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The Hon. Gina McCarthy
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Petition for Partial Waiver of 2013 Renewable Fuel Standard Volume Requirements

Monroe Energy LLC ("Monroe") respectfully submits this petition for a partial waiver of the 2013 Renewable Fuel Standard ("RFS") volume requirements. *See* EPA, "Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards," 78 Fed. Reg. 49794 (Aug. 15, 2013) ("2013 Rule").[1]

In setting the 2013 RFS volume requirements in the 2013 Rule, EPA emphasized that it was *not* making any decisions under the waiver provisions of section 211(o)(7)(A), which would require a different set of procedures and considerations.[2] Section 211(o)(7)(A) of the Clean Air Act ("CAA") specifies the conditions under which a waiver is permitted. It authorizes the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the RFS volume requirements in whole or in part on petition of any person, such as Monroe, subject to the requirements of the Act, under either of two conditions: (i) based on a determination by the Administrator, after public notice and opportunity for comment, that there is "an inadequate domestic supply"; or (ii) based on a determination by the Administrator, again

[1] On October 4, 2013, Monroe filed a Petition for Review of the 2013 Rule in the United States Court of Appeals for the District of Columbia Circuit. *Monroe Energy, LLC v. U.S. Environmental Protection Agency*, Case No. 13-1265. Independent of EPA's decision *establishing* the 2013 RFS volume requirements, Section 211(o)(7)(A) of the Clean Air Act specifically allows for a *waiver* of those requirements, upon an appropriate showing. *See* 42 U.S.C. § 7545(o)(7)(A).

[2] *See* 2013 Rule, 78 Fed. Reg. at 498110-498111.

after notice and comment, that implementation of the requirement "would severely harm the economy or environment of a State, a region, or the United States."[3]

Both conditions identified in Section 211(o)(7)(A) are present here. Whether or not the Agency gave any consideration to the adequacy of supply and to potential economic harm in promulgating the 2013 Rule, and based on additional evidence set forth in this petition, the Administrator should institute notice and comment proceedings concerning a partial waiver of the 2013 RFS requirements.

First, evidence shows that there is an *inadequate domestic supply* of blended fuel in 2013 and of the "credits" or "RINs" needed for compliance with the 2013 RFS requirements.[4] Prices for RINs have soared during 2013 and, as the year now draws toward a close, remain many times their historical level. These high prices result from the scarcity of RINs being offered for sale in the market and are *not* reflective of underlying market fundamentals associated with the costs of blending ethanol and other biofuels into transportation fuels. Rather, the scarcity is driven by the 2013 RFS requirements in conjunction with future statutory volume requirements, which require parties to submit more RINs than the market can possibly create. This creates incentives for parties with access to RINs to hoard them for future use, rather than making them available on the secondary market to parties who need them for compliance now. Speculators also have incentives to purchase and hold RINs, driving market prices even higher.

EPA recognized that fewer RINs would be created in 2013 than the quantity needed to satisfy the 2013 RFS requirements, yet refused to alter the statutory requirement using any of its available tools and authorities. Instead, it projected that this shortfall could be overcome through the utilization of "carryover" RINs created during 2012. The problem, however, is that RINs created during 2013 also can be carried forward to be used in 2014, creating further scarcity in 2013 that cannot be satisfied through the use of carryover RINs created in 2012. This inadequate domestic supply of RINs provides EPA with the authority to issue a partial waiver of the RFS requirements for 2013.

EPA should exercise that authority and grant a partial waiver. The high RIN prices that have existed for much of 2013, and that continue to exist as of this filing, do not serve the purposes of the renewable fuel provisions of the CAA, are not incentivizing greater use of renewable fuels, and are having a disproportionate and irrational impact on a particular market segment – namely, refiners that produce significantly more blendstock than they or their affiliates are capable of blending into finished gasoline or diesel, and that therefore must acquire a substantial number of RINs from the secondary market.[5] The RIN system was never intended

[3] 42 U.S.C. § 7545(o)(7)(A).

[4] Throughout this petition, when Monroe refers generically to RINs, it is referring to D6 RINs that are used to satisfy the total renewable fuel obligation.

[5] Typically, such refiners are "merchant refiners" who are unaffiliated with any blending operation. But even "integrated blender refiners" – those who are affiliated with a blending operation – can be disproportionately and negatively affected by the 2013 Rule if they are large net buyers of RINs on the secondary market.

to tilt the competitive market in favor of one group of refiners and against another. To the contrary, the RIN system was intended to facilitate compliance by refiners and importers in a competitively neutral way, by allowing them to satisfy their RFS obligations regardless of whether they themselves blended renewable fuels or were affiliated with blenders. Because the RIN system presently is operating in a manner at odds with its purpose, a partial waiver of the RFS requirements is appropriate.

Second, a partial waiver is merited because of the severe economic harm that will ensue without it. Under the 2013 RFS requirements, refiners like Monroe that rely on the secondary RIN market for compliance will face a competitive disadvantage by having to spend tens of millions of dollars that the large integrated refiners will not. Costs of that magnitude cannot be sustained, and they place merchant refiners like Monroe at a substantial competitive disadvantage and a great risk. Yet merchant refiners like Monroe are critical to state, regional, and even the national economies, as evident from an analysis completed by the Commonwealth of Pennsylvania regarding the economic impact from the 2011 closure of Monroe's refinery in Trainer, Pennsylvania.[6] There is no reason to threaten fragile regional, state, and national economies still reeling from the recession when current RIN prices do not incentivize the use of additional renewable fuel or otherwise advance any statutory purpose, and when the current RIN market is operating in a manner contrary to its intended purpose.

For these reasons and as explained further below, EPA should grant a partial waiver of the 2013 RFS requirements. Monroe respectfully requests that EPA institute notice and comment proceedings in connection with a proposed 20% reduction of the 2013 RFS requirements or other appropriate relief, and, in the interim, extend the period for compliance with the 2013 Rule.

I. WAIVER OF THE 2013 RFS VOLUMETRIC REQUIREMENTS IS WARRANTED DUE TO AN INADEQUATE DOMESTIC SUPPLY OF RENEWABLE FUEL.

Under section 211(o)(7)(A) of the CAA, EPA has authority to waive, in whole or in part, the quantitative requirements set forth in section 211(o)(2) of the Act upon a finding of "an inadequate domestic supply." The statutory phrase "inadequate domestic supply" does not specify supply of "what," and thus the statutory language is broad enough to encompass both the gasoline into which ethanol can be blended and RINs. Indeed, EPA has stated that a shortage of RINs falls within the scope of the term.[7] In order to justify a waiver, inadequate supply need not

[6] *See* Center for Workforce Information & Analysis, Reemployment Assessment and Economic Impact of ConocoPhillips and Sunoco Closings, Reemployment Assessment Report for Conoco Phillips (Jan. 9, 2012) (attached as Ex. 1) (hereinafter, the "PA Assessment").

[7] *See* Letter from Lisa P. Jackson, U.S. EPA, to Robert Greco III, API Group Director of Downstream and Industry Operations, at 17 (May 22, 2012) (denying petitions for reconsideration of portions of the December 9, 2010 RFS Rule and requests to waive the 2011 RFS cellulosic biofuel standard: "For most biofuels EPA believes that a demonstration by a petitioner that there were insufficient RINs available from the previous year (subject to the 20%

cause "severe economic harm." Otherwise, the "inadequate domestic supply" provision under Section 211(o)(7)(A)(ii) would have no meaning independent of the severe economic harm provision under Section 211(o)(7)(A)(i).[8]

As set forth below, in 2013, there is not an adequate supply either of blended fuel or of RINs. EPA has conceded, in the Final Rule, that there is an inadequate domestic supply of gasoline into which renewable fuel can be blended in 2013 – driven by the fact that the American economy cannot consume the amount of ethanol EPA has imposed on obligated parties in 2013. That, without more, establishes that there is an "inadequate domestic supply."

EPA has nevertheless suggested that RINs from prior years should be considered in an analysis of "supply." However, because of uncertainty caused by the blendwall and RFS requirements for 2013 and beyond, there is an inadequate supply of RINs even after accounting for RINs generated in prior years. Thus, EPA has the authority to grant a partial waiver of the RFS requirements for 2013, and it should exercise that authority.

A. Soaring RIN Prices Are Unrelated To The Fundamentals Of The Market For Renewable Fuels And Petroleum And Demonstrate The Problem Of Inadequate Domestic Supply.

1. RIN Prices Have Soared In 2013 And Remain High.

As EPA noted in announcing the 2013 Rule, the cost of purchasing RINs increased from 5¢/RIN in early January 2013 to approximately 70¢/RIN by March 2013 – a 14-fold increase – and then increased still further.[9] Indeed, prices reached as high as $1.44/RIN on July 17, 2013.[10] . Although prices recently have declined, to approximately 39¢/RIN as of October 10, 2013, those prices still are far above historical levels of approximately 2¢/RIN.[11] Given the extreme volatility in the market over the past seven months, there is no certainty that the prices have stabilized and will not increase again as the deadline for compliance approaches or other market factors make dictate.

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carryover limitation) and the current year's production to allow for compliance with the standard could be a basis for finding that there was an 'inadequate domestic supply.'") and Letter from Lisa P. Jackson, U.S. EPA, to Charles Drevna, AFPM President, at 17 (May 22, 2012) (same); *see also* 2013 Rule, 78 Fed. Reg. at 49822 ("The issue here is estimating the adequacy of the availability and use of ethanol in 2013 for compliance purposes, and the availability of carryover RINs is certainly relevant in analyzing that issue.").

[8] *See Bennett v. Spear*, 520 U.S. 154, 173 (1997) (applying the "cardinal principle of statutory construction" to "give effect, if possible, to every clause and word of a statute").

[9] *Cf.* 2013 Rule, 78 Fed. Reg. at 49822.

[10] *See* NERA Economic Consulting, *Analysis of RFS2 RIN Market*, 14 (Oct. 15, 2013) (attached as Ex. 2) (hereinafter, the "NERA Report").

[11] *See id.*

These price levels have enormous consequences for a refiner like Monroe that has limited blending capabilities and must acquire its RINs from the secondary market. Monroe explains the impact on its business in an attached filing with confidential business information.[12] Other merchant refiners would suffer similarly. At the average RIN prices that have existed in 2013, a merchant refiner would absorb an increased cost of 8.25 cents on each gallon of gasoline blendstock it sells.[13] That is a huge impact. It is more than the cash operating margin for U.S. East Coast refineries as of September 2013.[14] That is, RIN prices would more than offset this entire margin.

2. RIN Prices In 2013 Do Not Reflect Market Fundamentals For Renewable Fuels And Petroleum.

EPA itself has noted that spiking RIN prices constitute evidence "that the RIN market is not operating as intended."[15] EPA also has explained that RIN prices should be driven by market fundamentals; specifically, EPA has stated that "the cost of the RFS program is driven by *the cost of renewable fuels relative to the petroleum fuels they displace*."[16] If renewable fuels cost more than petroleum, RIN prices will offset this cost disadvantage and incentivize the use of renewable fuel. But if renewable fuels cost *less* than petroleum, there is no need for such an incentive and RIN prices should be near zero.[17]

Evidence from 2013 proves that the RIN market is not currently operating as intended. Throughout 2013, the cost of ethanol has generally been less than the cost of the gasoline blendstock it replaces. In such circumstances, the price of RINs should be near zero if the market were a well-functioning one with an adequate supply of RINs for all obligated parties to cover their renewable volume obligations ("RVO"s).[18] That is because, when ethanol costs less

[12] Monroe's attached filing discusses, among other things, the expected costs Monroe would incur to acquire RINs on the secondary market as needed to comply with the existing 2013 RFS requirements and the impact these costs would have on its operations. *See* Confidential Business Information Filing: Impact of Compliance on Monroe Energy, LLC (attached as Ex. 3) (hereinafter "CBI Filing").

[13] *See* NERA Report at 43.

[14] *See id.* at 43-44.

[15] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 75 Fed. Reg. 14670, 14722 (Mar. 26, 2010) ("2010 Rule").

[16] 2013 Rule, 78 Fed. Reg. at 49822 (emphasis added).

[17] *See* NERA Report at 10-12; Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 72 Fed. Reg. 23900, 23933 (May 1, 2007) ("2007 Rule") ("Under the market conditions we are experiencing today that make ethanol use more economically attractive [than petroleum], the annual volume requirements in the RFS program will not drive consumption of renewable fuels.").

[18] *See* NERA Report at 10-12.

than blendstock, blenders will include as much ethanol as they can in their finished gasoline, even if the blending process does not generate RINs that have any value.[19] In the words of the Department of Energy, blenders would have "blended even without the mandate."[20]

The empirical data confirm that, when ethanol costs less than blendstock, the price of RINs should be near zero. Prior to 2013, ethanol has generally cost less than gasoline blendstock. As a result, prior to 2013, the price of conventional fuel (D6) RINs was near zero, with the difference reflecting transaction costs.[21]

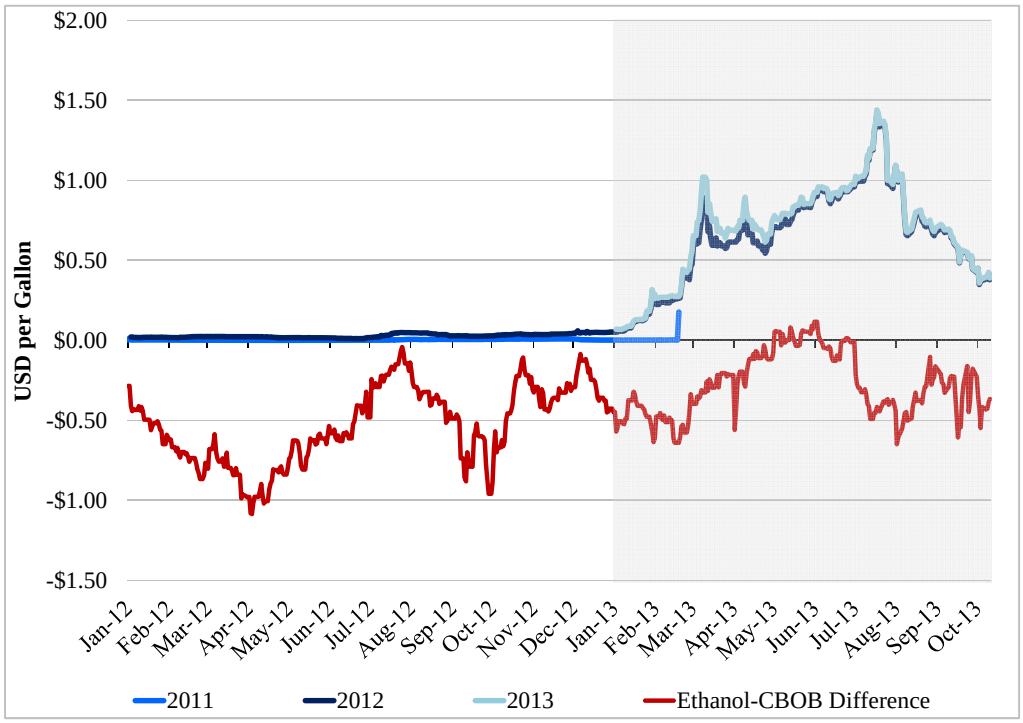
In 2013, however, RIN prices have skyrocketed both in absolute terms and relative to the price differential between ethanol and gasoline blendstock. Figure 4 from the NERA report (copied below) shows this in more detail. Prices of RINs have risen from near zero to more than $1.00 at times during 2013, even though ethanol has, on average, been cheaper than gasoline blendstock.

[19] RINs are actually created when renewable fuel is created, but they are first separated from the renewable fuel and made transferable when that fuel is blended into finished gasoline or diesel.

[20] Office of Policy & Int'l Affairs, U.S. Dep't of Energy, *Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship*, 3 (Mar. 2011) ("Small Refinery Study").

[21] *See* NERA Report at 11-12.

Figure 1: Comparison of Renewable Fuel RIN (D6) Prices and Calculated Renewable Fuel RIN Value for 2012 and 2013



Sources: OPIS, Platts, Bloomberg

Thus, the price for RINs in 2013 has been entirely divorced from the market fundamentals.

3. Instead Of Being Driven By Market Fundamentals, RIN Prices Are Being Driven By An Inadequate Supply.

The reason for this disruption in the market for RINs is the scarcity caused by the 2013 RFS requirements (together with uncertainty concerning future RFS obligations), along with the well-recognized existence of the "blendwall," which constrains the amount of ethanol that can be blended into gasoline. Approximately 93% (or more) of the vehicles on the road can only use gasoline that includes no more than 10% ethanol (E10 gasoline).[22] EPA has acknowledged that, as a result of the blendwall, obligated parties will not be able collectively to meet their obligations for 2013 using RINs generated in 2013.[23] That is, EPA acknowledged that the 2013 RFS requirements required the consumption of a greater volume of ethanol than the economy is

[22] *See id.* at 22 n.32.

[23] *See* 2013 Rule, 78 Fed. Reg. at 49820-49822.

capable of consuming, and thus required the submission of a larger number of RINs than blenders were capable of creating.[24]

Nevertheless, EPA concluded that compliance would still be possible, because 2013 RINs can be supplemented by RINs that have been carried over from 2012. Specifically, EPA found that there were 2.6 billion 2012 RINs that had been carried over, and that, so long as 1.4 billion of those 2012 RINs were made available for compliance, parties collectively could meet their 2013 obligations.[25]

The analysis set forth in the 2013 Rule overlooks a critical aspect of the problem, however. It fails to account for the fact that parties that are producing 2013 RINs will carry them over for use in 2014. Parties with excess RINs in 2013 have a strong incentive to carry those RINs forward for use in 2014, which in turn will allow greater usage of RINs created in 2014 to fulfill compliance obligations in 2015.[26] Under the statute, RFS requirements are even higher in 2014 than they are in 2013 and higher still in 2015. Indeed, EPA has stated that it cannot conceive of a scenario in which the market will generate a sufficient supply of RINs in 2014 to enable obligated parties to meet their obligations under the statutory volume requirement.[27]

Under EPA's rules, parties can use RINs generated in 2013 to meet 20% of their 2014 obligations.[28] The inadequate supply in 2014, 2015, and beyond generates demand for the full complement of RINs to be banked. Thus, in order for supply of RINs to be adequate in 2013, the market must be able to generate enough RINs to allow parties to meet their 2013 compliance obligations *and* bank the full complement of RINs they are permitted to bank for 2014. It cannot do so. As EPA explained in the 2013 Rule, due to the E10 blendwall, the economy is capable of generating only 13.1 billion RINs, leaving a gap of 1.4 billion RINs needed for 2013 compliance.[29] EPA assumed that that gap could be filled with some of the 2.6 billion RINs that were carried over from 2012.[30] But if parties bank the full amount they are permitted, then the actual gap is not 1.4 billion – rather, it is 1.4 billion plus the amount of RINs that can be banked for use in 2014 (20 percent of the expected 2014 compliance obligation, which, under the existing statutory obligation for 2014, amounts to 3.6 billion RINs).[31] The 2.6 billion RINs from 2012 cannot fill that gap.

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[24] *See id.*; *see also id.* at 49809 n.30.

[25] *See id.* at 49821-49822.

[26] NERA Report at 19-21.

[27] *See* 2013 Rule, 78 Fed. Reg. at 49823. *See also* NERA Report at 17, 20 n.29.

[28] *See* 40 C.F.R. §§ 80.1427(a)(1), (5).

[29] *See* 2013 Rule, 78 Fed. Reg. at 49822.

[30] *See id.* at 49821-22.

[31] *See* NERA Report at 23, Fig. 6.

To be sure, EPA has pledged to adjust the 2014 RFS requirements downward.[32] But EPA has not yet made clear what the 2014 RFS requirements will be. And there is substantial uncertainty regarding whether EPA's adjustment will leave sufficient breathing room to account for the possibility, for example, that the EIA's projection of total gasoline consumption will be too high, or that EPA's expectations concerning E85 consumption will prove to be too optimistic.[33] Moreover, even if EPA reduced *2014* obligations to the point where compliance with 2014 obligations is possible without use of banked RINs from 2013, parties still would have a substantial incentive to bank 2013 RINs for use in 2014. That is because RFS obligations increase still further in 2015, and EPA has given no indication at all as to what steps it will take in years after 2014. By banking 2013 RINs for use in 2014, parties can free up RINs created in 2014 for potential use in 2015.[34]

This explains why prices have soared. In order for supply to meet demand in 2013, the price of RINs must rise to a high enough level that those holding 2013 RINs are willing to sell them now rather than bank them for 2014 compliance. The price that a seller is willing to accept, in turn, depends on the seller's expectations about what rule EPA will adopt for 2014 and future years, and whether the current scarcity in RINs will continue.[35] Absent an expectation that EPA will act, the market would break down today.[36] Thus, current RIN prices essentially reflect a futures market in which parties are betting on what regulatory actions EPA will take. These include bets made by speculators who have reportedly sought to benefit from the market uncertainty by acquiring and hoarding RINs in anticipation of even higher prices.[37] Plainly, there is not an adequate supply of RINs, and EPA has discretion to adjust the RFS requirements accordingly.

B. The Current High RIN Prices Do Not Serve The Purposes Of The Statute, Are Not Incentivizing Additional Demand For Renewable Fuels, And Are Disproportionately Impacting One Segment Of The Market, For No Rational Reason.

Not only is the supply of RINs inadequate to allow for RFS compliance, but the resulting increase in RIN prices serves no statutory purpose. It is not bringing about any material increase

[32] *See* 2013 Rule, 78 Fed. Reg. at 49798, 49823.

[33] *Cf. Am. Petroleum Inst. v. EPA*, 706 F.3d 474, 479 (D.C. Cir. 2013).

[34] *See* NERA Report at 21.

[35] *See id.* at 19-21. Even in present market conditions in which the market expects EPA to act, EPA has "recognize[d] that in some cases carryover RINs from 2012 may not be available to an individual obligated party that needs them." 2013 Rule, 78 Fed. Reg. at 49822. That alone shows supply is inadequate, as the RFS are not intended to subject obligated parties to potentially massive penalties for failure to comply with obligations they cannot meet.

[36] *See* NERA Report at 17, 19-20.

[37] Gretchen Morgenson and Robert Gebeloff, *Wall St. Exploits Ethanol Credits, and Prices Spike*, N.Y. Times, Sept. 15, 2013, at A1.

in the use of renewable fuel, and it is disproportionately harming one segment of the marketplace – market participants that do not have their own blending capabilities or that produce substantially more fuel than they blend, and so must procure RINs on the secondary market. The resulting market distortions are directly contrary to the policy that the RIN credit system was intended to facilitate – namely, allowing all obligated parties, regardless of whether they have blending capabilities or are affiliated with blenders, to comply with the RFS requirement in an economical, fair, and competitively neutral manner. Accordingly, EPA should exercise its discretion and institute notice and comment proceedings to grant a partial waiver.

1. The Existing RFS Requirements Are Not Materially Increasing Use Of Renewable Fuel.

As explained above, when the cost of ethanol is less than the cost of blendstock, as it has been in 2013, blenders will blend the maximum amount of ethanol that they can. The RFS requirements are not needed to encourage ethanol production. Moreover, as EPA has conceded, there are structural and other barriers – the "blendwall" – that prevent the American economy from consuming the amount of renewable fuel that the RFS Final Rule required. For 93% (or more) of the vehicles on the road, the "blendwall" has been reached, and additional amounts of ethanol simply cannot be used. Thus, for the overwhelming majority of vehicles presently in use today, the 2013 RFS requirements, and the high RIN prices that have resulted, simply cannot result in increased use of ethanol. Blenders will not blend more ethanol (and thereby create more RINs) than consumers will purchase.[38]

The 2013 RFS requirements also are not significantly incentivizing usage of ethanol for the remaining 5-7% or so of vehicles called flex fuel vehicles ("FFV"s), which largely consist of certain SUVs and trucks. These vehicles can run on E85 gasoline that contains at least 50% ethanol.[39] As EPA and DOE have both recognized, there are substantial barriers that limit the expansion of E85. These include the limited number of FFVs, the limited number of gas stations that supply E85, and the investments that would be required for additional gas stations to begin supplying E85.[40] Moreover, even for consumers who have FFVs and are located sufficiently close to gas stations that supply E85, there are additional barriers to expanded use of E85: the lower fuel efficiency of E85, which increases costs and requires consumers to refuel more frequently; the extra time and inconvenience required to find and reach stations that supply E85; and consumers' general unfamiliarity with the fuel.[41]

The RFS requirements are not well suited to address these deep structural barriers. As the D.C. Circuit recently emphasized with respect to the cellulosic biofuel requirement, the

[38] *See* 2013 Rule, 78 Fed. Reg. at 49821 (acknowledging that the total volume of E10 that could be consumed in 2013 is 131.1 billion gallons, which would contain less ethanol than the statutory requirement).

[39] *See* NERA Report at 22 & n.32.

[40] *See* 2013 Rule, 78 Fed. Reg. at 49821.

[41] *See* NERA Report at 30-31.

current RFS rules "appl[y] the pressure to one industry (the refiners)" even though "it is another . . . that enjoys the requisite expertise, plant, capital and ultimate opportunity for profit."[42] That is just as true with respect to E85 – pressuring refiners to buy more RINs or to put more ethanol in fuel does nothing in the near term to incentivize gas station owners (who are usually small business franchisees) to invest in an additional underground fuel tank in order to supply a substitute (E85) for what they currently sell (E10).[43]

Empirical evidence confirms that the 2013 RFS requirements are having little effect on E85 use. NERA's analysis shows that even though RIN prices jumped dramatically in 2013, this did *not* result in a growth of E85 infrastructure. In fact, the number of gasoline stations selling E85 has so far grown more slowly this year than in previous years.[44] Nor have high RIN prices translated into gasoline prices that have made use of E85 gasoline economically attractive. That is so even for consumers that have FFVs and access to E85.[45] Not surprisingly, then, E85 usage has *not* increased in 2013 as compared with 2012. For the first seven months of 2013, E85 usage was 0.04 billion gallons. That is approximately the same amount as in 2012.[46]

It is also a paltry number. The 2013 RFS requirements call for the consumption of a total of 16.55 billion gallons of renewable fuel. EPA estimated this would necessitate the consumption of 14.5 billion gallons of ethanol, and that this is 1.4 billion gallons more than the maximum amount of ethanol that can be consumed in E10 fuel.[47] In other words, the statute requires the consumption of *1.4 billion* gallons more ethanol than blenders can use in producing E10.[48] EPA estimated that it would take *2.1 billion* gallons of E85 usage to fill this gap.[49] Actual E85 usage of 0.04 billion gallons in the first seven months of 2013 is minute, relative to this number.

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[42] *Am. Petroleum Inst.*, 706 F.3d at 480.

[43] EPA exacerbated this problem with the 2013 Rule. Despite its statutory obligation to issue final volume percentage requirements by November 30, 2012, EPA did not issue the 2013 Rule until August 15, 2013. The late issuance of the rule undermined the ability of the 2013 RFS requirements to bring about any significant behavioral change in 2013.

[44] *See* NERA Report at 29-30.

[45] *See id.* at 32-34.

[46] *See id.* at 24.

[47] *See* 2013 Rule, 78 Fed. Reg. at 49822 ("[W]e note that the 14.5 bill gal of ethanol that might need to be consumed in 2013 . . . is only 1.4 bill gal above the E10 blendwall.").

[48] *See id.* at 49821-22.

[49] The structural barriers identified above preclude a rapid increase in E85 usage to anything like this amount. Using a very conservative approach, NERA estimated that an additional 70,000 gas stations would need to supply E85 to increase E85 usage by 2.1 billion gallons a year, even assuming no issues with consumer demand for the fuel. *See* NERA Report at 29. Historically, however, fewer than 400 additional gas stations have begun supplying E85 each year. *Id.* at 30.

As these data show, the structural barriers are simply too great, and will require too long to change, for higher RIN prices to meaningfully expand E85 use and eliminate the inadequate supply of RINs that presently exists.

2. Maintaining The 2013 RFS Requirements Artificially Disadvantages Merchant Refiners, Contrary To The Purposes Of The RIN System.

Retention of the 2013 RFS requirements is also inconsistent with a core purpose of the credit system that Congress mandated and that EPA implemented through the establishment of the RIN system: to enable efficient refiners to comply with the program in an economic and competitively neutral manner. When EPA set up the RIN system, it explained: "[T]he credit trading program permits current blending practices to continue wherein some refiners purchase a significant amount of renewable fuel for blending into their gasoline while others do little or none, thus providing a means for all refiners to economically comply with the standard."[50] But under the obligations established through the 2013 Rule, the credit trading system does not provide a means for all refiners to economically comply.

a. Merchant Refiners Face Significantly Higher Costs.

The elevated RIN prices that exist in 2013 significantly disadvantage refiners that do not have their own blending facilities ("merchant refiners"), or that produce substantially more fuel than they blend, to the benefit of refiners that have such facilities ("integrated blender refiners"). That disadvantage is an entirely artificial one, unrelated to any greater efficiency of integrated blender refiners.

Integrated blender refiners generally do not have to purchase many RINs (if any at all) to meet the 2013 RFS requirements, and thus they do not face substantially increased costs as a result of high RIN prices. They will obtain most (if not all) of the RINs they need to meet their obligation through the process of blending ethanol with gasoline blendstock. Their cost of doing so is the same as it would be in a market without any structural scarcity in RINs. The cost is determined by the relative prices of ethanol and gasoline blendstock, and, in today's market, is zero.[51]

In contrast, merchant refiners have to purchase all (or nearly all) of the RINs they need in the secondary market. As discussed above, in ordinary market conditions, this price would itself be determined by the relative prices of ethanol and gasoline blendstock, and it would be equivalent to the cost faced by integrated blender refiners. In today's market, that price would be close to zero, reflecting only transaction costs. But market conditions today are anything but ordinary. The structural scarcity of RINs created by the 2013 RFS requirements and the blendwall is forcing merchant refiners to pay far more to satisfy their RFS obligations than what it costs an integrated blender refiner to comply. Moreover, to the extent that integrated blender refiners blend more gasoline than they refine, they enjoy a windfall resulting from their ability to

[50] 2007 Rule, 72 Fed. Reg. at 23929-30.

[51] *See supra* Fig. 1 & accompanying text.

sell their excess RINs to competing merchant refiners in need of RINs. These conditions create a major cost disadvantage for merchant refiners.[52]

DOE predicted exactly this result in its Small Refinery Study. DOE 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, 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.[53]

In contrast, DOE explained, companies that have their own blending operation "are not experiencing hardship" so long as they generate sufficient RINs to meet their own obligation.[54] Indeed, if they sell any excess RINs they generate, "[t]he windfall profit may be utilized to offset other margin related impairments."[55] DOE provided an example in which a merchant refiner ends up with a cost disadvantage of 5.65 cents per gallon of BOB it sells compared to an integrated blender refiner.[56] In that example, RIN prices were much lower than they have been

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[52] NERA Report at 35-45. The increase in RIN prices has not increased the price that blenders have to pay for ethanol. *Id*. at 35 That is because the competition among ethanol producers precludes any ethanol producer from raising its price.

[53] Small Refinery Study at 17-18. DOE further explained:

> 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).

Id. at 2-3.

[54] *Id.* at 35.

[55] *Id*. Similarly, in establishing the criteria by which a small refiner could establish the economic hardship required to justify a waiver, DOE incorporated the inability of a refiner to blend as a relevant factor. It also identified as a relevant factor the extent to which small refiners produce more diesel than the industry average. That is because, even if a small refiner does its own blending, the more diesel it produces, the lower the percentage of renewable fuel it can blend into its finished product. *Id*. at 34.

[56] *Id.* at B-5.

in 2013. Although DOE's study only evaluated the impact of RIN purchases on small refineries, the cost disadvantage it referenced does not depend on the size of a refiner. Indeed, some small refineries do their own blending, and would be better off than Monroe or other mid-size refineries forced to obtain RINs on the secondary market at current price levels.

The comparative disadvantage faced by merchant refiners results not only from the scarcity of RINs that is driving prices up, but also from EPA's regulatory decision to make refiners and importers the obligated parties under the RFS program, even though blenders are the entities that are able to generate RINs. If the obligation were on blenders, a refiner that lacked a blending operation would not be disadvantaged relative to a refiner that has one. EPA itself has previously recognized this, stating that it would "consider revisiting" its decision to make refiners and importers, rather than blenders, the obligated parties if it "determine[d] that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers."[57] EPA has not yet revisited that decision, even though "the RIN market is not operating as intended."[58]

b. Merchant Refiners Cannot Simply Eliminate The Cost Disadvantage They Face By Passing On RIN Costs.

The suggestion that merchant refiners can simply pass on the cost of higher RIN prices does not reflect reality. Indeed, as DOE explained of small refineries, "[t]he degree to which the costs burdening small refineries will be passed through to the market depends on many factors, including the market power and the relative cost level of a small refiner relative to other market participants."[59] Put another way, a refiner cannot raise its price for gasoline blendstock if other refiners will satisfy market demand at the existing price.[60]

Empirical evidence shows that the market is satisfying demand at the existing price. Merchant refiners have been unable to pass on their increased RIN costs. NERA conducted a series of regressions that shows that the increase in RIN prices is not correlated with an increase in the price of gasoline blendstock.[61]

That is not surprising. RIN costs do not have to be – and often are not – incurred until months after the 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

[57] 2010 Rule, 75 Fed. Reg. at 14722.

[58] *Id*.

[59] Small Refinery Study at 23.

[60] *See* NERA Report at 36.

[61] The regressions also show that higher RIN prices have not resulted in an increase in the price of finished gasoline. *See id.* at 36, 38-41.

price it commands on the secondary market, and need do nothing else to comply. This, along with excess refining capacity due to the decline in gasoline consumption, constrains the price at which refiners can sell blendstock. NERA explains:

> 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.[62]

Of course, when merchant refiners 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.

Merchant refiners cannot avoid these losses by becoming blenders. Monroe's Trainer refinery, for example, transports all of its output via pipeline or barge to major oil companies under long-term contracts. The pipeline and barges are unable to accept a blended product, and nearly all blending occurs downstream by unaffiliated companies at terminals Monroe neither owns nor operates.[63] Additionally, many merchant refiners may have long-term contracts with blenders, which would prohibit them from becoming blenders in the short term; and even for those without such contracts, becoming a blender may not be practicable. Blenders typically have relationships with the retail market, and a refiner without those connections would have trouble becoming a blender and competing effectively with blenders that have already established those relationships. A refiner might also face inflated prices for space at terminals if it suddenly tried to become a blender.[64]

More fundamentally, merchant refiners should not *have* to become blenders. While the RFS requirements may be intended to tilt the market towards renewable fuels, they are not intended to tilt the market among refiners. 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."[65] But the RIN system is no longer preserving natural market forces. Refiners that do not blend now face an artificial cost disadvantage relative to those that do, even if they are more efficient.

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[62] *Id*. at 37.

[63] *See also id.* at 43. Monroe provides EPA additional information about its blending capabilities in the attached CBI Filing.

[64] *See id*. at 44.

[65] 2007 Rule, 72 Fed. Reg. at 23929.

In light of the adverse effects that are resulting from the inadequate supply of RINs, EPA should exercise its discretion under Clean Air Act Section 211(o)(7)(A)(ii) and issue a partial waiver of the RFS requirements. Specifically, EPA should reduce the total quantity of renewable fuel required under the statute by 20 percent, reflecting the reality that parties are banking the maximum amount of 2013 RINs allowed for potential use in 2014, and are not making a sufficient number of RINs available on the secondary market to parties like Monroe that rely on that market for compliance.

II. EPA SHOULD PARTIALLY WAIVE THE 2013 RFS REQUIREMENTS ON THE BASIS OF SEVERE ECONOMIC HARM.

EPA should also grant a partial waiver of the 2013 RFS requirements on the basis that "implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States."[66] Merchant refiners like Monroe are critical to state and regional economies, and even to the national economy. Yet, as discussed above, they face large, artificial cost disadvantages from the 2013 Rule.[67] A cost disadvantage of such a magnitude cannot be sustained. NERA concludes that "[r]efiners who must purchase RINs to meet their RVO will eventually be forced to exit the market if current market conditions persist."[68] The effect of such exits would be severe, as demonstrated by a report issued by the Commonwealth of Pennsylvania on the impact of a single shutdown of the Trainer refinery in 2011.[69]

EPA has interpreted its waiver authority under section 211(o)(7)(A)(i) to authorize a waiver so long as the applicant can show a level of harm that is greater than "serious," although that harm need not be "extreme." [70] The severity of harm is assessed under a balancing approach that analyzes "the full impacts of the RFS program and a possible waiver, including detrimental and beneficial impacts. . . ."[71] Here, as discussed above, there are no beneficial impacts from imposing the statutory volume requirements because high RIN prices are not incentivizing significant usage of renewable fuel. There are, however, "severe" detrimental impacts.

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[66] 42 U.S.C. § 7545(o)(7)(A)(i).

[67] *See also* CBI Filing.

[68] NERA Report at 41-42.

[69] *See* PA Assessment, *supra* n.6.

[70] *See*, *e.g.*, Notice of Decision Regarding Requests for a Waiver of the Renewable Fuel Standard, 77 Fed. Reg. 70752, 70774 (EPA Nov. 27, 2012) ("2012 Waiver Denial"); Notice of Decision Regarding the State of Texas Request for a Waiver of a Portion of the Renewable Fuel Standard, 73 Fed. Reg. 47168, 47172 (EPA Aug. 13, 2008) ("2008 Waiver Denial").

[71] 2008 Waiver Denial, 73 Fed. Reg. at 47172; *see also* 2012 Waiver Denial, 77 Fed. Reg. at 70774. In its 2008 and 2012 waiver denials, EPA performed individualized assessments of the severity of harm suffered by discrete sectors of the economies of several states and the nation. *See* 2012 Waiver Denial, 77 Fed. Reg. at 70762-65 (separately assessing the impact of RFS implementation on the pork, poultry, and dairy and cattle sectors at both the state and national level); 2008 Waiver Denial, 73 Fed. Reg. at 47177 (same).

A. Merchant Refiners Face Substantial Competitive Disadvantage.

The artificial disadvantage for merchant refiners created by the 2013 RFS requirements is substantial and will lead to severe harm if it persists, as it will so long as the pricing mechanism for RINs reflects the option value associated with RINs rather than the intrinsic commodity value. This artificial disadvantage makes "the current market unsustainable."[72] Merchant refiners will begin withdrawing from the market, causing severe harm to their states and regions.

DOE's analysis of small refiners demonstrates the severity of the disadvantage that a merchant refiner can face from the blendwall. DOE concluded that small refiners that need to purchase RINs in the secondary market could "suffer significant economic hardship" as a result of increased RIN prices that result from the blendwall and that this could threaten the economic viability of these small refiners.[73] Somewhat larger refiners that lack blending capacity are equally affected when RIN prices rise dramatically as the result of a supply shortage, as they have done in 2013. EPA has never explained why the conclusions of the Department of Energy – that spiking RIN prices in the face of the blendwall cause significant economic hardship – do not apply to all merchant refiners. And EPA should bear the burden of providing such an explanation, given that a sister agency has already found that obligated parties forced to rely on the secondary RIN market are harmed by spiking prices. Indeed, at the average RIN prices that have existed in 2013, the cost of RINs to merchant refiners has been 8.25 cents on every gallon of gasoline blendstock sold, more than the average margin on such sales for refineries in many years and more than the margin for east coast refineries as of September 9, 2013.[74] Refining margins for merchant refiners typically are small and subject to considerable market volatility. Even slight variations in these costs can erase projections of positive refining margins.

Monroe provides additional information about the economic hardship it would suffer if compelled to purchase RINs to comply with its full 2013 RFS obligation in the attached CBI Filing.[75]

1. In The Long Run, Merchant Refiners Will Begin Withdrawing From The Market.

While merchant refiners so far have not reduced their production in response to high RIN costs, the status quo is not a stable equilibrium. "Refiners who must purchase RINs to meet their RVO will eventually be forced to exit the market if current market conditions persist."[76]

In this case, the long term is not likely to be very long. DOE has established criteria to identify small refiners that face severe hardship that can threaten their viability. Merchant

[72] NERA Report at 41.

[73] Small Refinery Study at 18.

[74] NERA Report at 43-44.

[75] *See* CBI Filing.

[76] *Id.* at 41-42.

refiners will often fit many of these criteria.[77] Merchant refiners are generally smaller than integrated blender refiners. Many merchant refiners (including Monroe) also operate on a stand-alone basis without the ability to smooth cash flows to buffer them from cost swings. They also often have limited access to capital. Refining margins for these refiners also may be low, and they may have little or no ability to blend their output. Monroe provides further detail in the attached CBI Filing of some of the refiner-specific circumstances that result in severe hardship to it.[78] Companies with these characteristics have little buffer when costs rise dramatically. The Trainer refinery, for example, actually ceased operations in late 2011 after an increase in the premium it paid for crude oil dramatically reduced refining margins.[79] The shutdown of that refinery within the past two years illustrates the substantial difficulty companies have experienced in attempting to achieve sustainable refining margins.

The threat to the viability of merchant refiners as a result of their artificial disadvantage distinguishes Monroe's waiver petition from the petitions EPA previously denied in 2008 and 2012. In both instances, one or more states argued that RFS volume requirements increased the price of corn, negatively impacting the livestock industry and food prices.[80] EPA found, however, there was no economic impact in most cases,[81] and even in the few scenarios where denying a waiver would have any impact, the projected impact across those scenarios was limited to a cost increase of approximately 5% or less.[82] This is in stark contrast to the impact the RFS volume requirements is having on Monroe.[83]

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[77] These factors are lack of access to capital, lack of additional upstream or downstream lines of business, lack of local market acceptance of renewable fuel, a high percentage of diesel production (a factor that really is applicable only to refiners that engage in some blending since the RVO of a refiner isn't impacted by how much diesel it produces), low refining margins, inability or lesser ability to blend renewable fuel, and high RIN prices. None of these factors are unique to small refineries. *See* Small Refinery Study at 31-35.

[78] *See* CBI Filing.

[79] 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-idUSTRE78Q5R320110927; Press Release, ConocoPhillips, ConocoPhillips Seeks Buyer for Trainer, Pa., Refinery (Sept. 27, 2011), *available at* http://www.conocophillips.com/EN/newsroom/news_releases/2011news/Pages/09-27-2011.aspx.

[80] 2008 Waiver Denial, 73 Fed. Reg. at 47168-47169; 2012 Waiver Denial, 77 Fed. Reg. at 70753.

[81] 2008 Waiver Denial, 73 Fed. Reg. at 47173-47174 (finding no impact in 76 percent of scenarios modeled); 2012 Waiver Denial, 77 Fed. Reg. at 70760 (finding no impact in 89 percent of scenarios modeled).

[82] 2008 Waiver Denial, 73 Fed. Reg. at 47177; 2012 Waiver Denial, 77 Fed. Reg. at 70763.

[83] *See* CBI Filing.

Even if merchant refiners forced to obtain RINs from the secondary market can absorb negative margins in the short run, they cannot remain viable in the long run if they continue to be forced to operate at a substantial cost disadvantage.[84]

2. The Impact of Refinery Closings on the Regions in Which They Occur Would Be Severe.

When a refiner shuts down, the effect on the regional economy is severe. The effect of the 2011 shutdown of the Trainer facility illustrates the extreme harm to regional economies from losing a merchant refiner. The Commonwealth of Pennsylvania issued a report shortly after the shutdown assessing the effect of the resulting 400 layoffs on the surrounding region (the "PA Assessment").[85] The PA Assessment found that these layoffs affected five different counties,[86] that nearly thirty percent of those laid off could "expect substantial difficulty finding reemployment in their current occupation within their current region and throughout the Commonwealth,"[87] and that reemployment prospects for nearly forty percent of the 400 persons laid off were either "Fair to Difficult" or "Difficult."[88]

The PA Assessment also found that the closure of refineries affects both related industries (e.g., the refiner's suppliers and its customers) and industries that relied on spending from refinery employees (retail trade and health care industries).[89] The study estimated that for each refinery job lost, 18.3 jobs would be lost in the region,[90] 22 jobs at the state level and 61 jobs at the national level.[91]

The Commonwealth separately determined that the cost of unemployment resulting from refinery shutdowns at that time would be over $250 million.[92] This prompted Pennsylvania to offer Monroe a $30 million grant on the condition that Monroe would promptly re-hire and restart the refinery as soon as possible. Monroe acquired the refinery in June 2012, brought back a labor force of more than 300 people, and immediately performed a refinery-wide turnaround and re-commissioning project.

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

[85] *See supra* n.6, PA Assessment, Appx. A..

[86] *See id*. at 1.

[87] *Id*. (emphasis in original deleted).

[88] *Id*.

[89] *See id.*, Appx. C at 1.

[90] *Id*.

[91] *Id*.

[92] *See* Cherri Gregg, *Braskem America To Purchase Portion Of Sunoco's Marcus Hook Refinery*, CBS LOCAL PHILADELPHIA, July 11, 2012, http://philadelphia.cbslocal.com/2012/07/11/braskem-america-to-purchase-portion-of-sunocos-marcus-hook-refinery/.

EPA's implementation of RFS volume requirements in 2013 now threatens to undo the substantial investment and all of the gains Monroe and the Commonwealth have made in the past year to avoid a regional economic disaster. And even with Monroe operational again the region remains fragile. For instance, while Monroe succeeded in reviving the Trainer refinery, the same unfortunately cannot be said for a neighboring refinery in Marcus Hook, Pennsylvania. Shut down in late 2011, that refinery once employed several hundred persons.[93] Now it operates solely as a terminal, employing a mere 60 persons.[94] In this context, the loss or partial shutdown of additional refiners unquestionably would cause severe harm to the region. And, because Monroe's situation is not unique, failure to alleviate the current market conditions threatens similar harm to refiners and communities in multiple regions.

III. EPA CAN ELIMINATE SEVERE HARM BY GRANTING A PARTIAL WAIVER.

As explained above, EPA should initiate notice and comment proceedings to partially waive the 2013 volume requirements due to both an inadequate domestic supply and severe economic harm. Specifically, EPA should reduce 2013 volume requirements by 20%. As explained above, the scarcity of RINs is driven by the market's inability to generate sufficient RINs to enable obligated parties both to meet their 2013 obligations and to bank the RINs that may be banked for use in 2014. Reducing the 2013 RVO by 20% would eliminate this problem.

Monroe proposes that EPA grant a partial waiver to effectuate such a reduction, effective immediately, and allow the waiver to continue until the end of the 2013 compliance year.[95] Because Monroe understands that EPA already is considering whether to reduce 2014 volume requirements, Monroe does not request at this time that the waiver continue into the 2014 compliance year.

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[93] *See* PA Assessment, Appx. B at 1.

[94] *See* Aaron Nathans, *Export Terminal A Mixed Blessing*, THE NEWS JOURNAL, May 19, 2013.

[95] An alternative approach would be for EPA to waive Monroe's own volume requirement, without reducing nationwide total volume requirements. EPA enjoys authority to grant a waiver for a particular obligated party, when the waiver request is made by the obligated party. The statute provides: "The Administrator . . . may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, by any person subject to the requirements of this subection, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required under paragraph (2) . . . ." 42 U.S.C. §7545(o)(7)(A). The statute is best read to allow EPA flexibility to tailor a waiver to the circumstances, except when the waiver results from the Administrator acting "on his own motion," in which case the Administrator is constrained to "reduc[e] the national quantity of renewable fuel." *Id.* That makes sense, because the need for a waiver for a particular State or particular obligated party may not necessitate a nationwide reduction in the renewable fuel standards, and Congress wanted to give EPA maximum flexibility to respond to waiver requests by States or obligated parties.

IV. THE TIMING OF MONROE'S WAIVER PETITION IS REASONABLE.

In its 2008 denial of a waiver request from the State of Texas, EPA advised that it expected applicants generally would request waivers at least six months prior to the requested start date of those waivers,[96] and would otherwise include "an explanation why such expectation could not be met."[97]

Here, it was necessary and reasonable to wait to request a waiver until after EPA issued its final requirements on August 15, 2013, because it was uncertain until then what the final rule would say given that many parties were seeking a reduction in the requirements.[98] Monroe filed this petition as soon as reasonably possible after the issuance of the final 2013 Rule. Moreover, much of this petition and the attached report from NERA relies on evidence that has been developed over the course of 2013. In any event, EPA made clear in its 2008 waiver denial that guidance on the administrative process was *not* binding on either the EPA or the public,[99] a principle it recently reaffirmed.[100] Finally, Monroe has in fact sought a waiver more than six months prior to the 2013 compliance deadline of June 30, 2014.

CONCLUSION

For the foregoing reasons, EPA should initiate notice and comment proceedings to partially waive the 2013 volume requirements due to both an inadequate domestic supply and severe economic harm.

[96] 2008 Waiver Denial, 73 Fed. Reg. at 47184.

[97] *Id*.

[98] 2013 Rule, 78 Fed. Reg. 49794.

[99] 2008 Waiver Denial, 73 Fed. Reg. at 47183.

[100] 2012 Waiver Denial, 77 Fed. Reg. at 70755.

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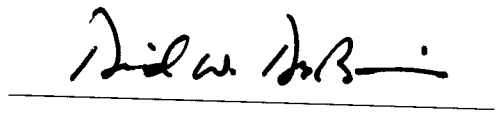
Respectfully Submitted,



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