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FEDERAL TRADE COMMISSION
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P082900
SECRETARY

June 30, 2008

Donald S. Clark, Secretary
Federal Trade Commission
Room H-135 (Annex G)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: *Market Manipulation Rulemaking*, P082900

Dear Secretary Clark:

On June 23, Plains All American Pipeline, L.P., filed a timely set of comments in the above-referenced proceeding. To date, however, these comments have not been posted on the FTC website with other comments filed in this rulemaking proceeding.

In a telephone conversation this afternoon with James F. Mongoven of the Bureau of Competition, we were invited to re-submit the comments to be included in the rulemaking record in this proceeding.

Enclosed herewith, therefore, are the comments of Plains All American Pipeline, L.P. in the Market Manipulation Rulemaking.

Sincerely yours,

James W. Moeller

PLAINS
ALL AMERICAN

June 23, 2008

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

Re: Market Manipulation Rulemaking, P082900

Dear Sir or Madam:

This letter is submitted on behalf of Plains All American Pipeline, L.P. ("Plains") in response to the Advance Notice of Proposed Rulemaking (the "ANPR") issued by the Federal Trade Commission ("Commission") regarding Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007, 73 Fed. Reg. 25,614 (May 7, 2008). Plains is a publicly traded master limited partnership engaged in the transportation, storage, terminalling and marketing of crude oil, refined products and liquefied petroleum gas and other natural gas related petroleum products through its primary operating subsidiaries, Plains Marketing, L.P. and Plains Pipeline, L.P. Plains Marketing, L.P. is a non-regulated storage and terminalling company, primarily engaged in the storage of crude oil and certain refined products and Plains Pipeline, L.P. is a regulated pipeline entity, primarily engaged in the transport of crude oil and refined products on lines regulated by the Federal Energy Regulatory Commission ("FERC").

We have reviewed the comment letter submitted on the ANPR by the Association of Oil Pipelines ("AOPL") and the comment letter on the ANPR submitted by the American Petroleum Institute ("API") and the National Petrochemical and Refiners Association ("NPRA") and agree with and support the points made by the AOPL and API and NPRA. In particular, we share the AOPL's concern that the proposed rules contemplated by the ANPR will create overlapping regulation that will be duplicative of the jurisdiction of other regulators, particularly the jurisdiction of the FERC with respect to oil pipelines. As noted in the AOPL comment, FERC has extensive authority over oil pipelines and the adoption of an anti-manipulation provision applicable to these same entities by another regulatory authority creates a risk of conflicting and inconsistent standards, with resulting uncertainty. We recommend that the Commission structure any rules and civil remedies that it adopts in a manner that will avoid any overlap with other regulatory regimes.

While Plains takes issue with a number of other aspects of the ANPR, we will focus on only six of the "potential practices" as outlined in the ANPR.

1. The Commission asks whether a firm's decision regarding supplying a market (including whether to reduce, increase, or maintain unchanged the amount it supplies) should be considered manipulative or deceptive.

Many firms aggregate crude oil to meet operational requirements or contractual commitments. In addition, many times uncommitted volumes of foreign crude move to the U. S. market because there is tankage available to hold the crude oil, and the price exposure can be hedged. Implementation of government imposed requirements could cause disruptions that are detrimental to the market and could cause uncommitted volumes of crude oil to be delivered to locations other than the U.S.

Further, we do not believe that there is a firm in the U.S. that controls (a) a sufficient amount of crude oil production to manipulate the market, and/or (b) enough available tankage to permit the firm to manipulate the price of crude oil or refined products. Ten days supply in the U.S. would require a party to hold almost 200 million barrels of crude oil or refined products.

2. The Commission asks whether market participants with terminal or other storage inventory should be under an affirmative obligation to release inventory during price spikes.

This provision, in our view, would be inadvisable and would seriously undermine the operation of the markets. The question presumes that there is inventory, readily available to suppress a price spike. While there is always inventory in terminals and pipelines, a substantial amount of the inventory is: (a) operationally required for the movement of crude oil on pipelines and through terminals; (b) contractually committed; (c) logistically staged for delivery to a refiner, processor or to meet delivery commitments to customers; or, (d) accumulated in anticipation of potential receipt shortages (due to weather, mechanical failures, etc.). It should also be noted that the need to segregate, blend, batch and stage inventory for delivery has increased significantly over the last 25 plus years as the U. S.'s reliance on foreign imports has increased and, the varieties and qualities of crude oil and refined products that are handled by terminal operators and/or owners have expanded.

We believe that intervention by regulators could actually create market manipulation opportunities. If market participants knew that firms that had inventory in their possession were required by law to take certain actions in pre-defined market conditions, those conditions could be utilized to the benefit of the party creating the condition and to the detriment of the owner of the inventory.

This type of regulation could also lead to unintended consequences. If inventory was intended to be delivered to one market A, but was forced due to inventory release regulation to be sold in market B, there could be shortages and price spikes created in market A and over supply in market B, especially since there would likely be more than one party that owned inventory in market B that was forced to liquidate its inventory. The market is very complex and ever changing and implementing government mandates in place of the judgment of market participants is not likely to benefit the consumer.

Lastly, the government already has the ability to release crude oil from the 716 million barrel Strategic Petroleum Reserve. We would note that the government's recent decision to discontinue purchases for the Strategic Petroleum Reserve (resulting in an additional two million barrels per month available to the U.S. market) has not had a discernable impact on the market or any appreciable downward impact on the price of crude oil or refined products.

In conclusion we do not believe that the Commission, or any regulatory authority, should be substituting its judgment for the considered business judgment of terminal or storage operators, who must take into account a variety of complex factors in determining whether, and when, to release inventory. In fact, whether a sale of inventory will be profitable is only one, and not necessarily the most important, consideration in making this determination. Moreover, an anti-manipulation rule should only prohibit conduct that satisfies the requisite intent standard and should not cover ordinary business activities undertaken in the normal course. Indeed, it is the intent to deceive, defraud or manipulate that distinguishes many forms of legitimate behavior from those that violate applicable antifraud provisions. Any regulation that prohibits legitimate conduct without taking into account this important distinction will serve only to inhibit necessary business activity with no enhancement of public or market protection.

3. The Commission asks whether a denial of access to a non-regulated terminal may be an act of market manipulation subject to Section 811, and whether applying the rule to this behavior is likely to result in benefits that outweigh the costs.

In this instance as well, we believe that a terminal operator should be permitted to make legitimate business decisions for bona fide reasons without running afoul of anti-manipulation prohibitions. In addition, a requirement that a terminal operator provide access to third parties will not serve to increase terminal capacity; to the contrary, interference with the operation of the market will distort supply and demand relationships and ultimately will artificially restrict capacity. Such a requirement could also adversely impact investment in infrastructure that is needed to facilitate the necessary movement of the various grades of crude oil and refined products and could result in the abrogation of negotiated contracts. Further, the FERC governs access to common carrier pipeline systems and any attempt by the Commission to also regulate access to common carrier lines would result in duplicative regulations and inefficiencies in the market. We would also note that shipper's generally have the ability to construct their own facilities and connect to a common carrier system. With respect to this issue, a denial of access should be actionable only if committed with the intent to defraud or manipulate. Further, we believe that this provision would be anti-competitive, by restricting legitimate competition between terminal operators and others in the storage business.

4. The Commission asks whether preannouncements that pipelines are approaching capacity constraints may be a conduit for market manipulation or deceit under Section 811, and whether applying the rule to this behavior is likely to result in benefits that outweigh the costs.

Common carrier pipelines already allocate a specified percentage of a pro-rated pipeline's capacity to new shippers and pro-rationing practices are regulated by the FERC. Accordingly, shippers have a forum to address any issues relating to pro-rationing policies and creating duplicative forums would lead to inefficiencies.

Pre-announcing potential capacity constraints would not benefit pipelines and therefore could not result in market manipulation. Petroleum pipelines can only charge based upon their tariffs (they cannot charge rates above or below the tariff rates) or market based rates (which are limited due to competitive alternatives). Pre-announcing pipeline capacity constraints should benefit the market as suppliers will have the chance to more efficiently arrange for transportation alternatives.

5. The Commission asks whether false or misleading physical sales reports to private reporting entities by market participants in thinly traded petroleum commodity markets exists, the likelihood the practice could drive false or misleading market prices, the ability of a market manipulation rule effectively to police such activities, and the potential benefits or harm to public data sources or private data compilation services.

We believe that the use of index pricing simplifies transactions and provides administrative efficiencies for both the buyer and the seller. Index pricing is a widely used practice that we support. We are not aware of any instances in the crude oil market where a party reported false information to reporting services. Finally, with respect to this issue, the provision of false or misleading information should be actionable only if committed with the intent to defraud or manipulate.

6. The Commission asks whether public announcements by refiners of planned reductions in the overall utilization of their refinery plants or reductions due to scheduled maintenance and refinery downtime should be viewed as manipulative under Section 811 and whether any business justifications balance the perceived harm.

In almost every instance, there will be market participants that will know there is a reduction in utilization of a refinery or a scheduled maintenance event that will occur because a refiner must pre-schedule receipts and deliveries with its suppliers, pipelines and terminal operators and its customers. Limiting dissemination of the information could provide opportunities for a limited number of market participants to profit from their knowledge at the expense of other market participants. The transparency associated with refiners publicly announcing planned reductions or scheduled maintenance benefits that market. We do not believe there is any harm in providing this type of transparency to the market for reductions that are in fact implemented. Also, many refineries are owned by public companies and are required to keep their shareholders apprised of material events. Again, with respect to this issue, the practice should only be considered manipulative if a refiner deceptively or fraudulently announces a reduction in utilization in an attempt to increase prices, without the intent to actually reduce its utilization of its refinery.

In sum, we believe that the Commission must carefully tailor any rules and civil remedies that it adopts to ensure that they do not inhibit bona fide commercial activity and are limited to fraudulent or manipulative conduct. In our view, a requirement to release inventory, and to provide terminal capacity would be contrary to the history and nature of the energy business, and would restrict or prohibit legitimate business decisions with no benefits to the markets or public protection. Finally, we believe that any rule that is adopted must be structured so as to not duplicate existing regulation of the energy business.

Plains All American Pipeline, L.P. appreciates the opportunity to comment on the ANPR. We would of course be pleased to provide any additional assistance in this process that the Commission might request.

Sincerely,

Plains All American Pipeline, L.P.

By PAA GP LLC, Its General Partner

By: ____________________
Lawrence J. Dreyfuss
Vice President