



THE CHAIRMAN

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

October 25, 2012

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Representative Markey:

I am pleased to respond to your letter of October 12, 2012, concerning gasoline and home heating oil prices in New England. As your letter emphasizes, high fuel prices are a source of very serious concern for you and for your constituents. We at the Federal Trade Commission are also very sensitive to the pain that high fuel prices can cause for consumers, and we most appreciate your vigilance on behalf of consumers in New England and beyond. Among other things, we are currently conducting a Petroleum Industry Practices and Pricing Investigation to determine whether behavior in the petroleum refining sector indicates any potential violations of law.¹

In your letter, you express concern about the potential for illicit pricing activity in light of the following: gasoline prices in New England that appear high relative to most other areas that have not recently experienced supply disruptions; East Coast refinery utilization rates that are below the national average; and forecasts of high home heating oil prices this winter. Accordingly, you call for an appropriate investigation by the Commission.

Thank you for bringing these concerns to the Commission's attention. The energy sector is one of our primary areas of law enforcement, and we constantly work to detect and prevent any activities in the sector that may diminish competition and injure consumers. The FTC continues to police the petroleum industry aggressively to ensure that consumers in New England and throughout the United States are not subject to any conduct that violates the laws and rules that we enforce.

In that context, we promptly intensified our vigilance following several factors that appear to have tightened supply to New England and heightened industry participants' concerns over supply to that region.² I underscored in my recent public statement about gasoline price

¹ The Commission's description of the investigation appears at <http://www.ftc.gov/os/2011/06/110620petroleuminvestigation.pdf>.

² Refined petroleum inventories in the Northeast were low in September and early October relative to previous years. Observers attributed these relatively low inventories to a number of refinery issues. See <http://www.eia.gov/oog/info/twip/twiparch/121011/twipprint.html>; <http://www.bloomberg.com/news/2012-09-18/new-york-gasoline-strengthens-after-irving->

spikes in California that the FTC will remain vigilant in our oversight responsibility, and we will not hesitate to act if we see a violation of the laws that we enforce.³ Of course, we continue to apply the same vigilance to New England that we exercise in California and the rest of the country.

More specifically, as part of our continuous oversight of petroleum markets, FTC staff members continuously monitor gasoline prices in 18 retail areas in New England and in the Boston wholesale region, as they do in numerous areas and regions throughout the United States. For more than 10 years, our Gasoline and Diesel Price Monitoring Project has tracked daily retail prices for gasoline and diesel fuel in approximately 360 cities across the nation and daily wholesale prices for those products in 20 major urban areas. The Price Monitoring Project shows that gasoline prices in New England have exceeded their predicted ranges since September 22, 2012. Our staff is continuing to track gasoline pricing patterns and other developments closely in New England. Although the Price Monitoring Project does not formally analyze home heating oil prices, movements in home heating oil prices are highly correlated with movements in diesel prices (which the project does track).

In response to your specific information requests, I am happy to provide the following information. (Because they are closely related, I consider your first and third questions together.)

Has the FTC initiated an investigation into manipulation of oil and gasoline markets at any time in the last five years? If not, why not?

Has the FTC prosecuted any persons or entities for fraud relating to the manipulation of oil and gasoline markets in the last five years? If so, please describe those actions and their ultimate outcomes.

The Commission wholeheartedly shares your goals of uncovering and preventing any anticompetitive conduct that increases the price of gasoline to ordinary Americans and of unearthing any violations of the Prohibition of Energy Market Manipulation Rule.⁴ Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the details of any nonpublic investigation, the Commission disclosed some information when it opened the Petroleum Industry Practices and Pricing Investigation. This comprehensive

[refinery-shuts-unit.html](http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/6656579;refinery-shuts-unit.html); [http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/6656579;](http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/6656579;refinery-shuts-unit.html)
<http://blogs.wsj.com/marketbeat/2012/09/26/gasoline-prices-unrefined/>.

³ Statement by FTC Chairman Jon Leibowitz on Gasoline Price Spikes in California (Oct. 10, 2012), available at <http://ftc.gov/opa/2012/10/gasprices.shtm>.

⁴ 16 C.F.R. Part 317 (2012). The Commission issued this Rule under the authority of Section 811 of the Energy Independence and Security Act of 2007, 42 U.S.C. §17301.

investigation began in June 2011, stemming from increases in crude oil and refined petroleum product prices and profit margins early last year. We have used subpoenas and civil investigative demands to seek to determine whether oil producers, refiners, transporters, marketers, physical or financial traders, or others have, among other things, engaged in anticompetitive or manipulative practices in violation of the antitrust laws or the Market Manipulation Rule.

In addition, our staff examines every communication about the Market Manipulation Rule that it receives from any source.⁵ Although the Commission has received no complaints that point to a violation of the Rule, we will investigate any reported conduct that reasonably appears to satisfy the Rule's core requirement – that there be fraudulent or deceptive conduct in connection with wholesale purchases or sales of crude oil, gasoline, or petroleum distillates.⁶

Has the FTC investigated whether different regions of the country may be more susceptible to market manipulation or price gouging?

Since the early 1980s, the FTC has been the federal antitrust agency primarily responsible for addressing competition issues in the petroleum industry. The agency has invoked all the powers at its disposal – including steadfast investigation and prosecution under the antitrust laws, extensive research and the preparation of studies, and advocacy before state legislatures and other government agencies – to protect consumers from anticompetitive conduct and unfair or deceptive acts or practices in the industry. In doing so, the FTC has assembled competition policy and enforcement expertise in matters affecting the production and distribution of petroleum products, including specific regional marketplace dynamics. The agency has a solid

⁵ The Commission established a process in November 2009 to monitor compliance with the Rule. I should add that the work of the interagency Oil and Gas Price Fraud Working Group – established by the Attorney General during the spring 2011 oil and gasoline price increases – has enhanced the possibilities for cooperative information-sharing among the member agencies, and various agencies' investigations in the petroleum sector (including those by the FTC) may benefit from information gleaned from the Working Group process. The Working Group consists of federal and state law enforcement agencies with oversight of oil and gasoline markets.

⁶ More specifically, as our Guide to Complying with Petroleum Market Manipulation Regulations (<http://www.ftc.gov/os/2009/11/091113mmrguide.pdf>) explains, the Rule is aimed at two kinds of behavior in wholesale petroleum markets: (1) fraudulent or deceptive conduct (including making false or misleading statements of material fact) in connection with wholesale purchases or sales of crude oil, gasoline, or petroleum distillates (16 C.F.R. § 317.3(a)); and (2) the intentional failure to state a material fact, when the omission makes the statement misleading and distorts (or is likely to distort) market conditions for any product covered by the Rule (16 C.F.R. § 317.3(b)). In other words, the first prong of the Rule applies to overt fraud and deception, such as outright lying. The requirement of an impact on market conditions applies only to the second prong (intentional omission).

working knowledge of how regions may differ in their susceptibility to market manipulation or anticompetitive activity. We have conducted a significant number of inquiries into petroleum industry conduct in recent years and also have taken enforcement action to block or remedy the anticompetitive effects of numerous petroleum mergers.

Although our staff has not undertaken a systematic investigation to identify geographic areas, times of the year, or specific petroleum products in which anticompetitive manipulation would be more likely, what we have learned from our investigations over the years suggests that markets are more susceptible to anticompetitive manipulation when market participants have limited supply options at their disposal. It would require a detailed examination of the structural characteristics of the market in question, such as we perform in any merger or conduct investigation, to determine whether supply options are in fact significantly limited in a particular case.

The Commission shares your deep concern over the economic hardship consumers face when gasoline, heating oil, and other energy prices are high. Energy prices have an enormous effect on the entire United States economy and the well-being of all consumers; indeed, the bedrock nature of the energy sector is a major impetus behind the Commission's vigorous law enforcement role in this industry. Accordingly, the FTC does not hesitate to proceed against conduct that it has reason to believe is illegal, and I can assure you that we exercise our statutory authorities to the fullest extent possible if we encounter indications of unlawful conduct.

Thank you again for contacting me about fuel prices in New England, and please let me know if we can be of further service in this or any other matter.

Sincerely,



Jon Leibowitz
Chairman