BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Final Rule: Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards	EPA Docket No. EPA–HQ–OAR–2012–0546

PETITION FOR RECONSIDERATION

Pursuant to section 307(d)(7)(B) of the Clean Air Act (hereinafter, "the Act" or "CAA"), Monroe Energy, LLC ("Monroe") hereby petitions the Administrator of the United States Environmental Protection Agency ("EPA") to reconsider ("2013 Rule"). Specifically, EPA must reconsider section IV.B.2 of the 2013 Rule, in which EPA declined to exercise its discretionary authority to extend the hardship exemption for small refineries and small refiners to a broader class of obligated parties.[1] EPA concluded in the 2013 Rule that it would not be "appropriate to extend the exemption for small refineries" to a broader class of obligated parties "absent such hardship." 78 Fed. Reg. at 49826. In its Notice of Proposed Rulemaking, however, EPA gave no indication that it would consider extending the exemption to other obligated parties upon a showing of hardship. Monroe thus had no opportunity to submit evidence of such hardship.

EPA therefore must convene a proceeding for reconsideration of the 2013 Rule under the Act's administrative reconsideration provision because: (i) the grounds for Monroe's objection arose after the period for public comment (but within the time specified for judicial review); and (ii) Monroe's objection is of central relevance to the outcome of that rule.[2] In addition, because

[1] *See* 78 Fed. Reg. at 49825-49826.

[2] 42 U.S.C. § 7607(d)(7)(B). EPA has defined "central relevance" as an objection that "provides substantial support for the argument that the regulation should be revised." EPA's Denial of the Petitions To Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 75 Fed. Reg. 49556, 49561 (Aug. 13, 2010). Thus, a timely motion for reconsideration is granted where new evidence "provides substantial support for the argument that the regulation should be revised." *Id.*; *see also* Standards of Performance for New Stationary Sources: Stationary Gas Turbines, 45 Fed. Reg. 81653, 81653 n.6 (EPA Dec. 11, 1980) (denial of petition to revise); National Ambient Air Quality Standards for Particulate Matter, 53 Fed. Reg. 52698, 52698 (EPA Dec. 29, 1988) (denial of petition for reconsideration). Monroe's objections are "of central relevance to the outcome of the rule," 42 U.S.C. § 7607(d)(7)(B), because they show that the regulation should be revised. In addition, because judicial review of the Final Rule is available by the filing of a petition for review by October 15, 2013, the grounds for Monroe's objections arose "within the time specified for judicial review." 42 U.S.C. § 7607(d)(7)(B).

reconsideration proceedings may affect compliance obligations under the 2013 Rule and parties must have ample lead time to meet their compliance obligations before the compliance deadline, Monroe respectfully asks that EPA expedite reconsideration and, if necessary, extend compliance deadlines.

I. BACKGROUND & SUMMARY OF THE ISSUES PRESENTED.

On February 7, 2013, EPA proposed annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels applicable to all gasoline and diesel sold or introduced into commerce in the United States in 2013 (the "Proposed Rule").[3] As part of the Proposed Rule, EPA requested comment on two narrow issues relating to the existing exemptions for small refiners and small refineries. *First*, EPA sought comment on "whether it would be appropriate to extend the two year exemption for small refineries as discussed in section 211(o)(9)(A)(ii)(II)."[4] That section exempted small refineries for at least two years if a Congressionally mandated study by DOE concluded that those refineries would face a disproportionate economic hardship under the RFS program.[5] EPA had exempted several small refineries from the RFS program in 2011 and 2012 based on the results of DOE's 2011 small refinery exemption study.[6] Because those exemptions expired at the end of 2012, EPA sought comment on whether to extend the term of the exemption.[7] *Second*, EPA sought comment on the separate issue of "whether it is appropriate for the agency to make changes to the 2013 volumes if small refiner exemptions are granted after the final rule is issued."[8]

Both of these questions were tailored to address narrow and specific issues arising from EPA's existing exemptions for small refineries and small refiners. Nowhere did EPA invite comment on whether it should expand the administrative hardship exemption for small refiners – which is available upon a showing of disproportionate economic hardship that significantly affects the refiner's ability to comply with the RFS standards, 40 C.F.R. § 80.1442(h) – to allow other obligated parties to receive such an exemption upon a similar showing. That issue was well beyond the scope of EPA's requests for comment.

EPA received comments in response to the Proposed Rule from Coffeyville Resources Refining & Marketing, LLC ("Coffeyville") and Wynnewood Refining Company, LLC ("Wynnewood").[9] Among many other things, Coffeyville and Wynnewood asked EPA to exercise its discretion to extend the small refinery hardship exemption to allow mid-sized

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[3] Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards, 78 Fed. Reg. 9282 (proposed Feb. 7, 2013).

[4] 78 Fed. Reg. at 9303.

[5] 42 U.S.C. § 7545(o)(9)(A)(ii)(II).

[6] 78 Fed. Reg. at 9303.

[7] *Id.*

[8] *Id.*

[9] *See* Comments of Coffeyville Resources Refining & Marketing, LLC and Wynnewood Refining Company, LLC, Docket ID No. EPA-HQ-OAR-2012-0546 (Apr. 8, 2013).

refiners to receive an exemption if they suffer the same disproportionate harm as small refiners.[10] Coffeyville and Wynnewood also argued that EPA used the wrong criteria to evaluate whether a small refinery suffered disproportionate economic hardship.[11] Specifically, they argued that EPA erroneously required a small refinery to show that it would not remain "economically viable" without an exemption, when it should have required a showing of "disproportionate hardship relative to others in the industry."[12]

In the 2013 Rule, EPA responded directly to Coffeyville and Wynnewood's comments. EPA acknowledged that it had authority to extend the hardship exemption for small refineries and small refiners to a broader class of obligated parties, but stated that it would not exercise that authority in the case of mid-sized refiners absent a showing of economic hardship – a showing that Coffeyville and Wynnewood had failed to make. Specifically, EPA stated:

> A third commenter suggested that EPA not only continue to provide hardship waivers, but extend the opportunity for waivers to mid-size refiners . . . . This commenter also stated that EPA's granting of hardship relief is based on whether the refinery cannot remain economically viable without said relief. The commenter believes the decision point should be based on whether the refiner suffers disproportionately to others in the industry.
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> The Act specifically provides for a temporary RFS exemption for small refineries, and for the possibility of extensions of those temporary exemptions. EPA used its discretion in the RFS1 program regulations, and again in the RFS2 regulations, to extend the temporary exemption (and possibility of extensions) to a few small refiners meeting criteria established in prior EPA fuels rules based on general authority to provide appropriate lead time in establishing implementing regulations and based on the language in section 211(o) directing EPA to apply RFS requirements to refineries, blenders, distributors, and importers "as appropriate." Regarding EPA's use of "economic viability" (in the commenter's words) as a decision point, the Agency has interpreted this to be a severe impact – large enough to create a hardship and threaten the viability of the company. *Thus, absent such hardship, the agency does not believe it is appropriate to extend the exemption for small refineries.*[13]

It is not surprising that EPA lacked the evidence of hardship that it claimed to need, because the Proposed Rule never requested such evidence from interested parties. Had EPA informed the public that it would consider extending the hardship exemption for small refineries and small refiners to a broader class of obligated parties upon a showing of hardship, Monroe and others would have provided EPA with such evidence.

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[10] *See id.* at 5-6.

[11] *Id.*

[12] *Id.*

[13] 78 Fed. Reg. at 49825-49826 (emphasis added).

Accordingly, reconsideration is warranted. As a result of EPA's failure to advise the public that it was willing, within the scope of its rulemaking, to consider extending the hardship exemption for small refineries and small refiners to other obligated parties, interested parties like Monroe were deprived of their opportunity to offer evidence in support of such a rule change. Monroe could only have become aware of EPA's willingness to consider extending the exemption after the 2013 Rule was issued. Thus, the grounds for Monroe's objections, as presented in this Petition for Reconsideration, unquestionably arose after the period for comment ended (but within the time specified for judicial review). And because the decision whether to extend the hardship exemption directly affects parties' 2013 RFS obligations under the 2013 Rule, this issue is plainly of central relevance to the outcome of that Rule.

For the reasons below, EPA should grant reconsideration and exercise its discretionary authority to extend the hardship exemption for small refineries and small refiners to obligated parties who are not "small refiners," but who can demonstrate that they face disproportionate economic hardship that significantly affects their ability to comply with the RFS standards.

II. EPA SHOULD EXERCISE ITS DISCRETION TO EXTEND THE HARDSHIP EXEMPTION.

Congress provided EPA with discretion to exempt parties from RFS obligations as EPA deems appropriate. While Congress has specifically provided for an exemption for "small refineries,"[14] CAA section 211(o)(3)(B) additionally provides that "[t]he renewable fuel obligation determined for a calendar year under clause (i) shall . . . be applicable to refineries, blenders, and importers, *as appropriate*."[15] EPA exercised this discretion to wholly exclude blenders from the requirements of the statute,[16] and has twice exercised its discretion under that subsection to exempt other obligated parties who fall outside statutory exemptions from RFS obligations.[17] As EPA explained when it first created a regulatory exemption for "small refiners" – a category distinct from the "small refineries" defined by Congress – EPA had "discretion to determine the regulated refiners, blenders and importers, 'as appropriate,'"[18] and it exercised that discretion because "[w]e continue to believe that some refiners, due to their size, generally face greater challenges compared to larger refiners."[19]

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[14] 42 U.S.C. § 7545(o)(9)(B).

[15] 42 U.S.C. § 7545(o)(3)(B)(ii)(I) (emphasis added).

[16] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 72 Fed. Reg. 23900, 23923 (May 1, 2007).

[17] *See id.* at 23925; Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 75 Fed. Reg. 14670, 14716 (Mar. 26, 2010). Specifically, in 2010, EPA promulgated regulations under 40 C.F.R. § 80.1442(h)(1) requiring that small refiners show that (i) "Circumstances exist that impose disproportionate economic hardship on the refiner and significantly affects the refiner's ability to comply with the RFS standards," and (ii) "The refiner has made best efforts to comply with the requirements of this subpart."

[18] 72 Fed. Reg. at 23925 (using the language of 42 U.S.C. § 7545(o)(3)(B)(ii)(I)).

[19] *See id.*

Currently, eligibility for the administrative "small refiner" exemption is limited to refiners employing fewer than 1,500 people with a total average crude oil processing capability of 155,000 barrels per calendar day.[20] But the reasons that justify an exemption for such "small refiners" equally justify an exemption for merchant refiners that, although slightly larger, also suffer disproportionate hardship when the market price for RINs explodes as it has in 2013.

As an initial matter, the enormous spike in RIN prices during 2013 reflects the scarcity of RINs for 2013 compliance offered for sale in the market.[21] EPA created that scarcity by adopting RFS volume requirements in the 2013 Rule that exceed the amounts of renewable fuels the national economy can use in 2013, due to the E10 blendwall. While EPA recognized that fewer RINs would be created in 2013 to satisfy the 2013 RFS requirements, it projected that this shortfall could be overcome with "carryover" RINs created during 2012. The problem, however, is that RINs created during 2013 also can be carried forward to be used in 2014. Obligated parties with access to RINs have a strong incentive now to hoard 2013 RINs for 2014 compliance, creating scarcity in 2013 that cannot fully be satisfied through the use of 2012 carryover RINs.[22]

The resulting increase in RIN prices significantly disadvantages refiners that are significant net purchasers of RINs – typically, refiners with little blending capabilities ("merchant refiners") – as compared to refiners with their own or affiliated blending facilities ("integrated blender refiners"), which can produce the RINs needed for compliance. That disadvantage is entirely artificial, unrelated to any greater efficiency of integrated blender refiners. Integrated blender refiners generally do not have to purchase many (or any) RINs to meet their 2013 obligations, and thus do not face substantially increased costs as a result of unprecedentedly high RIN prices.[23] Instead, these refiners obtain most (if not all) of the RINs they need to meet their obligations through the process of blending ethanol with gasoline blendstock.[24] The cost of their doing so is the same as it would be in a market without RIN scarcity. That cost is determined by the relative prices of ethanol and gasoline blendstock.[25] And, in today's market, where ethanol is cheaper than gasoline blendstock, that cost is zero.[26]

[20] Specifically, small refiners are defined as refiners that "(1) Produced gasoline at a refinery by processing crude oil through refinery processing units; (2) employed an average of no more than 1,500 people, including all employees of the small refiner, any parent company and its subsidiary companies; and (3) had a total average crude oil processing capability for all of the small refiner's refineries of 155,000 barrels per calendar day (bpcd)." 72 Fed. Reg. at 23924; *see also id.* at 23925.

[21] *See* NERA Economic Consulting, *Analysis of RFS2 RIN Market*, 17-21 (Oct. 15, 2013) (hereinafter, the "NERA Report") (Ex. 1).

[22] *See id.* at 19-21.

[23] *See* NERA Report at 35-36.

[24] *See id.* at 10-13, 36.

[25] *See id.* at 10-13.

[26] *See id.*

Most merchant refiners, by contrast, purchase all, or the substantial majority, of their RINs in the secondary market.[27] Under ordinary market conditions, this price would also be determined by the relative prices of ethanol and gasoline blendstock, and it would be equivalent to the cost faced by integrated blender refiners.[28] In today's market, that price would be zero (plus transaction costs).[29] But market conditions today are anything but ordinary. RIN scarcity created by the 2013 Rule is forcing merchant refiners and other net RIN purchasers to pay far more to satisfy their RFS obligations than what it costs refiners who obtain compliance primarily by blending.[30] That creates a major cost disadvantage for merchant refiners.

DOE predicted precisely this result with respect to small refineries in its 2011 small refinery exemption study, on which DOE then relied to recommend hardship exemptions for certain small refiners.[31] Specifically, DOE explained:

> The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. . . . While current RIN prices for ethanol are moderate[,] . . . there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).[32]

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[27] *See id.* at 35.

[28] *See id.* at 10-13.

[29] *See id.*

[30] *See id.* at 17-21.

[31] *See* Office of Policy & Int'l Affairs, U.S. Dep't of Energy, *Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship* (Mar. 2011), *available at* http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf ("Small Refinery Study").

[32] Small Refinery Study at 2-3 (emphasis added). DOE further explained:

> As the RFS mandate increases, obligated parties will demand more RINs, adding upward price pressure. As the mandate increases, increasing the supply of RINs becomes difficult or nearly impossible. In anticipation of the blend wall, obligated parties may stockpile RINs through discretionary blending in anticipation of a shortage of blending opportunities. Those parties that are short,

Monroe operates a 185,000 barrel-per-day refinery in Trainer, Pennsylvania (the "Trainer refinery") as a merchant refiner. Although the refinery falls outside the statutory definition of "small refinery" and EPA's definition of "small refiner," and thus cannot qualify for either the statutory exemption for "small refineries" or the current administrative hardship exemption for "small refiners," it faces precisely the same disproportionate economic harm that DOE described in its study. Monroe transports all of its output via pipeline or marine vessel to two major oil companies under long-term contracts. Neither the pipeline nor the marine vessel is capable of accepting blended product, and nearly all blending occurs downstream by unaffiliated companies at terminals Monroe neither owns nor operates, depriving it of resulting RINs. While Monroe blends a very small portion of its output at its sole terminal, there are contractual, physical, and regulatory constraints that preclude it from obtaining compliance benefits from that operation.[33] Monroe therefore depends entirely on the secondary market for RINs to obtain compliance. Indeed, Monroe's exposure to the secondary RIN market places it at a disadvantage even relative to many smaller refiners who currently may apply for hardship relief. As the DOE study found, "many (but not all) the respondents [to a small refiner survey] blended ethanol in 2009."[34] One small refiner actually reported $4 million in revenue that year from RIN sales, meaning that it was blending more ethanol into fuel than necessary to meet its own compliance obligation.[35]

Furthermore, Monroe and other net purchasers of RINs are not able to pass their compliance costs on to their fuel purchasers. Empirical evidence confirms that these refiners have been unable to pass on their increased RIN costs. Specifically, linear regressions show that the increase in RIN prices is not correlated with an increase in the price of gasoline blendstock.[36] This is not surprising. RIN costs do not have to be – and often are not – incurred until months after blendstock is sold, at prices that currently are highly volatile. There is no current cash cost to pass on. The estimate of refiners as to what they will have to pay when they ultimately purchase RINs will vary substantially among refiners depending principally on their expectations of future EPA actions. Moreover, integrated blender refiners, which represent the vast majority of the market, do not face this choice – they possess the RIN, regardless of the price it commands on the secondary market, and need do nothing else to comply. This, along with excess refining

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> i.e. cannot generate enough RINs through their own facilities to meet their RVO, will need to purchase RINs and could suffer significant economic hardship."

Id. at 17-18.

[33] Monroe attaches a confidential business information filing that discusses, among other things, the Trainer refiner's very limited blending operations and why Monroe is unable to obtain RINs from those operations. *See* Confidential Business Information Filing: Impact of Compliance on Monroe Energy, LLC (hereinafter "CBI Filing") (Ex. 2).

[34] Small Refinery Study at 35.

[35] *Id.*

[36] The regressions also show that higher RIN prices have not resulted in an increase in the price of finished gasoline. *See* NERA Report at 36, 40.

capacity due to the decline in gasoline consumption, constrains the price at which refiners can sell blendstock.[37]

Of course, when merchant refiners and other net purchasers ultimately must purchase RINs to satisfy their obligations, they will incur the costs associated with those RINs. By contrast, large integrated blender refiners that generate their own RINs need not procure RINs on the secondary market, and that segment of the market thus experiences no upward price pressure as a result of high RIN costs. To the contrary, to the extent that large integrated blender refiners are generating excess RINs because they blend more fuel than the refine, high RIN prices amount to an additional and substantial source of revenue for such refiners.

In addition to limited blending capacity, Monroe possesses many other attributes that DOE has identified as likely to increase the burden on small refineries when the cost of compliance rises. For example, like many smaller refiners and refineries, Monroe operates on a stand-alone basis without the ability to smooth cash flows to buffer it from cost swings. Even slight variations in costs can erase projections of positive net refining margins and threaten the continued viability of operating the Trainer refinery. Indeed, the Trainer refinery actually ceased operation in 2011 after its refining margins were dramatically reduced due to the premium it paid for the light, sweet crude oil that it refines.[38] The refinery remained shut down at the time Monroe purchased it, and Monroe had to invest substantial capital to return the refinery to operation. Also, like small refiners and refineries, Monroe has limited access to additional sources of capital.[39]

These factors, in addition to limited blending capabilities, combine to make Monroe and other similarly situated refiners just as vulnerable as small refiners. The same reasons that justified EPA in creating an administrative exemption for small refiners justify, in the current context where RIN prices have exploded, providing relief to mid-size refiners with limited blending capabilities who are dependent upon the secondary market for RINs.

To be sure, EPA has previously considered and rejected a request to adopt a "general hardship" exemption.[40] But Monroe does not seek a general hardship exemption that would be

[37] *See* NERA Report at 37 ("As long as there are some refiners who expect EPA actions to drive future prices low enough that they remain willing to meet market demand at the present price, gasoline prices will not rise. If a particular refiner tried to pass on the cost of the RIN, other refiners with unused capacity of production would increase their production.").

[38] Jeffrey Kerr and Anna Driver, *Conoco to sell or shut Pennsylvania refinery*, REUTERS, Sept. 27, 2011, http://www.reuters.com/article/2011/09/27/us-conocophillips-trainer-idUSTRE78Q5R32010927; ConocoPhillips Press Release, "ConocoPhillips Seeks Buyer for Trainer, Pa., Refinery," 9/27/11, http://www.conocophillips.com/EN/newsroom/news_releases/2011news/Pages/09-27-2011.aspx.

[39] Monroe provides EPA additional information about characteristics that further exacerbate the severe harm it will face if it must purchase RINs at these unprecedentedly high prices in the attached CBI Filing (Ex. 2).

[40] 72 Fed. Reg. at 23926.

available to any obligated party. Rather, Monroe requests that EPA extend an administrative exemption to other obligated parties who fall outside the "small refiner" definition, but who nonetheless face similar challenges – because, for example, they are merchant refiners with limited blending capabilities and therefore must depend on the secondary market to acquire RINs.

Further, EPA's rationale for rejecting the general hardship exemption does not apply to Monroe's request. In rejecting the general hardship exemption in 2007, EPA reasoned that no such exemption would be needed because "sufficient RINs will be available and at reasonable prices, given that EIA projects that far greater renewable fuels will be used than required."[41]

Of course, as explained above, the 2013 Rule now requires the use of *more* renewable fuel than can actually be used due to the E10 blendwall.[42] This has given obligated parties a strong incentive to begin hoarding 2013 RINs now in anticipation of needing them for 2014 compliance, when a RIN shortfall may be much worse.[43] As a result, the market price for RINs vastly exceeds historical prices.[44] Since March 2013, RIN prices in the secondary market have averaged between 80 and 85 cents.[45] Prices reached as high as $1.44 on July 17, 2013, and remained at $0.90 cents on the day EPA announced its final rule, 45 times their historical averages.[46] Although prices have since come down since their peak, they remain more than 15 time higher than their historical levels.[47] In light of these realities, EPA's rationale for rejecting the general hardship exemption in 2007 – that "sufficient RINs will be available and at reasonable prices, given that EIA projects that far greater renewable fuels will be used than required"[48] – does not apply today, at least with respect to merchant refiners like Monroe who must rely on the secondary market to acquire their RINs.

III. MONROE CAN ESTABLISH THE REQUISITE HARDSHIP THAT SIGNIFICANTLY AFFECTS ITS ABILITY TO COMPLY WITH THE RFS STANDARDS.

The Final Rule issued in 2013 acknowledged EPA's discretionary authority under CAA section 211(o)(3)(B) to extend hardship relief to obligated parties in addition to those currently eligible for a hardship exemption. As noted above, in response to the comments from Coffeyville and Wynnewood, EPA recognized that it had the power to provide mid-sized refiners with the same hardship relief that it previously had made available under CAA section

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41 *Id.*

42 78 Fed. Reg. at 49822.

43 *See* NERA Report at 19-21.

44 *See id.* at 13-15.

45 *See id.* at 14.

46 *See id.*, *id.* at 14 n.20.

47 *See id.*

48 72 Fed. Reg. at 23926.

211(o)(3)(B) to "small refiners." But EPA declined to do so because Coffeyville and Wynnewood had failed to demonstrate the requisite hardship:

> Regarding EPA's use of "economic viability" (in the commenter's words) as a decision point [in granting hardship relief], the Agency has interpreted this to be a severe impact – large enough to create a hardship and threaten the viability of the company. Thus, absent such hardship, the agency does not believe it is appropriate to extend the exemption for small refineries.[49]

It therefore follows that, if EPA had been presented with a *prima facie* showing of the requisite hardship, the agency would have exercised the discretionary authority to extend the hardship exemption to additional obligated parties upon a showing of hardship.

EPA stated that the relevant "decision point" in determining whether to grant hardship relief is a "severe impact – large enough to create a hardship and threaten the viability of the company."[50] Although EPA has not provided a more precise definition of "viability," DOE defined "refiner viability" in its 2011 Small Refinery Study to mean "the ability of the refiners to remain competitive and profitable."[51] The DOE study further explained that, "under some circumstances, a small refinery may face compliance costs that would significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure."[52]

Monroe provides EPA with such a *prima facie* showing of hardship in the attached CBI Filing.[53] Monroe can provide additional information, as needed, as part of the EPA's rulemaking process to establish such an exemption.

EPA should carefully consider this *prima facie* showing within the broader context of the rapidly growing threat to the merchant refinery sector now that the industry has surpassed the blendwall. In this respect, even if Monroe and other merchant refiners forced to purchase RINs can absorb negative or low margins in the short run, they cannot expect to remain viable in the long run if they continue to be forced to operate at a substantial cost disadvantage. "Refiners

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[49] 78 Fed. Reg. at 49825-49826.

[50] 78 Fed. Reg. at 49826. Monroe does not agree with EPA's assessment as to the appropriate "decision point." Monroe concurs with the position Coffeyville and Wynnewood expressed in comments that neither CAA section 211(o)(9), nor any regulations promulgated by EPA, require a showing that RFS compliances "threaten[s] the viability of the company." *Id.* For example, existing regulations governing small refiners merely require a showing of "disproportionate economic hardship" that "significantly affects the refiner's ability to comply with the RFS standards." 40 C.F.R. § 80.1442(h)(1)(i). In any event, Monroe clearly establishes in this petition that a broader class of obligated parties could satisfy the requisite hardship showing that EPA articulated in the 2013 Rule.

[51] Small Refinery Study at 27, 36.

[52] *Id.* at 37.

[53] *See* Ex. 1.

who must purchase RINs to meet their RVO will eventually be forced to exit the market if current market conditions persist."[54] As noted, the Trainer refinery ceased operations in late 2011 after an increase in the premium it paid for crude oil dramatically reduced refining margins. This occurred well before the cost of acquiring RINs was a concern for merchant refiners. The shutdown of the refinery within the past two years illustrates the substantial difficulty companies have experienced in attempting to achieve sustainable refining margins, and provides additional *prima facie* evidence that Monroe and similarly situated refiners face hardship that significantly affects their ability to comply with the RFS standard while remaining competitive.

IV. SCOPE OF RECONSIDERATION.

Because Monroe has made a *prima facie* showing of disproportionate economic hardship – the very showing that EPA, in its 2013 Rule, claimed to need in order to justify extending the hardship exemption to obligated parties other than "small refiners" – EPA should grant reconsideration and modify its rules to allow Monroe and other refiners facing similar challenges to petition for hardship relief from RFS obligations for 2013 as well as later years.

EPA should additionally request comment on the appropriate standard to be applied in the current context – where the blendwall has been reached, RIN costs are divorced from traditional market forces, and merchant refiners such as Monroe face hardship disproportionate to any experienced by integrated blender refiners, which can rely on RINs from their own blending operations or those of affiliates.[55] The 2013 Rule describes the relevant "decision point" as "a severe impact – large enough to create a hardship and threaten the viability of the company."[56] But EPA should consider carefully what this means in the unique circumstances posed by the blendwall, and should further evaluate whether the extreme disparity in RFS compliance costs between net purchasers of RINs and net sellers of RINs (including even small refiners with blending capabilities) can be justified. CAA section 211(o)(3)(B) grants EPA broad discretion to determine the appropriateness of subjecting parties to the renewable fuel obligations, and does not limit the manner in which EPA may reasonably exercise its discretionary authority to exclude refiners, blenders, and importers.[57] Continuing to subject refiners like Monroe to RFS obligations when RIN prices rise as significantly as they have in 2013 will dramatically tilt the oil refinery market in favor of integrated blender refiners. While the RFS may be intended to tilt the market towards renewable fuels, it is not intended to tilt the competitive market among refiners or to favor any particular form of corporate organization. To the contrary, as EPA itself explained when implementing the RIN program, Congress mandated implementation of the RFS through a tradable credit system in order to "preserve[] the natural market forces and blending practices that will keep renewable fuel costs to a minimum."[58] The extreme inequity created by a system that requires one class of refiners to transfer millions of

[54] *See* NERA Report at 41-42.

[55] *See* 42 U.S.C. § 7545(o)(9)(B); 40 C.F.R. §§ 80.1441(e)(2), 80.1442(h).

[56] 78 Fed. Reg. at 49825-49826.

[57] 72 Fed. Reg. at 23923.

[58] 72 Fed. Reg. at 23929.

dollars each year to competitors generating RINs at near-zero costs is precisely the kind of "disproportionate economic hardship" that should lead EPA to exercise its discretion to exempt obligated parties from compliance "as appropriate." 42 U.S.C. § 7545(o)(3)(B).

V. CONCLUSION.

Pursuant to 42 U.S.C. § 7607(d)(7)(B), Monroe hereby requests that EPA reconsider section IV.B.2 of the 2013 Rule, in which EPA erroneously declined to exercise its discretionary authority to exempt obligated parties in addition to small refineries and small refiners from RFS requirements upon the appropriate showing of disproportionate harm. Monroe respectfully requests that EPA instead adopt regulations permitting a broader class of obligated parties to petition EPA for hardship relief, and to take such action, including extending the compliance deadline for submission of RINs, as is necessary to permit such an exemption to be implemented.

Dated: October 15, 2013

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