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United States Senate

WASHINGTON, DC 20510

April 8, 2008

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

FEDERAL TRADE COMMISSION
2008 APR 14 AM 8:12
CONG. CORRES. BRANCH

Dear Chair Kovacic and Commissioners Harbour, Leibowitz, and Rosch:

With volatile oil prices exceeding \$100 per barrel, and gasoline and diesel pump prices already topping \$4 per gallon in some regions, our constituents have expressed serious concerns as to whether current petroleum prices can be explained by normal market fundamentals. To help correct this harmful perception, we request you complete the rulemaking necessary to aggressively implement the Federal Trade Commission's (FTC) new responsibility to prohibit oil and petroleum market manipulation, as mandated by Congress in the Energy Independence and Security Act of 2007 (P.L. 110-140), by the end of the year.

In passing Title VIII, Subtitle B of the Energy Independence and Security Act, Congress reaffirmed that it is the responsibility of the federal government to establish clear procedures to ensure that the U.S. petroleum market is as free from manipulation as possible, and to levy penalties against those who might seek to profit from such illegal activities. Utilized effectively, we believe this new authority will substantially augment consumer protections, help lower and stabilize prices, increase market transparency, and provide drivers the confidence that retail gasoline and diesel prices are free from the influence of anticompetitive practices and the exercise of market power, which might rightly be considered manipulation.

As you know, the new authority granted to the FTC is modeled on the anti-manipulation authorities utilized by other agencies such as the Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC). As such, we believe the FTC can pursue its own rulemaking in relatively short order. Specifically, Title VIII, Subtitle B of the Energy Independence and Security Act carefully tracks section 10(b) of the Securities Exchange Act of 1934 for which a substantial body of case law has been developed over the last half century. In fact, the Supreme Court has compared this body of law to "a judicial oak which has grown from little more than a legislative acorn." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737 (1975).

We believe it's worth noting that section 10(b) of the Securities Exchange Act simply ensures the integrity of the securities markets by giving the Securities and Exchange Commission the ability to prevent or remedy fraudulent or manipulative practices aimed at artificially affecting those markets. The language is not intended to catch sellers who take advantage of the natural market forces of supply and demand, only those who attempt to affect the market or prices "by artificial means ... unrelated to the natural forces of supply and demand." Mobil Corp. v. Marathon Oil Co., 669 F.2d 366, 374 (6th Cir. 1981). Similarly, the Supreme Court has read "the words 'manipulative or deceptive' used in conjunction with 'device or contrivance'" to cover only "knowing or intentional misconduct." Ernst & Ernst v. Hochfelder, 425 U.S. at 197. The word "manipulative," it has said, "connotes intentional or willful conduct designed to deceive or

defraud ... by controlling or artificially affecting ... price[s]...." 425 U.S. at 199. It means "practices ... that are intended to mislead ... by artificially affecting market activity." Santa Fe Industries v. Green, 430 U.S. 462, 476 (1977).

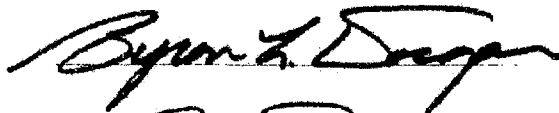
Much of the inspiration for the new authority granted to the FTC was based on the success of complementary provisions established for the electricity and natural gas markets in the Energy Policy Act of 2005, which in turn were a reaction to clear evidence of market manipulation by Enron and others in the Western electricity markets in 2000 and 2001 that cost consumers billions. By modifying the Natural Gas Act and the Federal Power Act, these provisions provided FERC with stronger enforcement authority which has succeeded in increasing market transparency and punishing cheaters in those particular energy markets. We note that FERC was able to propose its anti-manipulation rule within three months of enactment of the Energy Policy Act of 2005 and adopt the final rule three months later. To date, FERC has used its expanded authority to complete 64 investigations, 14 of which have resulted in settlements involving payment of civil penalties or other monetary remedies for alleged market manipulations totaling over \$48 million. In addition, two investigations have led to FERC bringing enforcement actions for alleged market manipulation against two energy trading companies that would total over \$458 million in civil penalties. The new law has also motivated market participants to be more vigilant at self reporting and policing.

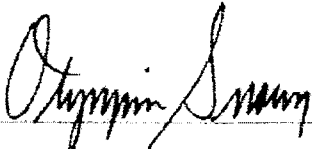
While we appreciate that oil and petroleum markets differ from the electricity and natural gas markets, and the Commission's regulatory role may not always be the same as either the SEC or FERC, oil and gas markets are also susceptible to fraud and manipulation. Indeed, the Commission's Congressionally-mandated investigation of gasoline prices after Hurricane Katrina, released May 2006, acknowledged the possibility that the petroleum industry could manipulate prices by reducing production, distribution, or inventories. Likewise, recent enforcement cases brought by the Commodity Futures Trading Commission have pointed to tactics designed to artificially influence the price of physical petroleum supplies.

We look forward to hearing from the Commission in writing on its plans and efforts to date on developing rulemaking and a detailed timeline for implementing this urgently needed new anti-manipulation authority. If the 2000 and 2001 Western energy crisis taught us anything, it is that energy markets operate best when they are subject to effective and consistent oversight. Without a bright line demarcating the distinction between healthy market practices and illegal manipulation --especially when supplies are tight in markets with extremely inelastic demand-- unscrupulous market participants may be more apt to take advantage of consumers. Such actions may already be seriously burdening our country's economy and the impacting the welfare of our constituents.

Sincerely,

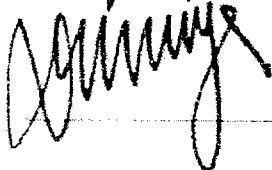








GORDON SMITH





THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 2, 2008

The Honorable Maria Cantwell
United States Senate
Washington, D.C. 20510

Dear Senator Cantwell:

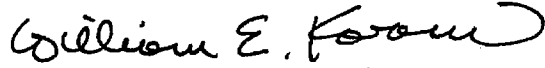
Thank you for the letter of April 8, 2008, from you and your Senate colleagues about the Federal Trade Commission's new authority, under Section 811 of the Energy Independence and Security Act of 2007, regarding manipulation in wholesale crude oil, gasoline, or petroleum distillate markets. Today, the Commission will make public an Advance Notice of Proposed Rulemaking (ANPR), and our goal is to complete the Rulemaking process this year. We look forward to working with you and the Committee as this Rulemaking moves forward.

Our staff has worked hard to move as speedily as possible. To date, an FTC task force has examined the development and use of anti-manipulation authority by other federal agencies, as well as by the states; met with other government officials (including the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, and the Securities and Exchange Commission); and, undertaken other tasks, both substantive and administrative, in connection with this legislation. The ANPR announces a comment period of 30 days, following which the agency expects expeditiously to analyze the comments received, draft a proposed rule, and issue a Notice of Proposed Rulemaking (NPR), with a 30-day comment period. We appreciate your efforts to combat high and volatile gasoline prices, and we will keep you apprised of significant developments throughout the Rulemaking process.

The learning that will accompany the ANPR/NPR process is crucial. The Commission has not previously sought to develop a legal definition of the term "manipulation" or prosecuted a case alleging manipulation. Moreover, as you recognized in your letter, there are challenges involved in appropriately applying this broad concept to markets that, unlike electricity or natural gas, are not subject to comprehensive regulatory, disclosure, or reporting regimes. The pursuit of a case alleging manipulation in wholesale markets for crude oil, gasoline, or distillates may encounter other complexities arising from the differences between such products and the other markets in which manipulation cases have been brought, but we hope to overcome those challenges as we avail ourselves of the methods and opportunities contemplated by the ANPR/NPR procedures. Specifically, we believe that there is no better way to generate meaningful comments that will assist in our development of a workable rule for the benefit of the American public.

Enclosed please find a copy of the ANPR which we expect to be published in the Federal Register on Monday, May 5, 2008. The Commission greatly appreciates your interest in this topic. Please feel free to contact Chairman Kovacic at any time with any additional questions or comments, or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.


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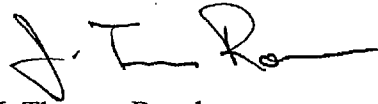
William E. Kovacic
Chairman



Pamela Jones Harbour
Commissioner



Jon Leibowitz
Commissioner



J. Thomas Rosch
Commissioner

cc: The Honorable Byron L. Dorgan
The Honorable Olympia J. Snowe
The Honorable Gordon H. Smith
The Honorable Daniel K. Inouye



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 2, 2008

The Honorable Byron L. Dorgan
United States Senate
Washington, D.C. 20510

Dear Senator Dorgan:

Thank you for the letter of April 8, 2008, from you and your Senate colleagues about the Federal Trade Commission's new authority, under Section 811 of the Energy Independence and Security Act of 2007, regarding manipulation in wholesale crude oil, gasoline, or petroleum distillate markets. Today, the Commission will make public an Advance Notice of Proposed Rulemaking (ANPR), and our goal is to complete the Rulemaking process this year. We look forward to working with you and the Committee as this Rulemaking moves forward.

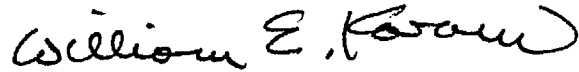
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The Honorable Byron L. Dorgan – Page 2

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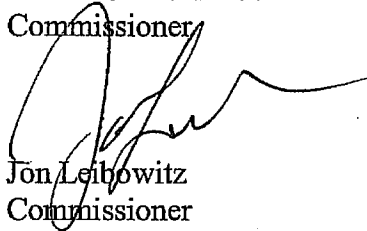
Sincerely,



William E. Kovacic
Chairman



Pamela Jones Harbour
Commissioner



Jon Leibowitz
Commissioner



J. Thomas Rosch
Commissioner



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 2, 2008

The Honorable Olympia J. Snowe
United States Senate
Washington, D.C. 20510

Dear Senator Snowe:

Thank you for the letter of April 8, 2008, from you and your Senate colleagues about the Federal Trade Commission's new authority, under Section 811 of the Energy Independence and Security Act of 2007, regarding manipulation in wholesale crude oil, gasoline, or petroleum distillate markets. Today, the Commission will make public an Advance Notice of Proposed Rulemaking (ANPR), and our goal is to complete the Rulemaking process this year. We look forward to working with you and the Committee as this Rulemaking moves forward.

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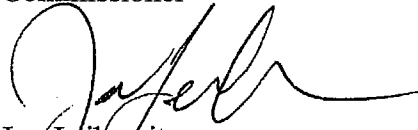
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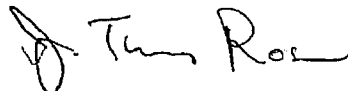
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Jon Leibowitz
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THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 2, 2008

The Honorable Gordon H. Smith
United States Senate
Washington, D.C. 20510

Dear Senator Smith:

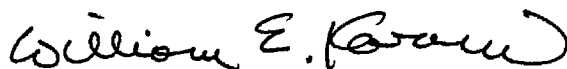
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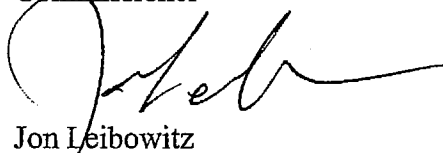
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Jon Leibowitz
Commissioner



J. Thomas Rosch
Commissioner



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 2, 2008

The Honorable Daniel K. Inouye
United States Senate
Washington, D.C. 20510

Dear Senator Inouye:

Thank you for the letter of April 8, 2008, from you and your Senate colleagues about the Federal Trade Commission's new authority, under Section 811 of the Energy Independence and Security Act of 2007, regarding manipulation in wholesale crude oil, gasoline, or petroleum distillate markets. Today, the Commission will make public an Advance Notice of Proposed Rulemaking (ANPR), and our goal is to complete the Rulemaking process this year. We look forward to working with you and the Committee as this Rulemaking moves forward.

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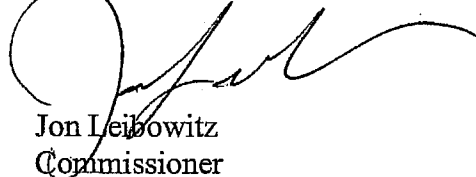
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William E. Kovacic
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