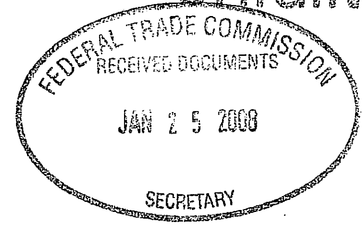
PETROLEUM CORPORATION



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January 24, 2008

Carbon Offset Workshop Comment, Project No. P074207
Donald S. Clark, Secretary
Federal Trade Commission/Office of the Secretary
600 Pennsylvania Avenue, N.W. Room H-135 (Annex O)
Washington, DC 20580

Re: Carbon Offset Workshop – Comment, Project No. P074207

Dear Secretary Clark:

Anadarko Petroleum Corporation ("Anadarko") is responding to the Federal Trade Commission's ("FTC") request for comments concerning the voluntary markets for carbon offsets and related questions of consumer interpretation.[1] Specifically, Anadarko is responding to question (7) posed by the Federal Register notice: "What is the relationship between the concept of 'additionality' in carbon offset markets and the FTC's standard for deception under the FTC Act?" 72 Fed. Reg. at 66097.

We note that the FTC has separately requested comment on whether it should update its Guides for the Use of Environmental Marketing Claims, 16 Code of Federal Regulations ("CFR"), Part 260 ("Green Guides"), to address, among other things, the emerging markets in carbon offsets.[2] Anadarko intends to respond separately to that request. However, to the extent the comments submitted today are also responsive to the agency's separate request concerning potential updates to the Green Guides, we would ask the agency to consider our comments in those proceedings as well.

I. Introductory Comments

Anadarko is concerned that, by venturing into consideration of whether the concept of "additionality" may pose consumer protection issues in the voluntary carbon markets, the FTC is treading into consideration of technical and policy determinations that are beyond the agency's

[1] "Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop," 72 Federal Register ("Fed. Reg.") 66094, Nov. 27, 2007.

[2] 72 Fed. Reg.66091, 66093, section ("§") III.B.(1)).

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expertise and authority. The agency's workshop notice says that it does not plan to develop "environmental standards for carbon offsets", but will instead focus on its "traditional consumer protection role." 72 Fed. Reg. at 66096, § 1.B. We are, nevertheless, concerned that, by focusing on certain issues regarding "additionality", both in its workshop notice and workshop, the FTC risks becoming entangled in highly complex policy issues at the core of ongoing discussions concerning the design of market-based mechanisms addressing climate change.

In our view, the FTC should be wary to presume that voluntary carbon offsets must meet the simple "but for" formulation of additionality, to avoid consumer protection concerns. We are concerned that, by adopting such a blanket presumption, the FTC could risk stifling activity in the nascent voluntary carbon markets, which could deter U.S. companies and citizens from seeking to support timely and effective responses to climate change, in advance or outside of anticipated regulatory programs.

There are a number of issues involving the voluntary markets for carbon offsets that may legitimately raise serious concerns in light of the FTC's standard for deception under the Federal Trade Commission Act ("FTCA") and existing Green Guides. Such concerns would appear to arise, for example, with respect to whether existing greenhouse gas ("GHG") registries and tracking systems are adequate to assure that the same offset is not sold multiple times to separate parties. They also might arise with respect to the fundamental questions of offset delivery and timing, i.e., whether and when a reduction project actually occurs.

However, there currently is little agreement on how one determines whether an emission reduction is "additional". Prevailing guidance and protocols suggest that the concept of "additionality" is relatively incoherent and encompasses many different formulations. Some of these formulations are based upon objective criteria, such as whether or not a reduction was already mandated by law. Others, however, are based upon highly subjective criteria and policy considerations, such as the role that market and government incentives should play in the promotion of particular GHG reduction strategies.

In the following comments, we attempt to distinguish the objective formulations of "additionality", which may, in fact, raise consumer protection issues meriting guidance from the FTC, from those formulations which raise policy considerations better left for resolution by market forces. We also suggest that the emergence of voluntary standards and guidelines may soon resolve much of the uncertainty within the voluntary carbon markets, such that the FTC might proceed cautiously in adopting guidelines applicable to them.

II. Description of Anadarko Petroleum Corporation and its Interests

Anadarko Petroleum Corporation is among the largest independent oil and gas exploration and production companies in the world, with 3.01 billion barrels of oil equivalent ("BOE") of proved reserves as of December 31, 2006. The Company's major areas of operation are located onshore in the United States, the deepwater of the Gulf of Mexico and Algeria. Anadarko also has production

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in China, Venezuela and Qatar, a development project in Brazil and is executing strategic exploration programs in several other countries. The Company actively markets natural gas, oil and natural gas liquids ("NGLs") and owns and operates gas gathering and processing systems. In addition, the Company engages in the hard minerals business through non-operated joint ventures and royalty arrangements in several coal, trona (natural soda ash) and industrial mineral mines located on lands within and adjacent to its Land Grant holdings. The Land Grant is an 8 million acre strip running through portions of Colorado, Wyoming and Utah where the Company owns most of its fee mineral rights. Anadarko is committed to minimizing the environmental impact of exploration and production activities in its worldwide operations through programs such as carbon dioxide ("CO_2") sequestration and the reduction of surface area used for production facilities.

Enhanced oil recovery ("EOR"), is used to increase the amount of oil that can be produced from mature reservoirs after primary recovery methods have run their course. The launch of our CO_2 flood projects in the Salt Creek, Monell and Sussex fields in Wyoming helped turn EOR into a focus area for the company. As an example of the innovative ways Anadarko seeks to preserve the environment at its operations, the company is proactively sequestering, through its EOR projects, millions of tons of CO_2, a greenhouse gas that would otherwise be vented into the atmosphere. Anadarko built a 125-mile pipeline that transports CO_2 to the Salt Creek and Monell fields, with plans to extend the line to the Linch/Sussex area. This major geological sequestration will be one of the largest projects of its kind in the world.

III. Detailed Comments on "Additionality"

A. The FTC's Consideration of Additionality

The FTC's workshop notice provides, in relevant part:

> One carbon offset issue, commonly referred to as "additionality," has generated significant discussion. "Additionality" addresses whether carbon offset consumers are paying for a project that would have occurred without the offset market. In the view of many involved with this market, offset sellers have a duty to demonstrate that their underlying greenhouse gas reduction projects would not have occurred but for the sale of the offset; otherwise, they argue, sellers are not really reducing greenhouse gas emissions. Under this view, for example, it would not be appropriate to sell offsets based on a project (e.g., capturing methane from a landfill) implemented to comply with existing environmental regulations because greenhouse gas reductions would have occurred without the sale of the offsets. The practical application of the "additionality" concept to specific fact scenarios has raised a large number of questions and produced a variety of opinions among industry members and other stakeholders.

72 Fed. Reg. at 66096-97, § II.C (internal footnote references omitted).

We note that the above discussion suggests the significant difficulty defining "additionality" and the range of views on its relevance to offset projects. We also note that the above excerpt raises two distinct formulations of "additionality":

- The first involves consideration of whether the offsets project would have occurred "but for the sale of the offset", meaning that the project would not have gone forward without the additional revenue stream associated with the sale of available carbon credits.
- The second, as demonstrated by the example of the landfill methane project already required by law, involves consideration merely of whether the project reductions are beyond what is required by law, in other words, "surplus" to mandatory reductions. It does not involve consideration of what would have happened in the absence of the offset market; i.e., it does not require the counter-factual determination of whether the reductions are greater than would have occurred under the "baseline" scenario or, as often referred to, "business-as-usual" ("BAU").

B. <u>The Incoherence of "Additionality"</u>

According to the GHG Protocol for Project Accounting ("GHG Project Protocol") developed by the World Business Council for Sustainable Development ("WBCSD") and World Resources Institute ("WRI"), "[w]hile the basic concept of additionality may be easy to understand, there is no common agreement about how to prove that a project activity and its baseline scenario are different."[3]

The WBCDS/WRI Project Protocol sets forth a number of possible "tests" for additionality, which reflect the analytical framework developed by the United Nations Framework Convention on Climate Change ("UNFCCC") Clean Development Mechanism ("CDM") Executive Board under the Kyoto Protocol[4] As summarized by the Project Protocol, these additionality tests include the "Legal, Regulatory or Institutional Test"; the "Technology Test"; the "Investment Test"; the "Common Practice Test"; and the "Timing Test". (Project Protocol, at 20.)

The Project Protocol says that "there is no agreement about the validity of any particular additionality test, or about which test project developers should use." Id. Rather, the requirement and application of additionality tests within any GHG program is a matter that must be decided on "policy grounds", according to the Project Protocol; for that reason, the Project Protocol "does not require any of these tests." Id.

[3] *GHG Protocol for Project Accounting* ("Project Protocol"), § 2.14, WBCSD/WRI, 2005.

[4] See *Methodological Tool: Tool for the demonstration and assessment of additionality* (Version 04), UNFCCC CDM Executive Board,("EB") 36 Report Annex 13.

Similar doubts regarding the meaning and value of additionality tests were expressed by the Market Advisory Committee convened by the Secretary of the California Environmental Protection Agency to make recommendations to the California Air Resources Board on the design of a cap-and-trade system. On this point, the Market Advisory Committee report provides as follows: "It is extremely difficult to develop objective standards for additionality and many efforts to date have failed to produce offsets that meet stringent standards for additionality and/or that enjoy public confidence."[5]

C. Distinctions between Various Formulations of "Additionality"

Certain aspects of the understanding of "additionality" may raise consumer protection issues under the FTC's standard for deception.[6] For example, if a project does not qualify as "additional" because the reduction was already mandated by existing legal requirements (as in the example of the landfill capture project presented by the FTC in its Federal Register notice), then claiming or marketing an offset as a result of the project may indeed raise serious consumer protection concerns.

This example, however, only involves one test for "additionality", which can be more narrowly described as the determination of whether or not the reduction is "surplus". Such determinations can be made by reference to objective legal criteria and have been successfully made for many years in determining whether reductions are "surplus" and therefore creditable under the Clean Air Act's offset programs

We think it reasonable for an offset consumer to assume, absent any disclaimers to the contrary, that a purchased GHG reduction was not already mandated by law. In other words, when a consumer purchases a carbon offset, they should be able to assume that the reduction was not undertaken to meet existing legal requirements, but is achieved either in advance of, or in addition to, mandatory reductions. We think this situation is sufficiently similar to one where the same offset is sold to multiple parties that it raises a serious concern for deception and fraud.

Similar concerns would appear to be raised where a renewable energy generator markets renewable energy certificates ("RECs") attributable to its renewable generating capacity and also markets the corresponding GHG reduction associated with that capacity.[7] In all of these circumstances, we

[5] *Recommendations for Designing a Greenhouse Gas Cap-and-Trade System for California*, Recommendations of the Market Advisory Committee to the California Air Resources Board, June 30, 2007, at § 6.3.2, footnote 59.

[6] 15 United States Code ("U.S.C.") § 45; see FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

[7] A related issue is "double-counting", such as where an upstream generator of electric power experiences a reduction in GHGs attributable to an end-user's energy efficiency measures and both

think there is a significant potential for deception, such that the FTC might issue guidelines deeming them to constitute unlawful practices under the FTCA.

In contrast to the foregoing scenarios, many additionality tests are highly subjective and provide little guidance on how they should be applied. For example, under the most common version of the "Investment Test", according to the Project Protocol, a project is deemed additional if "it would have a low rate of return without revenue from GHG reductions." (Project Protocol, at 20.) According to the Project Protocol, "[t]he underlying assumption is that GHG reductions must be a decisive reason for implementing a project that is not an attractive investment in the absence of any revenue associated with its GHG reductions." Id. However, without adequate industry-specific metrics on whether an internal rate of return ("IRR") is, in fact, be "attractive" or not to project developers and investors, this test is practically meaningless.

Similarly, the "technology" test, so-called "barriers" analysis, and "common practice" test are all equally vague and subjective. They all involve complex counter-factual questions of what constitutes the baseline scenario (or BAU) and how the offset project differs from that scenario. Answering these questions may require technological and policy considerations that would appear to lie beyond the expertise of the FTC.

For example, geologic carbon sequestration has been recognized as an important strategy for achieving GHG reductions by the Intergovernmental Panel on Climate Change ("IPCC"). [8] Nevertheless, decisions on whether such sequestration projects should be awarded certified emission reductions ("CERs") under the CDM have been stalled, in part because of concerns regarding the project's additionality, in light of other economic drivers that may motivate enhanced oil recovery ("EOR").[9] In light of these questions and the difficulty answering them with existing tools, the CDM Executive Board deferred consideration of its decision on EOR and sought "high-level" policy guidance from the UNFCCC's Meeting of the Parties ("MOP").

In sum, the simple "but-for" formulation of additionality may not adequately accommodate the multiple and complementary forces that influence whether a project goes forward. This seems

the generator and the end-user separately claim that reduction as a marketable offset. Whether this situation amounts to deception is substantially less clear than the foregoing circumstances.

[8] *IPCC Special report on Carbon Dioxide Capture and Storage*, prepared by IPCC Working Group III, B. Metz, O. Davidson, H.C. de Coninck, M. Loos and L.A. Meyer, Cambridge University Press, 2005.

[9] See *Recommendation on CO2 capture and storage as CMD project activities based on the review of cases NM0167, NM0168 and SSC_038*, UNFCCC CDM Executive Board, EB 26 Meeting report, Annex 13, at 9. ("Guidance on how to assess additionality (and/or select the most likely baseline scenario) is required for Enhanced Oil Recovery project activities.")

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particularly true where consumers may decide to support an offset project, not because the project would fail in the absence of marketable offsets, but out of their interests in supporting and aligning themselves with emerging technologies that hold the promise of near-term stabilization of GHG emissions.

D. The Role of Emerging Voluntary Standards and Guidelines

There is increasing evidence that many of the issues raised by the FTC will, with time, be resolved through the emergence of voluntary standards and guidelines or, in the case of a mandatory trading program (e.g., cap-and-trade), by those environmental agencies charged with administering the program.

With respect to the determination of additionality for sequestration projects involving EOR, guidelines have recently been published to assist in establishing the baseline scenario and accounting for secondary emissions.[10] More generally, other standards have recently been released to increase the credibility and transparency of the voluntary carbon markets.[11] The evolution of these voluntary guidelines and standards and their role in shaping trends in the voluntary carbon markets should substantially reduce, if not eliminate, many of the consumer protection issues raised by the FTC.

IV. Conclusion

As described above, the concept of "additionality" is multi-faceted and, in many respects, incoherent. In our view, certain formulations of the concept involve rather objective questions that, if proven false, would appear to upset consumers reasonable expectations. For example, offset purchasers should be able to assume (just as they may assume that a marketed offset has not already been sold to someone else) that reductions are additional (i.e., "surplus") to legally mandated reductions. If this assumption is proven false upon evaluation of governing legal standards, then the offset provider should be held responsible.

In contrast, many other formulations of "additionality" are highly subjective and cannot be resolved without engaging in a difficult, counter-factual analysis of what would have occurred in the absence of revenue from the carbon markets. In our view, such a "but for" formulation of

[10] See *Oil and Natural Gas Industry Guidelines for Greenhouse Gas Reduction Projects*, International Petroleum Industry Environmental Conservation Association ("IPIECA") and American Petroleum Institute ("API"), March 2007; *Part II: Carbon Capture and Geological Storage Emission Reduction Family*, IPIECA and API, June 2007.

[11] See, e.g., *Voluntary Carbon Standard - Specification for the project-level quantification, monitoring and reporting as well as validation and verification of greenhouse gas emission reductions or removals*, Voluntary Carbon Standard ("VCS"), November 19, 2007.

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additionality may not adequately accommodate the multiple and complementary forces motivating reductions in GHGs. Further, determining whether an offset project qualifies under these formulations often involves challenging technical and policy decisions, which, in the case of EOR, even the CDM Executive Board has been reluctant to make without additional high-level guidance from the UNFCCC MOP.

In light of the incoherence in applying these additionality tests, we do not believe that the FTC should seek to develop guidelines or otherwise suggest that credible offsets must, absent disclaimers, satisfy the broader, "but for" formulation of additionality (i.e., that the project would not go forward without the additional revenue from the sale of offsets). Doing so could deter both project developers and consumers from participating in the voluntary carbon markets. Such a consequence would only further delay the accomplishment of substantial reductions in GHG emissions.

Finally, a number of voluntary standards and guidelines have recently been developed to increase the credibility and transparency of the voluntary carbon markets. These standards and guidelines are expected to play an increasingly important role in aligning offset prices with offset quality. As a consequence, many of the issues raised by the FTC may soon be addressed by market forces.

Thank you for the opportunity to submit these comments. Please feel free to contact me with any questions or concerns.

David J. Owens