FILE

Douglas R. Melin
General Attorney

~~06-540-GA-ORD~~
06-1201-AU-ORD

Marathon Petroleum Company LLC

539 South Main Street
Findlay, Ohio 45840-3296
Telephone 419/421-3266
Fax 419/427-4170
E-mail: DRMelin@MarathonPetroleum.com

FAX

RECEIVED-DOCKETING DIV
2006 DEC 15 PM 5:23
PUCO

By telecopier

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Dear Commission:

With regard to the review, and proposed amendments to, O.A.C. Chapter 4901: 5-17 through 5-37 by the Commission, Marathon Petroleum Company LLC (MPC) has the following comments. MPC is a supplier of transportation fuels and heating oil, as those terms are defined in the current and proposed energy emergency regulations.

1. The new sections titled "Pre-Emergency Actions" (4901:5-33-03 and 4901:5-29-04) present several issues. First, they appear to enlarge the powers of the Commission beyond those delegated in R.C. 4935.03, which anticipates that an energy emergency has first been declared and in no sense can be read plausibly to allow the Commission to implement the supply measures anticipated in the regulation. In the absence of a more explicit delegation by the legislature, the proposed new regulations are vulnerable to a constitutional challenge.

Further, the "pre-emergency" actions are not subject to any of the procedures that apply to similar actions that may be taken after an energy emergency has been declared. The Commission's powers arguably are more sweeping before an energy emergency has been declared than after. It is doubtful that the legislature intended the Commission to have greater powers in a pre-emergency setting than it would after the governor has determined that an energy emergency has occurred. Given that the pre-emergency actions may be implemented at any time "prior to an energy emergency" there is no limit on when the Commission may impose them. Under the proposed scheme, the Commission might decide to take pre-emergency actions today (December 14, 2006) even though no conditions exist that would warrant them. Hence, the proposed pre-emergency sections can be seen as granting the Commission of day-to-day regulatory control of an industry that has not been subject to formal regulation by the state of Ohio. Given that there is no evidence of legislative intent on that score, the pre-emergency regulations amount to an overreaching of authority.

2. Revised sections 4901:5-29-05(B)(5) and 4901:5-33-05(B)(4) eliminated the words "with surplus volumes" from the text of the regulations. The deleted words should be restored. Suppliers often have contractual commitments to customers and regular supply relationships with non-contract customers. Allowing the Commission to disrupt supply patterns with existing customers in a setting where there is no precondition of a "surplus" (however that term may be defined) can easily lead to unintended harms that outweigh the intended benefits, especially at an early "stage one" time frame.

3. I received the proposed regulations only a day ago and have not had an opportunity to thoroughly review the existing regulatory scheme. However, a cursory review of the existing scheme suggests that there are a number of provisions that are in need of further definition and clarification. Particularly of concern is that the mandatory set-aside section 4901-5-35-01, et seq. may cause unintended supply disruptions if a seller is required to maintain up to 5% of its supply in reserve at the discretion of the Commission and await an optional decision of the Commission as to its use. The regulation is also unclear as to whether the Commission can "bank" the reserve from month to month. As more product is held in reserve, the supplier's flexibility to respond to crisis situation diminishes. It is also unclear how the set-aside program volumes relate to the allocation process described in other sections of the energy emergency regulation. MPC will be pleased to provide further comments on this and other sections should the Commission so desire.

Respectfully submitted,

Douglas R. Melin

Douglas R. Melin