



# Interim Report on Gasoline Pricing:

## A Report to Congress

Federal Trade Commission

March 2006

## **I. INTRODUCTION**

In two separate enactments, Congress directed the Federal Trade Commission to conduct an investigation to examine gasoline pricing. Section 1809 of the Energy Policy Act of 2005<sup>1</sup> (the “Energy Policy

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compulsory process and other tools, the Commission is examining refining, product transportation by pipeline and marine vessel, terminaling, marketing, and retail – to determine whether any firm or firms may have manipulated gasoline prices art

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profitability of companies that otherwise may not have been the focus of the Energy Policy Act investigation – including retailers subject to complaints of “price gouging” – and on the tax expenditures. Section 632 also requires the Commission to examine additional conceptual issues relating to price gouging, including the effects on the national economy. Section 632 provides a definition of “price gouging” for purposes of the investigation.

The Commission is using compulsory process and other tools to conduct this investigation. In addition

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Commission cannot replicate. The FTC requested information and data from each company concerning the 11 tax expenditure categories identified in the FY 2006 Budget that relate to energy.<sup>9</sup> For those companies that take credits or deductions related to the 11 categories, all but one company responded with its interpretation of tax line items for credits and deductions. Consequently, the Commission likely will report the total tax credit and deduction values in the 11 energy-related categories.<sup>10</sup> The Commission's final report will include a full description of each category, as well as a summary of tax expenditure items as presented in budget documents. Given the complexities of relevant calculations, the limitations of the information to which the Commission has access, and the specialized expertise necessary, the agency will not be able to provide actual "tax expenditure" numbers as defined in the Budget Act; rather, the Commission's final report will summarize tax credit and deduction data as fully and accurately as possible, and explain any distinctions between these data and the Budget Act's definition of "tax expenditures."

## B. Retailer Profitability and Tax Expenditures

Section 632 requires the Commission to look for evidence of price gouging by, and to obtain profitability and tax information from, any retailer of gasoline and distillates against which multiple complaints of price gouging (with identifying information) were filed with a Federal or state consumer protection agency in August or September 2005. Although staff had anticipated that this requirement would present a large number of retailers for investigation, neither a review of complaints filed with federal agencies nor a canvass of the state attorneys general's offices yielded complaints that met this standard.<sup>11</sup> Retail stations belonging to integrated refiners and wholesalers that meet the statutory threshold of \$500 million in sales are already included within this investigation, and we are examining tax expenditure and profitability data for those

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<sup>9</sup> Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006, at 315 (2005).

<sup>10</sup> Many of the categories will have no response because those items reflect tax expenditure categories not available to the Commission's survey group. In addition, some categories may have been eliminated. In particular, the Alternative Fuel Production Credit appears to have expired in 2002, but companies still reported these credits for the years covered in this investigation. The Clean Fuel Vehicles and Property deduction and credit is phasing out this year, and will be unavailable in 2007. Analytical Perspectives, *supra* note 9, at 336.

<sup>11</sup> For example, while almost 20,000 complaints were logged by the Department of Energy's gasoline price hotline during the week immediately following Katrina, many of the complaints failed to identify the gas station or retailer sufficiently to allow the Commission to contact the target of the complaint for additional information, none of the complaints contained information that would allow the Commission to contact the complainant for information identifying the retailers complained about, and none of the stations that were identifiable were the subject of more than a single complaint.

companies. However, to provide as complete a response as possible, the agency has sought information from retailers that various states have charged with price gouging in the wake of Hurricanes Katrina and Rita. As noted, the agency issued Section 6(b) Orders to 99 retailers, many of which had settled state charges without a trial and paid a fine. Although several of these retailers are significant companies with multiple retail stations that should have little difficulty providing the requested information, we are encountering a significant number of small, single-station owners with relatively little sophistication or computer expertise (many of whom speak English only as a second language).

Many of the single-station owners do not keep the kind of data required by Section 632 because it is not required for their reporting purposes. Those that are not computer literate may need to generate those data manually from invoices kept in basements or attics. Moreover, language and cultural barriers are making it difficult for several persons to understand fully the data the agency has requested and how to submit it. All of these individuals seem to be trying hard to comply with the Commission's investigation, but some may not be able to provide the requested information.

For two reasons, the staff has not to date requested that the Commission enforce compliance in Federal court. First, because all retailers seem to be acting in good faith, there is