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FEDERAL TRADE COMMISSION
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SECRETARY

May 19, 2009

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex G)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Market Manipulation Rulemaking, PO82900

Dear Federal Trade Commission:

I am enclosing comments of the Illinois Petroleum Marketers Association on the Revised Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation pursuant to Section 811 of Subtitle B of the Energy Independence and Security Act of 2007.

Thank you.

Sincerely yours,

William J. Fleischli
Executive Vice President

COMMENTS BY THE ILLINOIS PETROLEUM MARKETERS ASSOCIATION

May 19, 2009

Re: Market Manipulation Rulemaking, P082900

I am Executive Vice President of the Illinois Petroleum Marketers Association (IPMA), a trade association made up of 500 members who own and operate 3,500 gasoline stations and convenience stores in Illinois. On behalf of my members, I provide the following comments on the Federal Trade Commission's (FTC) Revised Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation pursuant to Section 822 of Subtitle B of Title VIII of The Energy Independence and Security Act of 2007, promulgated at 16 CFR Part 317. IPMA provided comments on the FTC's Advance Notice of Proposed Rulemaking on the same subject on June 19, 2008, and on its Notice of Proposed Rulemaking on September 3, 2008.

The following comments and our previous comments on the ANPR and NPRM are prompted by a situation which is occurring here in Illinois and in numerous States across the country. As stated in our previous comments and again here by way of background, the oil companies sell gasoline at terminal racks. The majority of gasoline is transported to these terminal racks by pipeline. Ethanol, a primary gasoline additive, cannot be transported by pipeline. It must be delivered by truck or rail car from an ethanol plant or other terminal source. IPMA members operate independent gas stations and convenience stores in Illinois and buy their gasoline from numerous terminals at the best price on any given day. Historically, gasoline has been pure, unblended gasoline free of ethanol. If it is necessary or desirable to add ethanol or other oxygenate to gasoline because of environmental rules or for added octane or other reasons, IPMA members have traditionally purchased ethanol at the best price from an independent ethanol producer. They then inject the ethanol into the pure gasoline and sell it to a retailer or wholesaler for ultimate sale to the public. The percentage of ethanol added is typically 10% which is commonly known as E10.

Many oil companies now no longer sell pure, unblended gasoline at the terminal rack and will only sell pre-blended gasoline that already contains the ethanol. This removes independent marketers' ability to purchase gasoline and ethanol separately to produce their own gasoline/ethanol blends and take advantage of lower ethanol prices available on the open market. We believe that this results in the lowest blended gasoline price when sold to the consumer.

A number of consequences will flow from this limitation that will have an impact on the wholesale and retail price of gasoline and provides opportunities to manipulate the market. Independent ethanol producers and wholesalers have been selling ethanol to both oil companies and independent marketers. Their customer base may be as large as 300 or 400 customers per supplier. Should oil companies eliminate the availability of unblended gasoline, the ethanol suppliers' customer base will go from 300 or 400 to less than 10. The only purchasers of ethanol for blending will be the oil companies. The smaller the customer base, the greater is the likelihood that the purchaser will control the price through market dominance. If the oil companies eliminate the independent marketers' ability to do their own blending and control the market, they will control prices and distribution. Prior to this action by the oil companies, independent marketers could buy unblended gasoline from one source and ethanol from another source at the best price available and sell the blended fuel for the lowest possible value in the market. If unblended gasoline is unavailable, independent marketers will have no choice but to purchase blended gasoline at the terminal and no longer have the ability to blend gasoline and ethanol at the best price. As a result, it is our opinion that the consumer will suffer. Since there will no longer be a market for separately priced unblended gasoline and ethanol, the price of gasoline blended with both pure gasoline and ethanol can be set without regard to the cost of its components. As an example, if the price of ethanol is significantly less that the price of gasoline, the price of ethanol could be kept artificially high so the total cost of blended gasoline can remain high. Is it fraud to artificially increase ethanol prices to maintain a high price for gasoline? We believe that it is.

It is also our opinion that this situation will adversely impact Illinois and Midwest ethanol manufacturing facilities by forcing them to accept prices dictated by their smaller customer base which may have no relationship to the cost of producing the ethanol or the cost of constructing and maintaining an ethanol plant. The ethanol industry in Illinois has been developed upon business assumptions that support the cost of constructing and operating a facility. It has been developed with considerable monetary investment by both government and private funds. It surely is not in the best interest of that industry or the people of Illinois to allow the oil companies to change the underlying basis of the ethanol business, that being the customer base, without considerable oversight.

Our comments on the RNPRM are limited to the decision not to include non-petroleum based commodities such as ethanol and other oxygenates in the definition of gasoline. In our comments to the NPRM, we argued that manipulation of non-petroleum based commodities such as ethanol and other oxygenates that directly or indirectly affect the price of gasoline should be subject to Commission enforcement under the proposed Rule (NPRM p. 34) and should be included in the definition of "gasoline."

While we support the Commission's position stated at page 54 of the RNPRM that it intends to reach products such as ethanol under the "in connection with" language of the proposed Rule, we believe that it should be made clear that the Rule applies to non-petroleum based commodities such as ethanol and other oxygenates. Renewable fuels such as ethanol and biodiesel are steadily growing in significance as result of federal or state environmental mandates or from efforts to reduce dependence on foreign oil. It has become such an integral, indistinguishable component of automobile "fuel" that it should not be treated separately. As stated, we support the "in connection with" position that the Commission intends to use to reach ethanol and other blending products through a "sufficient nexus" approach. We, however, again argue that these non-gasoline products be included in the definition of gasoline in the final Rule.

Sincerely,

William J. Fleischli