Prepared Statement of the Federal Trade Commission

Midwest Gasoline Prices

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Chairman

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I. Introduction

various components. The Commission's Bureau of Competition shares responsibility for reformulated gasoline that went into effect on May 1, 2000 at the wholesale level in both Chicago and Milwaukee. The new, more-stringent regulations require that winter-blend gas be drained from storage tanks before the summer-blend supply could be added. These regulations may have led to abnormally low inventories. According to some reports, summer-blend Phase II RFG is proving more difficult to refine than anticipated, causing refinery yields to be less than expected. The ethanol-based RFG used in Chicago and Milwaukee is reportedly proving to be the most difficult of all to make. Further, St. Louis has now entered the RFG program for the first time, thus adding additional demand to an already tight Midwest RFG supply situation.[(10)] Moreover, the recent appeals court decision upholding Unocal's patent for some formulations of RFG may have caused some refineries to change RFG blends in an effort to avoid infringement, leading to production delays and decreased refinery throughput.[(11)] As with the OPEC factor, RFG-related issues seem unlikely, however, to provide a complete explanation for recent Midwestern gas price increases, given that in the Midwest as a whole, conventional gasoline prices have risen more dramatically than RFG prices since the end of May.[(12)]

Another possible factor underlying the price increases could be the break in the Explorer pipeline last March. This pipeline moves refined petroleum products from the Gulf of Mexico through St. Louis to Chicago and other parts of the Midwest.[(13)] Explorer is still not operating at full capacity.[(14)]

These supply and demand factors could explain the Midwest price increases in whole or in part. However, these price spikes are particularly large. None of these factors precludes the possibility that collusion may have occurred at some point that further contributed to among two or more independent firms to increase prices, curtail output or divide markets. Our investigation will focus on whether any industry participants have engaged in collusion because it does not appear, at the outset, that any single oil company has sufficient market power to raise prices unilaterally.

The Commission has initiated a formal investigation into the causes of the recent gas price increases in the Midwest. This will be a civil investigation conducted pursuant to our authority under the Federal Trade Commission Act.[15] The investigation is being spearheaded by our Midwest Regional Office, located in Chicago. We are working closely with the Attorneys General of the affected States to coordinate our combined efforts.

The Commission's investigative process in a nonmerger collusive practices case involves a thorough search for evidence that the industry participants are engaging, or have engaged, in collusive behavior prohibited by the antitrust laws. Once a formal investigation is opened, staff typically requests from the Commission the authority to use compulsory process. The Commission has approved the use of compulsory process in this investigation, permitting the issuance of both subpoenas and Civil Investigative Demands, and the taking of depositions under oath.[16] Process will be used to take testimony and gather evidence from the various entities that refine, transport and distribute gasoline in the Midwest, as well as suppliers and customers, and other knowledgeable or affected persons. The Commission already has T3(i)-2(ousl2(l)-2hTJ E)4(a)4(d [(a)4(n7g)10(e)4 intensive analysis. We cannot say at this time when the investigation will be concluded.

We assure you that our investigation will be thorough, objective and as expeditious as possible. The FTC has an excellent staff of lawyers and economists with considerable experience in the oil industry who are working on this investigation, and we will pursue this matter vigorously.

1. **This written statement represents the views of the Federal Trade Commission. My oral presentation and response to questions are my own, and do not necessarily represent the views of the Commission or any other Commissioner.**

2. Energy Information Administration, Office of Oil and Gas Daily Price Report (June 12, 2000). In comparing average RFG prices at different times and at different places, it should be noted that RFG requirements may differ between summer and winter and also between localities.

3. EPA Data, RFG-CG Price Information, based on Oil Price Information Service data (June 14, 2000, June 23, 2000).

4. *Id.*

5. *See* R. Kemper & K. Mellen, "As Pressure Builds, Price of Gas Falls," *Chicago Tribune* (June 23, 2000).

6. EPA Data, RFG-CG Price Information (June 14, 2000).

7. Energy Information Administration, Motor Gasoline Watch (June 21, 2000) at 2.

8. Energy Information Administration, Update: A Year of Volatility-Oil Markets and Gasoline, June 21, 2000 (West Texas Intermediate crude oil spot prices).

9. On June 21, OPEC announced a production increase of 708,000 barrels per day. "OPEC Agrees to Increase Oil Production," *Wall Street Journal* (June 22, 2000) at A3.

laws, pursuant to authority granted under the Sherman Act. 15 U.S.C. § 1 et seq. If we uncover evidence of criminal activity, however, such as hard-core price fixing, we can forward the matter to the Antitrust Division.

16. Subpoenas and CIDs are two methods of requiring the submission of certain information needed for an investigation. The Commission has authority to issue both. There are certain administrative and procedural advantages to each type of compulsory authority. Subpoenas are generally preferable for document discovery or in-person testimony, while CIDs may be superior for obtaining interrogatory responses or information and for service on foreign entities. Naturally, the Commission seeks evidence from witnesses on a voluntary basis where appropriate or feasible.