



**Illinois Petroleum Marketers Association
Illinois Association of Convenience Stores**

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WILLIAM J. FLEISCHLI
EXECUTIVE VICE PRESIDENT

September 3, 2008

Federal Trade Commission
Market Manipulation Rulemaking
P.O. Box 2846
Fairfax, Virginia 22031-0846

Re: Market Manipulation Rulemaking, PO82900

Dear Federal Trade Commission:

I am enclosing comments of the Illinois Petroleum Marketers Association on the Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007, promulgated in 16 CFR Part 317.

Thank you.

Sincerely yours,

BILL FLEISCHLI
Executive Vice President

Encl.

COMMENTS BY THE ILLINOIS PETROLEUM MARKETERS ASSOCIATION

September 3, 2008

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) Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation and False Information in 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.

The following comments and our comments on the ANPR are prompted by a situation which is occurring here in Illinois and in numerous States across the country. As stated in our comments to the ANPR 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 the gasoline because of environmental rules or for added octane or other reasons, IPMA members have traditionally found 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 have recently announced that they would no longer sell pure, unblended gasoline at the terminal rack but would 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 around the country 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 smaller the customer base, the greater 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, today the price of ethanol is significantly less than the price of gasoline, but the price of ethanol is being artificially kept 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.

We agree that the Securities Exchange Act of 1934 and SEC Rule 10b-5 definition of “manipulative device or contrivance” as “employ[ing] any device, scheme, or artifice to defraud” is appropriate in this case. We submit that the oil companies will employ such a manipulative device or contrivance when they limit, and therefore control, the market for unblended gasoline and ethanol. They will defraud consumers by

“controlling and artificially affecting the price of [blended gasoline]. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1976).

We agree that Commission jurisdiction should extend to pipelines. (NPRM pp. 26-67)

We agree that the definition of “gasoline” should be as defined on Pages 33-34 of the NPRM and should include both “those commodities regularly traded as finished products and those products only requiring oxygenate blending to be finished.” We agree with the language 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. We agree that the manipulation of ethanol should be covered under the proposed Rule where changes in ethanol prices directly or indirectly affect wholesale gasoline prices. We request that it be made clear that the Rule applies to non-petroleum based commodities such as ethanol and other oxygenates.

We agree that “wholesale” means purchases at the terminal rack or upstream of the terminal rack.

We agree that the proposed Rule should not require proof of an identifiable price effect before such conduct is culpable.

The following comments are in response to the “Questions on Proposed Specific Provisions” section of the NPRM beginning on page 63. Each paragraph corresponds to the paragraph designation in the NPRM.

a. Rulemaking Standard. The proposed Rule does meet the rulemaking standard that it is “necessary or appropriate in the public interest or for the protection of United States’ citizens. If the oil companies are able to sell only blended gasoline without regard

to its cost, consumers will be injured by having to pay higher gasoline prices that are set without regard to market forces or cost.

e. It would make clear what practices are proscribed by the proposed Rule if they are included in the language of the Rule. The list does not have to be exclusive. We request that the practices described in these Comments, *i.e.*, an oil company's refusal to sell only gasoline blended with ethanol instead of unblended gasoline at the terminal rack, be included in the list.

g/k. As long as the Rule language "directly or indirectly, in connection with" in Section 317.3 includes the conduct described in these comments, we believe that the language is sufficiently broad to capture the intent of EISA.

Sincerely,

William J. Fleischli