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FAO: House of Commons Public Bill Committee

Via email: [scrutiny@parliament.uk](mailto:scrutiny@parliament.uk)

13 June 2023

**Re: Energy Bill Call for Written Evidence**

Dear Sirs,

I write on behalf of Valero Energy Ltd, who markets fuel in the UK under the Texaco brand, with around 750 Texaco-branded service stations in the UK. The company owns and operates Pembroke Refinery in south west Wales, which is one of Europe's largest and most complex refineries, has ownership interests in four major pipelines, nine fuel terminals and a large aviation fuels business.

As a manufacturer of what are considered "core fuels" under the Energy Bill, Valero welcomes this opportunity to submit our thoughts regarding those elements set out in Part 11 under 'Core Fuels Resilience'. In particular, our response, reflects the common downstream oil industry position, as outlined by the UK Petroleum Industry Association (UKPIA).

Like others in our sector, Valero is deeply concerned that the lack of clarity regarding the 'powers of direction' that the Secretary of State will award himself through this legislation will create additional uncertainty for businesses such as ours, stymie private sector investment and could perversely create unintended consequences that damage fuel resilience in the UK. For example, failing to limit the Secretary of State's powers by requiring the input of the Competition and Markets Authority (CMA) could undermine the competitive structure of the downstream oil sector. If directions were given by the Secretary of State that placed operators in our sector at a competitive disadvantage or make certain assets uneconomic to run, it is eminently foreseeable that those operators will choose to cease operation of those assets.

UKPIA's suggested amendments (which can be found in Annex I of this letter), have been endorsed by all UKPIA's members, including Valero. As set out in their response, it is important to note that UKPIA members are responsible for six major oil refineries, numerous coastal and inland fuel terminals and over 1,200 filling stations in the UK. We therefore, strongly urge the Public Bill Committee, when considering the Energy Bill in its entirety, not to ignore the very real ramifications these measures could have on the resilience of the downstream oil sector.

Once again, Valero is grateful for the opportunity to share our views on this important issue, and we would be willing to provide any further details should they be required.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'B. Donovan', with a horizontal line extending to the right.

**Brian Donovan**  
Vice President UK Commercial Operations

Cc: Elizabeth de Jong, Chief Executive, UK Petroleum Industry Association  
Jamie Baker, Director of External Relations, UK Petroleum Industry Association

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## **Annex I: Proposed UKPIA Drafting Changes to the Energy Bill**

### **Section 223, Subsection 8:**

- This requires that the supply of core fuels to consumers in all areas of the UK be maintained at “normal levels”. Subsection 8 continues by defining “normal levels” as – a) not substantially below the average monthly levels of supply in the UK and b) consistent with a reasonable balance between supply and demand. However, neither point provides sufficient clarity.
- We seek greater clarity as to what constitutes “substantially below the average monthly levels of supply”. For example, “a 5-year average demand +/- 20% for an equivalent month”.
- In addition, we seek a definition of a “reasonable balance” between supply and demand. For example, “supply is able to meet 110% of the 5-year average demand” (if there is a demand surge).

### **Section 224, Subsection 2:**

- This defines the use of broad powers of direction that the Bill would see given to Secretary of State. However, these powers could we believe be abused, despite efforts to place greater conditions on their use, which we acknowledge have been included since they were raised in pre-legislative scrutiny through the inclusion of Section 222.
- We seek the inclusion of additional language that would ensure these powers are used only as a “last resort” and that is explicit on the requirement to consult with the Competition and Markets Authority (CMA) given the potentially large impacts on the competitiveness of the sector and on those companies under direction.
- We believe this could be achieved by inclusion of the following language:
  - a) before the issue of the relevant notice under section 225, the persons to whom this section applies have been consulted and given a reasonable opportunity to consider and provide comments to the Secretary of State on anything that is required by such direction (including in relation to any specifications and other requirements that may be required to be satisfied, any costs that may be assumed or otherwise incurred and any responsibilities and liabilities that may be assumed or otherwise incurred);
  - b) the Secretary of State considers that the persons to whom this section applies have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience (having due regard to the risk of disruption to, or a failure of, continuity of supply of core fuels that exists as a consequence of the steps that have not been taken);
  - c) there is no requirement for any person to whom this section applies to increase or improve the capacity or capability of any relevant activities or assets;
  - d) in relation to each person to whom this section applies, either –
    - i. that person has agreed arrangements with the Secretary of State to determine: (A) all specifications and other requirements (if any) that are required to be satisfied in connection with such direction; and (B) when such specifications and other requirements in connection with such direction have been satisfied; or
    - ii. the direction includes: (A) all specifications and other requirements (if any) that are required to be satisfied in connection with such direction; and (B) arrangements for a suitably qualified independent expert to determine when such specifications and other requirements in connection with such direction have been satisfied;
  - e) in relation to each person to whom this section applies, either –
    - i. that person has agreed arrangements with the Secretary of State in relation to funding for all costs that may be assumed or otherwise incurred in connection with such direction; or
    - ii. the Secretary of State has committed to that person to provide financial assistance under section 242 to fully indemnify that person for all costs that it may assume or otherwise incur in connection with such direction;
  - f) in relation to each person to whom this section applies, either –
    - i. that person has agreed arrangements with the Secretary of State under which it may assume or otherwise incur any responsibility or liability in connection with such direction; or



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- ii. the Secretary of State has committed to that person to provide financial assistance under section 242 to fully indemnify that person from all responsibilities and liabilities which it may assume or otherwise incur in connection with such direction.

**Section 225, Subsection 2:**

- Under this, the Secretary of State must give a person written notice accompanied by a draft of the proposed direction before using the powers of direction. However, the written notice does not need to have a clear end point. We seek the inclusion of additional language to require clarification of an end point.

**Section 225, Subsection 4:**

- Under this, the Secretary of State must consult various bodies before giving a direction. However, the directions have the potential to affect commercial decisions by operators, which goes beyond the scope of the listed regulatory bodies to be consulted.
- We seek the explicit inclusion of the Competitions and Markets Authority as one of the listed entities given the potential to affect competitive matters within the sector – rather than the existing provisions

**Section 229, Subsection 3:**

- This requires a duty to report “notifiable incidents” which affect a person’s relevant activities or assets in such a way as to create a significant risk of disruption to the supply of core fuels. However, there is at present a lack of clarity as to what constitutes a disruption during a “notifiable incident.” There are many “disruptions” to fuel supplies that are managed and mitigated whether at refineries, terminals and right down to forecourts. This is particularly important to give clarity on given contravention of this requirement could entail imprisonment.
- We seek definition of a threshold (or multiple thresholds for different types of entity in scope) that is clearer on when people must report incidents. For example, “more than X kt supply affected, pipeline which carries over X kt, more than 10 forecourts”. This could also take into account longevity of outage.

**Section 212 and 213:**

- In these sections, titled “Disclosure of information held by Secretary of State” and “Disclosure of information by HMRC,” there is reference to non-disclosure of potentially sensitive information. However, this is not sufficient to ensure that sensitive data will not be placed in the public domain as a result of an FOI or EIR.
- We seek specific reference to an FOI and EIR being included in language to reassure that sensitive data will not be made public.

**Section 222:**

- In this section, titled “Financial assistance for resilience and continuity purposes,” steps are set out to provide such financial assistance.
- However, there is no guarantee that government will fund resilience requirements, and it may not be commercial for companies to invest. As such, the Bill risks incentivising companies to stop supply, counter to the Bill’s objective.
- We seek clarification that these funds will come from Government.