

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

)

Market Manipulation Rulemaking)

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No. P082900

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COMMENTS OF THE MISSISSIPPI ATTORNEY GENERAL

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The Mississippi Attorney General welcomes this opportunity to submit comments on the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking (“NPR”) concerning Section 811 of Subtitle B of the Energy Independence and Security Act of 2007 (“EISA”). We commend the FTC on its diligent work and the well-developed rule. We support the FTC’s efforts in this arena.

The Notice of Proposed Rulemaking states that the Commission “seeks comments on the specific formulation of the proposed Rule, and in particular on whether using SEC Rule 10b-5 as a model is appropriate.” The Mississippi Attorney General provides the following limited comments in its efforts to assist in this important endeavor and for the furtherance of the public interest of the State’s citizens.

1. General Questions

a. What is the effect, if any, on consumers?

The proposed Rule will benefit consumers significantly because market manipulation can artificially inflate prices of petroleum products and cause consumers to pay more for essential goods, such as gasoline. Gasoline and diesel are vital for consumers to pursue their necessary daily activities, and the price of these commodities directly and significantly impacts consumers. These prices are particularly important during times of market disruption, such as during a state of emergency, when any market manipulation could magnify the price of fuel. Ensuring that such artificial increases do not occur is critical to consumers’ well being during times of natural disasters and other emergencies, as well as on a daily basis.

2. Questions on Proposed Specific Provisions

a. Rulemaking Standard The Mississippi Attorney General agrees with the Commission that the proposed Rule meets the rulemaking standard. The proposed Rule is necessary to ensure that

consumers do not pay higher prices for petroleum products due to wholesale market manipulation. Likewise, the scope of the proposed Rule is well tailored to ensure that it will address the concerns without deterring desirable market practices that could ultimately benefit consumers.

b. Scope

The Mississippi Attorney General strongly agrees with the Commission's rationale and decision not to provide for safe harbors or exemptions to the proposed Rule.

c. Definitions

The Mississippi Attorney General agrees with the Commission in defining wholesale to include sales at the terminal rack level.

p. Scienter Element of Proof

The Mississippi Attorney General believes that both intentional and reckless conduct should be covered by the scienter requirement.

r. “Attempted Manipulation”

The Mississippi Attorney General supports the inclusion of attempted manipulation in the proposed Rule. Fraudulent or deceptive conduct, even if not fully completed, should nonetheless be within the enforcement reach of the EISA.

s. Proof of Price Effects

The Mississippi Attorney General believes that proof of price effects should not be required to establish a violation. Such an element of proof could make it extremely difficult to prove such a causal link and could chill the enforcement of otherwise obvious violations.

u. Preemption

The Mississippi Attorney General agrees that the EISA does not preempt state law and the proposed Rule should not. The proposed Rule, as currently written, may be considered to apply to

enforcement of a state anti-price gouging statute as it could be alleged that such enforcement is “conduct that directly or indirectly affects market prices of an enumerated petroleum product at the terminal rack level or upstream of the terminal rack level.” Although such a position does not seem probable, the last portion of this section should be modified to ensure that such a position could not be taken.

CONCLUSION

The Mississippi Attorney General appreciates this opportunity to comment and would welcome any future opportunity to help in this rulemaking process.

Respectfully Submitted,

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