark index price or prevent it from declining, and withheld propane from other market participants, all to distort the price. By causing the benchmark index price to be distorted and inflated, defendants deceived and defrauded their counterparties who engaged in transactions based on the benchmark index price.

II. Background

A. BP and the NGL Trading Bench

4. BP America Inc. and BP Products North America Inc. (“BP Products”) were based in Warrenville, Illinois. Defendants were employees of BP America Production Company, an indirect subsidiary of BP America Inc., and were assigned to the Integrated Supply & Trading (“IST”) group, which was BP’s worldwide trading business. Within IST, the Natural Gas Liquids (“NGL”) trading bench (“NGL Trading Bench”) was responsible for domestic trading of natural gas liquids, including TET propane.

5. The NGL Trading Bench was located at 501 Westlake Boulevard in Houston, Texas, and traded TET propane with counterparties located throughout the United States. After the NGL Trading Bench executed a trade, BP sent a confirmation notice to the counterparty via

the mails and interstate wire communications.

6. Funds from BP's sales of TET propane were transmitted by counterparties via the mails and interstate wires to BP Products' bank account in Chicago, Illinois. Certain propane transactions were subject to a commission fee payable by counterparties. Commission fees were paid by counterparties via the mails and interstate wires.

7. Defendants commonly were granted a year-end bonus, which was based in part on trading profits of the NGL Trading Bench.

B. Defendants and their Conspirators

8. Defendant **MARK DAVID RADLEY** ("RADLEY") was the bench leader of the NGL Trading Bench. **RADLEY**'s responsibilities included the development and oversight of trading strategies.

9. Defendant **JAMES WARREN SUMMERS** ("SUMMERS") was a Vice President of NGL Trading, and **RADLEY**'s supervisor. Defendant **SUMMERS** also was responsible for supervising the activities of the NGL Trading Bench and approving trading strategies.

10. Defendant **CODY DEAN CLABORN** ("CLABORN") was the primary trader on the NGL Trading Bench responsible for trading TET propane during 2003 and 2004, among other times.

11. Defendant **CARRIE KIENENBERGER** ("KIENENBERGER") was a trader on the NGL Trading Bench who traded TET propane during February 2004, among other times.

12. Dennis N. Abbott ("ABBOTT") was a trader on the NGL Trading Bench during 2003 and 2004, among other times.

13. BP Trader #4 was a trader on the NGL Trading Bench primarily responsible for trading other categories of propane during 2003 and 2004, among other times.

C. TET Propane Market

14. Propane, a natural gas liquid, was used by petrochemical industries to produce plastics and also was used as a source of energy for residential and commercial purposes. Residential and commercial use of propane was greatest in the Northeast and Midwest, including in Indiana, Ohio, New York, Pennsylvania and Illinois, among other states. The primary means by which TET propane was delivered to these regions from the Gulf Coast was via the Texas Eastern Products Pipeline Company, LLC ("TEPPCO") interstate pipeline system. Only propane that was in the TEPPCO system could be delivered in satisfaction of a sale of TET propane. Thus, the inventory of propane in the TEPPCO system represented the total amount of TET propane in the world.

15. TET propane was a commodity as defined in Title 7, United States Code, Section 1a(4) and TET propane was a commodity in interstate commerce.

16. TET propane was predominantly bought and sold over-the-counter in one of three ways: (a) directly between two parties; (b) through voice brokers; and (c) through an electronic trading platform known as "Chalkboard." Propane sales generally were made in lots of 1,000 barrels. Each barrel was the equivalent of 42 gallons of propane. Prices for propane were quoted in increments of one-eighth of a cent per gallon. In determining prices for propane trades, traders considered prices associated with current bids to buy and offers to sell, as well as recent trades they had observed or heard about.

17. In voice broker transactions, brokers negotiated and executed deals on behalf of a

buyer and seller. Voice brokers communicated bids to buy and offers to sell from one trader to other traders. Additionally, voice brokers communicated to traders the price of the most recent sale of propane of which the voice broker was aware.

18. In Chalkboard transactions, buyers and sellers posted anonymous bids to buy and offers to sell on the Chalkboard electronic website, and learned the counterparty's identity only upon completing a transaction. All bids to buy and offers to sell posted on Chalkboard were published anonymously to all traders who accessed the Chalkboard system. Additionally, when a transaction was completed on Chalkboard, the price associated with that transaction was published to all traders who accessed the Chalkboard system, without identifying the counterparties involved.

19. TET propane was bought and sold by traders with different delivery time periods. When a trader bought or sold an "any" contract, the seller was obligated to deliver the propane to the buyer on or before the last calendar day of the month. Thus, for example, a trader could sell propane to a counterparty on February 2, 2004, but would not be required to deliver that propane to the counterparty until February 29, 2004.

20. TET propane was delivered into a buyer's account at TEPPCO through a Physical Transfer Order ("PTO"). The PTO was generated based on distribution chains arranged by the companies that bought and sold TET propane. Each distribution chain identified a volume of propane, and the parties that had purchased or sold that propane during the month. The last party in the distribution chain received into its account the volume identified on the chain.

21. Prices of propane sales were published daily by the Oil Price Information Service ("OPIS"), based on information collected daily from propane traders and voice brokers. Pricing

information was collected by OPIS for sales conducted directly between counterparties, via voice broker, and via the Chalkboard system.

22. OPIS published, at the end of each trading day, the highest and lowest priced transactions, and the “OPIS average,” for TET propane. The “OPIS average” was the midpoint between the high and the low transactions for that day. OPIS published separate prices depending on when the propane was required to be delivered, including for “any” TET propane. OPIS prices published for TET propane would affect the price paid by commodity traders and end users of TET propane and other categories of propane in the Midwest and Northeast. A TET propane transaction at a price outside the range of prices that had already occurred on a given day would likely affect the OPIS average for that day.

23. Defendants and other propane traders sometimes purchased or sold TET propane based on the daily or monthly average published by OPIS (“OPIS average transaction” or “OPIS index”). When a party engaged in an OPIS average transaction, the actual price that would be paid was not known at the time of the transaction. A purchase or sale that occurred subsequent to the OPIS average transaction, at a price that constituted a high or low for that day, would likely affect the OPIS average and therefore the price paid in an OPIS average transaction.

24. Companies A through S, among others, purchased or sold February 2004 TET propane.

III. The Conspiracy

25. Beginning on or about February 5, 2004, and continuing through at least March 29, 2004, in the Southern District of Texas, and elsewhere, defendants

**MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,**

did knowingly and willfully conspire, confederate and agree with each other and others to commit the following offenses against the United States:

- a. to manipulate and attempt to manipulate the price of February 2004 TET propane, a commodity in interstate commerce, contrary to Title 7, United States Code, Section 13(a)(2);
- b. to corner and to attempt to corner February 2004 TET propane, a commodity in interstate commerce, contrary to Title 7, United States Code, Section 13(a)(2); and
- c. to devise a scheme and artifice to defraud counterparties who purchased February 2004 TET propane based on the OPIS index price, and to obtain money and property by means of materially false pretenses, representations, and promises, and to utilize the United States mails, private and commercial interstate carriers, and interstate wire communications for the purpose of executing that scheme and artifice, contrary to Title 18, United States Code, Sections 1341 and 1343.

A. Purposes of the Conspiracy

The principal purposes of the conspiracy included:

26. to acquire control of all or a dominant portion of February 2004 TET propane, withhold a portion of that propane from sale for a limited time, and thereby obtain the ability to artificially enhance the price of February 2004 TET propane;

27. to artificially inflate the price of February 2004 TET propane and thereby enrich BP by selling propane at the artificially inflated price and at an artificially inflated OPIS index price;

28. to conceal the fraud, price manipulation and corner scheme by making false statements to certain BP executives, market participants and others; and

29. to enrich the conspirators by obtaining from BP bonuses and other remuneration based in part upon BP's profits from sales of February 2004 TET propane at artificially inflated prices.

B. Manner and Means

The conspiracy was carried out through the following manner and means, among others:

30. The conspirators would design their scheme by, among other things, attempting a similar scheme in 2003 and by exploiting daily TEPPCO system inventory levels on the internet.

31. The conspirators would purchase February 2004 TET propane "any" contracts to acquire control over the supply and force month-end purchasers of TET propane to purchase from BP at artificial prices.

32. The conspirators would mislead the market about the true supply of February 2004 TET propane through the presentation of "false" or "show" offers – offers that were designed to falsely convey that BP wished to sell propane.

33. The conspirators would falsely convey that multiple counterparties wished to

purchase propane and mislead the market about the true demand of February 2004 TET propane, by presenting multiple, or stacked, bids to buy on Chalkboard when they did not in fact wish to purchase additional propane.

34. The conspirators would, after obtaining a dominant position of February 2004 TET propane, purchase additional propane at artificial prices to maintain control over the supply of propane, to increase the price, and to prevent the price from falling to a level at which it would otherwise settle.

35. The conspirators would use specific trading tactics to artificially increase the OPIS index price, including selectively withholding February 2004 TET propane from the market, continuing to accumulate February 2004 TET propane, and preventing other participants from buying propane at a price below the “floor” set by the conspirators.

36. The conspirators would force other market participants to buy from BP at artificially inflated prices during February 2004 by withholding a large quantity of February 2004 TET propane until March, and accepting physical delivery of this propane into BP’s account at TEPPCO at the end of February.

37. The conspirators would, after achieving control of almost the entire supply of February 2004 TET propane, sell propane to other market participants at prices artificially inflated by the conspirators’ conduct.

38. The conspirators would sell February 2004 TET propane to counterparties based on the reported OPIS index price that was artificially inflated and distorted by the conspirators’ manipulative and fraudulent conduct prior to, and during, the days these transactions were priced.

C. Overt Acts

In furtherance of the conspiracy and to achieve its purposes, the conspirators committed the following overt acts, among others, within the Southern District of Texas, and elsewhere:

Planning the Manipulation and Corner Scheme

39. On or about February 5, 2004, **RADLEY** and **ABBOTT** discussed by telephone how the successful execution of the scheme to corner February 2004 TET propane would establish that they and BP could “control the market at will,” and how to obtain approval for the scheme from **SUMMERS**.

40. Between on or about February 5 and February 9, 2004, **RADLEY** obtained approval from **SUMMERS** for the conspirators to use BP funds to execute the scheme.

41. On or about February 9, 2004, in a telephone conversation, **RADLEY**, **CLABORN** and **ABBOTT** discussed the implementation of the scheme with respect to BP’s acquisition of control over the supply of February 2004 TET propane and their plan to withhold from sale that propane for a period of time until they saw “some of these shorts come in.”

42. On or about February 9, 2004, in a telephone conversation, **RADLEY**, **CLABORN** and **ABBOTT** discussed the implementation of the scheme with respect to BP’s February 2004 TET propane sales based on the OPIS index price, and **RADLEY** advised that: “The advantage of . . . selling an index price, there's no complaint. If we squeeze it in the last four or five days of the month, forgive my French, but you know, it's going to be hard to say what is the fair price of the market at the time.”

Controlling the Supply of February 2004 TET Propane with BP’s Resources

43. In accordance with their scheme to manipulate the price of and to corner February

2004 TET propane, the following conspirators accumulated contracts requiring delivery of more barrels than existed in the entire system inventory at the TEPPCO facility, by at least February 19, 2004, through the following specific trades, among others, each of which constitutes a separate overt act:

Conspirator	Date	Volume (barrels)	Price/gallon
CLABORN	2/9/2004	150,000	0.61
ABBOTT	2/11/2004	100,000	0.64

44. On or about February 23, 2004, in order to send false information to the market about the availability of TET propane, **CLABORN** posted an anonymous offer to sell February 2004 TET propane on Chalkboard at 0.7675 cents, when at the time the last completed transaction occurred at 0.75 cents and a pending offer existed at 0.765 cents.

Concealing the Manipulation and Corner Scheme

45. On or about February 6, 2004, **SUMMERS, RADLEY, CLABORN, KIENENBERGER, ABBOTT, and BP Trader #4**, to conceal the scheme, agreed to refrain from using words such as “squeeze,” “leverage,” and “corner” in meetings, telephone conversations or on corporate documents.

46. On or about February 13, 2004, the conspirators, including **SUMMERS, CLABORN, ABBOTT and BP Trader #4**, discussed the scheme and allegations of wrongdoing that had been made by other traders, and agreed that they would conceal the true nature of the scheme from other market participants in future discussions.

47. On or about February 18, 2004, after a market participant questioned **CLABORN** as to why BP was accumulating such a large quantity of propane, **CLABORN** falsely responded

that BP would be “consuming it at some point.”

48. On or about February 19, 2004, when a market participant questioned **CLABORN** as to whether BP was trying to corner TET propane, **CLABORN** falsely responded that the market participant was “badly mistaken.”

Purchases to Obtain Control Over the Supply and to Increase Price

49. On or about the dates referenced below, the following conspirators engaged in the following additional purchases of February 2004 TET propane to obtain control over the supply, and to increase the price, each of which constitutes a separate overt act:

Conspirator	Date	Volume (barrels)	Price/gallon
CLABORN	2/19/2004	25,000	0.69625
ABBOTT	2/19/2004	25,000	0.6925
BP Trader #4	2/20/2004	2,500	0.7175
CLABORN	2/20/2004	25,000	0.715
CLABORN	2/23/2004	10,000	0.7525
BP Trader #4	2/23/2004	5,000	0.75125
CLABORN	2/24/2004	25,000	0.7825
KIENENBERGER	2/24/2004	10,000	0.8225

Continued Execution of Scheme Despite Allegations of Wrongdoing

50. On or about February 23, 2004, **RADLEY, SUMMERS, CLABORN, KIENENBERGER, ABBOTT** and BP Trader #4 discussed several articles that had appeared in the industry press indicating that BP was engaged in a “short squeeze.”

51. On or about February 23, 2004, **RADLEY, SUMMERS, CLABORN, KIENENBERGER, ABBOTT** and BP Trader #4 discussed the risk of discovery if they

continued executing the scheme.

52. On or about February 23, 2004, **SUMMERS** directed the conspirators to “go make money” on the manipulation strategy, concluding that the “reputational risk” was a “sunk cost” and to do otherwise would result in a sure loss to BP.

Selective Withholding of Contracts and Supply

53. On or about February 20, 2004, **RADLEY** directed **CLABORN**, **KIENENBERGER**, **ABBOTT** and BP Trader #4 not to sell propane until they saw “the big shorts come in.”

54. On or about February 26, 2004, **RADLEY** directed **CLABORN**, **KIENENBERGER**, **ABBOTT** and BP Trader #4 to refrain from selling propane to other market participants.

55. On or about February 26, 2004, **RADLEY**, **CLABORN**, **KIENENBERGER**, **ABBOTT** and BP Trader #4 agreed not to make a single offer to sell any February 2004 TET propane to other market participants.

56. At certain times during late February, as set forth below, the following conspirators refused to sell February 2004 TET propane to counterparties as part of their strategy to drive up the price, each refusal constituting a separate overt act:

a. On or about February 20, 2004, in order to artificially inflate the price, **ABBOTT** refused to sell February 2004 TET propane to a counterparty;

b. On or about February 23, 2004, though BP's position exceeded approximately 4 million barrels of February 2004 TET propane, **CLABORN** refused to sell February 2004 TET propane to a counterparty; and

c. On or about February 26, 2004, **KIENENBERGER** withheld February 2004 TET propane from a counterparty, though that counterparty offered to pay “best bid,” or the highest price in the market place at that time.

Bidding During February 23-27 to Inflate OPIS Index and Manipulate Price

57. As set forth below, the following conspirators placed bids to “buy” propane on Chalkboard during the early mornings of on or about February 23 through on or about February 27, 2004, each of which was the “best bid” on Chalkboard at the time it was placed, and each of which was placed with the intent to: (1) prevent other market participants from engaging in transactions at prices lower than the conspirators’ bids; (2) force market participants to pay BP a price higher than where BP artificially set the bid; (3) deceive market participants about the demand for propane; and/or (4) permit BP to profit by selling propane based on the OPIS average price for that day and subsequent days, which average the conspirators sought to artificially increase by placing such bids, each of which constitutes a separate overt act:

Conspirator	Approx. Date	Approx. Time	BP Bid Price/gallon
ABBOTT	2/23/2004	7:32:19 a.m.	0.60
BP Trader #4	2/23/2004	7:33:03 a.m.	0.62
ABBOTT	2/23/2004	7:34:35 a.m.	0.655
BP Trader #4	2/23/2004	7:35:11 a.m.	0.665
CLABORN	2/23/2004	7:44:37 a.m.	0.675
CLABORN	2/23/2004	8:05:35 a.m.	0.67625
ABBOTT	2/24/2004	7:57:36 a.m.	0.72
CLABORN	2/25/2004	6:58:01 a.m.	0.86
CLABORN	2/26/2004	6:59:10 a.m.	0.85

Conspirator	Approx. Date	Approx. Time	BP Bid Price/gallon
CLABORN	2/26/2004	7:10:05 a.m.	0.82125
KIENENBERGER	2/27/2004	7:14:29 a.m.	0.77625

58. On or about February 25, 2004, **CLABORN** purchased February 2004 TET propane from a counterparty and declined a discount offered to him unless the counterparty agreed not to communicate the price of the transaction to OPIS or other market participants, because the discounted price would have constituted the OPIS low price for the day.

59. On or about February 23, 2004 through on or about February 26, 2004, among other times, the following conspirators stacked multiple bids on Chalkboard as a means of providing false information about the true demand for propane, each of which constitutes a separate overt act:

Conspirator	Approx. Date	Approx. Time	BP Bid Price/gallon
ABBOTT	2/23/2004	7:32:19 a.m.	0.6
BP Trader #4	2/23/2004	7:33:03 a.m.	0.62
ABBOTT	2/23/2004	1:01:14 p.m.	0.7
ABBOTT	2/23/2004	1:01:21 p.m.	0.695
ABBOTT	2/23/2004	1:01:28 p.m.	0.6925
ABBOTT	2/24/2004	7:57:45 a.m.	0.725
ABBOTT	2/24/2004	7:57:50 a.m.	0.7275
ABBOTT	2/24/2004	7:58:16 a.m.	0.73
CLABORN	2/25/2004	9:19:39 a.m.	0.89
CLABORN	2/25/2004	9:19:55 a.m.	0.89625
CLABORN	2/25/2004	9:20:10 a.m.	0.89375
CLABORN	2/25/2004	9:21:06 a.m.	0.89125

Conspirator	Approx. Date	Approx. Time	BP Bid Price/gallon
CLABORN	2/25/2004	9:21:14 a.m.	0.89125
CLABORN	2/25/2004	9:21:22 a.m.	0.8925
ABBOTT	2/25/2004	10:48:01 a.m.	0.89
ABBOTT	2/25/2004	10:48:05 a.m.	0.89
ABBOTT	2/25/2004	11:13:09 a.m.	0.89
ABBOTT	2/25/2004	11:13:17 a.m.	0.89
CLABORN	2/25/2004	12:24:50 p.m.	0.89
CLABORN	2/25/2004	12:25:32 p.m.	0.89125
CLABORN	2/25/2004	12:41:37 p.m.	0.88875
CLABORN	2/25/2004	12:41:44 p.m.	0.8875
CLABORN	2/25/2004	12:41:53 p.m.	0.89
KIENENBERGER	2/25/2004	2:46:41 p.m.	0.85
KIENENBERGER	2/25/2004	2:47:08 p.m.	0.86
CLABORN	2/26/2004	6:59:10 a.m.	0.85
CLABORN	2/26/2004	6:59:24 a.m.	0.84

Additional Accumulation to Increase Price, Prevent Price Drop and Reacquire Control

60. On or about the dates referenced below, the following conspirators engaged in the following purchases of February 2004 TET propane for the purpose of preventing a drop in the price and acquiring control of the supply, each of which constitutes a separate overt act:

Conspirator	Date	Volume (barrels)	Price/gallon
KIENENBERGER	2/25/2004	50,000	0.855
KIENENBERGER	2/25/2004	100,000	0.86
CLABORN	2/25/2004	50,000	0.8525
ABBOTT	2/25/2004	25,000	0.87

Conspirator	Date	Volume (barrels)	Price/gallon
BP Trader #4	2/25/2004	20,000	0.90
ABBOTT	2/26/2004	25,000	0.83
CLABORN	2/26/2004	25,000	0.84
CLABORN	2/27/2004	2,500	0.86

61. On or about February 27, 2004, **RADLEY** posted anonymous offers to sell March 2004 TET propane to signal that the prices of March and February TET propane would not converge.

Selling February TET Propane at Artificial Prices to Profit from Scheme

62. On or about the dates referenced below, the following conspirators engaged in the following sales of TET propane at artificial prices in order to profit from the scheme, each of which constitutes a separate overt act:

Conspirator	Counterparty	Date	Volume (barrels)	Price/gallon
CLABORN	Company A	2/27/2004	40,000	0.94
CLABORN	Company B	2/27/2004	25,000	0.93
ABBOTT	Company C	2/27/2004	5,000	0.925
CLABORN	Company D	3/9/2004	25,000	0.94

63. On or about February 27, 2004, **KIENENBERGER** offered to sell 10,000 barrels of February 2004 TET propane on Chalkboard at 0.94 cents per gallon.

Causing Funds to be Sent by U.S. Mail

64. On or about March 24, 2004, **CLABORN** caused Company E to transmit a commission payment via the U.S. mail in connection with a sale by **CLABORN** to Company E

of February 2004 TET propane based on the fraudulently inflated OPIS average price.

Accepting Delivery of Remaining Propane

65. On or before February 29, 2004, **SUMMERS, RADLEY, CLABORN, KIENENBERGER, ABBOTT** and others caused BP to accept delivery of approximately 4 million barrels of February 2004 TET propane into its account at TEPPCO.

Concealing Unlawful Nature of Scheme from Certain BP Executives and Others

66. On or about February 24, 2004, to conceal the nature of the scheme, **ABBOTT** redesignated 3 million barrels of BP's February 2004 TET propane as March barrels in BP's inventory system, and added the notation "rolling Feb length to WET March market. [W]e will be carrying bbls over to March[.]"

67. On or about February 26, 2004, to conceal the nature of the scheme, **KIENENBERGER** redesignated 800,000 barrels of BP's February 2004 TET propane as March barrels in BP's inventory system.

68. On or about February 27, 2004, in response to a voice broker stating to **CLABORN** that "there is nobody else that has any out here but you. [EXPLETIVE] what's it going to go to Cody, a buck," **CLABORN**, to conceal the unlawful nature of the scheme, instructed the voice broker not to share this information with a counterparty, and cautioned "everything you say is recorded."

69. On or about March 3, 2004, to conceal the unlawful nature of the scheme, **SUMMERS** made a false and misleading statement to a senior BP Executive about how the conspirators sold propane during February 2004.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO – TWELVE
7 U.S.C. § 13(a)(2); 18 U.S.C. § 2
Commodity Price Manipulation and Attempted Price Manipulation

70. Paragraphs 1 through 24 and 39 through 69 of this Superseding Indictment are realleged and incorporated as if fully set forth here.

71. From on or about February 5, 2004 through on or about March 29, 2004, in the Southern District of Texas, and elsewhere, defendants

**MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,**

and others, did knowingly and intentionally manipulate and attempt to manipulate the price of February 2004 TET propane, a commodity in interstate commerce, by engaging in the conduct described in paragraphs 1 through 24 and 39 through 69 above, and causing the following artificial prices to affect the price of February 2004 TET propane, by communicating said artificial prices to other market participants, counterparties, and the public, as set forth below:

Count	Counterparty	Approx. Date/Time	Price/gal.	Manner artificial price communicated to market
2	Company G	2/24/2004 2:28 p.m.	\$0.84	Chalkboard
3	Company G	2/24/2004 2:28 p.m.	\$0.85	Chalkboard
4	Company H	2/24/2004 2:50 p.m.	\$0.86	Chalkboard
5	Company I	2/24/2004 2:53 p.m.	\$0.865	Chalkboard
6	Company J	2/24/2004 4:24 p.m.	\$0.8825	Chalkboard
7	Company K	2/25/2004 7:41 a.m.	\$0.9125	Chalkboard
8	Company L	2/25/2004 7:41 a.m.	\$0.92	Chalkboard

Count	Counterparty	Approx. Date/Time	Price/gal.	Manner artificial price communicated to market
9	Company M	2/26/2004 7:12 a.m.	\$0.84	Chalkboard, OPIS (daily high)
10	Company C	2/27/2004 10:32 a.m.	\$0.91	Chalkboard
11	Company N	2/27/2004 10:38 a.m.	\$0.92	Chalkboard
12	Company A	2/27/2004 1:48 p.m.	\$0.94	OPIS (daily high)

All in violation of Title 7, United States Code, Section 13(a)(2), and Title 18, United States Code, Section 2.

COUNTS THIRTEEN – SEVENTEEN

7 U.S.C. § 13(a)(2); 18 U.S.C. § 2

Commodity Price Manipulation and Attempted Price Manipulation

72. Paragraphs 1 through 24 and 39 through 69 of this Superseding Indictment are realleged and incorporated as if fully set forth here.

73. From on or about February 5, 2004 through on or about March 29, 2004, in the Southern District of Texas, and elsewhere, defendants

**MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,**

and others, did knowingly and intentionally manipulate and attempt to manipulate the price of February 2004 TET propane, a commodity in interstate commerce, by engaging in the conduct described in paragraphs 1 through 24 and 39 through 69 above, and causing the OPIS average price for February 2004 TET propane to be artificial and inflated, on the dates set forth below:

Count	Date	OPIS Average price/gallon
13	2/23/2004	\$0.746875
14	2/24/2004	\$0.811250
15	2/25/2004	\$0.892500
16	2/26/2004	\$0.808750
17	2/27/2004	\$0.861875

All in violation of Title 7, United States Code, Section 13(a)(2), and Title 18, United States Code, Section 2.

COUNT EIGHTEEN
7 U.S.C. § 13(a)(2); 18 U.S.C. § 2
Corner and Attempted Corner

74. Paragraphs 1 through 24 and 39 through 69 of this Superseding Indictment are realleged and incorporated as if fully set forth here.

75. From on or about February 5, 2004 through on or about February 24, 2004, in the Southern District of Texas, and elsewhere, defendants

MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,

and others, did knowingly and intentionally corner and attempt to corner February 2004 TET propane, a commodity in interstate commerce, by engaging in the conduct described in paragraphs 1 through 24 and 39 through 69 above, culminating in the control over the supply of February 2004 TET propane on or about February 24, 2004 and the withholding from sale of that propane for a limited time.

All in violation of Title 7, United States Code, Section 13(a)(2), and Title 18, United

States Code, Section 2.

COUNT NINETEEN
7 U.S.C. § 13(a)(2); 18 U.S.C. § 2
Corner and Attempted Corner

76. Paragraphs 1 through 24 and 39 through 69 of this Superseding Indictment are realleged and incorporated as if fully set forth here.

77. From on or about February 25, 2004 through on or about February 27, 2004, in the Southern District of Texas, and elsewhere, defendants

MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,

and others, did knowingly and intentionally corner and attempt to corner February 2004 TET propane, a commodity in interstate commerce, by engaging in the conduct described in paragraphs 1 through 24 and 39 through 69 above, culminating in control over the supply of February 2004 TET propane on or about February 27, 2004 and the withholding from sale of that propane for a limited time.

All in violation of Title 7, United States Code, Section 13(a)(2), and Title 18, United States Code, Section 2.

COUNTS TWENTY – TWENTY-SIX
18 U.S.C. §§ 1343 and 2
Wire Fraud

78. Paragraphs 1 through 24 and 39 through 69 of this Superseding Indictment are realleged and incorporated as if fully set forth here as constituting the scheme and artifice to defraud referred to herein.

79. From on or about February 5, 2004 through on or about March 29, 2004, in the Southern District of Texas, and elsewhere, defendants

**MARK DAVID RADLEY,
JAMES WARREN SUMMERS,
CODY DEAN CLABORN
and
CARRIE KIENENBERGER,**

and others, did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud purchasers of February 2004 TET propane at a price based on the OPIS index and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and did use interstate wire communications for the purpose of executing the scheme and artifice, all as more fully set forth below.

80. On or about the dates referenced below, in the Southern District of Texas, and elsewhere, for the purpose of executing such scheme and artifice and attempting to do so, the defendants and others did cause to be transmitted by means of wire communications in interstate commerce writings, signs, signals and sounds, as described below, each constituting an act in execution of the scheme:

Count	Approx. Date	Counterparty	Volume (bbls)	Dates for OPIS Daily Price Term	Wire Communication
20	2/23/2004	Company O	25,000	2/24/2004 to 2/27/2004; OPIS Average +.00125 per gallon	Interstate wire transfer on 3/15/2004 to BP bank account of approximately \$887,086.20.
21	2/23/2004	Company P	25,000	2/25/2004 to 2/27/2004; OPIS Average	Interstate wire transfer on 3/8/2004 to BP bank account of approximately \$898,800.
22	2/24/2004	Company Q	30,000	2/24/2004 to 2/27/2004; OPIS Average	Interstate wire transfer on 3/29/2004 to BP bank account of approximately \$1,062,936.
23	2/24/2004	Company R	50,000	2/25/2004 to 2/27/2004; OPIS Average	Interstate wire transfer on 3/12/2004 to BP bank account of approximately \$1,794,198.
24	2/24/2004	Company G	25,000	2/25/2004 to 2/27/2004; OPIS Average	Interstate wire transfer on 3/11/2004 to BP bank account of approximately \$897,093.
25	2/25/2004	Company S	75,000	2/25/2004 to 2/27/2004; OPIS Average +.00125 per gallon	Interstate wire transfer on 3/9/2004 to BP bank account of approximately \$3,330,027.

Count	Approx. Date	Counterparty	Volume (bbls)	Dates for OPIS Daily Price Term	Wire Communication
26	2/25/2004	Company S	25,000	2/25/2004 to 2/27/2004; OPIS Average +.0025 per gallon	Interstate wire transmission of sales confirmation on 2/27/2004.

All in violation of Title 18, United States Code, Sections 1343 and 2.

A True BILL

ORIGINAL SIGNATURE ON FILE
FOREPERSON ⁰

STEVEN TYRRELL / J.D.
STEVEN A. TYRRELL
Chief, Fraud Section

JERROB DUFFY
Senior Trial Attorney, Fraud Section

JOSEPH KONIZESKI
Special Trial Attorney, Fraud Section

TYLER C. MURRAY
Assistant U.S. Attorney

United States Department of Justice
Criminal Division, Fraud Section
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
(202) 514-0819