
Committee Meeting

of

ASSEMBLY TRANSPORTATION COMMITTEE

"Testimony concerning the recent increase in the price of gasoline in New Jersey from invited representatives of the petroleum products industry and academic experts"

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: September 15, 2005
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John S. Wisniewski, Chair
Assemblyman John J. Burzichelli
Assemblyman Upendra J. Chivukula
Assemblyman Gordon M. Johnson
Assemblyman David R. Mayer
Assemblyman Michael J. Panter
Assemblyman Vincent Prieto
Assemblyman Brian P. Stack
Assemblywoman Linda Stender
Assemblyman Peter J. Biondi
Assemblyman Francis L. Bodine
Assemblyman John C. Gibson
Assemblyman Kevin J. O'Toole



ALSO PRESENT:

Maureen McMahon
Nancy M. Lipper
*Office of Legislative Services
Committee Aides*

Christopher Jones
*Assembly Majority
Committee Aide*

Jerry Traino
*Assembly Republican
Committee Aide*

*Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey*

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ASSEMBLYMAN JOHN S. WISNIEWSKI (Chair): Good morning, everyone. Welcome to the Summer session of the Assembly Transportation Committee. I'm Assemblyman John Wisniewski. I appreciate all of my colleagues taking the time for what is not traditionally a time that this Committee will meet to be here, to consider a very important issue, which is gasoline prices.

Let me just make a couple of housekeeping announcements first. If you have a cell phone, or a pager, or any electronic device that makes loud noises, please try and set it on silent, or turn it off, so that those who are providing testimony, or asking questions, are not disturbed.

This meeting is going to be broadcast on the Internet. The microphones in front of you, as you testify, will be recording this and it will be broadcast on the Internet and also archived on the Internet for future reference, in case you're not able to sleep one night. (laughter)

I would ask those who are here, if you wish to testify there are forms on a table in the back of the room that we would ask you to fill out and get up here to Maureen or Nancy, so that we are aware of your desire to testify. If you have written testimony, we would appreciate having a copy of that written testimony in advance. And as always, if you have written testimony, to the degree possible, we would appreciate it if you not read it verbatim. We're able to do that. We would appreciate it if you could give us the essence of the points you wish to make.

And finally, everyone who is here to testify -- once you have concluded testifying and have answered questions from the Committee, I would appreciate it if you would remain. There may be subsequent individuals testifying who raise issues or points perhaps not covered by your

testimony, or that require follow-up questioning, and if your schedule permits, myself and members of the Committee would permit your staying.

With that, I would ask Maureen to call the roll.

MS. McMAHON: Assemblyman O'Toole?

ASSEMBLYMAN O'TOOLE: Here.

MS. McMAHON: Assemblyman Gibson?

ASSEMBLYMAN GIBSON: Here.

MS. McMAHON: Assemblyman Biondi?

ASSEMBLYMAN BIONDI: Here.

MS. McMAHON: Assemblyman Bodine?

ASSEMBLYMAN BODINE: Here.

MS. McMAHON: Assemblywoman Stender?

ASSEMBLYWOMAN STENDER: Here.

MS. McMAHON: Assemblyman Stack?

ASSEMBLYMAN STACK: Here.

MS. McMAHON: Assemblyman Prieto?

ASSEMBLYMAN PRIETO: Here.

MS. McMAHON: Assemblyman Panter?

ASSEMBLYMAN PANTER: Here.

MS. McMAHON: Assemblyman Mayer?

ASSEMBLYMAN MAYER: Here.

MS. McMAHON: Assemblyman Johnson?

ASSEMBLYMAN JOHNSON: Here.

MS. McMAHON: Assemblyman Chivukula?

ASSEMBLYMAN CHIVUKULA: Here.

MS. McMAHON: Assemblyman Burzichelli?

ASSEMBLYMAN BURZICHELLI: Here.

MS. McMAHON: Chairman Wisniewski?

ASSEMBLYMAN WISNIEWSKI: Here.

Thank you.

By arrangement with my colleagues across the aisle, we're going to have two opening statements that are going to be, I promise you, very brief. And I'll take the prerogative of the Chair and call Assemblyman O'Toole to make an opening statement on behalf of the Minority.

ASSEMBLYMAN O'TOOLE: Thank you, Chairman.

First of all, I want to thank you for convening this hearing -- extraordinary hearing. I think this is a step in the right direction, Chair. But I think, to move this issue along, and I think with the gravity of the issue at hand and with gas prices being as expensive as they are, I think going forward, perhaps, having a Committee hearing to talk about and vote on some bills that we're going to talk about would be the next step. I really appreciate that you have struck -- I think two or three public hearings we're going to have. But I think part of that-- And certainly before Election Day, maybe in the next couple of weeks, we should have a Committee hearing. And I would ask that we send a letter at the conclusion of this hearing to the Acting Governor, our Speaker, to see if he can reassign some of the important bills I suspect we're going to hear some testimony on.

Having said that, I think it's not news to anybody that gas has never been more expensive. It's never been more of a crisis here in New Jersey. I can't tell you how many constituents have come to me and said they are now paying \$50 and \$60 just to fill up on gasoline for their vehicle. This is as critical, and the question is, how did we get here and why are we

here now? I think some of the things I'd like to hear some of the speakers talk about, either this hearing or the next hearing, is the potential of repealing of the law that prohibits selling of gas below market, which I'm told is -- the Attorney General is not allowed to do that right now, because of a 1930 law. And at some point, I'd like to hear some testimony from some expert talking about how we can incentivize using alternate fuels, and whether it's increasing a State tax credit for hybrid vehicles, whether it's increasing the incentive, or creating incentive for some of our refineries to increase their capacity, which we have not seen -- certainly not a new refinery, new capacities have been added in the last two decades. I really think we have to look at that.

We have a program at BPU, the solar panel program, which, frankly, has not been used to its potential. We have gasoline gouging that's going on. Frankly, we have some laws that are on the books that are essentially useless, and we've seen testimony -- will see testimony, certainly in writing, from the Commissioner of Community Affairs. It says that she has no ability to go after some of the gouging that's going on. To me, that's unconscionable. If there are people who are jacking up the prices overnight on gas they have in the ground, based on what they think the gas should be the next day, I think that's unconscionable. And if the fine that we have seen is \$50 an offense -- again, that's not much deterrent for those people who are abusing the public trust.

I think that we should talk about increasing the transit credit trust for those who use public transportation. And I'm hoping, Mr. Chair, we can get some testimony about some of the commodities traders, and some of the Wall Street folks, that have really lived for this day -- that I'm

told, and I hope it's not true -- have really (indiscernible) away gas futures. So it's really in their interest not to have gas go lower, but rather go higher, and they can make their million, or the next million, or their next 10 million.

So having said that, Chair, those are a lot of issues we want to talk about. There's also a number of bills that have been languishing in the Assembly for a number of years -- some Democrat, some Republican -- talking about a tax credit for constructing facilities for the sale of alternate fuels; a bill with a gross income tax credit for the incremental cost of an alternate fuel; establishing State subsidies for the lease of solely electric cars; and on and on and on. And I'm hoping we can get some testimony and some momentum to move some of those bills that either have languished, or are in other committees, to come before us in a week or two. Let's reconvene a real Committee, have us come back at a special session, vote them out and take action today that will drive some of the gas cost down immediately.

Thank you, Chair.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

On behalf of my Democratic colleagues, I'd also like to make an opening statement.

All of us are surprised. None of us would have been able to envision, a year ago, that routinely we would be going to the gas pumps and paying-- Today the price is \$3.04 a gallon -- the average price in the state. Recently, as last week, it was \$3.20 a gallon. It is an incredible state of affairs. What makes it even more incredible is that New Jersey, through all of the fluctuations in gas pricing over the last 25 and 30 years, has been the

low-cost state nationally. If gas prices spiked up as a national trend, New Jersey still remained the lowest of all our surrounding states. Now, for some reason, New Jersey is the highest at \$3.04 a gallon. And at \$3.20, certainly, we were the highest in the surrounding region.

That's a question that needs to be answered by the individuals who will come before us today -- why this change? There are a lot of other issues that need to be explained by the people who will testify today to this Committee, and I want to emphasize that the purpose of this meeting today is to begin the process of, first, understanding the mechanisms behind the pricing, behind the delivery, behind the retail of gasoline. All of us know a little bit about it. Most of us know what we know anecdotally, because of conversations we have had and experiences we have had. But I don't believe, in recent memory, the Legislature has sat down and critically analyzed this issue.

I know during the term of Governor Driscoll there was a special committee convened to discuss gasoline prices at that time, and then once before that in the 1930s. This is an issue that has come to a boiling point. All of us have run into constituents, friends, and families who are now saying, "Something has to be done."

But first, let me thank Assembly Speaker Albio Sires for authorizing the Assembly Transportation Committee to undertake this investigation. We have today's meeting scheduled, and we will have one next Thursday. And depending on the turnout and the amount of testimony on Thursday, we will consider whether to have additional testimony on days after that.

But one of the major concerns that myself and my members of the Committee, here, have is the implication that the prices at the pump represent price gouging. We have laws in effect in this State, as I said earlier, enacted more than 70 years ago that were intended to prevent price gouging, were intended to prevent unfair competition. And yet we see, routinely, prices that are through the roof. We need explanations as to how that can happen. We need to know whether consumers are being unfairly preyed upon in this market.

It was mentioned earlier that gasoline is traded as a commodity, and there are people who make their living doing that. But we need to understand whether the people who earn their living trading gasoline as a commodity are doing so at our detriment. Some of these issues and some of the answers we receive today are going to be answers that, perhaps, go beyond the scope of authority of this Committee or this Legislature. In fact, a great deal of what we're about to undertake is a national issue. There are things that we can do as a Legislature to help prevent price gouging. There are things we can do as a Legislature to help stabilize the price of gasoline. But we have to remember -- and I remember as a new driver during the 1970s -- when gasoline went to the unheard of price of \$1 a gallon, when people waited in lines that went around the block. Gasoline was sold on odd and even days depending on your plate. And at that time, there was a national policy. Speed limits were reduced. There were stickers by thermostats to keep the temperature down to 68 degrees. There were stickers on light switches to turn the lights off when you left. And the result of that national policy was that we reduced oil consumption by 30 percent.

And then the pressure eased. And then we went on our way and lived our lives as we had continued to do before that. So part of what the answer to this Committee meeting is going to be -- how can we have an effect on national policy? What can we do to foster the development of alternate fuel vehicles? The recent transportation bill adopted by the United States Congress and signed by President Bush has a provision in there for something called the hydrogen highway, to support the use of hydrogen-powered vehicles. Is that something that this Committee needs to be looking at to support, and supplement that initiative here in New Jersey?

Many years ago, this State embarked on an ambitious program of alternative fuel vehicles -- LNG vehicles. Unfortunately, those vehicles today run on gasoline and not natural gas. Maybe we need to reexamine that.

There are a host of issues and questions more numerous than I can enumerate now, or any of my colleagues can; and with each sentence uttered before us by the witnesses, additional questions will be raised. I hope all of you will be patient. I hope all of you will listen attentively.

I would ask my colleagues to allow each witness to finish their testimony. And given the number of members of this Committee and the number of individuals signed up to testify at this point, which is 12, that we try to be as brief and concise in our questions and not duplicative. I understand everybody wants to have their say, and I will certainly endeavor to make sure everybody does. But I also want to make sure that everybody here who is testifying has an opportunity to educate us on these points.

With that, I would like to call our first witness -- is Clinton Andrews. Mr. Andrews is a Rutgers University Associate Professor, and he is Director of the program in Urban Planning and Policy Development at the Bloustein School of Planning and Public Policy.

Dr. Andrews, thank you for being here this morning.

CLINTON JAMES ANDREWS, Ph.D.: Thank you very much, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Dr. Andrews, if you would just state your name and your position for the transcript, I'd appreciate it.

DR. ANDREWS: Certainly. Clinton James Andrews. I'm Associate Professor at Rutgers University. I reside in Highland Park.

My job today, as has been explained to me by the people who invited me, is to try to give a quick overview of the situation in our petroleum sector. And so I'm going to breeze through some slides and make a couple of points, and with some questions that I encourage you to ask of the remaining witnesses.

So, for those of your who don't have a hard copy in front of you, I want to let people know that I've put a copy of this slide show on the Web site there at *policy.rutgers.edu/andrews*.

If you go to the AAA Web site, you can find out exactly what are the average prices for gasoline in New Jersey. And as of yesterday, they were, on average, \$3.12 a gallon. This morning, the average has dropped down to \$3.10. But certainly compared to a year ago, things look quite dramatically high.

I think it's useful to put some historical perspective on where we are so we make good judgments and not rash judgments. So I want to,

first of all, remind us that the U.S. gasoline price peak was September 2; that Hurricane Katrina sidelined approximately 5 percent of U.S. refining capacity; that U.S. gas inventories are down about 4 percent from where they were this time last year; that the world oil price peak was on August 30, topping almost \$71 a barrel. It's now down in the \$65 to \$66 range. October futures are also in that range. And that oil production has been holding firm at a 25-year high for most of last year. We have a very robust demand for oil and gas. We have China. We have India. We have the U.S. economic growth, which has been robust; and of course, we have trouble in the Middle East and trouble in Louisiana.

Now, if you look over a century, you can see in nominal terms -- that's the blue line at the bottom (indicating slide) -- that we're at unprecedented price levels. It's a very dramatic price spike, and it's been slowly rising over several years. This is not unique to Katrina. If you measure it in real terms -- in other words, translating previous years' dollars and their buying power into current terms -- it doesn't look quite as dramatic, but it is still a rise on par with what was going on in the 1970s, when those of us of a certain age remembered the gas lines. And so we should be paying as much attention today as we were in the 1970s.

Now, a couple of observations. Petroleum markets are problematic; they always have been. They suffer from dramatic and persistent price volatility. It's in the nature of the structure of that industry. Demand is relatively unresponsive. We can't trade our big car in tomorrow for a smaller new car because we're still making the payments on it. We can't buy a new house because we can no longer afford to heat it. And so, in many ways, demand is unresponsive. All we can do are minor

behavioral changes such as we saw on Labor Day weekend when people drove a little bit less and that reduced the pressure.

And meanwhile, on the supply side, the supply is very lumpy. You don't just build a little refinery. You have to build a big refinery, if you're going to build one at all. You don't build little tankers. You build big tankers. It's very capital intensive and it is hard to build supply infrastructure in small increments. And given this combination of unresponsive demand and lumpy supply, it's actually quite difficult to balance them. And so if you can't balance the quantities, you end up seeing price volatility. And over time, both consumers and producers have sought governmental intervention, or some sort of external intervention, to try to improve price stability.

And this is a famous historical (indiscernible) that Daniel Yergin came up with, identifying the five major price stabilization regimes that we have had in the history of the oil industry. You can go back a century ago, when Rockefeller found the solution to volatility was monopoly -- "I'll own everything and I'll balance it out for you folks. The price will be a little bit higher than it would have been otherwise, but I'll take care of the volatility." And we let him do that for quite a number of years.

Eventually, going into World War I and coming out the other side into the Depression, we saw a regulatory approach. We saw the Texas Railroad Commission performing prorationing of production, and that was internationally influential in reining in price spikes and, also, managing availability. That eventually gave way to a private solution -- the Seven Sisters cartel. And if you look at the names -- Exxon, Shell, BP, Mobil --

they're all still around today, but in different configurations. And their solution was not to rely on government, but to rely on deals among companies to carve out the market, and manage price and quantity that way.

Eventually the countries where the oil was located wanted a piece of the action, and they said, "Let's create OPEC," in 1960, and "We'll do the management," instead of letting the multinationals do it. They were effective only very briefly, during the 1970s into the '80s. They have not been effective in any significant way since then. And instead, what has dominated the last generation has been what's known as the Saudi-American regime, wherein the Saudis provide swing production capacity. They supply oil to meet demand, and the Americans, in return, supply what's necessary to ensure stability of the regime in the Middle East.

Now, in parallel with the advent of this regime, there have been a number of explicit oil security policies put in place, starting with the International Energy Agency that developed an allocation system -- basically a plan for future disruptions, followed by geographic diversification in the supplies of oil so we don't rely only on the Middle East; followed also by fuel diversification so that we don't rely on oil when we could use coal or natural gas, or some other form of power. Also, by relying on energy efficiency to rein demand in, by building strategic petroleum reserves, such as -- some of that was released last week following the hurricane. And perhaps most important was a global oil information system that made the marketplace transparent, finally, and let us know where the oil was, how much was there, and what price was it going. And that helped create a truly global market in oil.

So we've been dealing with price stabilization for a long time, and we've adopted a variety of solutions over time. Now, when you go to the gas pump, you know that you pay two, three, three-plus dollars per gallon, but who gets that money? And what I've got showing here are the components of gas price. And for the U.S. as a whole, about 19 percent is taxes; about 8 percent goes to the distributing and marketing functions; about 18 percent is refining; and about 55 percent is the cost of the crude oil. These proportions have been relatively stable over time. If you look at 1998, '99, 2000, 2001, and July 2005, those proportions have been pretty stable. And so, as we think about solutions, we'll want to look at all of those parts of the story.

Now, as we know, the hurricane has damaged our refining function nationwide, and we've also seen general increases in the price of crude oil. And so a question that often comes up is, how long does it take the change in prices to filter through the whole system? And there's not a lot of evidence to work with here that's in the public domain. But there was an important study done in the late '90s, focusing on the mid-Western supply chain, and this is what they found. They found that refineries and pipelines have almost no delay, after whatever the crude oil spot price change was. By the time it comes to the rack price at the city terminal, there's a little bit of a delay, maybe a week or so. And by the time it hits the retail station, the delay is often more on the order of a month. That is not exactly what we've seen in recent weeks. It seemed like it's happened a lot quicker.

But one of the things that the studies have found is that the lags that are built into this system often cause an appearance of downstream

price stickiness that isn't actually borne out in fact. And so it's important to look at the dynamics of the prices, expecting that there's going to be some time lags built in. And I'm sure some of our later witnesses can talk more about this topic.

Okay, who's making the money? Over time -- this is 1977 through 2002 -- looking at the oil and gas production phase of the industry -- in the dark blue line (indicating chart) -- you can see that during the '70s they were doing pretty well. In the '80s and '90s, things were not so hot. But they've basically been bouncing around between 0 percent and 20 percent profit rates. Compare that to what you get in a money market fund or what you were getting during your dot.com investing years, and see how that fits in.

The refining and marketing arms of the industry have seen their profit rates bounce around as well. But they've also seen profits dipping negative over historical recent history. And so it's between negative 5 and positive 15 percent -- have been the annual profit rates.

Let's turn to New Jersey and see what our status is. A benchmark -- we're 10th in the nation in population -- eight-and-a-half million, roughly. We're on the high end of per capita income. This is a rich state, which means we can be profligate with things like energy if we're not careful. In fact, we're number 13th in total energy consumption. And on a per capita basis, we're really quite impressive -- way down there at number 38. If you look at petroleum consumption, we actually are ahead of where we should be relative to population. We're close to where we should be in the gasoline consumption, distillate fuel consumption, liquid propane gas consumption. But one figure that stands out quite distinctly here is that

we're number four in jet fuel consumption. So part of our petroleum consumption is going into jet fuel in a disproportionate way, and that probably bears further understanding.

If we look at the upstream supply story in New Jersey -- well, I'm afraid we don't have a single oil well. We don't produce any. We do have a couple of major product pipelines. We don't have crude coming into the pipelines, just refined products. And we have quite a number of ports that are active and that bring oil and oil products into the state.

If you look at all of our imports -- the stuff that comes into ports -- about half of it is crude oil and the other half is refined product of some sort. If you look at where it comes from, it's remarkably diverse. No single country supplies more than 10 percent of our total imports, and that turns out to be the U.K., not the most unfriendly of regimes. In fact, it's distributed among more than 50 countries, where we get our oil from and our oil products. And so we're actually doing pretty well on the geographic diversification story.

Looking downstream to refining, we have refining capacity on the order of 615,000 barrels per calendar day, which if you translated that into a rough estimate of gallons per day of gasoline, that's about 26 million, which well matches our consumption. Where is that located? Port Reading has a refinery that's not operating. Perth Amboy has a large refinery that does operate. Paulsboro has two refineries. Westville's got one, and Linden's got the largest of the refineries. And so we're spread out among a number of firms and capabilities.

At the retail level, we've got over 3,600 gas stations, which is only a couple of percent of the U.S. total. And our gas taxes are about half

of the national average -- 10.5 cents per gallon, compared to 18.7 cents per gallon, which is the weighted U.S. average, state-level gas tax. There's also a 18.4 percent, per gallon, Federal gas tax.

I also want to note, on the nontransportation side, that about one-fifth of New Jersey homes are heated by oil, and that we have a large heating oil reserve in Woodbridge that helps us cushion against bad winters -- at least as far as supply, not necessarily the price.

Okay, let's switch away from the industry for a second and think about why should government act. And what we teach at the Bloustein School includes several classical rationales -- things that are highly defensible. You can make very clear, rational arguments. First of all, follow a Hippocratic oath, "Above all, do no harm." Bad policy interventions are just as bad as bad market failures. Second, it's often quite valuable to improve allocation efficiency -- in other words, to correct market failures. Classic examples of market failure are pollution problems, monopoly problems, inadequate information.

It's also a standard rational to improve distributional equity. In other words, to correct gross unfairnesses and, hence, things like the low-income heating assistance program are supported by people of all political stripes. And the final, classical rational is to improve stability at the macro level to correct structural imbalances, like trade deficits, to dampen speculative activity, to help the marketplace do what it does well by providing some stability.

Controversial rationales -- one's where I would urge you to think twice because they can be abused -- include arguments to enforce national norms. Because in fact, how many people actually share that

norm? That's something that isn't always clear. Pursue national objectives -- what is a national objective beyond that we all like apple pie? Are we sure that we have everything else in common? And clearly, catering to special interests is something that is sometimes an outcome of public policy, sometimes an unintended outcome.

In the energy sector, those rationales boil down to three key dimensions. The first is, try to improve the security of energy supply -- it's reliability, our degree of self-sufficiency, and of course, issues like nuclear non-proliferation. All play a role in energy policies, and appropriately so. There are also economic improvements, which are driving what we're talking about today. Are prices reasonable? Can we dampen down price volatility? Can we encourage job growth? Perfectly good rationales.

And finally, environmental improvements have been and will continue to be a key part of energy policy. Climate change issues, air pollution issues, water pollution issues, land damage issues are all part of energy policy. And anything we do in energy policy to address economic imperatives has to also deal with the security and the environmental imperatives, and so it's a balancing of conflicting, competing, parallel objectives that's really your job today, I suggest.

So let me close with a couple of questions that I encourage you to explore with the other witnesses and among yourselves. The first has already been mentioned -- is there documented price gouging going on? There's a legal definition of price gouging which is subtly different than an appearance of high gas prices, and it's important to distinguish those two.

Are there special product demands -- and here I'm thinking of the jet fuel case, but there are certainly others such as reformulated gasoline, that are affecting refineries' ability to deliver gasoline and heating oil. Are there things that don't appear in the macro data which are, in fact, problems for us? Are high energy prices slowing economic growth? Now, I know, in my case, I drive a small car. It's get good mileage. In fact, I walk to work most days, and it's still going to be a hit of about \$1,000 a year on my disposable income, between the gasoline and the heating bill, and the indirect impacts of these price spikes. People who have a longer drive and a larger car with a larger family are going to see probably two or three times that hit.

Is a new price stabilization regime needed? In other words, is the Saudi-American regime and all of the things that we've done to improve the transparency of oil markets and to provide strategic reserves, is that still adequate? Or are we now in a situation where we need something better, something more dramatic, such as switching to alternative energy carriers like electricity or hydrogen? And then finally, how do we do the balancing act among economic, security, and environmental objectives that is right for New Jersey and that works not only in the short run, but also the longer run?

So I'll stop there. Thank you very much.

ASSEMBLYMAN WISNIEWSKI: Dr. Andrews, thank you very much. We appreciate your testimony today. It's been very enlightening.

Let me just ask two questions that came to mind as you were testifying. During the close of your testimony, about the questions about

documented price gouging, you made a distinction that what we may observe as price gouging may not be what is legally defined as price gouging, and I would appreciate it if you could explain that distinction.

DR. ANDREWS: My understanding of New Jersey law -- and with so many lawmakers in front of me, I expect to be corrected shortly (laughter) -- is that--

ASSEMBLYMAN WISNIEWSKI: Only by the lawyers.

DR. ANDREWS: --is that it's illegal to raise your prices twice in one day if you're a retail operator. And so if we see that and then we document it -- take the video camera out there and watch them changing the prices -- then we've got a case of legal price gouging. Now, if a retail operator is passing price spikes through to customers because that's what they had to buy the gas for from their distributor, then we shouldn't be holding the retailers accountable. We should look upstream to make sure that there wasn't some similar malfeasance going on. But realistically, if prices get higher, that could just indicate scarcity. That could be the market working the way it normally works.

ASSEMBLYMAN WISNIEWSKI: Would a case of a station -- and I'm told by some of the research that the Office of Legislative Services has done -- that, on average, the difference between the price a dealer pays when the tank is brought to his station and the retail price is something like seven to 10 cents. If a dealer decided to charge 50 cents markup, would that constitute price gouging?

DR. ANDREWS: Not necessarily in my view, because the retailers should be selling the gas for the replacement price. So that encompasses the retailer's expectation of what the next tanker truck is going

to cost. Now, there's certainly room, being very -- you could have a very pessimistic or a very optimistic retailer.

ASSEMBLYMAN WISNIEWSKI: Or a very rich retailer.

DR. ANDREWS: Yes, certainly. Yes. (laughter)

ASSEMBLYMAN WISNIEWSKI: One follow-up question to that. You had talked about the capacity of this state to refine crude oil into gasoline, and I think the number you had talked about was something like 26 million gallons per day.

DR. ANDREWS: That's an extremely rough estimate that I'm sure our colleagues from industry can fine-tune. That's based on, purely, the hypothetical case of using all of our refinery capacity to produce gasoline, something which would never actually happen.

ASSEMBLYMAN WISNIEWSKI: The question I have is, is you said in conjunction with that statement that that roughly matches our consumption.

DR. ANDREWS: Yes. Across all types of -- heating oil and--

ASSEMBLYMAN WISNIEWSKI: Do you have any insight as to, if our capacity to produce the finished product is roughly equal to our consumption, the relevance of refining capacity in Louisiana and Mississippi being shut down causing price spikes in New Jersey? If we can make it here, why does a problem in the south have an impact on prices here?

DR. ANDREWS: I think there's a couple parts of that story. One is that individual retailers, and people upstream from them slightly, don't see New Jersey as a closed economy. They see no reason to buy only from New Jersey, and they'll buy it from wherever it happens to be cheap.

And so they have contractual relationships that are quite intricate and cross New Jersey's boundaries. Some of them have relied on the pipelines that bring up finished product; mainly the Colonial and the Buckeye and the Sun pipelines to bring some finished product into the state, just as some of our refined product is sold out of state. And so New Jersey is not a hermetically sealed unit here.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Johnson has a question.

ASSEMBLYMAN JOHNSON: Mr. Chair, could I go beyond the boundaries of, say, New Jersey? I'd just like to ask--

ASSEMBLYMAN WISNIEWSKI: With your question, or physically? (laughter)

ASSEMBLYMAN JOHNSON: With my question.

Do you know or could you speak about the impact of oil speculators such as International Petroleum Exchange and that group -- what's the impact of the speculation on oil and the price of crude? How does that increase the price and how much so?

DR. ANDREWS: I have been looking for evidence of speculation, and it's hard to measure while it's happening, because the statistics lag by several months. So I haven't been able to bring any data that shows that that speculation has been a problem. Maybe around Christmas something will show up. It might be worth asking other witnesses whether they've seen evidence, because they might have different data sources.

In general, there's a role for a middleman in these markets, because they spread the risk of price volatility around a little bit. They buy

futures contracts. We've seen what happened to Delta Airlines and Northwest Airlines this morning -- they declared bankruptcy because they haven't bothered to put hedging contracts in place, like Southwest Airlines had had. And so they were dramatically hurt. So you could call Southwest Airlines speculators or you could call them managing risk well.

There are other people who are investing in oil futures and commodities purely because they hope to, literally, speculate. They've occasionally played a role in a commodity market or two. I think of the Hunt brothers doing silver many years ago.

ASSEMBLYMAN WISNIEWSKI: It didn't turn out well for them, did it?

DR. ANDREWS: No, it did not turn out too well for them. Highly risky business. I wouldn't want my kids to go into it. But whether it's actually affected us here in New Jersey, I can't tell right now.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Burzichelli.

ASSEMBLYMAN BURZICHELLI: Thank you, Mr. Chairman.
And welcome, Dr. Andrews.

My colleague touched on an area that I have a considerable interest in. I live comfortably nestled between two refineries in Paulsboro -- the Valero Refinery and the Citco Refinery. So I have a sense of what happens at that level, the impacts of those facilities, which by the way happen to be good neighbors, although may not be very popular at the moment. Although it was interesting -- as the disruption of production occurred in Louisiana, suddenly people had a new look at the refineries that

were operating in New Jersey around the clock, and the smoke stacks weren't as much of a problem as they had been a week before.

But Assemblyman Johnson touched on the area of speculators. And Assemblyman O'Toole began to mention it in his remarks. I think we're looking to understand, some of us not as sophisticated as others on this panel, of what role these brokers play in this equation. Because knowing some of the refinery people very well, although their profits at the refining level are a little better today, we understand some handle sour crude, some handle sweet crude -- different margins involved in all of that. And I suspect, as we've had this area -- this veil of crisis, maybe everybody has done a little bit better, and maybe that's all contributed. But it seems to me that maybe at the very beginning of this process, maybe a group has done very, very well and has caused a cascade of this panic that's occurred, and now we have the veil of the hurricane that allowed many of them to operate.

I'm reading with interest, in a publication from the Pennsylvania Petroleum Marketers & Convenience Store Association, they're quoting from hearings that took place in Washington similar to this. And it said, "Circulating in both committees was a press report quoting an oil trader who witnessed incredible profits garnered by oil traders as a result of Hurricane Katrina. The trader noted that many traders made so much money in a week following Katrina that they would not have to work the rest of the year. If gasoline retailers make such a claim, he would be, and should be, hauled off in handcuffs." So I'm suspecting from how you answered Assemblyman Johnson that you are not really in a position to help us understand that world a little better, with regard to how a barrel of oil,

which is \$40 and trading somewhat in a stable fashion, suddenly becomes \$71, when, frankly, it's the same oil coming out of the same ground from the same place.

So it's going to be helpful for us to understand, recognizing our limits as a State Government, but at least through these discussions so people can better understand where the spark is, where the panic ensues from. And the average New Jersey person that I've talked to, knocking door to door because of this time of year, I just can't understand that when the national news, CNN says that the price of oil at a barrel is going to go up \$8 a barrel, that the next morning they get up in Paulsboro and the price at the pump is up three cents. They seem to feel it's at the direction of the television broadcast. And I know others will contribute to that discussion today. But are you in a position to help us understand? When you talk about the supply, are there regulatory things that our Federal partner should be looking at and how these things are traded? Because I notice also that notes tell me that home heating oil was not traded on the commodity exchange 12 years ago, that it only appeared within the last decade as being handled as a commodity. And liquid propane gas still is not traded on the commodity exchange. Can you help us understand what brings it to be a commodity, and what's happening in that world, and how is that affecting this price?

DR. ANDREWS: I think I'll only be able to help you a little bit here, and maybe other witnesses can take it further. But there has been increased interest in the business world in managing risks from energy. And as interest grows in a particular commodity, then we see a commodity market created for it. Those markets have always existed, but they were

being made more formal. It used to really be people calling one another on the phone and saying, "Have you got some of this?" and "I'll give you two-thirds of what you just asked for and hold it for me until December." And now, in a way, it's becoming more transparent, which has had many good effects, but it has also had the effect of allowing amateurs into the game, and also of some professionals who are developing incredibly sophisticated strategies to try to do arbitrage in what's a highly transparent market.

ASSEMBLYMAN BURZICHELLI: And through the Chair, if I may follow?

ASSEMBLYMAN WISNIEWSKI: Briefly.

ASSEMBLYMAN BURZICHELLI: Let someone else pick up the questioning from me. If crude oil is representing 55 percent of the cost of a gallon of gasoline, and you're suggesting that some have entered into an interest in this commodity for purposes of, for lack of better term, gambling, are we -- do you think that this current cycle we're in will lead to some sort of call for regulating how such a commodity, in a natural interest as petroleum, is to be regulated and how it's traded on commodities exchange, or is that something that would interfere with a free market transaction and not likely to occur?

DR. ANDREWS: I would say we got a lot of that in the 1970s, in the form of the world oil information system that made markets transparent. Before that, it was hard to figure out what was going on. And since then, prices have been much more visible, and it's been harder to play gains. Also, if you remember the slide I showed that showed where New Jersey gets its oil -- and we get our oil from 50-odd different countries -- that's a lot of people to try to get to collude. And one of the things that

we've really seen, over time, is that it's hard for any one producer to have that much market power.

ASSEMBLYMAN BURZICHELLI: And I don't know -- and through the Chair, and I'll close on this. I don't know that my curiosity is leading to a direction that suggested there is this collusion occurring. The word I would use would be *greed*. And greed is always a problem.

DR. ANDREWS: Yes.

ASSEMBLYMAN BURZICHELLI: Greed brings the attention of government, brings the attention of people like yourself who are teaching others, and that's what we are working to learn -- where we want to direct our interest. And I don't want to say anger -- but certainly outrage. I suggest we'll find ourselves limited, from the State capital in New Jersey, but our voice can be loud.

So, Mr. Chairman, thank you for the opportunity to question.

Thank you, Doctor.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

Doctor, I just wanted to make one observation, in terms of collusion. You said, given the number of individuals and companies involved, it would be difficult. I would just offer the countervailing thought that when there's enough money to be made, they'll find a way. So something we need to be mindful of.

Assemblyman O'Toole, then Assemblyman Mayer.

ASSEMBLYMAN O'TOOLE: Thank you, Chair. Through you, Professor, I certainly appreciate the tutorial. It was educational.

As we sit here before the Assembly Transportation Committee in the State of New Jersey, my quest -- I think all of ours is -- is what can we

do today to help control these costs today. Not in a faraway land. Not in Washington D.C. Because there's very little we can say here that's going to impose a change of the will in D.C., whether it's in the Senate or Congress.

So my question to you, Professor -- I was trying to pick through your thesis there -- is the consumption that you've pointed out, has it been consistent and is it predictable going back to the 1970s, to the current day? And as you're answering that question, what is the thing that we can most do today, right here and now, through this Committee, or the Assembly getting here tomorrow? Is it what we talked about? Is it increasing productivity? Is it about conserving more, diversifying alternate fuel sources, creating less of a dependency, preventing some of the gouging we've talked about, or this Hunt conspiracy which you've picked up on? What can we do in the immediate future, today, to bring down the gas prices tomorrow?

DR. ANDREWS: Okay. First, I would urge you to view this as a multi-prong problem. You're not just trying to reduce gas prices; you're also trying to preserve security of supply and the quality of our environment. And you need to keep all three linked together before you're going to find a solution that is going to be satisfying to New Jersey. That means that you're probably heading in the direction of doing a few things instead of one thing -- having a complementary set of policies that would include, in my wish list -- and I don't know if you want me to speak about this now before other stakeholders have had a chance -- but I guess I'll go ahead. It's clear there's a lot we can still do on the demand side to help people manage their consumption of energy.

And we saw, during the 1970s, both people responding to the high price of the energy by shifting away from certain activities that were energy-intensive; we also saw that a large fraction of the fuel efficiency improvements in the U.S. auto fleet was as a result of regulation. The CAFE standards, which are so unpopular, currently, in Washington, actually had a measurable effect. And in the academic journals, it appears that they were, at least, as important as the high prices in changing driving behavior. So that means there is a role for regulation of stuff that people have trouble doing themselves, such as detecting what's an energy-efficient car or house.

Also, on the demand side, letting prices get high sometimes, frankly, helps people know that there's a problem and helps them contribute to the solution. So we all drove a little bit less on Labor Day weekend. It's an unpopular thing to say, but it is a way for everyone to participate in the solution.

On the supply side, I am a big fan of better energy carriers, of having ways to transform all sorts of different primary energy sources -- like oil and coal and natural gas and solar energy -- into some common currency that we can use to drive our cars, to power our homes and our offices. And the two main ones that we've been hearing about, I think, should be set in competition with one another -- one is electricity, which is an energy carrier we're very familiar with; and the second is hydrogen, which is undergoing a combination of a little bit of experimentation and a lot of hype right now, but where we need to be very systematic in developing some experiments to see what would actually make hydrogen work.

There are some other things we can do on the supply side that have to do with ensuring, in a short term, that our refining capacity has the flexibility to serve whatever needs the State places on it.

But I'll stop there -- that's a long enough list.

ASSEMBLYMAN WISNIEWSKI: Thank you, Doctor.

Assemblyman Mayer.

ASSEMBLYMAN MAYER: Thank you, Mr. Chairman. Thank you for convening this hearing, and your leadership in this role.

Dr. Andrews, I appreciated your opening remarks, in which you said that we should be careful to make good judgments and not rash judgments. And I think that's the purpose of this hearing today and subsequent hearings, where we are here to explore and understand the petroleum industry more. So I appreciate those comments.

I have two very quick questions for you. One deals with profits. I've been reading, and I have an article here, not to pick on ExxonMobil, but I have an article that says, "ExxonMobil's profits are likely to soar above \$10 billion this quarter," which is really \$110 million a day, and more net income than any company has ever made in a quarter. And I noticed on your slide, you went up to year 2002. Do you have any current figures for '03 or '04 for profits?

DR. ANDREWS: I don't. I believe there's some oil industry representatives who are going to be testifying later, if you can direct the question to them.

ASSEMBLYMAN MAYER: Okay, thank you.

And you mentioned that New Jersey -- I guess we have a disproportionate consumption of jet fuel. I did not understand the

correlation. Are you saying that because we are -- the demand for jet fuel is so high that it pushes down the supply of gasoline, thus increasing prices?

DR. ANDREWS: One influence of having a relatively large demand for jet fuel-- And clearly, it spills out of New Jersey. It's Newark Airport; it's military; it's also -- some of it is really supplying the other two airports in the region -- other two major airports. But the implication is that for any given barrel of oil that we bring into this state, some fraction of that is going to be going to serve the jet fuel market, as opposed to the home heating or driving. There's nothing wrong with that as long as among -- across the 50 U.S. states and among the 50-odd countries that are trading partners with New Jersey, we balance things out. But something that I don't know the answer to, and I'm hoping that another witness might, is whether that significant demand is in anyway a problem for New Jersey.

ASSEMBLYMAN MAYER: Okay. Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you very much.

Assemblyman Panter.

ASSEMBLYMAN PANTER: Thank you, Mr. Chairman. I'll ask a few, very brief questions, because I know we have a number of other witnesses to get to, but these would really help me refine my questions for some of those in the industry that we'll hear from today.

I think that Assemblyman Mayer hit it on the head, in the sense of two questions that we're really here today to answer, at least in my mind. The first is whether the profit margins of oil companies, or wholesalers, or retailers, increased over the time following Hurricane Katrina. Because if they did increase, I think it raises a significant question on whether anyone took advantage of the situation or whether price

increases throughout the food chain were an absolute economic necessity, as a result of the prices that they themselves were paying.

But my two questions are-- As we try to become more educated about this -- and I think you've brought us a long way with the insight that you've offered -- as I look at gas prices and the research that we've seen, it indicates that roughly speaking about half, in terms of the factors that affect gas prices, about half of the price affected by crude oil prices -- about 20 percent, or somewhere in that neck of the woods -- is taxes, both Federal and the state; refining is about 15 or 16 percent; and the rest is, broadly speaking, distribution and marketing. So my question is, when we look at a select time frame from a few days before Hurricane Katrina to a time of seven to 10 days after Hurricane Katrina, it seems to me that certainly the tax component has not changed. I didn't see any state or the Federal Government raising taxes over that time period.

Crude had crept up about 3.5 percent -- the figures that we've been given over the 10-day period I'm looking at. And yet, prices in New Jersey rose by about 26.5 percent. So my question is: All that data taken together, is it fair to say that with crude coming up only nominally, with many of the factors that figure into gas prices remaining constant, my magnifying glass, kind of, starts focusing on the refining piece of the chain. And if that only accounts for 17 percent of total gas prices, and yet total gas prices have risen by 26, my simple math indicates that refining prices have gone up 125 to 150 percent during that time period, though you've told us, I think, that Katrina only affected 5 percent of U.S. refining capacity. So is that a -- I guess my question is, are those fair assumptions, as we seek

answers from some of the folks in this business to account for the price increase, if that's the piece we need to be focused on, the refining link?

DR. ANDREWS: I think that's a great question to ask the people in the business, yes. I think you're back of the envelope suggests that there's something interesting there, yes.

ASSEMBLYMAN PANTER: And the second question I have, in broad terms, can you tell us, as the industry is consolidated -- and we saw all of those large oil companies merge together, and I'm sure there were some cost-cutting measures after those mergers -- how has the industry's overall refining capacity changed as a result of those mergers? Has it decreased, has it increased?

DR. ANDREWS: In the United States, it has hardly changed at all. It was just a -- there was a new landlord, somebody new owned the refinery. And what was -- the places that jobs were cut were in consolidating research labs, so you had one research lab instead of two, similar with the marketing arm, and another, what you might call, *overhead functions* of the business.

ASSEMBLYMAN PANTER: Thank you very much, Dr. Andrews.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Dr. Andrews, thank you for your testimony. I would appreciate it, if possible, if you could stay with us. I'm sure that subsequent testimony will lead to even further questions from members of the Committee, and we'll have an opportunity to continue that questioning.

DR. ANDREWS: Okay, I'd be glad to.

ASSEMBLYMAN WISNIEWSKI: Thank you.

While you're wrapping up your computer there, I'd like to call up Tyson Slocum. Mr. Slocum, just grab a seat right up here, and press the button so the red light is illuminated, and state your name and affiliation for the record.

TYSON SLOCUM: I'm Tyson Slocum. I am Research Director with Public Citizen. We're based in Washington, D.C. That is where I work and live. We are a national consumer advocacy group, and I specialize on the regulation of energy markets.

ASSEMBLYMAN WISNIEWSKI: Please present your testimony.

MR. SLOCUM: Great. Well, first of all, thank you all very much for inviting me here today. Just yesterday I was testifying before the United States House of Representatives on problems with America's dysfunctional national gas markets, where I outlined rampant uncompetitive practices and outlined the more than \$2 billion in fines that have been levied against natural gas companies in the United States for uncompetitive practices. Last year, I testified also before the United States House of Representatives on uncompetitive practices in the United States petroleum and gasoline industry. I have authored a number of reports, and I've provided written testimony to you today.

Some of the opening statements by members of the Committee talked about how high gasoline prices are in New Jersey, that your state, contrary to past precedent, is now above the national average, in terms of price. You've seen prices rise more than 70 percent in the last year. And so what's driving those high prices? No question, America's huge appetite for gasoline and oil is playing a role. In New Jersey, 53 percent of the oil

consumed is consumed in the automobile sector for cars and trucks. Nationally, the United States uses 25 percent of the world's oil every day. We are, far and away, the largest consumer.

A lot of people have been talking about, "Oh, China has been using more oil, and that's impacting things." China is only the second largest consumer and they use less than 7 percent. The rate of consumption growth in the United States continues to rise. A lot of that is driven by inefficient fuel economy standards. Our fuel economy standards, in 2005, are worse than they were in 1987. Today, the average fuel economy for our cars and trucks on the road is 20.8 miles per gallon. In 1987, it was 22.1 miles a gallon. Clearly, we are -- every car that's on the road today is less efficient than it was back in 1987, which is ridiculous. We've had a revolution in technology that has generated fantastic efficiencies throughout the U.S. economy, except, it appears, for the automobile industry and the folks that drive those products.

But that aside, there must be some other explanations that are going on here, and I'm not just talking about Hurricane Katrina, because gas and oil prices were well on their way to setting record highs long before Katrina was gathering in the Gulf of Mexico. So the question before this Committee, one of the question is, is there evidence of some sort of Enron-style market manipulation, whether it be by oil companies, whether it be by hedge funds in energy trading markets.

And the facts I'm going to present to you today unambiguously say, "Yes." There is evidence of collusion. There is evidence of market manipulation. And I hope that the New Jersey Assembly can take some

steps and try to urge the Federal Government to take some steps to address these uncompetitive practices.

It's important to recognize that when I'm talking about uncompetitive practices I'm not talking about, in my personal research and experience, about smaller retailers of gasoline. I'm not talking about the mom and pop operation that's operating a gas station on the street corner. I realize there might be some other witnesses that will come and talk about problems for that sector, but that's not the focus of what I'm talking about. What I'm talking about are the large global oil companies that are vertically integrated monopolies. Companies like ChevronTexaco, which owns a large oil refinery here in New Jersey. I'm talking about ConocoPhillips, another vertically integrated monopoly that owns a large refinery here in New Jersey. I'm talking about Citco, a subsidiary of the Venezuelan State Oil Company that has a refinery here in New Jersey.

These are the entities that I'm going to be focusing on today. Now, there has been a near revolutionary change in the makeup of this industry in just the last couple of years, where we have seen a rate of mergers and acquisitions almost unprecedented. We have seen huge, global, vertically integrated monopolies that are former competitors merging to become one company. ExxonMobil -- former competitors -- now they're the same company. ChevronTexaco -- used to be competitors -- now they're the same. ConocoPhillips. BP acquired two large U.S. companies -- Amoco and Arco. The list goes on and on: Valero, which owns a large refinery here in New Jersey, has acquired multiple other refining companies -- Ultramar Diamond Shamrock, Orion Refining -- and then just last month, the Federal

Trade Commission approved their acquisition of Premcor, another major U.S. oil refiner.

As a result of all of these mergers, we have uncompetitive markets, and the proof is in the numbers. The profits of the largest five oil companies operating in the United States today are \$254 billion since 2001. ExxonMobil has led the way with after-tax profits of \$89 billion since 2001.

Now, we saw a chart earlier that showed average profit margins from -- I believe the period was 1977 to 2002. That is not very instructive, because the change in the oil industry really started in '98 and '99, when the merger started to occur. And that has radically transformed the industry.

Lee Raymond, who is the CEO of ExxonMobil, is an extremely smart CEO. He runs the world's largest, most profitable corporation. And he, along with his colleagues, other CEOs, clearly understood that profit margins for the industry were volatile. They were suffering. And they took aggressive action to make sure that sustained high profits were going to be easier. And they did that by acquiring competitors at an unprecedented rate. So that is what's going on in the market right now.

Now, what has this translated into as far as the United States' consumer is concerned? Well, the largest five oil companies operating in the United States, which are ExxonMobil, ChevronTexaco, ConocoPhillips, BP, and Shell, they control 14 percent of global oil production. Those five companies combined produce 10 million barrels of oil a day, whether it be in Nigeria, whether it be in the Middle East, whether it be here in the United States. Remember, the United States is the third largest crude oil

producing nation in the world. Those five companies produce more oil every day than Saudi Arabia, which produces 9 million barrels of oil a day.

The OPEC cartel, as the prior witness talked about, is not as relevant as it used to be. And I argue, and others argue, that we've seen a new corporate cartel that has arisen, where these companies are vertically integrated monopolies. When the price of crude oil goes up, they rake in record profits, because that is their product that they're drilling out of the ground and sending into market, either to third parties or selling to their own affiliates who own oil refineries, say, in New Jersey. So they control 14 percent of global oil production. They control 48 percent of U.S. oil production, which is significant, because we are the third-largest oil producing nation in the world.

They control half of the refining capacity in the United States, which is very significant because all that crude oil has to be turned into refined products like gasoline. And if you control both crude oil streams and refining capacity, you're looking pretty good. And to top it off, they have retail affiliates. And these branded retail stations, and these five companies, control 62 percent of the retail market as a result.

Now, these numbers are for 2004, and they are much, much different than they were just a decade ago. Say, let's take 1993, where the largest five companies, in 1993, controlled a third of the oil refining capacity. So in 10 years, the largest five companies have gone from controlling one-third of U.S. oil refining capacity to one-half. And the top 10 oil refiners went from controlling 55.6 percent of refining capacity in 1993 to 83 percent today. By any economist's measure, that is a highly

concentrated market. And when you have highly concentrated markets, you have the ability for companies to manipulate those markets.

Now, I think one of the members of the Committee was asking about refining profit margins. The United States Department of Energy has a division called the Energy Information Administration. They compile all sorts of very useful statistics. One of them is profit margins on refining. It is very important to look at the statistics, and I note it in my testimony that I've provided you today.

In 1999, the average profit in the U.S. oil refining business was 22 cents a gallon for motor gasoline that they were producing. And that was pretty constant through the 1990s. It was in the low twenties, as far as their per gallon profit margin. By 2004, as a direct result of all the mergers, that profit margin is now over 40 cents per gallon. That's for calendar year 2004. I haven't yet seen statistics for the first half of 2005, but I can guarantee that it is much higher than 40 cents. So we've seen an 80 percent jump in their profit margins, in the refining sector alone, from '99 to 2004.

And remember, we also saw this other breakdown of -- well, crude oil comprises 55 percent of the cost of a gallon of gasoline. Well, of course, the kingdom of Saudi Arabia is getting very rich off of that. But like I said, ChevronTexaco, ExxonMobil, ConocoPhillips, Citco -- these are all huge oil producers themselves. When the price of crude oil goes up, they reap record profits. Don't take my word for it -- look in their balance sheets. Take a look at their 10Ks that they file with the United States Securities and Exchange Commission. They're very happy to boast of that -- the fact that when crude oil prices go up, they're making money because

they're producing that product and they're selling it -- of course, selling it at a discount to their own affiliates.

Now, you may wonder, "Okay, well, here's this guy. He looks kind of young. He's from Public Citizen, Washington, D.C. I've never met him before." So I understand if you don't want to take my word for it. So I urge you to take the Federal Government's word. The United States Government Accountability Office, that is the research arm of the United States Congress, in May of 2004, released a report discussing what the impact of recent mergers have been on gasoline prices. The United States Government Accountability Office found conclusively that recent mergers have led to less competition and, in turn, have led to higher gasoline prices.

And it's interesting to note that their price analysis ends in the year 2000. That's before the mergers of ChevronTexaco, ConocoPhillips, and Valero's acquisitions were even announced. And I just met with the GAO yesterday and asked them if they were going to do a follow-up. And they agreed with me that those statistics were going to be much bigger with the impact of those mergers.

Also, the United States Federal Trade Commission, which is an independent regulatory agency that's out there, supposed to be protecting consumers -- did a major investigation in March of 2001 into high gasoline prices. And in my testimony I quote a long passage from the conclusions of that report, and I'm going to read part of it. It says, "An executive of one oil company made clear that he would rather sell less gasoline and earn a higher margin on each gallon sold than sell more gasoline and earn a lower margin." Another employee of this firm raised concerns about oversupplying the market and thereby reducing the high market prices.

Now, the Federal Trade Commission found that there was no evidence of collusion and so, therefore, no violation of anti-trust laws. But I'm not a lawyer, but I can definitely see here that if companies are intentionally withholding supplies from the market, that's uncompetitive behavior and something should be done.

I've also done extensive research on the lack of adequate regulation over energy trading exchanges. In 2000, Congress passed the Commodities Futures Modernization Act, which deregulated energy trading exchanges. It greatly expanded the ability of hedge funds, investment banks, and oil companies to get involved in over-the-counter derivatives markets.

So I've been asked to wrap up. In closing, what can the State of New Jersey do? First of all, it's a no-brainer -- the Legislature, the Assembly should order the Attorney General, or advise the Attorney General, to commission an immediate investigation, particularly with the five large oil refining operations operating in the state, about whether or not consumers are being price gouged. Second, I think that the Assembly should explore whether or not the Board of Public Utilities, or another appropriate agency, should start regulating gasoline as it does other commodities. Other states are already starting to do this. Hawaii has started it, effective September 1. And the state of California is seriously considering it. And also, of course, the State should also take aggressive steps to try to encourage energy efficiency -- mass transit, hybrid vehicles, and so forth.

Thank you very much for your time, and I'm sorry if I went over a lot of my allotted time. I'm very happy to answer any and all questions you may have.

ASSEMBLYMAN WISNIEWSKI: Mr. Slocum, thank you for your very well-prepared and thoughtful comments and testimony to the Committee. We appreciate it.

I'm going to call first on the ranking Republican, Assemblyman Bodine, because I had inadvertently omitted him. He wanted to ask a question for the last witness, so I'll give him first crack at you.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

I do have one question for this young man I've never met before. But I have to say this, that your presentation is very professional, and it substantiates much of the information some of your older colleagues have provided me in the last several months. I'm aware. I have watched the financials of Chevron and Mobil Oil for the last two or three weeks, and I wholeheartedly agree with everything you said. I've watched their stocks and other financial information about them. And I agree with -- and again, some of my friends have provided me with the same information regarding mergers reducing competition and the long-range effects of that.

But there's a very small comment that you made at the very beginning of your presentation and I have some trouble accepting that. And I don't know what you based it on, and maybe I haven't had a chance to completely read your presentation. But you mentioned that the efficiency of automobiles since 1987 -- cars today are not as efficient as then. I can only say that all of the cars I've had, since '87, have been a far better performer, have given me much better gas mileage per gallon, and I

wondered what is the basis of that statement and how does-- I would think that with the exceptions of SUVs, I think overall, cars, in general, are a much better product than then. Can you elaborate on that?

MR. SLOCUM: Yes, sir.

First of all, you're absolutely correct that regular automobiles have unquestionably improved their overall fuel economy. However, as you mentioned, the problem lies with SUVs and light trucks, which are exempt from the higher fuel economy standards applied to automobiles. Now, the source for my numbers, which I provided, comes from an annual report issued by the Environmental Protection Agency, which does an annual assessment of the nation's automobile fleet. And they combine the fuel economy fleet of automobiles, which are a higher standard, with the automobile fleet of SUVs and light trucks, which are at a lower standard. And when those two fleets are combined, you get the complete U.S. -- what's known as the Corporate Average Fuel Economy standard. And when that is taken into account, the SUVs are dragging overall fuel economy down. And so that is the culprit.

And so any analysis of a situation has to be on, should we continue extending the fuel economy loophole for SUVs and light trucks, because consumers are buying them like crazy and they get much worse gas mileage than do regular automobiles. So that is the basis for the numbers that I provided.

ASSEMBLYMAN BODINE: Thank you.

If I could, just one quick question in a follow-up?

ASSEMBLYMAN WISNIEWSKI: A quick follow-up, sure.

ASSEMBLYMAN BODINE: Somewhere in all of the information that we have been reading, I thought I read something to the effect that there have been an exorbitant number of mergers over the last 10 years. I think I saw something like 2,600. I don't know if that's true or not. Can you elaborate on the number of mergers that have taken place during that period of time?

MR. SLOCUM: Yes. I follow the larger ones. The Government Accountability Office covered that and -- yes -- the lead statement in the summary of the GAO report that was released in May of 2004, says, "over 2,600 mergers have occurred in the U.S. petroleum industry since the 1990s." And this is a large report; it's over 260 pages long. So I definitely encourage members of the Committee and their staff to take a look at it, because it echoes-- This report came after my report that I released in March of that same year discussing the negative consequences of this rate of merger activity.

And I haven't followed all 2,600 mergers. We have a fairly small operation, our resources are limited. But the large mergers I follow very closely.

ASSEMBLYMAN BODINE: Thank you very much.

Thank you, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Mayer.

ASSEMBLYMAN MAYER: Thank you, Mr. Chairman.

Thank you, Mr. Slocum.

A quick question for you. I am concerned about the ability to control competition. And you mentioned that out of the five companies here, they control 62 percent of the retail market. Would you say that

retail prices are set more by the competition between the retailers -- “Well, I have on my sign a certain price, you have on your sign a certain price” -- or by the actual cost to manufacture and transport the crude oil? And I say that because if it is the retail competition that’s out there and you have an industry that controls 62 percent of the market, that may raise substantial issues.

MR. SLOCUM: Yes. I think that prices are driven more by factors in the wholesale market than on the retail market. I think buying gasoline -- consumers, I think, are less apt to go out of their way to do shopping at gas stations than they will for other products that they’ll buy in the consumer market. And remember that a lot of retailers don’t just sell gasoline. They have convenience stores that are also generating revenue. And so they’re dealing with a lot of different kinds of products that they’re trying to sell. I think that the biggest driver in prices is the wholesale market. These retailers, especially if they’re independent, are forced to accept whatever price is being given to them. And it has been documented that some of the large oil companies engage in something called *zonal pricing*, where they’ll literally just, kind of, carve up a market. Because for very large companies, sometimes they’ll do aggressive head-to-head competition. But head-to-head competition can, quite frankly, be messy. It can have unpredictable results.

And if you are trying to return value to your shareholders every quarter, you want to make sure that you are returning predictable strong results. And competition is a messy business if you’re dealing with competition between two big giants that have a lot of resources they can throw at each other. I’m not saying they never compete on any level, but

I'm saying that there will be more of a tendency towards collusive type of behavior than head-to-head competition on every level.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Thank you for your question.

Assemblyman Burzichelli.

ASSEMBLYMAN BURZICHELLI: Thank you, Mr. Chairman.

I'd like to continue with the line of questioning, because I'm, again, trying to understand. You mentioned early on, you used the word *collusion*. The professor was hesitant to draw a conclusion that collusion was, in fact, taking place. I have a real interest of understanding better the world of the brokers, the speculators, the people involving -- that are managing hedge funds. Because it seems to me, as a layman, so many gallons of crude are produced somewhere in the world on a given day, and a couple of days later, a similar amount is produced, give or take a drop off or an increase. But yet, we see a great swing in prices.

And from your travels in our nation's capital, and the testimony you've offered and the study your group has done, is this drawing attention by anyone? Is anyone looking at this and saying that, "When I watched the national news, or CNN, and they show footage of the Commodities Exchange, or the stock exchange, and you see people at the end of the day looking as if they were insane -- they're rushed, they're confused, they're disheveled -- and their work, at the end of the day, I think is influencing the price of gas almost two days later." What are you sensing from your group? Is anyone paying attention?

MR. SLOCUM: Absolutely. There's been considerable attention in the United States Congress towards revisiting their recent

actions to deregulate these energy trading exchanges where the prices of crude oil and other energy products are set. Remember that OPEC producing nations do not set the price of oil. It is not -- a bunch of members of the Saudi royal kingdom don't get together in Riyadh and say, "Okay, this is what the price of oil is going to be." It is set by energy traders. Many of them are in New York. And in June of 2003, Senator Feinstein, from California, put forward an amendment to restore transparency to these commodities markets by deregulating the over-the-counter derivatives exchanges. And both New Jersey Senators, Corzine and Lautenberg, voted in favor of this amendment. However, it failed 55 to 44. And that was in June of 2003, and that's been the last time that there has been a floor vote in either the House or the Senate to restore transparency to these markets.

ASSEMBLYMAN BURZICHELLI: If I may, through the Chair, had that have been successful, Senator Feinstein's initiative, what would that have accomplished? Would that just allow people to understand better what was taking place, or if the people were being excessive in their greed, they would be subject to public opinion and possibly be reined in? What would have happened?

MR. SLOCUM: It would have forced a lot of current traders who operate under the radar screen to divulge more information about their positions and their operations. And in Public Citizen's view, a market that is transparent is a better functioning market, because it is providing more information to market participants and to regulators and to consumers. We can more clearly see the signals that are going on and respond accordingly.

Right now, a majority of the trading is not going on on big established regulated exchanges, like the New York Mercantile Exchange. They're going on on these under-the-radar-screen, over-the-counter, or OTC derivative exchanges, which were just deregulated fully in the year 2000. And I don't think it's a coincidence that you've seen more volatility and bigger price swings since the deregulation of those exchanges.

So what that Feinstein amendment -- that both New Jersey Senators thankfully voted for, in my opinion -- would have done, would have just restored transparency, forced these OTC exchanges to be subject to some more daylight, to be subject to scrutiny from the United States Commodity Futures Trading Commission. Now, not to say that I am thrilled about the CFTC's current enforcement, I don't think that they have been doing a great job.

ASSEMBLYMAN BURZICHELLI: Excuse me, what does that stand for?

MR. SLOCUM: I'm very sorry. It's the Commodity Futures Trading Commission. I come from D.C., and we're an acronym city, so I apologize for not spelling that out. The Commodity Futures Trading Commission is an independent, regulatory body appointed by the President. Members are confirmed by the United States Senate, and they are supposed to be the regulators of trading exchanges -- soybeans, live cattle, natural gas, crude oil, gasoline, you name it.

The former chairman, James Newsome, until last year, stepped down. And the very next day he assumed the job as President of the New York Mercantile Exchange, which to us presented a very troubling example of a revolving door, where you had the chairman who puts together an

enforcement staff, leaves, and then heads, the very next day, a major trading exchange that is under the jurisdiction that his former colleagues will now be in charge of scrutinizing. So--

ASSEMBLYMAN BURZICHELLI: I think that's probably more of a coincidence than any design. (laughter)

ASSEMBLYMAN WISNIEWSKI: You think so.

ASSEMBLYMAN BURZICHELLI: Mr. Chairman, on the surface, it would appear that way to me. (laughter)

And Mr. Chairman, I'll conclude, because I don't want to just keep harping on this, but the reason I've made a point to raise this issue, because we're going to hear from refiners. We're going to hear from retailers. We're going to hear from wholesalers. And I just sense that there's this whole group of people that are, sort of, quietly off to the side, making a whole lot of money and having a great deal of influence of what's happening in this country. And we may not have reach from this body, but I think we need to understand it so we can then direct our attention where it has to be directed.

I have one last question, if I may, just on this vertical monopoly discussion?

ASSEMBLYMAN WISNIEWSKI: Sure, briefly.

ASSEMBLYMAN BURZICHELLI: I recall when the Mobil Oil Refinery, in Paulsboro, was being offered for sale, because of its size and Mobil's attention was changing. It was before they were gobbled up by Exxon and a new government was formed. I understand it, serving as Mayor, that the larger, the big companies, as you mentioned, were interested in getting out of the refining business because it was capital

intensive, there were small margins, there were issues of refining in this country that made it just very difficult, and they preferred to be in the oil exploration business, natural gas exploration business, and handling that side of the equation and maybe staying involved on some of the retail side. When you look at Valero Energy, which I happen to know well and have great respect for, are they a vertical monopoly, or are they just a refiner? Where do they fit in this picture, or are they not big enough to get your attention in one of these families of -- the Seven Sisters.

MR. SLOCUM: I did not mention them as one of the largest five, because they are not vertically integrated. Valero is a downstream company. It's not a small company by any means. It is, depending on how you measure it, the largest, or the second largest, refiner in the United States. So it definitely plays a very big role in these markets, but it's not the same as some of these vertically integrated companies that have global exploration and production, in addition to their domestic refining capacities.

ASSEMBLYMAN BURZICHELLI: And we speak of that, through the Chair -- we also have Sun Oil Company, which is based out of Philadelphia, which operates a refinery in the southern part of the state. That, I guess, would also be considered downstream.

MR. SLOCUM: That's correct.

ASSEMBLYMAN BURZICHELLI: But when you look at the larger companies, do the larger companies, when they engage in oil exploration and they're drilling -- whether it's Shell or BP -- do those commodities get fed-- How do those commodities find their way to the

market, and do they make those commodities available to other refiners, or do they maintain that product in their own stream?

MR. SLOCUM: It's a combination of things. They are selling on the open market. They are delivering to their own affiliates. And obviously, if you're running a large operation, you're not going to sell market price goods to your own affiliates. That wouldn't make much sense. You're going to be providing it to them for the cost to you. So it really depends. I'm sure that there are other witnesses here from-- I don't know if we have witnesses here from any of the vertically integrated companies, but they could probably discuss, in more detail than I have access to, what their contractual arrangements are for the crude oil they produce and to whom and to where they are selling that.

ASSEMBLYMAN BURZICHELLI: Very good.

Thank you, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you, Chair.

I assume you and your institute -- you're not in favor of SUVs? That's my sense. Is there an official policy that you have?

MR. SLOCUM: We think that SUVs should -- I think that measures should be implemented to make sure that they get better fuel economy. But I am not -- Public Citizen is not in a position to tell consumers you should be forbidden from purchasing this kind of product. We're not calling for a ban on SUVs. We're calling for them not to be treated differently from the regular automobile fleet.

ASSEMBLYMAN O'TOOLE: My next question, through the Chair -- it seems to me that, from your standpoint, I certainly agree with my colleague, Bodine, that you seem to have a great grasp of the issues at hand. I think, perhaps, more so from the Federal jurisdiction than, perhaps, New Jersey. And it seems to me that you don't want to recognize that -- perhaps your viewpoint is accurate -- that this productivity that goes across, globally, in India and China, you're saying is not really impacting some of the scarcity, or the perceived scarcity in terms of the oil currently.

We here in New Jersey -- we have an ever-growing population, same here in the state side. Has there been a predictability in terms of our consumption, either in the states or in New Jersey? And I have a follow-up to that.

MR. SLOCUM: First of all, there's no question that rising demand in China and India have played a role. It has not led to any scarcity of crude oil. The issue, with Hurricane Katrina aside and the temporary displacement of Mexico production -- that was immediately made up for with the strategic petroleum reserves. So there was never any real shortage. There are no global shortages of oil anywhere in the world today.

My point in emphasizing U.S. demand is that we are, far and away, the largest consumer. We use 25 percent. And so, from an economist's perspective, if you're the big dog in the room, what you do is going to have a big impact on world oil prices and world commodity prices. And so as long as the United States is taking zero steps to address our continuing growth of use of oil and gas, the sky's the limit for prices. I think what we'll see -- if we don't do anything to address the fundamentals

in the industry and to deal with demand, I think you're going to see \$100 a barrel of oil before you'll ever see 30 again.

ASSEMBLYMAN O'TOOLE: Which I think Forbes, in a 2004 *Forbes* magazine, predicted to be seen sometime in this decade.

But in the last few minutes of your testimony, I'm glad you got around to the New Jersey perspective. And again, my charge is, we here, in the State of New Jersey and the State Assembly, we don't have control in D.C., in Pennsylvania, other states. We have control to some extent, here, what we can do. And I'm glad you got around to, in the last couple of minutes, talking about some suggestions as to what we can do here, right now.

And the first thing you suggested is we can order -- which, obviously, we can't order the Attorney General -- we can certainly recommend to the Attorney General having an investigation into the price gouging. And my question to you is, if you have evidence of either price rigging or price manipulation or price gouging -- and you did say collusion early on -- if you could forward that to us, and we'd be more than happy to use that as a vehicle to send that to the Attorney General. Because if that's true and the facts bear themselves out, I would love to see the executives who have made those decisions paraded out in handcuffs and leg irons -- if they are, in fact, engaging in this illegal behavior. And do you have any evidence to that extent?

MR. SLOCUM: No, I don't have any evidence, because Public Citizen does not have the power of subpoena. These are not going to be documentation that is going to present itself and fall on my lap. It is going to be evidence that you're going to find in internal communications. And

the only way to obtain those kinds of internal communications is either through discovery in litigation or compelling them to do it from some sort of government entity that has that power.

ASSEMBLYMAN O'TOOLE: But my question is, and I think you're on to something, is that if you're going to ask for the Attorney General to launch an investigation, there has to be some jump-off point that we say, "Based on this fact, or this e-mail, or this letter, or this information, we believe that you should investigate the price gouging, or manipulation, or some of these other illicit things that are going on," as opposed to saying, "Hey, the price is going up. You guys are guilty of it."

MR. SLOCUM: Sure. Well, I think the first thing to cite would be the March 2001 United States Federal Trade Commission Report, which -- although it said, "We found no evidence of collusion," what they found was that multiple companies, independently of each other -- if you can believe that -- were intentionally withholding supplies from the market for the sole purpose of driving prices up.

Now, I know in the state of California they have state laws making that kind of practice illegal. It is not illegal under Federal law. So, for example, a lot of the energy companies that were ripping off consumers in California came under jurisdiction from the state attorney general for anti-competitive practices.

Like you pointed out, I don't know much about New Jersey laws. I've never worked or lived in this great state, but I'm sure that you all, and the Attorney General's Office, know if a law exists -- some sort of unfair practices act, or something like that -- that could be applied. If the Federal Trade Commission finds that this practice goes on in the refining industry, I

think it's not unreasonable to conclude that it may be going on in New Jersey's refining industry.

ASSEMBLYMAN O'TOOLE: And through the Chair, my last question. Your last comment about New Jersey should take aggressive steps to reduce oil demand by promoting mass transit and carpooling, I think those are great suggestions. If you have concrete suggestions or things that are working in other states, if you could forward to the Chair's attention, that would be wonderful and that would be very helpful to us as we look at this whole package.

And in part of that, I assume that your institute does not look at, or advocate, increasing refinery business here in New Jersey. Is that my sense?

MR. SLOCUM: Increasing the refining business?

ASSEMBLYMAN O'TOOLE: Yes. Should we create incentives here in New Jersey to allow the refineries to increase their productivity here in New Jersey?

MR. SLOCUM: To be honest, I really don't have a position on it. I do know that the energy bill that was just signed into law by President Bush, on August 8, contains some very expensive subsidies to oil refiners to encourage them to expand their capacity. There is a tax provision there that costs over \$400 million, over the next 10 years, to encourage them to expand their capacity. I think they qualify if they expand their capacity by at least 5 percent, and the refiners can deduct half of the expenses incurred.

ASSEMBLYMAN O'TOOLE: But my question is, do we need additional capacity, either in New Jersey or elsewhere? Do we need new refineries or additional productivity capabilities here in New Jersey?

MR. SLOCUM: I think that the United States does. I would imagine that it would be helpful for New Jersey, as well. I know that there is one new refinery being built outside of Phoenix, Arizona, by a small company called Arizona Clean Fuels, which I think-- And they have successfully obtained the necessary air quality and environmental permits, which I think undercut some of the industry's arguments. I know I've heard from some of the large oil companies that it's too expensive to obtain permits. And what I want to ask is, if a small, independent company in Arizona can build a refinery, why can't the world's largest corporation -- ExxonMobil or any of those -- build one as well?

ASSEMBLYMAN O'TOOLE: Thank you for your time.

Thank you, Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman. Assemblywoman Stender, and then Assemblyman Biondi.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

Mr. Slocum, I want to thank you. Certainly, so far, you have, unfortunately, been confirming my worst suspicions of global market price activity during a time of crisis. But I have a couple of small, technical questions.

You spoke earlier about the amount of profit in a gallon of crude. Now, when we hear crude oil being discussed, it's always by the barrel or talking about the barrel price -- that it's now-- I think it's \$60-some a level. I have two questions: How many gallons does that actually yield out of a barrel, number one? And do you have, also, as a follow-up, do you have any idea of the amount of profits at the retail level? I mean, you talked about the refining level, but when we're thinking -- we're here

because of the price of gasoline to our consumers, and what can we do? And if we're going to talk about some of the impacts, I'm wondering if you have any insight into how that actually is structured?

MR. SLOCUM: Sure. First of all, to answer your question, I believe that there are 42 gallons to a barrel of oil. I was citing some statistics that are compiled by the Energy Information Administration, which is a statistical branch of the United States Department of Energy, and they compiled data on refining profit margins. And so the statistics I was quoting were in cents per gallon, because it is a profit margin on the gallons of product that are refined at the refinery, because you're putting in barrels of crude oil and turning that into gallons of refined product. And so those profit margins, in 1999, were just over 22 cents per gallon, which means that was their profit margin -- 22 cents. And by 2004, that had increased to over 40 cents per gallon. Does that answer your question?

ASSEMBLYWOMAN STENDER: Well, that's part of it. But in 1999, do we know what -- do you remember what the price per barrel was for crude? I mean, I'm just trying to get a percent -- a comparison point in terms of--

MR. SLOCUM: I could not tell you, offhand--

ASSEMBLYWOMAN STENDER: Okay.

MR. SLOCUM: --what the price of a barrel of oil-- Much, much less than it is today.

ASSEMBLYWOMAN STENDER: Yes, that much I think we would all remember.

MR. SLOCUM: Yes.

ASSEMBLYWOMAN STENDER: I think gas was a lot cheaper then, too. And as far as the retail--

MR. SLOCUM: It was probably, maybe around \$25 a barrel, but I'd have to check.

ASSEMBLYWOMAN STENDER: Okay. And then, as far as at the retail level, do you have any insight into how that has changed or moved, or what those returns are for retailers?

MR. SLOCUM: I do not have access to as good statistics on retail numbers as I do for wholesale. Mainly because the retail market has lots of different kinds of players, and it isn't as widely available to a researcher like me. But perhaps, I think there might be other witnesses here from the retail industry, or from the oil industry, that might be able to better comment than me.

ASSEMBLYWOMAN STENDER: Because I'm just wondering if when we were paying \$1.50 a gallon, what was the profit that people were securing from that? And now we're at three, what do we--

MR. SLOCUM: Oh, so you're asking what the profit margin for the retailer is?

ASSEMBLYWOMAN STENDER: A point of comparison, yes.

MR. SLOCUM: I imagine it's probably very low. I don't think that they have a lot of capability to get big margins. You might have isolated incidences of individual retailers being able to take advantage of whatever circumstances is in their neighborhood to get a much bigger margin. But I think they're operating on very small margins.

ASSEMBLYWOMAN STENDER: Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblywoman.

And then the last question, Mr. Slocum, from Assemblyman Chivukula.

ASSEMBLYMAN CHIVUKULA: Thank you, Mr. Chairman.

Mr. Slocum, one of the things that my understanding is, is that the refineries usually come up with the wholesale prices. And the state of Hawaii, they tried putting a cap on the wholesale prices. Would something like that work for New Jersey, given the number of refineries that we have in New Jersey?

MR. SLOCUM: I think that New Jersey is in a stronger position than other states to take some unilateral action that would be more effective, because of the presence of very large refineries in your state. And so I believe that your state would have a stronger capacity to address concerns with pricing with those facilities.

Of course, it would always be better to try to work in concert with your neighboring states or to try to get the Federal Government. I do know that a coalition of northeastern states, which I believe includes New Jersey, recently worked together on climate change policy to deal with emissions from power plants and other industrial point-source emissions, I believe. That was an example -- I think a successful one -- of a region, encompassing multi-states, acting in unison on an important policy matter than can be more effectively engaged when you're dealing with it together. But that said, I think that New Jersey is in a stronger position to act unilaterally since you've got five major refineries here.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

Thank you, Mr. Slocum, for your testimony. If it's possible, and you could remain with us, that would be appreciated, in case there are follow-up questions we'd like to ask you.

MR. SLOCUM: I will remain.

ASSEMBLYMAN WISNIEWSKI: Thank you.

I'd next like to call the Director of the Division of Consumer Affairs, Kimberly Ricketts.

Director, welcome.

KIMBERLY RICKETTS: Thank you.

Chairman Wisniewski and members of the Committee, I've had the opportunity to work with many of you in the past, either in my capacity as Executive Director of the Governor's Task Force on Mental Health, or as Chief of Staff at the Department of Community Affairs. It's great to see so many familiar faces today. Today, I am here to testify in my new capacity as Director of the Division of Consumer Affairs. I've held the position since May, and was officially sworn in by Governor Codey on September 6.

Since Hurricane Katrina hit the southern United States, consumers in New Jersey -- like those in many other parts of the country -- have experienced rapidly rising gas prices and concerns over fair and honest treatment when purchasing gasoline. You've heard from others today on this issue, but I'd like to talk to you from our perspective -- to tell you what the Division of Consumer Affairs has done, and is still doing, to protect consumers.

Investigators from the Division's Office of Weights and Measures, as well as investigators from county and municipal offices of Weights and Measures, have been exercising our statutory enforcement

authority to address these concerns by inspecting stations, both proactively and in response to consumers' complaints, to ensure that the station operators are following the law and that consumers are being treated fairly.

Gas stations are inspected by State, county, and some municipal inspectors once a year to ensure that they are operating properly. The pumps are also inspected in response to consumer complaints. And if problems are found, the pumps are condemned and shut down. Over Labor Day weekend, State, county, and municipal inspectors inspected pumps in response to consumer complaints. And over the Labor Day weekend alone, the State inspectors visited 400 stations and found 100 alleged violations. Some of these alleged violations concern prices being raised more than once in a 24-hour period, and others concerned the actual pump price for gas differing from the posted price on the roadside sign.

I'd like to just take this opportunity to thank those county inspectors who assisted us in Bergen, Camden, Cumberland, Gloucester, Hudson, Monmouth, Middlesex, Passaic, Salem, and Warren counties -- for their time and assistance over the Labor Day weekend.

Our authority to pursue these violations comes from two separate statutes, the Motor Fuels Act and the Consumer Fraud Act. Under the Motor Fuels Act, it is unlawful to change the price of gasoline more than once in a 24-hour period. The Consumer Fraud Act, which among other things prohibits deceptive practices and misrepresentation in the sale of merchandise, requires that the price per gallon at the pump must match the price posted on the roadside sign. Under this authority, we will continue to do everything in our power to help motorists avoid unjustified or prohibited price increases.

I'd like to make one point of clarification. We do not have the authority, under New Jersey's price gouging law, to charge a station or an operator with a violation in these current circumstances. Under the New Jersey law, there must be a declared state of emergency in New Jersey before price gouging -- excuse me, I've been saying it a lot for the last couple of weeks, I should be able to do this -- before price gouging can be charged. Many legislators have requested our assistance with drafting anti-price gouging legislation. And we look forward to working with you on this issue. However, we think this is a very complex subject that requires careful study and discussion before legislation is created, to avoid any unintended consequences.

But there is a change, which if made, would help us do an even better enforcement job should this situation happen again. Penalties need to be increased so that they actually impact a violator's bottom line. Currently, violations of the Motor Fuels Act carry penalties that range from \$50 to \$200. This penalty schedule was part of the original Motor Fuels Act enacted in 1938. Clearly, this needs to be updated. The current structure does very little to deter those unscrupulous operators who want to take extra profits at the consumers' expense. We need your help in changing that. We need stronger penalties so that companies do not consider a violation of this law simply as a manageable cost of doing business in New Jersey. In addition to using the full extent of our enforcement authority under these statutes, we also looked for creative ways to address this situation and protect New Jersey consumers.

You may hear from others testifying today that there are two provisions of the Motor Fuels Act that regulate gasoline pricing that may, as in this recent crisis, appear to conflict.

The first we have already touched on -- the prohibition against changing the price of gasoline more than once in a 24-hour period. The second provision prohibits gas station operators from selling gasoline below net cost. The industry contacted us to express their concern that in a volatile market, when the price of oil was changing quickly, the circumstance would arise that they would be forced to either raise the price of gas more than once in a 24-hour period to avoid selling below costs -- thereby violating one provision -- or selling below cost until they could raise the prices legally -- thereby violating the other provision.

The Division of Consumer Affairs is, by its very definition, an agency dedicated to protecting the rights of consumers. In this instance, when the industry felt that it was being squeezed between the two provisions, we temporarily suspended enforcement of the prohibition against selling below cost. The prohibition is designed to ensure that one company does not underprice its competitors and drive them out of the industry. In this limited circumstance, it was obvious that this was not a concern. So to help retailers resolve this predicament, while also protecting the consumers, we crafted a creative and temporary solution that made sense for all parties involved. We will be closely monitoring prices in the market to determine when enforcement of this provision should resume.

This brings me to another point I want to make here today. I think that while there are some bad actors out there who tried to take advantage of this crisis to make extra money, most gas station operators

tried to do the right thing by consumers, while also trying to stay in business.

We recognize and understand that the operators of the gas stations may not be the ones setting or raising the prices. But our primary jurisdiction is at the pump, and that is where we conduct our inspections to ensure that the rules are being followed. There has been some recent confusion on this point, and I want to make sure our role is clear. We have the responsibility to enforce the Motor Fuels Act, but anything beyond enforcement is handled by the Division of Taxation, as it is their statute. We do not have broad authority to set pricing, nor do we have control over the many factors that may have contributed to the recent swing in prices.

We continue to encourage consumers to contact us at 800-242-5846 to report any suspicious activity or inflated pricing. And we stand ready to work with the Legislature to address this issue today and into the future.

Thank you, again, for the opportunity to testify, and I would welcome any questions you might have.

ASSEMBLYMAN WISNIEWSKI: Director, thank you very much for your testimony. I appreciate the information you've provided to us.

One thing caught my attention, as you concluded your remarks, was that there is a bifurcation enforcement between your agency and the Division of Taxation. And this Committee has run into that in the past when we held our hearings on the illegal commuter vans. We've heard testimony that those vans are regulated by, in part, the Department of Labor, the Department of Community Affairs, Department of

Transportation, and no one entity has total authority. Therefore, enforcement becomes difficult. How would you view legislation that would combine the enforcement, say, within your Division?

MS. RICKETTS: For all of those items you just talked about or just specific to the gas?

ASSEMBLYMAN WISNIEWSKI: Talking about in terms of motor fuels and the Taxation issue with motor fuels, and the price at the pump, and those issues.

MS. RICKETTS: I will tell you that, right now, the way the statute is set up, it specifically outlines the parameters of the enforcement at the pump. And in that aspect, it is, from that perspective, the Office of Weights and Measures, both at the State level, the county, and the municipal. I think that, aside from increasing the penalties so that the penalties really mean something, that inspections and enforcement at the pump -- we have an adequate statute, or adequate language in the statute, to do that at the pump.

Anything beyond how prices are set, I don't know if that actually belongs in the Division of Taxation or a separate area, but there does, I think, need to be additional review of how all of those come together. So that, should we be in another situation like we were recently, that it would be clear who can do what and when.

ASSEMBLYMAN WISNIEWSKI: I appreciate your testimony and your answer. I know you don't want to be testifying today that you want to take somebody else's work away from them, but we think that -- I think, at least, and I probably speak for members of the Committee -- that it seems that you get less efficient enforcement when you have one subject

split among agencies, and I believe that's something that this Committee will look at.

Assemblywoman Stender, then Assemblyman Gibson, and then O'Toole.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.
Good afternoon.

MS. RICKETTS: Hi.

ASSEMBLYWOMAN STENDER: I wanted to ask a couple of follow-up questions on the issue of changing the price within a 24-hour period, because, specifically, I've proposed legislation to change that. I think that we've seen this disconnect in the last few weeks where it was changing on TV, and there was no way that those increased prices could have already gotten to our local gas stations. And yet, those prices were climbing at an alarming rate. And it seems to me that, perhaps, allowing changes consistent with when deliveries are received may make more sense. And I'm wondering if you could speak to that issue a little bit. First of all, if you know the history as to why it's permitted to change every day, and if you have any information about how often the retailers get deliveries, or if there's any connect on that rule that you are aware of?

MS. RICKETTS: What I will say is that as far as my understanding, under the Division of Taxation statute, why you can't sell below net cost and you can only change the price once in a 24-hour period was to maintain a competitive and robust, yet fair, marketplace. That's my understanding of it.

In regards to deliveries and how that relates, I am probably not the best person to ask that. I will tell you that in brief discussions with

industry members, throughout this situation, it's my understanding that approximately -- and again, I would suggest that you clarify with the industry members here today -- that approximately 20 percent of the 3,600, give or take, gas stations, or licensees in the state, receive multiple deliveries in a day. And again, disclaimer, I would clarify with the industry on that.

ASSEMBLYWOMAN STENDER: Thank you.

MS. RICKETTS: Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblywoman.

Assemblyman Gibson.

ASSEMBLYMAN GIBSON: Yes. Thank you, Mr. Chairman.

I think we've already learned that the retailers add just a small part of the problem -- very, very low profit margin. But it is still part of the problem, so I just want to ask a question.

My understanding of the issue why you can't sell below -- you can't offer gasoline as some sort of an incentive to come in and use your convenience store or some other thing. So that's why that law is on the books, as I understand it. But certainly, if the price is going to increase every hour, you suspended the opportunity to keep below the market, and I think that was appropriate.

We have a law that says you can't raise it any different than every 24 hours. Do we have any control over the wholesaler so that they can be in sync with that? Can we have any control of the wholesalers, that they're under the same time standards as the retailers?

MS. RICKETTS: The Division of Consumer Affairs and our enforcement capacity does not have that type of control. It may be something that this group and the Legislature wants to look at.

ASSEMBLYMAN GIBSON: But do you think the Legislature could do that -- New Jersey wholesalers -- they're not wholesalers that are coming in from other states, and things like that?

MS. RICKETTS: I would defer to the attorneys on the Committee as to whether the New Jersey Legislature could actually do that. But I think it's something that should be looked at. And as far as the locations of the wholesalers, whether they're in New Jersey or outside of New Jersey, I think it's a mix, but I would defer to the industry reps that are here today.

ASSEMBLYMAN GIBSON: There may be -- other testimony will come and bring that out.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.
Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you, Chair.
Kim, it's good seeing you again.

MS. RICKETTS: You, too.

ASSEMBLYMAN O'TOOLE: I'm sure that you're doing your professional best trying to keep track of this very difficult situation.

MS. RICKETTS: Thank you.

ASSEMBLYMAN O'TOOLE: My question -- two questions.
First, through the Chair, is how many inspectors do you have working for

you, specifically in Weights and Measures, as opposed to the various county outposts?

MS. RICKETTS: The State actually has 20.

ASSEMBLYMAN O'TOOLE: Is that enough to do your job? I know you relied upon the counties. You cited some of their cooperative natures. Is 20 enough, during this, to do the job you're looking to do today?

MS. RICKETTS: I would tell you that with the current situation that we've just gone through, 20 is not enough. I will tell you that we were creative, and the Division of Consumer Affairs has investigators as well. And where allowable, we brought in additional individuals from our Office of Consumer Protection to assist. But looking at just the 20 State inspectors for this type of situation, no.

ASSEMBLYMAN O'TOOLE: My next question, through the Chair, is that you talked about that you do not have any authority to charge a station or operator with a violation unless, in fact, an emergency is declared by the Governor. Is that correct?

MS. RICKETTS: Correct. That is what's in the statute.

ASSEMBLYMAN O'TOOLE: Has the Acting Governor -- either Codey or Sires -- declared such an emergency?

MS. RICKETTS: Not a specific state of emergency. In New Jersey, there was a state of emergency declared to enact the compact for emergency services between New Jersey and, I think, Mississippi or Louisiana.

ASSEMBLYMAN O'TOOLE: Well, maybe we should petition the Governor to see if they can declare such an emergency. I note the

Attorney General has, in fact, put aside the enforcement of the rule about those people who are charging less than market value. And perhaps there's something we can do today to allow you to free up your hands so you can look at the price gouging. To think that we don't have one on the books that we can use absent an emergency is pretty preposterous. I'm sure my colleagues would talk about the actual enforcement should an emergency be declared. So my question is, is there any vehicle we can use either to ask the Governor for an emergency, or perhaps we can get an opinion from the Attorney General suggesting the way he has bypassed a regulation that we can bypass during this "fuel or oil" emergency?

MS. RICKETTS: In order to suspend the one provision, we actually use prosecutorial discretion to do that. As far as declaring a state of emergency, I'm going to have to defer to the Legislature and your opinion on that. I will say that the states in the South who are impacted by the storms and suffered great loss, they have declared state of emergencies, which would seem rightfully so. But I would defer to the wisdom of this Committee and the Legislature as far as whether or not to petition the Governor.

ASSEMBLYMAN O'TOOLE: Thank you.

MS. RICKETTS: I do think that it is worth looking at additional tools.

ASSEMBLYMAN O'TOOLE: I agree. I agree.

Thank you, Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.
Assemblyman Panter.

ASSEMBLYMAN PANTER: Thank you, Mr. Chairman.

I want to thank you for being here today and also for your help these past few weeks, because I know that many of my colleagues have had the same experience -- that we've called on your office when we started fielding calls from our constituents. And your Department has really been terrifically responsive, and we appreciate that.

MS. RICKETTS: Thank you.

ASSEMBLYMAN PANTER: I gather from what you said that, certainly with penalties of \$50 and \$200, in terms of a violation, under current law it really pays to violate New Jersey's gas pricing statutes. It's profitable, because the fines are so insignificant. You can make more money even if you envision that you'll get fined from the State. And I think that's certainly -- that's something that we need to address. And I'd like to get your input, as time goes on, to find out how stiff those penalties should be to be a genuine deterrent to those sorts of economic decisions.

I did want to ask two very brief questions. I guess one is, I guess you've heard from retailers -- and I'm not trying to put the blame, so to speak, on retailers, because I think we're still trying to find out which piece of the chain is most accountable for prices increasing. But it sounds as if many of them have told you they were stuck between two laws: One law is not being able to raise prices more than once in a 24-hour period. The second is not being able to sell for less than essentially they pay for. I think we would probably find that most of them, in choosing between one or the other, chose the profitable route, and chose to raise prices more than once in a day, rather than sell for less than they pay.

My question is, it sounds as if, and correct me if I'm wrong, your Department is -- I don't want to say they're reactive -- but they go out

when they field calls from people who have complaints from specific stations or pricing in a certain region. You investigated over 400, which I guess is about 10 percent of New Jersey's total stations, and found that 30 of those had pricing violations. So my question is, if we assume that 10 percent of all New Jersey gas stations had violations, just as 10 percent of the narrow group you investigated, is there a way, instead of waiting to always get a complaint or field a complaint, that there can be some kind of affirmative requirement that all these stations give detailed reports on when and by how much they increase their prices? So you can really look at the other 90 percent of New Jersey stations to see if many of them violated the laws in the weeks following Katrina.

MS. RICKETTS: Well, through our State Office of Weights and Measures, as in addition to working collaboratively with the county and the municipal -- some of the larger municipalities have Offices of Weights and Measures, as well -- we do both. We're proactive in that we inspect the gas stations annually. And we also respond to complaints. So we are out there. I will say to you that with approximately 3,600 gas stations, and all total, in the state, we have 85 Weights and Measures inspectors, all total-- And gas stations are not the only responsibility. As I learned when I went to Consumer Affairs, Weights and Measures does everything from calibrate the scales in the grocery store, check to make sure the scanners work appropriately, they calibrate the radar guns for the State Police, they assist in weighing the trucks that travel our highways. There's numerous responsibilities that they have in addition to the gas station inspections. So while we are both proactive and responding to the complaints, with 85 inspectors statewide and the additional responsibilities, I would have to say

that they are doing a very good job with the number of inspectors that we have.

ASSEMBLYMAN PANTER: Thank you very much.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.
Thank you, Director.

Assemblyman Biondi.

ASSEMBLYMAN BIONDI: Thank you, Chairman.
Good morning, Director. Thank you for being here.

MS. RICKETTS: Good morning.

ASSEMBLYMAN BIONDI: A two-part question -- the AG had issued a memo declaring that any station caught or selling fuel below cost should not be penalized. So my question is, are you aware of any companies that were selling fuel below the cost? Did anyone take advantage of that?

MS. RICKETTS: Not to my knowledge. But there's a lot of stations out there, but not to my knowledge.

ASSEMBLYMAN BIONDI: Number two -- the fine for price gouging, which is only during a declared state of emergency: one, would you support the elimination of a state of emergency, (a); and (b), the fine was established in 1938 of \$50 to \$200 -- would you think today reasonable? If there's not legislation in the hopper at this time, I think there should be. I'd be more than happy to co-sponsor with someone. I know if I prime sponsor, it's not going anywhere -- it's just reality. (laughter) But would you think it be reasonable to move that fine? If it was \$50 in 1938, do you think it's reasonable to be \$2,000 to \$5,000 today?

MS. RICKETTS: You asked two questions--

ASSEMBLYMAN BIONDI: Yes, Ma'am.

MS. RICKETTS: --so I will answer them in two parts.

ASSEMBLYMAN BIONDI: Thank you.

MS. RICKETTS: As far as eliminating the state of emergency requirement before we can enforce anti-price gouging laws, I would say, at this point in time, I wouldn't have a yes or no answer before some additional study and focus and discussions were done to ensure that anything that we did was responsible and would not have unintended consequences on the consumer or the marketplace.

Second, as far as the increase in fines, if it pleases you, Assemblyman, through the Chair, I would actually like to -- and we have been discussing this without a finite answer -- we would actually like to go back to my team -- we've put together a gas task force -- and see if we could come up with some type of methodology, so that the numbers we recommend we could support.

ASSEMBLYMAN BIONDI: Good. I just think in any lawbreaking situation the pain should outweigh the pleasure. So if there's going to be price gouging, \$50 doesn't seem to be much of a painkiller, if you will.

MS. RICKETTS: And on that, Assemblyman, I certainly agree with you.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

Seeing no further questions from the Committee, Director, thank you very much for your testimony. If your time permits and you can stick around, we'd certainly appreciate it.

MS. RICKETTS: I will, as long as my schedule allows.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you.

I would next like to call Jim Dieterle, from the AARP.

J I M D I E T E R L E: Good afternoon.

I am Jim Dieterle. I'm the State Director of AARP in New Jersey. As I'm sure, as most of you know, AARP, which used to be called the American Association of Retired Persons, now just AARP, represents more than half of everyone in New Jersey who is 50 and older -- we like to say 50 and better -- as a membership consumer group trying to make a positive difference in their lives. And I appreciate the opportunity to speak to you briefly this morning. I just wanted to hit on a couple of points that may not be particularly evident in some of the testimony you've heard previously.

We're heard a number of statistics here about the petroleum issue, and how New Jersey is eleventh out of 50 states, and how about 20 percent of our homes here heat in oil. There is a connection between the price of gasoline, the price of distilled petroleum, and what is going to happen to -- what has already happened with oil heating prices and also with natural gas and electricity. And so I wanted to make that connection and bring to the top of mind of this Committee, and also we hope to the Legislature as a whole, the fact that there is a impending crisis on its way for New Jersey's citizens, and it's a crisis in home heating costs, utility bill costs, coming this winter.

We know from not only the media reports, but what's already happened with the price of heating oil and what we anticipate what's going

to happen with natural gas and electricity, that there's going to be a real crisis.

About two-thirds of our members are not working. They're living on fixed incomes, and they don't really have the capacity to go out and get another job, a second job, or whatever. Even for those -- a third of our members who are working -- some of them are part-time and really don't have the ability to deal with prices that we've seen go up -- well, for gasoline -- by over 25 percent just recently. These folks still need to drive to the supermarket, need to drive to the doctors, get to the druggist, get their prescriptions, whatever.

But we're further concerned about what's going to happen when they need to continue to heat their homes. Older Americans are particularly vulnerable to rapid increases in energy prices. That's probably because they spend a greater proportion of their disposable household income on heating. A lot of that has to do with health concerns. About one in every four low-income older households spends 19 percent of their income on home heating.

What I wanted to bring to your attention today, and not just to this Committee, but to the entire Legislature, is that there-- And I did hear the declaration earlier that what you're interested in is, what can this Committee do now to help with this situation? Well, I don't have any instant solutions to the gasoline crisis. We did hear how much that is not necessarily in our control here in New Jersey. But there is something that we can do. We can start planning, for now, to try to head off, to try to be proactive on what we anticipate at AARP -- and a number of other consumer groups anticipate the same thing -- will be a real problem, a real

crisis, in terms of the ability to afford not just home heating oil -- as a result of what we've seen recently from Hurricane Katrina -- but also natural gas and electricity.

Back in 1999, there was a significant spike in natural gas prices. I think you saw one of the charts, from Dr. Andrews, show that the profit margins shot up from, roughly, 10 percent to 17 percent at that time. And that price increase is looking to happen again. What happens when utility bills go way up, and the price of natural gas -- this is a pass-through. It's not like the utility companies are making big profits. They're just passing their costs along. When utility bills go up, as we anticipate will be happening -- not to mention the inability of people to pay for their electricity because they've spent their money COD on the oil delivery -- there is a huge increase also in sales tax revenue. Most people don't know that there's a sales tax on utility bills.

Back in 1999, this Legislature took action and passed a law that said, "a portion of the additional revenue to the State from this sales tax," which was not anticipated in balancing the budget -- and I'm sure it wasn't this year; who could predict Hurricane Katrina -- but the additional sales tax revenue, a good portion of that, was directed to a statewide nonprofit called New Jersey Shares, to help the forgotten, middle-income folks who are having an emergency in trying to pay for their heating bills or their electric bills.

Now, I have to share with you that I'm Vice President of the Board of Directors of New Jersey Shares, and have been with that group since it was founded in the late '90s. And it helps, right now, about 10,000 middle-income, not eligible for any kind of government assistance programs

-- about 10,000 New Jersey families every year, pay their electric and gas utility bills when they're faced with a one-time financial crisis. Our Board includes Salvation Army, the Association for Children of New Jersey, Catholic Charities, the CAP Agencies, AARP -- all the major nonprofits, as well as every single electric and gas utility, as well as PNC, Verizon. A whole bunch of folks on this nonprofit Board that simply tries to help the forgotten middle-income folks.

So I wanted to raise for your awareness today, and we'd be happy -- AARP as well as New Jersey Shares -- be happy to provide you with a white paper on this. That one of the things this Legislature can do would be to look at and, hopefully, pass legislation that will provide the wherewithal for New Jersey Shares to help these folks who are paying-- Let's hope the gasoline prices go down, but we know already that the oil heating crisis and the natural gas and electric prices, it looks really, really dark. Right now, New Jersey Shares -- they can't help a single family in the backyard of this Legislature. Mercer County, Essex County -- out of money.

We helped 10,000 families a year, about \$3 million worth of funding, of which \$2 million comes from the escheats that this Legislature helps direct towards New Jersey Shares. So there is ample precedent for the State getting involved with the only statewide nonprofit that helps middle-income folks with one-time emergencies. So I want to bring that to your attention, because we see it coming down the pike. We need to be proactive. AARP supports it. The Board of New Jersey Shares, at its last board meeting, indicated that this was going to be something we're going to have to come to the Legislature with. And while it doesn't directly affect transportation, as seniors, as fixed-income folks are paying these high

gasoline prices, we know what's happening with home heating oil. We see what's going to happen with utility bills. And it's very difficult to have impact on some of these things, but we could make a difference right here in New Jersey and prepare.

Frankly, we're really concerned with what would happen, not only this winter, but after the winter shutoff moratorium goes into remission, back-- I'm sorry, this coming March. What happens is, there are no shutoffs during the winter, thanks to our Board of Public Utilities regulations that say if you can't pay your bills, you just tell the utility that and they'll postpone shutoffs. But then we're concerned with what's going to happen come March 16. So we need to prepare for it now and not have Shares out of money and not being able to help folks.

So thanks a lot for this opportunity. I'd be happy to answer any questions you might have. I know it's a little tangential, but I wanted to take the first opportunity, because we see it happening.

ASSEMBLYMAN WISNIEWSKI: Mr. Dieterle, thank you for your testimony on behalf of AARP. We appreciate it. I think you've raised some very interesting points. Home heating oil prices, the predictions we've all read, is that they're going up. And I know that AARP is looking at -- at least, I know the Colonia Chapter -- is looking at creating some type of cooperative--

MR. DIETERLE: Yes.

ASSEMBLYMAN WISNIEWSKI: --to buy home heating oil. And maybe that's something that can be done on a statewide basis. But we do appreciate your testimony.

Thank you very much.

MR. DIETERLE: You're welcome.

ASSEMBLYMAN WISNIEWSKI: Next, I'd like to call, from the New Jersey Petroleum Council, Jim Benton and John Felmy.

J A M E S B E N T O N: Thank you, Chairman. Good afternoon.

My name is Jim Benton. I'm the Executive Director of the New Jersey Petroleum Council. We're the representatives of the energy industry here in New Jersey, supplying all forms of energy to New Jersey. Our offices are located right here in Trenton.

With me today is the Chief Economist of the American Petroleum Institute, Dr. John Felmy, who is anxiously awaiting some technical assistance to make certain that his presentation materials are available to you. I believe we've previously circulated them to the members of the Committee. We were set up similar to the Professor from Rutgers, but it does appear that we have a bit of technical difficulty.

ASSEMBLYMAN WISNIEWSKI: Did you want to wait a moment? We could call someone else who signed up to testify, while your technological problems get resolved.

J O H N F E L M Y, Ph.D.: That would be good, Mr. Chairman. It's fairly important in terms of the graphics that we're dealing with.

ASSEMBLYMAN WISNIEWSKI: Why don't we do that?

MR. BENTON: We can proceed briefly and, hopefully, the technician will show up in a moment or two, if you'd like.

ASSEMBLYMAN WISNIEWSKI: Do you know what though, we do have quite a few people left to testify. Some of them are going to be not as lengthy or in depth as yours.

MR. BENTON: Okay.

ASSEMBLYMAN WISNIEWSKI: So I would prefer just to do yours all in one segment--

MR. BENTON: Absolutely.

ASSEMBLYMAN WISNIEWSKI: --and you can find your technical person, and we could move forward.

If they're still in the room -- is Bill Dressler and Pat Fiumara available? And Eric DeGesero, Paul Riggins, and Mark Salisbury?

Mr. Dressler and Mr. Fiumara, from the New Jersey Gasoline Retailers.

WILLIAM DRESSLER: Good afternoon, Mr. Chairman.

I'm Bill Dressler. I'm an Executive Director of the New Jersey Gasoline Retailers Association. This is my associate Pat Fiumara. And we'd like to, because of some of the prior testimony we heard and some reservations that you might have as a Committee--

ASSEMBLYMAN WISNIEWSKI: Mr. Dressler, just one second? If everybody here could at least identify themselves, so that when we're going through the transcript, at a later date, everybody knows who everybody is.

Just make sure your red light is illuminated. (referring to PA microphone)

We'll start on the right, my left.

MARK SALISBURY: My name is Mark Salisbury. I'm with Mohawk Oil Company. We're a distributor for Sunoco. I am from Bernardsville, New Jersey.

ASSEMBLYMAN WISNIEWSKI: Thank you.

ERIC DeGESERO: Eric DeGesero, Executive Vice President, Fuel Merchants Association of New Jersey. We represent gasoline distributors who are also in many instances retailers, as well as home heating oil dealers and diesel fuel distributors in the state.

PAUL RIGGINS: My name is Paul Riggins, Riggins Oil Company, located in Vineland, New Jersey. We're a wholesaler, and we have an independent branded chain of service stations and a home heating oil business in the southern part of the state.

MR. DRESSLER: Again, my name is Bill Dressler. I'm the Executive Director of New Jersey Gasoline Retailers Association.

PAT FIUMARA: My name is Pat Fiumara. I'm the Associate Director of New Jersey Gasoline Retailers Association.

ASSEMBLYMAN WISNIEWSKI: Mr. Dressler, continue.

MR. DRESSLER: As I stated earlier, there seemed to be some concerns and some misunderstandings about how the retail business operates, and I would like to make some additions to your understandings of exactly what happens.

When an individual goes into the retail gasoline business, he affiliates himself with a major oil company, or a jobber. And that's how he gets his supply. Now, that supply is given to him through a contract, and he doesn't have the option of going shopping like you would do a supermarket. He has no options whatever as far as his supply is concerned. Those prices that he pays are dictated by the supplier, in most instances a major oil company. And even the jobbers -- if you're dealing through a jobber, the major oil company gives him a price. He, in turn, acts as a middleman and stipulates a price that the individual has to pay.

Now, there's a lot of things that people -- we're accused of price gouging. Everybody in this room is not saying you were price gouged, but you're certainly investigating as to whether or not that occurs. The problem is that no one understands exactly how our business operates. When we're called price gougers -- what's the definition of a price gouger? Does anyone have a definition of price gouging? My definition is, that if you elevate your profitability from what it was prior to a crisis situation, then you're a price gouger. But if you're not doing that, then you're not a price gouger. And you have to understand that in this business, when prices are given to you two and three times a day and they're increased, then certainly you should have the ability to do something about that.

Now, I'm not saying that we should have the ability to change prices more than once in 24 hours. But if we don't have that ability, then the major oil companies, who are our suppliers, shouldn't have that ability either. If it's changed once in 24 hours, it should be for anybody and everybody -- level the playing field.

Secondly, as far as being able to sell below cost, well, that's kind of an idiotic situation. Let me just understand -- make you understand that this was an arbitrary situation. We had no input whatever into whether or not they should relax those rules -- 5662A or 5662B. We were advised that that was going to happen and that's the way it was. When you hear testimony that we were part of that reaction, that's not factual.

The other thing is, if we're doing business and if those prices are raised to us, and if you don't have the ability to raise your price because you have additional costs coming forth, then you should react in some other way. What would be the normal reaction? If you can't sell it for a profit

and if you can't change it to be profitable, I guess the best operation would be for you to shut down the station until the next day. But people aren't doing that. It's easy to accept a two or three cent differential and swallow that. But when it's 50, and 60, and 70 cents, over a 24-hour period, you simply can't recover those costs by not being capable of raising your prices to relate to your costs that are going to be incurred in the future, in order to buy that new gasoline.

The price of gasoline per load has increased over \$6,000 over what it was three or four weeks ago. Now, where does a guy get \$6,000, or anybody, get \$6,000 in a mom and pop operation if he's not capable of raising his prices? Replacement costs are a factor.

And another thing that you have to look at is, in the operation of a gasoline station, 90 percent of the sales today are regular. There's no -- very little sales in the premium product. In addition to that, the fact of the matter is that the costs of selling gasoline are very seriously escalated. And not just because your prices are increasing, but because your costs are increasing. If you're selling gasoline and 90 percent of your business is on a credit card, and you're being charged for processing fees on that credit card -- a percentage, and it's about 2.5 to 3 percent -- at \$1 a gallon, it's a 3 cent number. At an escalation to \$3 and \$3.25, the margin escalates to a point where it's almost 10 cents a gallon for processing a credit card alone.

Now, there's very few people in this market, in this retail business that are making 10 cents a gallon. You've heard testimony that the retailer operates on a very small margin. Well, his average margin is anywhere from 7 to 10 cents. And if he's on a 10 cent number, he's very high, as far as profit margin is concerned. So look at profitability, and it's

almost nonexistent. And as the prices escalate, his profitability diminishes to a point where he's operating at a zero profit.

Now remember, you're not looking at gross. You're looking at net. A guy could say, "Well, you're making 20 cents a gallon." Well, that 20 cents a gallon is not really what he's netting. He's netting a very small margin as to what -- comparison as to what the escalation has been, with a price he's charging on the pump. So the guy at the pump, he's the one who takes all the brunt of the action. He's always the one, "You're gouging this, you're getting rich, you're doing the other thing." That's not factual, not factual at all.

And I'd like to take each and every one of you, if I may, one day and just put you in a service station to see how it's operated. And see that the reality of life is that these people are not making money. And the mom and pop is being abused to the point where we have diminished from 10,000 gasoline stations, 20 years ago, to 3,600 today.

I'd be glad to answer any questions for you, and I have testimony by the other people in the room.

Pat, do you have something you want to say?

MR. FIUMARA: Mr. Chairman?

ASSEMBLYMAN WISNIEWSKI: Sir, do you have any additional testimony?

MR. FIUMARA: Yes. I'd like to add one thing.

ASSEMBLYMAN WISNIEWSKI: Is your red light on?
(referring to PA microphone)

MR. FIUMARA: Yes, it is.

Director Ricketts mentioned the fact that she got a lot of calls to her office. We also got a lot of calls, through our office, about the price of gasoline -- people wanting to know why there was such a disparity between different brands and different stations. And one of the points I'd like to address is the disparity between the same brand -- sometimes only a couple of blocks away, eight or 10 blocks away, and the price could vary as much as 10 or 12 cents. Well, there's something that was alluded to earlier. I don't know if anybody paid attention to it, but it's called zone pricing. The oil companies have a method of charging whatever they want to whatever dealer they want.

Zone pricing started out as something that was for one area. It was a transportation -- it was put in because of transportation. If you had to transport the gas another hundred miles, you got an extra penny or so per gallon for the gasoline. The oil companies found it to be a loophole. They have zones as small as one now. Every dealer is in a different zone. They might have one or two, but usually it's each dealer is in a different zone. So they can take their dealer tank wagon prices and change them. And you can have dealers only a few blocks apart with the same brand gasoline paying as much as 10 cents more. So the dealer that's paying the 10 cents more is accused of price gouging, because all the customer can see is it's the same brand gasoline, it's a few blocks away, and they must be paying the same price.

Well, this isn't true. Because we have a bill in New Jersey, and in the bill it has four words that say, "Except to meet competition." Assemblyman Brammick introduced a bill, A-621, that hopefully would correct that. The oil company, instead of using the *except to meet competition*

in a means of keeping up with their competition down the street, they use that as a loophole to actually raise other dealers' prices. And we're hoping that if that bill is passed, that the dealers would play on a level playing field. That everybody would have to pay the same price for gasoline that comes out of the same rack. And that would also go beyond brands, because a lot of brands come out of the same rack. And we believe that this would be a very beneficial thing to the consumer, that they would see what the prices are.

Thank you.

ASSEMBLYWOMAN STENDER: Thank you.

Anyway, the Chairman has asked that we take the testimony from everybody present before we open up for questions.

So, Eric, please.

MR. DeGESERO: Thank you, Madam Chair.

Eric DeGesero.

Pat and Bill raise some interesting questions. And just before I get into my testimony, you have to understand that how gasoline is distributed in New Jersey to us, as consumers, it's transparent. If we know we are a fan of a particular brand, or what have you, you could have six branded stations that are owned and operated in a number of different manners. And that-- Just to understand the players, you have refiners -- that we've heard some talk about before today. In some cases, the refiners are integrated; i.e., they own access to crude. In other cases, such as what was mentioned regarding Valero -- who is now the largest refiner in America, who goes out and buys crude every day -- they don't have access to crude. So there's differences within refiners.

Then there's wholesalers. There are brands of gasoline that buy their product from refiners, and then they put their own -- they additize it, or detergentize it, to their own specifications. And so therefore, they have a brand -- they're a wholesale brand -- but they don't own a refinery. They're buying it; they're having somebody else refine it for them.

Then you have us, as distributors, which in some cases we own a location that we operate ourselves. So we're not only a distributor, we're a retailer. In some instances, we own a location, and we have a retailer operate it; and in some instances, we supply a station that a retailer owns -- he owns the property and the business -- and we're simply a supplier, as being a branded distributor. So those are the different players.

There's been a lot talked about, about the rapid increase in the price of crude oil from, roughly, \$24 a barrel, in 2002, to 65 today. And the gentleman from Public Citizen raised a very interesting point, as it relates to the over-the-counter derivatives market. I have testimony in here relative to the New York Mercantile Exchange. In my handout, I included a chart of what the Dow Jones Industrial Average has done from mid-'02 to today. And you'll notice it's a big V. It was about 10,500, down to 7,500, back up to 10,600, or what have you -- what it closed out last night.

You have noticed that in that comparable period of time you've had a couple of things happen from a market perspective. The NASDAQ, which was going to be our stock market for the next hundred years, the tech bubble burst, so all of the money-- And you'll remember what happened there. The money kept moving and momentum begot momentum, and prices moved simply because prices moved. There was no, necessarily, rational reason for it, but people were chasing-- It was a momentum play.

If you look at what's happened in the energies marketplace -- and that since the burst of the NASDAQ, in 2000, followed by the deregulation of the over-the-counters market, you've seen nothing but a steady increase in play in the Mercantile Exchange, or in energies, generally. It isn't just the Mercantile Exchange.

And we have asked the members of our Congressional delegation of New Jersey -- I have included a letter that they sent to the Government Accountability Office -- to ask some very basic questions. Are the fundamentals of transparency in the energy markets there? Are the people -- are the regulators doing their job that they should be, regulating; or are the regulators taking advice from the same investment bankers that are the ones that are causing these moves in the marketplace? I've also included some statements that's just a random sampling of statements over the past number of months to show how talk, or chatter, or fear of bad news, whether or not the bad news ever really materializes, that fear of bad news becomes its own self-fulfilling prophecy. And where that's important-- Now, whether part of it--

World demand for crude oil is increasing by 2 million barrels a day over the past few years. And certainly you have China, certainly you have U.S. demand, certainly you have all those other reasons, but you also have speculative interests in how you differentiate. What part of that is fundamental and what part is speculative? Respectfully, it doesn't matter. Because the price that these gentlemen here pay every night, that they then, in turn, supply their service stations with, goes up as a result of it. And I would urge that the Legislature maybe pass a resolution urging the Government Accountability Office to continue that investigation.

There was a very famous quote last week that some commodities traders made enough money to take off the rest of the year. Let's substitute the words *gas station owners*. We'd have a perp walk, with the county prosecutor and every TV camera out there if that same comment was made about a man or a woman that owns a gas station. Yet it can happen with impunity at a much higher level, at a much more sophisticated level of economics. But us, the corner gas station owner, it's all right for us to be rapped on the knuckles.

There was a lot that was talked about, about the major oil companies in terms of their presence in the market as it relates to their refining and exploration, as opposed to the retail. Most of our experience with major oil companies, as consumers, is their retail brand. But as you have seen today, from a number of different presenters, that the money for the major oil companies isn't made at the retail end. It's made at the refining and the exploration end.

So with that as some quick background, when we started on the morning of Monday, October (*sic*) 29 -- actually that morning started the previous Sunday night, because there is what's known as access or after-hours tradings on the commodities exchange. It's kind of like the pregame, if you will, and it takes into account news that might have come out over the weekend. It takes account -- what Singapore, or London, or traders that are trading on the American Exchange, are giving information from around the world. That, as a result of the fear about the hurricane, the price at one point that was up 22 cents, finished early in the morning up at about 13 cents. And that's when the chain of events started to unfold, because-- We as distributors normally get a price change from our suppliers any time

between the close of business -- 6:00. We normally get the price change between 4:00 and 6:00, and that price change for the next day's rack price takes effect any time between 6:00 and midnight. That's the way it normally -- that it always works, except when there is the issue that we encountered last week.

So when we have one member whose supplier changed their price three times for 18 cents on one day, August 29, and four changes for a total of 43 cents on the 30th-- We had another member who had prices to him increased by 11 cents, at 2:00 p.m., on the 29th. On the 30th, the price increased 15 cents at 1:00 p.m. Then at 12:01 a.m. on the 31st, the price increased 13 cents; at 1:00 on the 31st, the price increased 15 cents; and at 6:00 on the 31st, the third price change in 24 hours from this individual supplier was up 20 cents -- for a total one-day price increase of 48 cents, spread across three changes in a 24-hour period. The next price change that distributor received was a 10 cent decrease a couple of days later.

Those suppliers that are suppliers that did not change their price because of the market condition put us on such-- You can allocate in a couple of ways. You can allocate by pricing, which is what you heard the professor discuss, or you can say, "You can only get so much gasoline," which is what we were told. And in fairness to the major oil companies, that's a rational way, if they didn't have the product, that's as fair a way as any to allocate. So if you need to supply 10 gas stations, either you get enough gasoline to supply eight-and-a-half, or you give each station enough to keep them all going, but they all get a little less than they need.

So during the course of that week, we're receiving multiple price changes during the day. And where this is important, the issue of replacement cost pricing is something that is very fundamental to economics. It's fundamental to businesses that operate with inventory. It's something that since the gas station was invented -- to be able to pay for your next load of gasoline is a common practice, a common economic practice. Because if you are caught short, then you're going to have a very significant loss in terms of the product that you're bringing in. This practice of inventory management has never been a concern. We've never had a legislative hearing on replacement cost pricing until it ran headfirst into the no price change once every 24 hours, at the same time we were getting 48 cents worth of change in 24 hours.

So if you're anticipating your replacement costs to be up by 10 cents for your next delivery of 8,500 gallons, and it's really up 40 cents, well, then you're 30 cents short on 8,500 gallons of fuel or you're losing \$2,550 on that delivery. We believe that it's patently unfair that those of us at the bottom of the gasoline distribution chain are asked to shoulder a burden that's not required of anyone else in the distribution chain.

And if the Legislature is going to prohibit allowing for a replacement cost pricing, we urge -- which we urge that you don't do -- but we respectfully urge that it be done for not just the petroleum industry, but for all industry in the state. If it's a bad practice to operate in that manner, then it should be a bad practice, period, regardless if you're selling widgets or bagels or gasoline. And that the way that it is now, it's the smallest aspect of one industry that's held responsible.

A lot of talk about price gouging today and over the past couple of weeks -- the fact that the definition of it, under Title 2C, is that when the Governor declares a state of emergency, you can't make more than 10 percent that you were making prior to the declaration of the state of emergency, excluding price increases from your suppliers. So if you take the existing statute that there is on price gouging -- that the Legislature, I think within the past couple of years, has amended -- it specifically addresses the issue of being allowed to move the price if you get more of a price move from your supplier.

The issue of confusing changing the price once in 24 hours, which is clearly illegal -- to the best of my knowledge, I won't say there's about 3,000, give or take gas stations. Four hundred were inspected, 100 were fined. To the best of my knowledge, no FMA member has been fined. And in some instances, our members shut their station, rather than move it once in 24 hours and be in violation of the statute. Because to move more than once in 24 hours is against the law. But to not move, when you get a 24 cent increase that was unanticipated, is against good business practice and common sense.

Mr. Dressler talked about much of what goes into the cost at the gasoline station level. The State of New Jersey, the tax rate is fixed no matter what the gallon is, what the price per gallon is. The State of New Jersey is collecting 14.5 cents on every gallon of gasoline that's sold. The credit card companies are making their 8 percent. The commodities traders can take the rest of the year off. The crack spreads for the major oil companies are phenomenal. And yet, we're the ones accused of price gouging. We're the bottom of the barrel -- to pardon the pun -- but we're

the one that all the public heat is directed at. And that's understandable, because we are the most visible presence and we are the point of interaction between the public and the petroleum industry.

But to use an analogy, we aren't much different from a consumer, except for the fact that our storage tank is bigger. A car's got a 20-, 30-gallon tank. We have a 10,000-gallon -- a couple 10,000-gallon tanks. And the money comes out of our bank account to the major oil companies much faster than it does the consumers.

Dick Blumenthal, the Attorney General in Connecticut, was quoted last week as saying, "Many retailers have been forced to serve as collection agencies for big oil as skyrocketing prices squeeze them, as well as consumers." So the Attorney General in Connecticut has recognized the plight that we're in.

On average, gasoline marketing in New Jersey is highly competitive in that we're in a slump right now. And if somebody is in the majors and is doing pretty well and has a slump, well, you don't look at the slump period, you look at the overall average and that we would -- whether it's the wholesale price caps or the replacement cost pricing -- we would urge that the Legislature look at more fundamental issues of supply, what we could do to encourage refinery and terminal expansion in New Jersey, what we need--

We've lost a lot of service stations over the past number of years, which has hurt competition. Title 56 needs to be revisited, which Mr. Riggins is going to say a few words about. And we certainly need the Legislature's support in asking for a thorough and complete investigation of the commodities market. Because when you have the kind of plays when--

There's a statistic out there that I'm trying to get the source of it verified -- that one barrel of oil that's physically taken delivery of, there's 570-- That barrel of oil is traded 570 times for the one actual barrel that has delivery taken on. So you can look at the intensive volume that there is on the commodities market, and that most of the contracts that are traded, by delivery, is never taken on.

ASSEMBLYMAN WISNIEWSKI: Eric?

MR. DeGESERO: Yes, sir. Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: I want to just say we appreciate your testimony.

The gentleman with you, Mr. Salisbury or Mr. Riggins, do you have anything to add?

MR. RIGGINS: Yes.

ASSEMBLYMAN WISNIEWSKI: You can just sit in the same seat.

MR. RIGGINS: No, because my microphone doesn't work. (referring to PA microphone)

ASSEMBLYMAN WISNIEWSKI: Oh.

MR. RIGGINS: I wanted to talk about what really keeps the price down in New Jersey. I'm a wholesaler and a retailer. The thing that keeps price down is competition.

Mr. Chairman, you stated at the beginning how we've had the lowest costs, nationwide.

ASSEMBLYMAN WISNIEWSKI: Post price.

MR. RIGGINS: Historically.

And when you think about that-- We do have low taxes, but we also have a very high labor cost, because every gallon of gas that goes in your car, I have to pay somebody to pump that gas. So one offsets the other.

It is very important for us to protect competition. And a company like mine, who is out in the market-- Every day we're shopping gasoline prices, not from one supplier as Mr. Dressler was pointing out, but we shop from various suppliers. And we find the best prices, and we pass them on to our retailers, who pass them on to the consumers. We've been doing this for years, and we've been doing a great job. And that's why prices are low.

It is so, so important for us to protect competition. For years now, I've been going around, along with my peers, to legislators both on the State level and on the Federal level, saying that, "Hey, guys. Competition on the wholesale level is disappearing. Our suppliers are disappearing. They're merging, they're buying terminals, they're buying refineries. And we have less and less places to go to shop for these prices." That's a real problem. We go to the legislators, and we are just falling on deaf ears. We have found no interest from both Federal and on the State level to address this situation.

On the retail level-- I was very concerned to hear Mr. O'Toole's comments about rescinding the below-cost sales provision. Mr. Andrews, the first speaker, was referring to Standard Oil, back in 1911. They were able to-- Mr. Rockefeller was able to stabilize price because he used predatory pricing, and he eliminated competition, and just controlled the price and set it at whatever he wanted to.

Now, if we eliminate the below-cost selling provision as part of this Title 56, what's going to happen is, you're going to lose guys like me who have, for years, helped keep that price down. And the reason is, the hyper markets are going to come in with their billions of dollars, they're going to open up a massive facility, they're going to price so low that I will never be able to compete with them, I'll never be able to pay a mortgage payment, I'll never be able to pay my labor, and you're going to lose me. And it's going to happen one at a time, one by one, and the competition is going to go away. And then what do you have? You have very few wholesale suppliers on the one level, and you've got very few retail players on the lower level. What kind of pricing do you think you're going to have then? They're just going to have control of the market.

You complain about the little piece that we distributors and retailers make now. We're protecting the consumer. We're the guys that are protecting the consumer. And you're accusing us of gouging the consumer.

ASSEMBLYMAN WISNIEWSKI: Actually, I think we're accusing everybody, not just you.

MR. RIGGINS: Well, I've read the newspapers, and I've got a stack of them on my desk. And I'm a little upset at what distributors like myself and retailers like myself are accused of.

So my hope is that when you look at the changes you want to make that, above all else, you will look at protecting competition and making it healthy, and that you will include us in the discussion so we can give you our experience, and we can come up with a better, fair law to protect the consumer.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you. That's why you're here. And, certainly, this is not the last day we'll be working on this issue.

Mr. Riggins.

MR. SALISBURY: That was Mr. Riggins.

ASSEMBLYMAN WISNIEWSKI: Mr. Salisbury.

MR. SALISBURY: Mr. Salisbury.

I'm here to certainly answer questions.

We are at the end of the tail on the dog. We have a small business, three employees in my office, and about a dozen out pumping gas in the field. We supply fuel to 13 service stations in the Morris, Somerset, and Hunterdon County area. And we were riding a tiger starting on Monday, August 29. And we're still very uncertain about where the market is going.

I know that there are plenty angered out there about price changes. But we were really in a hurricane of our own during that period of time. Prices were increasing hourly. We have a little computer like this one, and we watched that New York Mercantile Exchange, and it was going through the roof. There was no real guidance on what the price -- the right price of gas was. We can only raise it once a day. At 7:00 in the morning, I would get on the phone with my field guys, and we would take a guess at what the right price was that day. And if we priced it too high, our customers cursed us, and rightfully so. If we priced it too low, we generally had a line of traffic out into the street that caused real safety problems. And we would run out of gas at that one location pretty promptly because

we don't have large storage. And we were prevented from replacing our gas. We were on ration.

So we had just five days of confusion. And it would have been a welcome intervention had the Governor declared a state of emergency, because in a way, that's what we had. And our market is not separate from Louisiana. It's all connected. It's connected by pipeline, it's connected by barge. We refine gasoline here, and we send it up to Maine, where there are no refineries. We send it to New York, we send it to Long Island. It's a completely integrated industry.

The first testimony you heard, from Dr. Andrews was, I thought, probably the best synopsis of where we've been, as an industry. And some of the recommendations he gave you, I hope you'll listen to very carefully, because we have both the demand problem-- We have given the consumer all the ammunition he needs to buy low-efficiency vehicles. We've told them they're safer. We've not done anything to discourage him from purchasing them. General Motors makes more money on a sport utility vehicle than on any efficient car. And so all the signals have been: use more gasoline. And on the supply side, all the signals have been, "Don't even think about building a new refinery. You're not going to-- You're just not going to do it."

I second -- and just to conclude.

If there's one thing that you've heard today -- and you'll hear some more, I'm sure-- I would say that the Hippocratic oath is a thing that you all need to remember. Above all, do no harm.

ASSEMBLYMAN WISNIEWSKI: Thank you very much for your testimony. And I think that is something that we're all mindful of.

We realize that you are the tail of the dog. Our suspicion is, however, that the dog has fleas. And we want to find out how to stop it.

I know some of my colleagues here have very brief questions, because we have a lot of testimony left.

Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

While I've never worked in a gas station, I've worked in retail. And my family has been in the retail business for 25 years. And the thing I don't understand is going back to this pricing piece. In retail, my experience always was, you paid a dollar for a cup, you figured out your cost, you sold it for \$1.50 or \$2, or whatever you needed to mark it up to to cover your cost and make your profit. And if you bought a hundred cups, when you sold that hundred cups, now you bought the next batch of cups. And based on that pricing, that's what you sold it at.

But what I hear you saying is that you bought your cup-- You've got a tank of gas in the ground that you paid one price for, and before it's gone, you've raised your price. But yet you already have profit and cost built in to the price that you paid. And I think that's part of where my suspicions come, in terms of what we're seeing.

I don't object to the fact that you've had all these fluctuations and that you have to raise your prices accordingly. What I resent, as a consumer, is the suspicion that you paid a dollar for gas that you -- that before you replace it, you're now charging me at the new replacement cost. And I would like you to speak to that, because I don't understand that at all.

MR. DRESSLER: Let me explain to you exactly what the oil companies are doing. Exactly what you're saying that we're doing they're doing, only on a much bigger basis. The oil company -- if they sell us the gasoline--

Let's go back a little bit in time, maybe a week or two, when prices escalated \$.53 overnight. That gasoline that they were selling us for \$.53 more than they did the prior day wasn't manufactured in the morning and then sold in the afternoon. It was manufactured months ago, and it was in storage. This is the way this business operates. It's operated this way for eternity. If you purchase a product, and if you sell it, and if you can't change your price to compete with what the additional costs are going to be, you're not going to have the money to replace that gasoline.

Now, the same thing with your cups. You're buying a minimum of 25, or 35, or 45, maybe a gross of cups as a retailer. And you have a margin of profit. But you have more than one product to sell, as a retailer. You also have paper plates, you have spoons, you have whatever else you're merchandising. We have one product, gasoline -- nothing else. We don't own convenience stores, like-- The majority of our people don't own convenience stores. We have a small minority of convenience store operators. So our main business is gas and oil. And if we don't raise the price in order to -- for replacement costs, we're out of business. Our margins of profits are eaten up by our costs. Ten cents to process our credit cards -- and we're not making \$.10 a gallon.

ASSEMBLYWOMAN STENDER: I understand that. But I don't feel that you're still really answering my question, which is, if you've got gasoline in the ground that you've paid a dollar for, and you're pricing it

at whatever the margin is -- \$1.50. But yet, before that gasoline is gone, you're now selling it at \$3.00 -- to me that looks like price gouging. And I don't feel that I'm getting the answers that really adequately explain why that wouldn't be so.

I understand-- I mean, you've got your profit built into the price of the gasoline that you already have on hand that you're already selling. And this is-- In a capitalistic society, that's what it's all about. But increasing it based on what your future price is, to me, sounds like price gouging. And that's where I don't think I'm getting an answer.

MR. RIGGINS: Let me take one little shot at it.

MR. DRESSLER: Well, let me answer that question.

First of all, you operate your business, or operated your business, or your family operated your business on a percentage. Am I right?

ASSEMBLYWOMAN STENDER: Well, yes. You pay X , and you sell at Y .

MR. DRESSLER: What you pay, you mark up the percentage. We don't operate that way. We operate on cents per gallon. If you would allow-- If the industry changed its philosophy, and if we were able to operate on a percentage basis the same as everybody else does, without being called *extreme profit makers*, that would compensate. As the price went up, my profits would escalate to take care of those added costs. But we don't have that ability, not when you're working on cents per gallon. So your business and my business is totally different.

The fact of the matter is, I don't have the ability to make money to compensate for my additional costs. I have to do it in another fashion. And that's the way this business runs.

ASSEMBLYWOMAN STENDER: I don't feel you've answered my question, but thank you.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Burzichelli, and then Assemblyman Panter.

ASSEMBLYMAN BURZICHELLI: If I may jump in to continue that--

ASSEMBLYMAN WISNIEWSKI: Just briefly, though. We have a lot of people waiting.

ASSEMBLYMAN BURZICHELLI: Yes, certainly.

Do I understand-- Am I understanding -- in the business you operate, that you pay for the delivery when you get the delivery. So you're always working -- it's cash, whether that cash is that day or that cash is in a couple of days.

Mr. Riggins, you deliver 8,000 gallons to the gas station off Route 55. When you deliver it on Tuesday, when do you get paid by that retailer?

MR. RIGGINS: I'll just give you a little example. Before the prices changed, say you were making-- A load of gas was--

ASSEMBLYMAN WISNIEWSKI: Wait. I think he asked a very specific question. You deliver gasoline on Day X, X-thousands of gallons, when do you get paid?

MR. DRESSLER: The next day.

MR. RIGGINS: When does the retailer pay me?

ASSEMBLYMAN BURZICHELLI: Yes.

ASSEMBLYMAN WISNIEWSKI: Yes.

MR. RIGGINS: Oftentimes, that day, or the very next day, or two days.

ASSEMBLYMAN BURZICHELLI: That's an important part of the equation.

MR. RIGGINS: Sure it is.

ASSEMBLYMAN BURZICHELLI: The reason that's important is because--

MR. RIGGINS: And they've got to have the cash to pay for it.

ASSEMBLYMAN BURZICHELLI: Because Assemblywoman Stender's question is what many people asked: Why does the gasoline inventory you have end up being sold at a higher rate immediately? And you're telling us the reason is because the replacement shipment coming in has got to be paid in advance of that shipment being sold. So you have to find the money somewhere to pay the difference between the cost of the inventory and what you're going to sell.

MR. RIGGINS: That's right. And when you're working on these little, itty bitty margins, where are you going to come up with \$8,000 all of the sudden -- in, like, a day?

ASSEMBLYMAN BURZICHELLI: Now, there's no-- Is there any consideration -- and, again, I guess it's just unique to the business -- there are not relationships with people that finance an inventory that deletes so quickly. So there's not a relationship with your bank, there's not that sort of thing that let's you then pay for the additional new inventory off of the profits and the cash flow off of that inventory when it's sold. You

are stranded in the relationship with the retailer between you as the distributor. And the retail only allows you to have the payment done within that 24 hour or 48 hour period, whatever the relationship is. There is no-- You don't buy it-- It's not sold on time. You don't get to pay-- You're always working behind.

MR. RIGGINS: Two things: The most you could ever get from, like, a supplier would be 10 days. With the prices at the level they're at, I'm paying for-- I, as a wholesaler, am paying for stuff in two or three days, or advanced paying just to be able to pick it up, because my credit lines are all maxed out because of the price.

And I am a wholesaler. These guys-- They don't have any money. They live hand to mouth. So if that load goes in, that load has got to be paid for. And at \$25,000 a load, I'm not going to give the guy three loads of gasoline and hope that I get paid for it. That's \$75,000. If he decides, "Well, I don't want to do that," I'm out \$75,000. That's a lot of money. It just doesn't work.

ASSEMBLYMAN BURZICHELLI: Mr. Chairman, I've had a lot of time you've allowed me. I have more questions, but I'd like to defer to Assemblyman Panter, and then consider me as we move along.

ASSEMBLYMAN WISNIEWSKI: Sure. Thank you.

Assemblyman Panter.

ASSEMBLYMAN PANTER: Thank you. And I will be very brief, as well.

I think the subject that Assemblywoman Stender and Assemblyman Burzichelli raised is certainly one that I'd like to get into in

some more detail, as well. But I know we have a number of other witnesses coming up.

I guess if I could just ask two very simple questions-- Perhaps the same question to you, Mr. Dressler, and then to Mr. DeGesero, as well.

I guess what you're telling me -- because I think that you and I see eye to eye in the way that we think intuitively about price gouging and what price gouging means. You're telling us -- because your definition of price gouging would be increasing your profits, or increasing your profit margin over a period, as we've experienced in the last two weeks, compared to what it normally is-- So the 3,600 stations, or thereabouts, that you represent all find that they have not increased profits during the last two weeks. And that the 30-plus percent price increase, we're going to find was cent-for-cent, the same increase that you purchase your gas from wholesalers, like Mr. DeGesero and his persons--

In other words, if every one of your stations -- if they went \$.10, \$.50, \$1.00, those mirrored, to the cent, the increase in price as you were buying from your wholesalers. Is that correct?

MR. DRESSLER: Yes. It's just a pass-through. Absolutely.

ASSEMBLYMAN PANTER: Okay.

So, Mr. DeGesero, I would ask the exact same question.

MR. DeGESERO: Yes.

ASSEMBLYMAN PANTER: So there will be no increases in profits among your two tiers on the ladder, which-- So each of you will effectively point us to the oil companies and the refiners, who we're going to speak with next, as to why those prices went up. You're saying it was a sheer pass-through right to the gas tank.

MR. DRESSLER: This isn't working. (referring to PA microphone)

But I can tell you that in most--

ASSEMBLYMAN WISNIEWSKI: Try it again.

MR. DRESSLER: In most instances, the profit margin would diminish because of the additional costs that you have no way to compensate for. So, basically, what you're saying is factual, except that your margin of profit didn't remain at \$.10, it actually went down, because your increased costs for processing the credit cards has eaten that up.

ASSEMBLYMAN PANTER: But it hasn't gone up.

MR. DRESSLER: It has not gone up.

ASSEMBLYMAN PANTER: Thank you very much.

MR. SALISBURY: I'll say this, we were facing very difficult decisions. As I said, there was a cloud of uncertainty over whether we would get fuel, what the price was going to be the next day.

So we maintained a fixed margin on our pass-through business. But as I said, where we operated the location ourselves, we took a stab at a price, the price that we thought would beat competition and not run us out of fuel before 10:00 in the morning. So, actually, some of our locations we had diminished margins because we took the wrong guess and we sold out at a lower profit. Some of our locations we had slightly better margins. But, overall -- over this 10-day period, our margin is stable and was not, at all-- But if you looked at one location, we might -- among one day had a margin that was higher than it was the day before. And the next day it was probably lower than it could have been. But we observed the 24-hour rule to the letter, including a price where we set too low, and I had to physically

go to the location myself and assist the attendant to pump gas over Labor Day weekend, because he had a line of cars out into Route 24 in Chester, New Jersey.

ASSEMBLYMAN PANTER: The only thing--
Mr. Chairman, I'm sorry. I'll move on quickly.

ASSEMBLYMAN WISNIEWSKI: Sure.

ASSEMBLYMAN PANTER: The only thing that I guess I would point out, that I'm thinking about-- Maybe you can help us think about this as time goes on. There obviously isn't much -- there's a difference between profit and profit margin. If you kept your profit margins constant-- Let's say your profit margin was 10 percent, that would be \$.20 if you were selling it at \$2.00. But it would be \$.35 if you were selling at \$3.50. So your aggregate profit would be more, even if your margins were constant, because the price of gas is rising so high.

So it might be that you have made a greater profit, in terms of dollars, but you're saying your profit margins would have been steady with what they were before. It's just the product is more expensive.

MR. SALISBURY: In fact, our profit margin, as a percentage, went down.

ASSEMBLYMAN PANTER: Okay. Thank you.

MR. SALISBURY: And I'll echo Mr. Dressler's comments. The cost of marketing gasoline, thanks to credit card fees which are a percentage -- 3 percent or more -- has gone through the roof this year. And we are finding people who no longer can stay in the business because of credit card fees and the other high cost to do business in New Jersey.

MR. DeGESERO: And as the price is increased, people -- there's a greater utilization of credit cards to pay for your gasoline, because folks don't generally carry \$80 -- if you're filling up a big SUV -- in their wallet to pay for it. So they're paying for it on credit cards.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Bodine has a question, and then we have Assemblyman Johnson.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

I would like to ask Mr. Riggins -- if you would specifically tell the Committee about the experience you had when you set your price at 8:00 in the morning, and what happened at noon, and the result of that later on that afternoon, in Wildwood.

MR. RIGGINS: Sure.

We have a Riggins station that's in Wildwood. This is before Labor Day weekend, in the summer. In the Summer, that's when we hope to make the money, because we don't in the Winter. We had price increases the day before, and that morning we set our price. And throughout the day, we were getting these price increases.

Now, the station had 6,000 gallons of regular. And we knew by 4:00 it would need another load. So we had a truck dispatched to go up to the refinery to get the load and take it down to Wildwood. Well, on the way up to the refinery, the price changed \$.43 from driving from Vineland up to Paulsboro. So he loads the truck, and he's driving down. And we were contacted by Mr. Brogan from Consumer Affairs that said, "You cannot raise your price more than once a day." And I told him my situation, and I even called the Director. And they said, "No, you can't."

So here we go. We've got a station in Wildwood. The load of gas is coming at 4:00. It's not going to run out of gas. At 5:00 I'm watching the inventory on the computer go down, and it's down to about 500 gallons. I called the dealer and said, "You've got to shut the station down now." He said, "Why? The load is here. I've got gas." I said, "I can't raise the price. I'm going to sell \$.30-some below cost, or I'm going to change the price. Either way I'm going to violate a law, and I can't." So I close the station in Wildwood, Rio Grande Boulevard, right before Labor Day. That's a problem.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Johnson, do you have a question?

ASSEMBLYMAN JOHNSON: Mr. Chairman, in the interest of time, I think I'll pass.

ASSEMBLYMAN WISNIEWSKI: Thank you.
Assemblyman Mayer.

ASSEMBLYMAN MAYER: Thank you, Mr. Chairman.
Just a quick question.

Mr. Dressler, you started your discussion about the contracts that retailers have with major oil companies. I think you called them *jobbers* or *middlemen*.

MR. DRESSLER: That's these fellows here.

MR. SALISBURY: I'm a jobber.

ASSEMBLYMAN MAYER: What is the typical length of that contract, time length of a contract?

MR. DRESSLER: I'm sorry? I didn't hear that.

ASSEMBLYMAN MAYER: What is, typically, the time length of a contract that you have?

MR. DRESSLER: Normally, the contracts run for a minimum of three years, and could run up to 10 years so that you're locked into that particular supply for that period of time.

ASSEMBLYMAN MAYER: So if I'm a retailer, I either go to the major companies and buy my gas through them, or I go to you -- the middleman or whatever you want to call it -- and buy it through you.

Now, are you, sir-- Do you get to-- Are you locked into a price? Do you have a contract, as well, with the major refineries?

MR. SALISBURY: I have a contract. We've had one since 1927. But we do not have a price. Our price, as you've heard here, changes generally once a day, but sometimes more.

ASSEMBLYMAN MAYER: Right, but you can't shop around.

MR. SALISBURY: I cannot shop around.

ASSEMBLYMAN WISNIEWSKI: Just please make sure your red light is on when you're answering questions. (referring to PA microphone)

MR. SALISBURY: My red light is on.

ASSEMBLYMAN WISNIEWSKI: It's not picking it up.

ASSEMBLYMAN MAYER: So even the middle -- in my mind, the middleman can't shop around--

MR. SALISBURY: That's correct.

ASSEMBLYMAN MAYER: --to look for a good price.

MR. SALISBURY: If you buy Sunoco gasoline, it better be Sunoco gasoline.

MR. RIGGINS: Now, my circumstances are different. I have my own brand, and I can shop around and buy gasoline wherever I want to. I have some contracts, I don't have a lot of contracts. And, basically, I look for the best prices and pass them on to the consumer. So it's a slightly different arrangement. And my deals with retailers are no contract to maybe three years, max. But a lot of them are just year to year.

ASSEMBLYMAN WISNIEWSKI: Thank you.

ASSEMBLYMAN MAYER: Mr. Riggins, just one--

ASSEMBLYMAN WISNIEWSKI: Sure.

ASSEMBLYMAN MAYER: You mentioned that you were very concerned about competition when you began your statement. And I agree with you.

And I was interested and intrigued by comments earlier about 62 percent of the retail market is, kind of, owned or controlled by the major oil companies. You're a small business person. In fact, I think you have a shop right on the Black Horse Pike, in Washington Township, that I drive by.

MR. RIGGINS: Yes.

ASSEMBLYMAN MAYER: In Gloucester County.

And you are surrounded by, really, some major -- some other major oil companies, whether or not-- I don't know if they're affiliates, or independents, or what have you.

But in your opinion, is it-- Do we really have competition in this, from your perspective? Or is it very limited competition when you have 62 percent of retailers are really owned or controlled by major oil companies?

MR. RIGGINS: At the current time, we have competition. The concern is, if you allow below-cost selling, that will decimate competition. You don't want to go there. If you want competition on the street, if you want good prices, you want guys like me there, you better protect competition. That's your job. If you allow below-cost selling, we're going to disappear. And the landscape will look very different.

ASSEMBLYMAN MAYER: Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Prieto.

ASSEMBLYMAN PRIETO: Thank you, Chairman.

I'll be very brief.

Mr. Riggins, you made a comment in the beginning that competition is the reason why we've always been below the national average of gasoline. Today's average is \$3.04 for New Jersey. It's, like, \$2.87 for the rest of the country. What do you attribute that to if we still have the competition here?

MR. RIGGINS: I'm very skeptical about these numbers. People quote GasBuddy. I don't know who those people are or what they're taking into account. I mean, yesterday, at my station in Wildwood we were talking about, it was \$2.86. And that's a fair price. And it sounds like it's below whatever averages people are coming up with.

People are just jumping at numbers. And we've had a shock. We need a little bit of time for the system to settle out. But, historically, long-term, we're doing a very good job at keeping these costs to the consumer down.

ASSEMBLYMAN PRIETO: I understand that, and I appreciate it, because we, historically, have been lower. But we've been using those same numbers to say we were lower. Is there any particular reason why you're saying that they're higher now?

MR. RIGGINS: I don't know, because I know what my stations are. And my stations are below those numbers. So I'm not sure.

MR. SALISBURY: I think I might have an answer for you. I think the system is still operating on very tough supply conditions. We still have refineries in drought. The East Coast is separate, to a degree, from the West Coast. You could talk to your economists about that. The East Coast is still operating-- We are still operating on allocation.

Until you get these refineries reopened, get the pipelines refilled, get this market settled down-- And as Dr. Andrews said, it's a one-week to four-week process to settle a market down. You won't see a normal relationship on prices. But I can guarantee you, if we get those refineries reopened--

New Jersey will always have the advantages of our own domestic refining supplies. We are very close to ports of entry, we're very close to refineries. We have excellent pipelines, but we could use some more. And we have lower taxes.

Generally, I think if you could do no harm for a little while here, and address demand, and address supply, over the longer term I think you will find that your consumer will get back to the position he was before, of enjoying fair pricing as long as we don't do anything to damage the New Jersey marketplace that, until now, has operated pretty well.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Gentlemen, thank you for your testimony. If you'd stick around in case there are further questions, we'd appreciate it.

Next, for the second time, Jim Benton, from the New Jersey Petroleum Council; and John Felmy, from the American Petroleum Institute. And I think we have technological success.

Jim, please begin.

Or, John, begin whenever you're ready.

MR. BENTON: Good afternoon, Chairman, members of the Committee.

My name, again, is Jim Benton. I'm the Executive Director of the New Jersey Petroleum Council. We're located here in Trenton. We represent the major suppliers of energy to the state, actual gas.

New Jersey and the petroleum industry have a long history together. The first refinery was built in Bayonne. Obviously, you're familiar with our current complex system of refineries, terminals, pipelines, our standing as an international harbor for the petroleum industry. And we also have a bright future in New Jersey, whether it's alternate fuels -- which are presently exemplified by solar energy commitments -- and our future with liquefied natural gas, which we hope to site at a major facility, here in New Jersey, in the near future. It's, indeed, a bright future.

Having said that, the recent energy shock that came to our citizenry and our state is deeply felt by the industry. It remains a situation that demands our attention and a troublesome one that will require resources to move forward.

During the period of time since the hurricane, we've been in touch with agencies of State government, the Board of Public Utilities, the

Department of Environmental Protection to seek necessary waivers to assure the supply. The Division of Consumer Affairs has testified before this Committee today. We've been in touch with the agencies of government, the League of Municipalities. And we've certainly done our level best to be in touch with all segments of the media responsive to your offices, to anticipate any difficulties or problems that might come your way.

We are certainly happy to participate in this hearing today. In viewing the hearing, I've tried to be as responsive as possible to the members of the Committee, relative to the situation here in New Jersey. We agree with the Chair, through the Chair, that the standard of good judgements and the best of abilities we can bring to this effort will be available to you, through the Committee. We also do recognize that -- not that I was around in those days -- but Governor Driscoll was the last governor to call a special review of petroleum in the State of New Jersey. And those types of judgements that were made at those times, certainly, are something that we can continue to review.

With regard to price gouging, we certainly oppose anyone who is in the position to price gouge. Let me be very clear that we, in fact, support all the laws of the State and are working very hard to make certain they are recognized.

With that, what I'd like to do today -- and I think it would be helpful to the Committee, recognizing, Chairman, your original call -- to provide an overview of how gasoline ultimately moves in the state. I've invited Dr. John Felmy, the Chief Economist in the American Petroleum Institute, to present some testimony to you today. And I think you'll find it very helpful, instructional, and very relevant to New Jersey.

John.

ASSEMBLYMAN WISNIEWSKI: Thank you very much.

Dr. Felmy.

DR. FELMY: Thank you, Mr. Chairman and members of the Committee.

What I'm going to do is briefly and quickly go through what we've experienced this year, prior to Hurricane Katrina, and then briefly talk about what happened after -- during and after, and where we stand right now, especially looking forward to concern about the Winter heating situation.

As Mr. Dieterle, I believe, indicated, it is a concern, in terms of the potential high cost of these bills, as projected by the Department of Energy. And then I will close with a few -- what I feel are things that need to be done to be able to try to advance the situation beyond where we are right now.

Where have we gone? We basically have had a series of events that have affected world crude oil markets. You've heard the litany of discussions of increased demand from China, India, other developed countries. You've heard about the weakness of supply, the struggling to keep up with pace, as both the U.S. grows in energy demand and as long as the third-world countries continue to industrialize and improve their demographics -- buy more cars and so on. And so demand continues to increase. As a result, we've seen spiking of crude prices over the last several years. And even small changes can have a big impact.

Now, if you look at what demand growth is going to be, the Department of Energy forecasts it to be a little less than what we

experienced last year, but still fairly robust at 2.1 percent per year. And when you combine that to what happened with excess capacity, worldwide, what you see is limited amount of excess capacity. And when Hurricane Katrina struck, it took every bit of excess capacity out of the market. So it was a very real market impact as a result of the damage that was done.

As I mentioned, there are a few other things that have gone into keeping prices higher. The dollar appreciation at least emboldened some OPEC producers to ask for higher U.S. dollar prices of oil, because their purchasing power in euros went down considerably. And so -- at least emboldened them in that way.

We've had concerns about Venezuela. There's, of course, weather issues that come in. OPEC is meeting soon. And everyone knows about what's happening with Iraq, in terms of an inability to be able to increase production dramatically from that source.

Now, one of the slides that I like to use basically points out what I think is one of the major problems the industry has, in terms of image. While retail gasoline prices are the most well-known price in America, crude oil prices are not. As the Professor mentioned earlier, roughly 55 percent of the cost of retail gasoline is crude. It varies by time period, depending on when you look at it. But nobody knows the price of crude oil in cents per gallon. Your two local papers here do not put crude oil prices in any form, and I just noticed it this morning. Even the major newspapers put it in, in dollars per barrel, in a futures market, for light, sweet, whatever, delivered whenever. And no one understands it.

An important question was asked earlier. How many gallons are in a barrel? And that's a real important question. And there's 42. And

so at \$65 a barrel, which is what we had yesterday at the closing market of crude, that works out to about \$1.55. So the cost of the crude oil is the base cost, to which you then tack on taxes. Here, you've got modest taxes: 18.4 for Federal and 14.5 for your State taxes. But you can see how high the base cost of the petroleum product is before you've done anything to it: before you've refined, before you've distributed, before you've marketed, before you've gotten it to consumers 24-7.

So a key thing-- And so when you look at how prices have moved, you can see, in general, we've seen they've moved together. I believe the FTC has indicated that 85 percent of the movement is explained by crude prices. And, of course, when you start, "Well, where do I start to say how one increases versus the other?"

If you just take a year-to-date number -- year to date for this year, 2005 -- and compare it to a year-to-date 2004 number-- So you've got averages. So you take some of the bumps out of it. We had crude oil prices increase by an average of \$.38 a gallon. Gasoline increased \$.37 a gallon. Now, of course, we had some spikes here. And prior to the spike, you saw that, roughly, crude oil prices were up 38 and gasoline 33. So you had a lag, in terms of gasoline prices responding to crude oil prices.

So that's an important consideration to take into account, because most people don't really know what happens with crude oil. And so they just see the prices go up and down at retail and say, "Gee, it's just the companies manipulating." When, in fact, it's fundamental costs that are going into most of the changes.

Now, what happened with Katrina? Katrina cut through some of our major facilities. We've had a huge impact because of this. The Gulf

of Mexico residents, folks from Louisiana, are really suffering because of this damage. And our workers are, too. They've lived this nightmare, in terms of what's happened to them, their families, their homes. And we're struggling to help them to be able to try to regain their operations to try to, first of all, find workers, to try to help them with homes that have been destroyed, to try to get housing for them, and so on. This was a very major impact -- as a result -- on the industry.

Nothing has impacted this industry -- like anything before. We've never had a situation where, basically, most of the Gulf was shut down; where you had-- First of all, all the off-shore pipelines were-- You can see what the shares are here, in terms of what's actually produced by the Gulf. It's very important, in terms of oil production, natural gas, refinery capacity, and so on.

Well, what was shut down? If we look, we had roughly in the order of -- somewhere in the order of 95 percent of the Gulf was shut down for oil production. And that works out to around 28 percent of crude oil production, nationwide; 19 percent gas; refineries, we had 11 percent shut down, about nine big refineries; and other refineries outside of the Gulf, outside of Louisiana and Mississippi, had reduced runs because they couldn't get crude oil. Why couldn't they get crude oil? Well, because the major pipeline -- one of the Caplines -- that transports crude oil to the Midwest was shut down, because like everything there, they all lost power. We also had -- barge traffic up the Mississippi was shut down, in terms of getting crude or products up or down the Mississippi. And we had the two major arteries that run into the Northeast -- Colonial and Plantation -- shut down. And most of this was all due to power outages. It's clear that that

was a huge impact, because without electricity, you can't run the pipelines, you can't run refineries, you can't run basically anything.

Now, what's happened now? Well, we're back up, to a degree. But we still have over 50 percent of our crude oil production shut down, over 30 percent of our natural gas shut down. And that's very, very important. Natural gas is different than oil. Because unlike oil -- if we have a shortfall in this country, we can import it; natural gas you can not. Basically, the pipelines from Canada are full. The imports are maxed out with LNG and an inability to build more LNG terminals. And so a production shortfall is a very real concern, going forward, particularly as we go into the Winter heating situation.

Many people have characterized the situation now as-- I know there was a question asked. And they said, "Well, we only had 5 percent of the refineries shut down. Why is that a big deal?" Well, even with 5 percent, it is a big deal. We still have four major refineries with significant damage, significant water problems, electricity problems, and so on. We don't know if we can bring them back on line. But even -- as tight the markets are -- even a small change can have a big impact. And they're basically-- What they mean-- Since they're shut down, it means that while Colonial and Plantation are operating, it's not clear how full they are to capacity.

So if we go forward, quickly, we can characterize the situation as one of-- We're recovering, but there is still lasting damage. I've heard many, many people on the news saying, "Well, this was just a temporary event. Why haven't prices come back down to pre-hurricane levels?" No, it's not a temporary event. It's a very real event which lingers.

What happened? Well, we saw crude oil prices spike up. We saw wholesale prices, futures prices. We saw, ultimately, retail prices lag back and increase in a very quick time, at the same time that you had a spike in demand for the Labor Day holiday. Economists call that a very tight market, and clearly it led to that increase. The same is true of natural gas.

Where did it increase the most? Well, unfortunately, New Jersey was one of the sources. Why? Well, it's because the most affected areas were along the pipelines. And when you lose a very real source of supply, it can have a big impact. And so what we've seen is, through -- along this area for supplies from those pipelines, we've seen the biggest price impacts.

What's happened since then? Well, we've seen prices come down. They've come down, roughly, on the order of about \$.14 nationwide, about \$.08 in New Jersey in varying degrees along the pipeline that are replenished more. So we're seeing the classic case of-- We saw crude oil prices come down, we saw futures prices come down fairly dramatically, we've seen the wholesale -- so retail is following. How much and close, and how soon it will follow depends on the market conditions affecting each level of the supply chain.

Let me turn briefly now, just as I mention Winter bills. Because while gasoline has gotten most of the press, in terms -- it's not too soon to think about the Winter, as previous witnesses have mentioned. The Department of Energy is forecasting that in the upper Midwest, natural gas bills are going to increase by somewhere around 71 percent, and nationwide about 52 percent. Heating oil bills in New England, 31 percent;

propane, 40 percent; and even electricity -- primarily in the Southeast where they use it the most for heating -- about 17 percent. We had record bills last year. It looks like if the Department of Energy forecast holds, you'll likely have record bills. And that's with a normal Winter, not a colder than average -- a normal Winter. So this could be the median, or it could be worse or better, depending on what the weather has showing for it.

What can we do? I mean, there are clear things that have to be done. Consumers should talk to their dealers and suppliers -- what can they do, in terms of pricing plans and so on. They need to, of course, clean their furnaces, insulate where they can, seal their windows. And if they may be eligible for Home Energy Assistance-- It's time to check now to see if you possibly could be eligible for that if you're a low-income consumer.

What can we do? Well, I'm going to briefly go through a couple of things that we think are important. Most of these cannot be done by the State, but they clearly need to be addressed. We need to increase the domestic production of oil and gas. We have a lot of resources to be able to do this. Currently, right now, we're precluded from that. I'll show you where. I'll mention, in discussion, what we need to do in the refinery area. And, finally, yes we do need more conservation and energy efficiency, because that's one of the key things that can help, in the very short run, or as the supply changes tend to be a little longer. But, clearly, conservation and energy efficiency can be an important change.

Where are the resources? We're currently prevented from looking for oil off the coast. Most of the Eastern Gulf-- Of course, everyone knows the debate over Alaska and Anwar. If we were allowed to produce more oil and natural gas, it could certainly help the supply

situation. We're about the only country in the world that denies our resources to our consumers.

What can we do, in terms of refineries? Well, there are several main reasons why refineries haven't been built, or ever expanded, to a degree, in the United States. The most important is permitting. It was discussed yesterday -- earlier about -- "Well, Arizona Clean Fuels is able to do that." It's unclear if they are still -- if they are going to be able to actually proceed. They've been in 10 years of development because of permitting and other conflicts.

We've got to reform the new source review quagmire that basically prevents us from expanding because of the uncertainty. We need to take a look at our national ambient air quality standards, which potentially add an onerous amount of requirements on top of programs that we're already doing to improve air quality. And we need to really look at the NIMBY factor. I mean, right now, basically, you try to put a refinery anywhere, and somebody will oppose you. And, unfortunately, while that may be appropriate for an individual location, from a social good it clearly has put us in the situation we have.

We've had lousy profit rates, to be candid, in terms of the refineries over the last 20 years or so. They have improved a little bit, and I'll address that in a minute. But one of the reasons we've had low profits is that we've had to spend \$47 billion in the last 10 years on all the environmental investments we've had to do. It includes reducing emissions from refineries and changing both diesel and gasoline fuels repeatedly over the years.

Fortunately, we've been able to run the system such that we have been able to increase production. We've actually been able to expand capacity from about 15 million barrels a day in 1994 to 17 million barrels. I'd love to see more expansion, but all those challenges that I mentioned have prevented us from doing that.

What has been the profitability in the industry? This is from the Department of Energy data, which talks about net investment, divided by net income, divided by net investment in place. Basically, for the last five years, we've had about a 7 percent rate of return, compared to SMP of about 12 -- haven't been a good investment. And so you've got to ask yourself as a refiner, "If I'm going to take 10 years to get something running, I'm going to be fought to the death over it, and I get a low return, why would you do that?" So we need to address these things to be able to build that. And, in fact, it was talked about -- "Well, we have-- The refiners were merged, so they had better returns." Well, they lost money in 2002, and that's after the mergers.

Where are we, in terms of overall industry profitability? It's true that we do have big companies. And we need big companies, because if you're going to drill around the world, produce, refine, market, and distribute fuel 24-7, you need big company, you need capitalization, you need scale.

It was mentioned earlier-- I heard the term *monopoly* used -- a company being a monopoly. I'd like to check Webster's on that. There's absolutely no justification for calling any of our companies a monopoly.

We have an industry that has increased in concentration over the years. There are clearly reasons we had to do that -- because in 1998-99

we were in a depression, and we had to improve our operations to remain viable. What we still remember-- We still remain a highly competitive industry. Yes, our concentration has increased, but we are just on par with other major consumer industries that have to cheaply deliver products to consumers.

But if you look at what our real profit rate is-- In other words, take our net income divided by sales, which is an appropriate measure that a consumer should want to know about, in terms of how much they're paying in profit per gallon, you'll see that according to *Business Week* -- these are the industries that they publish in the corporate scoreboard. And if you take oil daily, which has the compilation -- most thorough compilation for oil and gas -- you take net income divided by sales for those, we had 7.7 cents on the dollar, compared to all industry of 7.9 in many, many other industries, which have much more than we do.

So we get a fair rate of return for everything we have to do, the risks we have to bear, the massive task of finding oil around the globe and bringing it to consumers-- Assertions that, somehow, we are highly more profitable than normal are simply wrong.

One figure I want to mention-- Mr. Slocum talked about a profit margin from the refineries in 2004 of \$.40 compared to \$.24 earlier. He was referring to-- I looked at EIA data for that exact number. The gross margin for refineries -- gross margin for refineries in 2004, according to EIA, was \$.32 on the gallon. Then you've got to deduct virtually all your costs from that margin. And what you end up getting, if you look at the independent refiner and marketer companies, which have the most comparable measures -- and really successful companies like Valero and so

on. It works out to about 4.5 cents on the dollar, in terms of a profit rate for the refining industry.

Now, why have earnings increased? Well, a couple of things. First of all, we're producing record amounts of product. We're running the refining industry harder than we've ever done. We're importing record amounts. So if you sell record amounts, your earnings can go up. Second of all, with the mergers that we've had, we've been able to dramatically reduce our costs and improve our margins as a result of that. And, finally, yes, if you are an oil producer with the high oil prices that you have, which-- Unfortunately, we import 60 percent of our oil from abroad. You've done quite well with that. But it's a fair rate of return for everything we have to do to be able to get stuff to consumers.

Now, let me close -- because it has been said repeatedly today, do no harm. And I would like to request that and plead with you to not do things. There have been discussions about price controls. My philosophy -- and Hawaii, and so on. Price controls are something that are very, very much of a concern. Because those who do not remember the past are doomed to repeat it. Many of you are old enough to remember waiting in gas lines, all the gas that was wasted, all the mess that the government put us into because they couldn't replicate the marketplace. We've heard about windfall profits tax. That's simply inappropriate because there's no windfall at this point, based on the earnings that we have.

There are other discussions about marketing practices of the companies, that I would share a great deal of concern. One of them is zone price. Zone pricing is no different for our industry than in many other industries that price geographically. It's no mystery that prices are higher at

the beach certain times of the year than they are-- Zone pricing is designed to meet competition. If, for example, you have a high volume competitor coming in, or you're at a state line where you have lower taxes across the state line-- If the refiners don't price to that competition, either higher -- for lower prices for that, that dealer is going to go out of business.

Most of the studies I've seen have indicated that eliminating zone pricing would not help consumers. So I would urge caution, in terms of proceeding in that area. And, more importantly, it has nothing to do with the situation we are in, in terms of the price levels right now. It has nothing to do-- It was characterized that it's used for companies to not compete with one another. That's bogus. It is not used in that context. It's used to meet competition with other competitors. So it's really a competitive tool.

And so what I would like to close with is to say thank you very much for the opportunity to present these views. And I'd be happy to take any questions.

MR. BENTON: Chairman, that concludes the formal part of our testimony.

I just wanted to go over, very briefly, and in the quickest of fashion-- These are the United States gasoline requirements. And I brought this chart along, because the issue came up before regarding New Jersey's unique position, relative to gasoline. I'm sorry I don't have a chart to flip up on the screen. But as you can see, these are the different types of gasoline. Most average people think that gasoline is the same, whether you're in New Jersey, whether your in Minnesota or California, and certainly don't realize the differences that can be experienced when you

drive from New Jersey into central Pennsylvania, where the white areas are conventional gasoline; or if you drive simply across the boarder into New York, where they have -- as Assemblyman Burzichelli knows -- eliminated MTBE, so they are now using ethanol. So it's just a dynamic that further complicates the overall picture that Dr. Felmy has introduced to you. I don't mean to spend a lot of time on it, but it is the core that-- If gasoline coming up the Gulf Coast has to be blended to a New Jersey specific standard, which is now known as Federal reformulated gasoline--

We'll leave this here. If the questions of the Committee go in that direction, this will be helpful.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Gentlemen, thank you for your testimony.

Questions from the Committee?

Assemblyman Burzichelli.

ASSEMBLYMAN BURZICHELLI: Thank you, Mr. Chairman. You've allowed me to participate to some great extent here.

Welcome, gentlemen.

I said earlier, before you joined us for testimony-- Because of the fact that I sit uniquely between refineries -- and I see the Citgo refinery mentioned. But if I'm not mistaken, the Citgo refinery is, in large part, an asphalt refinery and not a gasoline producing refinery. But my immediate neighbor is Valero. And immediately up the road is Sunoco. And just down the highway a bit is what used to be the Motiva refinery in Delaware, which is now, I believe, owned by Valero or soon will be owned by Valero, which is probably a very good thing for everybody concerned.

So I want to be clear here that when we talk about oil companies, they come in different forms. Valero, Sunoco, refiners in New Jersey are not in the crude oil business. They buy crude oil. Is that correct? ExxonMobil, BP, they have interest in crude oil fields, exploration for oil, and delivering of crude oil, and offering crude oil for sale to people like Valero and to Sunoco. Am I-- Do I understand the breakdown in that respect?

MR. BENTON: Assemblyman, that's correct in those two examples that you referenced. To the best of my knowledge, Valero and Sunoco don't have exploration capacity. However, up in the northern part of the state -- which you may not be as familiar with -- we have a Hess refinery. Obviously, Hess has exploration production, as well as ConocoPhillips that presently owns the Bayway refinery. They have exploration production. There's also the Chevron refinery that is making asphalt in Perth Amboy. Chevron did have a full refinery there. However, they're not just dedicated to making asphalt. And, obviously, they are in the exploration and production business, as well.

ASSEMBLYMAN BURZICHELLI: I think-- I don't have the not-in-my-backyard mentality. I'd like to see both the Valero refinery and the Sunoco refinery -- we have footprints to work with -- be in a position to expand. And I know the regulatory process is difficult in letting it happen.

Now, there's a great frustration, as both of you are aware of, at the consumer level. And Mr. Felmy -- am I pronouncing that correctly--

Mr. Felmy, you point out, in the movement of the cost of crude, how it reflects directly to the cost of gasoline. And from hearing from the wholesalers and the retailers, it seems to me that there is an

oddity, as this business has gotten to be a bigger number business -- and these retailers and these wholesalers being required to pay for a product in advance of selling it is straining how the price reaches the consumer and causing it to get there maybe sooner than it should get there. And if they were in a position to have a structure of some sort of security bond or financing that would allow them to pay in a timely fashion after the load is delivered and they can sell off the new price -- there may be more stability for consumer price. Of course, that's way down the chain.

I've been speaking today, and asking today, about the relationship with the traders and the crude price, because it all comes back to crude. It constantly -- through the course of this day -- the little guy, all the way up to where you are talking about, the big people you represent -- it's all crude. So much is produced, so much is sold. Whether it be fear, prices changed-- I have great interest in this trading world, and these unregulated, over-the-counter traders and the manipulation taking place at the high end, which completely trickles down.

But the one thing I want to say, Mr. Felmy -- and I have great respect for people who have made this investment. Mr. Greehey, who is the Chairman of Valero, told me that buying the Paulsboro refinery was the worst decision he ever made, as far as return on investment. And I know that doesn't reflect in the region. It's just a tough environment to do business, as a refiner -- which is why the big guys got out of refineries, I think -- because there was more money to be made on this other side of the fence. But nonetheless, refineries are very, very important to us.

But I see the price of crude moves, the price of gasoline moves. But the price of crude, by the time it reaches the refinery, seems to be

reflected at the price we're paying way in advance of when it gets into the chain. And that's where the confusion is for the American consumer, in my opinion. We just don't understand. And the answers we're getting today continue to tell us that there's manipulation taking place at some point. It's not by the people that are refining. I don't think that's the big number.

I do honestly say that under this crisis, when panic strikes, maybe everybody gets a little more somewhere. Maybe not one big chunk. I mean, the little guys, heavy in the chain, the refiners may make a little more. You mentioned they're doing better because they're doing more in volume. And we understand that could very well be the case.

But when you talk about management of inventories, spot prices, New York Mercantile Exchange-- And the gentleman who spoke before is looking at the computer in the morning at how those prices are changing. That's where the frustration is. And that's what's now bringing government's attention.

And I want to say that the gasoline in Paulsboro today, where the refinery is, was \$3.09. And Mr. Riggins said the gasoline price in Wildwood, 97 miles away, was \$2.86. And so that's why there's a lack of confidence when you make your presentation as well as you did about interruption in service and things of that nature. There's more confusion than there is answers. And we're way past the point where petroleum is a luxury for people. It's an essential commodity in this country. And that's why you're seeing government paying closer attention.

That was a long-winded statement. I think when I started I had a question. But I think when I finished I lost my question. (laughter) I lost my question, honestly.

So, saying that, let me pass it to someone else who is more coherent, that maybe can pick up, Chairman.

ASSEMBLYMAN WISNIEWSKI: I think you were very coherent. We'll just come back to you when you come to your question.

For now, we'll go to Assemblyman Mayer, and then we'll go to Assemblyman Bodine.

ASSEMBLYMAN MAYER: Thank you, Chairman.

Gentlemen, when Dr. Andrews started his testimony, he went through a series of contributing factors to the cost of gasoline, which include the cost of the crude, the State and Federal taxes, the refining costs, and marketing.

My question deals more with the refining costs. What--

And, Mr. Benton, you held up the map. How much more costly is it in our region, compared to other parts of the nation -- the cost of that in difference of refining?

MR. BENTON: I'll refer to John Felmy. He'll give you the actual answers. But, obviously, you're talking about -- just to put names on what you're looking at. You're talking about a differential between Federal reformulated gasoline, which we have here in New Jersey largely for air quality purposes -- which John referenced earlier in his presentation -- and what we would call *conventional gasoline*, which is highlighted in areas that are white. And, again, the Federal reformulated gasoline is for air quality purposes.

DR. FELMY: There's no question there's other costs in operations for refineries in this area because of the-- As it was mentioned earlier, it is a wealthier state, in terms of per capita income, in terms of all

the costs of doing business that are higher here than in other states that don't have as high property costs, taxes, or things along that line.

It is a challenge, with all the environmental investments that we've had to make, to keep those refineries running in New Jersey. As I mentioned, we've spent \$10 billion over the last 10 years just in environmental investments alone. And that's money we couldn't spend on expanding capacity.

ASSEMBLYMAN MAYER: But how much is the difference in the cost?

DR. FELMY: The differential between conventional and RFG runs around \$.10 to \$.12 a gallon nationwide, on average, for the Department of Energy statement.

ASSEMBLYMAN MAYER: And just secondly, these zone pricing -- the concept of zone pricing, which has been around since the turn of the century. I'm not exactly sure how you come up with these zones. Can you explain how you come up with the zones?

DR. FELMY: We don't know. As a member of a trade association, we're not able to see marketing practices of individual companies. It varies by company. Some have zones of different structures; some have zones, as was mentioned, by one outlet. It's a very complex practice that's got specialized firms that come up with the zones. But the full focus of it is to meet competition, or else those dealers-- If you have a flat price, and those dealers now are a real aggressive low-cost competitor -- are going to have a real challenge.

ASSEMBLYMAN MAYER: And there are zones with one outlet in it?

DR. FELMY: I have heard, in testimony, that there are some companies that have that, yes.

ASSEMBLYMAN MAYER: And you're not aware of a particular formula that they use, X plus Y equals Z . It's more of a--

DR. FELMY: I'm not aware, and I'm not allowed to be aware.

ASSEMBLYMAN MAYER: Thank you.

ASSEMBLYMAN WISNIEWSKI: Why are you not allowed to be aware?

DR. FELMY: Anti-trust.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Bodine.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

Dr. Andrew's presentation this morning-- Two of the points that he made-- One had to do with New Jersey Retail -- talked that New Jersey has a million-barrel heating oil reserve in Woodbridge.

MR. BENTON: That's correct.

ASSEMBLYMAN BODINE: But it doesn't have any reserve in gasoline. Is that true? I'm not questioning the doctor. I'm just-- Is that a fair statement?

DR. FELMY: Yes, they don't have a governmental reserve center.

ASSEMBLYMAN BODINE: We do not.

DR. FELMY: No.

ASSEMBLYMAN BODINE: Is it feasible to have some kind of a reserve in gasoline for the State of New Jersey?

DR. FELMY: Well, we're very concerned about that.

First of all, the reserve is a Federal one. So it was established by the Federal government, it's owned and operated, and it's not dedicated solely to New Jersey.

We are concerned about product reserves of that type for several reasons. First of all, the products deteriorate very rapidly. So they're quite expensive to be able to maintain, because you've got to constantly circulate them. You know how, when you see gas fumes coming out -- it's the product breaking down.

We also are generally concerned that those inventories tend to crowd out other potential supply. If you see a million barrels of oil that's sitting there, or gas and heating oil, or gasoline, and you're, particularly, an importer, and you rely on imports, particularly in the Northeast-- The concern that, suddenly, those could be released by government action is going to really temper your moves towards bringing a lot more imported product. So there are pluses and minuses to it -- cost.

In addition, as the map shows -- since. If it were a Federal program, what type of gasoline would you put into it? I mean, if New Jersey were to be able to -- were to sponsor it, itself, of course they could say, "Well, it's going to be our reformulated gasoline." But if it's the Federal government, there are eight different types of gasoline or so that could go in. And so there's that added complication.

ASSEMBLYMAN BODINE: I was thinking, specifically, the State of New Jersey having its own reserve. Would that be impacted with the regionalization of -- things like MTBE? I understand that if there is a crisis, we can't even go to Allentown, Pennsylvania, because they have a different additive. Is it at least standard in the State of New Jersey?

MR. BENTON: It is standard. New Jersey, statewide, is Federal reformulated gasoline. There are sections of New Jersey that are eligible to have conventional gasoline. But the Department of Environmental Protection, quite a while ago, made a determination, for uniformity purposes -- we would be, as entire state, Federal reformulated gasoline. And that has really worked well for the State of New Jersey -- improving our air quality and allowing a seamless market within the state.

ASSEMBLYMAN BODINE: Thank you.

Could you tell me, over the last couple of weeks, with the crisis, is New Jersey consumer gasoline consumption up or down? Do you have any statistics on that?

DR. FELMY: We don't have statistics for New Jersey itself. They're only published with a lag by the Department of Energy. And we won't know what, for example, happened in August or September for several months.

The most recent data, nationwide, does show a slowing of demand. And, in particular, when we released our storage data yesterday, we saw a build in gasoline storage with-- Even though you had lower refinery operation -- so it's likely that that was a demand drop-off as a result of what occurred after the hurricane.

ASSEMBLYMAN BODINE: One last question. Do you have any idea of the number of gallons of gas that's consumed in the State of New Jersey, on an annual basis?

DR. FELMY: I believe the number is about 4.5 billion gallons. I have it-- But I think it's roughly on that order.

MR. BENTON: I think we have that number. We can get it to you. I don't happen to have it right at my--

ASSEMBLYMAN BODINE: Thank you.

Thank you, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.
Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

Clearly, there are a lot of forces in play that affect this industry. I'm going to try, again, the same kind of question I was trying with the retailers to see if I can get a little clarification.

On August 29, when Katrina, I believe, hit, we had *X* amount of supply in the pipeline available for consumers to use. Do you have any idea-- I mean, can you quantify that? What was available that was already in tanks available for our consumers? I mean, there had to be already gas that was available in the pipelines so consumers could access it. And the gasoline that was there had already been paid for, apparently, at a price based on a crude per barrel price of far less than \$65 a gallon, correct?

DR. FELMY: Well, the only data we have is a very broad level. The Department of Energy -- or the government aggregates data into what they call Petroleum Administration for Defense Districts which-- In this case, PAD 1 is the entire East Coast. I just looked at that data prior to the hurricane, and it showed something on the order of 50 million barrels of gasoline. But I have no idea where it was in the states comprising that large regional geographic area.

ASSEMBLYWOMAN STENDER: At the point that all this started, what you're suggesting is that on the East Coast there was 50

million barrels of oil that were already paid for at X amount of price. But yet, what we saw was that the crude prices began to rise exponentially, and the prices to the consumer were rising based on the increased crude for gasoline that wasn't going to even be available for sale for how long.

DR. FELMY: Well, prices were rising because of market factors. We saw crude oil prices increasing, we saw prices on the Mercantile Exchange -- the futures prices increasing. We saw spot prices increasing even more and, in turn, other prices including retail. Those are market responses to the factors. It's not a cost-plus business in that sense. It's a market factor, and supply and demand.

ASSEMBLYWOMAN STENDER: And I understand that. I mean, I understand that there were market factors and that they would be driving the prices up. That makes sense to me. And it would make sense that prices would then rise in response to it. What doesn't make sense to me is that on the spot, people were now paying based on what it was going to cost them, when there was already product available that had been paid for at a much lower rate. And can you explain how that is not gouging?

DR. FELMY: Well, it's a market price. And you've got to look at what-- I can't speak for the retailers. They were here. But you can certainly see that, as a retailer, you face an enormous problem. When prices are rising significantly, if you decide you're not going to price at the market price, you're going to be drained dry instantly, and you may not have the cash flow to replenish your supplies. Right or wrong, that's a fundamental cash flow problem that a small businessman faces.

ASSEMBLYWOMAN STENDER: Who made that money? Who made the money -- the differential -- in those instances in that week? Where did that money go?

DR. FELMY: Well, I don't know, because it's hypothetical, in terms of the individual retailer. Just like I don't know who would have made any different amounts of money throughout the supply chain. The only way we'll really know, ultimately, is when every company reports their quarterly profit reports.

ASSEMBLYWOMAN STENDER: Somehow I don't think the price increases were hypothetical. The consumers were feeling very severe increases. That was not a hypothetical increase going on at the pumps.

DR. FELMY: No, no.

MR. BENTON: I think you misunderstood the answer. I think that, in fact, while we would recognize that price increases were going on, I think what you have to acknowledge is that down the road, as Dr. Felmy attempted to answer, there will be reports, through quarterly profit reports, through disclosure statements, that would identify where, in fact, that money went, and where the revenue ultimately ended up. Whether it was at the retail point, or it was at the wholesale point, whether it was at the major company point, or whether it was at an exploration and production, what you had was a catastrophic hit to our nation's ability to deliver energy. You had the major pipeline to New Jersey go down. It was shut down. You weren't certain whether Gulf Coast supplies were going to make it to New Jersey. You had a very active media compounded by the presences of the New York--

You know, the New York Mercantile Exchange is really a misnomer. The wet barrels that back up the trading aspects of the New York Mercantile are located, physically, here in New Jersey. You had a very significant supply concern, the likes of which we really hadn't seen since probably September 11, when New York Harbor was closed and precipitated a regional concern about our ability to move the product.

So you really had a tremendous upheaval in the marketplace, compounded by the media that fed the story -- appropriately so -- that shortages were coming, allocations were coming; our own dealer network, wholesalers calling to say, "Is this out?" We had reports of facilities that were out. The system was in upheaval so that as a result, through those thousands of transactions, you had a very volatile marketplace. And it resulted in a very real cost increase.

ASSEMBLYWOMAN STENDER: I recognize that those things were going on.

Finally, what I was proposing is that we only allow price changes based on delivery. So the retailers are saying that would -- that it should include the wholesale level. And I would wonder how you would respond to that, because I'm wondering if it shouldn't include the wholesalers, as well. Because if you, again, were already supplying product that had cost you X amount of dollars to provide, and now you're going to increase it without -- just based on the futures. I think that our consumers are hurt by that.

DR. FELMY: I believe firmly that it should be the market to determine the prices at all levels. Failure to let the market work will lead to unintended consequences of shortages, of problems well beyond safety and

so on. This was a very tough time, but the markets worked. It was painful, there's no question. We know consumers have really suffered as a result of it. But we didn't have disastrous consequences of gas lines draining, everything dry -- although we had a lot of horrible rumors, silly rumors about -- people saying the gasoline stations were going to close down at 5:00, which was just absurd. But we got through this with market systems that worked, that moved scarce product around and, I believe, minimized the damage. Now we've seen wholesale price, futures prices come down and retail prices follow.

ASSEMBLYWOMAN STENDER: I know it's been a long day, and I appreciate all of your testimony.

My final question would be -- if you could answer this in a nutshell. And you just raised that.

We've seen prices go up very fast. We don't see them come down so quickly. Can you explain why that is?

DR. FELMY: We sometimes see this price adjustment factor, sometimes you don't. I've seen instances over the last five years where we've seen perfectly symmetric response. Much of this depends on what the supply and demand market conditions are at each level of the supply chain. We've seen retail prices follow the wholesale, follow the futures prices. We'll see how the market conditions proceed.

ASSEMBLYWOMAN STENDER: Thank you.

ASSEMBLYMAN WISNIEWSKI: I just want to throw in one question. You had made mention that -- and everybody's injunction to this panel has been to follow the Hippocratic oath and, first of all, do no harm. And I think everybody takes that seriously.

One comment you made was about regulation of price and that it has the potential to lead to shortages and scarcity of supply. We regulate price on the -- on natural gas. We regulate price on water. And we don't suffer a scarcity and supply problem. Why would we-- Why should we expect it on this commodity when on other commodities that's not true?

DR. FELMY: Because you have a natural monopoly with one supplier, where as now you have many, many suppliers competing for your business. You have competition, where as your water utility-- It's the pipe coming in. Your gas -- it's the pipe coming in -- is owned by somebody. The electric, the same way.

Now, we have seen deregulation beyond the actual delivery itself into the product supply market in the sense that you can -- in some states you can buy natural gas from many different suppliers. But it's entirely proper for a natural monopoly, with one supplier, to be regulated.

ASSEMBLYMAN WISNIEWSKI: But taking the example of natural gas, there's a delivery charge. And that is a static charge based on whose pipes you're hooked up to. But the commodity charge varies depending on who you choose to buy your natural gas from. Wouldn't that same model, therefore, apply to the gasoline market?

DR. FELMY: But you don't have-- In many cases, you don't have regulation of that product supply. And, secondly, you have, in terms of the regulation of the actual utility and so on-- In the case of gasoline or any other fuel like that, you have many, many suppliers that compete for your business.

ASSEMBLYMAN WISNIEWSKI: I know Assemblyman Panter has a question, and then Assemblyman Bodine.

Assemblyman Panter.

ASSEMBLYMAN PANTER: Thank you, Mr. Chairman.

I just had a few brief questions. The first is, on Pages 12 and 13 of your presentation, one chart is gasoline price increases from August 30 through September 6. And the second shows the same data from the following week. I guess my question is--

You talked a lot about that pipeline and the disruption that was caused by that pipeline going off line. The question I have is, why, according to this material, did New Jersey's gas price rise quicker than just about any state along that pipeline, including any state in the Northeast? And why has it decreased much more slowly than all of those states?

DR. FELMY: I can only posit that you're the end of the pipeline. And so the market conditions that support those factors with the supply impacts-- Because, remember, this was a very real shock with this product coming up when it was shut down -- or not coming up when it was shut down. While it's true that New Jersey is somewhat self-sufficient, you still have the incremental supply from the pipes. And even small changes in those supplies can lead to big impacts. And you see that throughout the pipeline system. In terms of the impacts coming down, it's the reverse, in terms of the conditions that support those markets.

MR. BENTON: I also think, to supplement Dr. Felmy's answer-- I think, in New Jersey, we do have a high volume of turnover at service stations. In other words, we are constantly bringing in new volume. And that volume was as current as the news coming to our distribution network in this state. So as a result, the price of the product did move as quickly as other states.

And, obviously, we also had the phenomenon -- which we hadn't seen in a while -- of everyone moving to top off their tanks, and that type of lines and response move very quickly through the marketplace, with an awareness that was just incredible.

ASSEMBLYMAN PANTER: And I'm sure that happened in most states, not just in New Jersey.

If I could just ask two brief questions-- One -- and forgive me for being -- my naivety in this subject -- but does the pipeline literally end in New Jersey, and gas is delivered from there throughout the Northeast? Or is it tapped in various spots along the way from the Gulf Coast, the latter?

DR. FELMY: It's tapped at various spots throughout. They have terminals throughout the entire distribution system.

ASSEMBLYMAN PANTER: I guess I'm still wondering why New Jersey would have risen higher than any state along the pipeline and failed to settle nearly as rapidly. And you had said earlier, it's probably because we're the end of the pipeline. But Vermont, and Maine, and Connecticut, and New York, and Rhode Island, and Massachusetts, for instance, would therefore be further away. But they didn't rise as much.

DR. FELMY: Well, they also have supplemental imports as a key aspect of their supply. So as a share of theirs, it's possible it was less than what New Jersey experienced. I don't know, because I'm not privy to the proprietary colonial--

ASSEMBLYMAN PANTER: The last--
I appreciate that.

The last question I have-- If I could just refer to Page 10, briefly -- just so I can understand this. Am I to understand, from your

graphic on Page 10, that for the last nine days, crude prices have been below the level -- below the pre-hurricane level?

DR. FELMY: Yes, that's correct. There was quite a bit of anticipation leading up to the hurricane, of course. The traders react in advance of these things and were watching hurricane movements well in advance.

ASSEMBLYMAN PANTER: So my last question then is, if-- As I'm trying to reconcile this in my own mind-- If crude prices are now, and for the last nine days have been, below what they were before Katrina. And you're telling us, from your presentation, that only about 5 or 5.5 percent of refining capacity is still down as a result of that hurricane. I'm trying to make those numbers match. Obviously, the numbers that I come up, based on where gas prices still are in New Jersey, is that the refining cost must still be at least twice as high as it was before the hurricane, despite the fact that 95 percent of refining capacity is up and running.

DR. FELMY: Well, first of all, Assemblyman, it's 95 percent of national capacity. But in terms of the Gulf Coast, it's 10 percent. So it is a significant share of supplies.

Next, the real price movement that we saw, in terms of crude prices, was because of the SPR actions of the administration and because of the IEA actions of both sales of crude oil. So you saw -- once the damage was really recognized how severe it was, you had this new supplement of product that came in that more than compensated for the loss of the production off-line.

In terms of the refinery responses, it's difficult to say what the margins are. If you look at the measure that some people use, which is a

refinery crack spread, in terms of how much you get for a product versus how much you pay for the crude oil, they did increase -- at least apparent increase, during the peak points, and then have come down dramatically.

ASSEMBLYMAN PANTER: Does Mr. Benton--

And I apologize. I don't mean to interrupt. But I think you gave me my answer.

Do you represent refiners, as well?

MR. BENTON: Yes.

ASSEMBLYMAN PANTER: So those refiners, today, are paying less for crude oil than they were before the hurricane, and yet we're paying 20 to 25 percent more in gas prices in the ground in New Jersey. So how do you account for that? Are the refiners-- How are their costs so high? Because their raw product is actually lower than it was before the hurricane -- that our gas prices are still 20 or 25 percent higher.

MR. BENTON: Well, it's a simple fact that they, in fact, participate in a regional market and, in fact, a global marketplace. And, indeed, the New York Mercantile, which is the discovery point for the price of crude oil, is located right across the Hudson River. That is one of the primary determinants for the marketplace, in a clear and clairvoyant way, of where your price point will be.

ASSEMBLYMAN PANTER: Okay. Thank you.

ASSEMBLYMAN WISNIEWSKI: I'm not sure-- Maybe Assemblyman Panter is satisfied with that answer. I'm certainly not sure I'm satisfied with it. (laughter)

If the price of crude oil is below where it was before the hurricane, why is not the price of gasoline commensurably lower than it was before the hurricane?

DR. FELMY: Well, because it's not just purely the crude price cost that play a role in here. You also have the market conditions for gasoline. So you saw, for example, prior to the hurricane, the futures price of gasoline was about \$1.92 a gallon. That spiked up to \$2.61 per gallon. You saw that influence the spot prices, the wholesale prices, and ultimately retail prices, in terms of a-- So it was more than just a crude price movement that caused the increase, in terms of gasoline.

ASSEMBLYMAN WISNIEWSKI: So it's the speculation on the Merc that's led to the gas prices to have gone up.

DR. FELMY: Well, there's no question that the market participants on the Merc, which include both speculators and people who buy and sell oil for their own businesses and so on -- they set the price that is the most transparent price, which others benchmark off of.

ASSEMBLYMAN WISNIEWSKI: So if the raw material has gone down in price, and the refining costs have more or less stayed static, as well as the tax picture, the fact that now gasoline, because of the operation of the Mercantile Exchange, is still higher than the raw material costs having come down, somebody is making a lot of money on it.

MR. BENTON: Gasoline has also fallen on the New York Mercantile Exchange to this point.

ASSEMBLYMAN WISNIEWSKI: Not by the same degree that crude oil prices have fallen.

DR. FELMY: Actually, Mr. Chairman, by a lot more. Gasoline dropped from \$2.61 on the Merc to, I believe yesterday it was \$1.95.

MR. BENTON: And that price--

ASSEMBLYMAN WISNIEWSKI: Yes, but the price-- I just filled up -- or tried to fill up on the way in here -- and I paid \$3.11 a gallon. So what I'm saying is that, we could talk about what the prices are on the Mercantile Exchange. There's still people -- somebody, somewhere in this equation -- we talked about-- One group said, "We're the tail on the dog." And this whole thing is a dog. And I said that it has fleas somewhere, because there's money being made. And the people who are paying that money are the consumers. The price of crude has gone down. The price on the Mercantile Exchange has gone down. Gasoline is still \$3.00-plus a gallon, on average in this state. There's something wrong with that picture.

DR. FELMY: And as we mentioned earlier, it's unclear where in that supply chain the money goes at this point.

MR. BENTON: But, ultimately, the price of gasoline will follow the price of crude oil. And, ultimately, that will work to the benefit of the consumers when it does return to those types of levels.

ASSEMBLYMAN WISNIEWSKI: Well, I guess we'll have to agree to disagree on that. Because the one thing I've noticed in all the years of driving is, when the price of crude oil goes up, or when the price on the Mercantile Exchange goes up, it's reflected immediately at the pump. When the price goes down, it's not reflected immediately at the pump. So it just seems to me, and I think perhaps shared by members of the Committee, that there is an elasticity in one direction and an inelasticity in the other direction.

Any other questions from the members of the Committee?
Assemblyman Mayer.

ASSEMBLYMAN MAYER: Mr. Chairman, just a comment -- a quick comment.

Doctor, you said something earlier in your testimony that concerned me. And you talked about -- you said low profits. And I wrote down-- You said, because of regulations. And then you used some type of net income divided by sales analogy, and then said there was no windfall profits.

Earlier in the morning, I talked about ExxonMobil making a quarterly profit of \$10 billion, which is \$110 million a day. And then no one can answer what exactly zone pricing is. It's evidently secret and, I guess, a mystery only controlled by the oil companies.

So I don't know, Mr. Chairman. I think this is kind of like digging for oil. We just have to dig a little deeper, perhaps.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

Any other questions? (no response)

Gentlemen, thank you for your testimony.

Did you have something you wanted to add?

MR. BENTON: Mr. Chairman, just briefly. I want you to know of our efforts. We did forward, I believe, ultimately -- or initially, at the request of Assemblyman Burzichelli, a report to you, which details the role of the Mercantile. There was an investigation into the Mercantile and into the trading, which does specifically address the concerns that were raised by this Committee, including Assemblyman Burzichelli, on the role

of traders. That report is available. I've submitted it through the Chair, through the staff, and available to you.

The second thing-- The question that I'm most often asked by newspaper people reflective of the concerns of the New Jersey driver is, where are we going? What are the challenges? What can we, as a state, do? And I'd like to remind the Committee, in a very brief fashion, that New Jersey has already poised to make two major transitions in the fuels marketplace. Number one, you should be aware--

I know, Assemblyman Burzichelli -- again, I keep picking on him to wake him up a little bit here. We are going to be transitioning away from MTBE. New Jersey has been, by virtue of the Federal energy law, relieved of the requirement to have an oxygenate in our gasoline. That's both good news and bad news. It's an opportunity, but it also has challenges. We will be moving to making that gasoline as clean -- in other words, do no harm -- meeting that standard for environmental improvements. So it will continue to meet the Federal reformulated gasoline improvements.

But now it will not be made with MTBE, as ultimately in-- For certain, in 2009, it will be banned in New Jersey, according to the existing law. We will be transitioning, where oxygenates are needed, to ethanol. Now, ethanol has grown in the Midwest. And, indeed, there are some plans to make a facility here in New Jersey. But it's that transition, that may begin as early as 270 days after the signing of the Federal Energy law, which was back in the summer -- which may mean that it will occur, perhaps, in the June time period of this year. That's one going forward.

The second one going forward -- which is a concern, because Governor Codey just signed what was called the Diesel bill. It addressed particulates. In there is the authority for the Department of Environmental Protection -- and this is an ongoing concern that should be made aware to this Committee -- that the Department of Environmental Protection, after a hearing, after the publication of a written report -- as soon as six months, can require ultralow sulfur diesel statewide. Ultralow sulfur diesel statewide will be introduced to on-road vehicles this year -- I'm sorry, 2006, the coming year is what I was referring to.

By this authority to the Department of Environmental Protection, after a hearing and after the written report, they can require it for our marine, our farm, our railroads, and construction vehicles, as well. This provides little or no safety net to the industry in making that transition.

This Committee, because of its interest in fuels and fuel supply, should be aware of that authority that was contained in Section 25. We voiced our concern before every committee that we were eliminating a safety net of supply. Colonial Pipeline has made an announcement. They will not be shipping ultralow sulfur diesel fuel north of Virginia. As a result, we are depending on our refineries and on other foreign sources of supply to meet that demand. It should be a clear and clairvoyant call to this Committee to be aware of that situation.

Those are two going forward -- the transition away from oxygenates and the ultralow sulfur diesel down the road. It's important that we maintain a competitive New Jersey refining system, and the

issuance of permits to continue to expand our refining capability plays a vital role in helping us meet our energy.

Thanks for the extra opportunity, Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Gentlemen, thank you for your testimony and your presentation.

Believe it or not, we're coming to the home stretch. And we have four individuals left to testify. From the Driving School Association of New Jersey, John Milhaczho. And from the Home Care Association of New Jersey, Lucille Richards.

John, please take a seat.

If Lucille is still here--

CAROL J. KIENZ: I'll be representing Lucille.

ASSEMBLYMAN WISNIEWSKI: Sure.

Please come on up and grab a seat.

John, please begin. Give your name and your organization.

JOHN MILHACZHO: Good afternoon, Mr. Chairman and members of the Committee. Thank you for giving me the time to speak to you.

My name is John Milhaczho, and on behalf of the Driving School Association of New Jersey and as a Co-Owner of Safety First Driving School, in Kendall Park, I come before you today to testify regarding the impact of recent gasoline price increases on the driving school industry and on small businesses in general, such as my own, which are dealing with the everyday increased operating costs of high gasoline prices.

For your information, there are approximately 200 privately owned, commercial driving schools throughout New Jersey. These predominately offer behind-the-wheel instruction for children, for adults, people coming into the country getting new licenses. We are-- The Driving School Association has been focusing its efforts on promoting and improving highway safety in New Jersey for over 30 years. And we're making sure that our instructors are up to par, and we're teaching our students in the most proficient manner available.

My company, like other members of the Driving School Association of New Jersey, maintains a fleet of reliable, safe teaching vehicles, which are used every day by our customers. As a company which is part of an industry almost entirely dependent upon automobiles, recent spikes in the price of gasoline have brought into doubt the profitability and the long-term viability of our business in general. Escalating fuel costs have presented to my small business and my industry an economic reality that seems bleaker and bleaker every day.

For example, an average car used for driver education in New Jersey drives approximately 50,000 miles a year. And during that time, it's in operation for about 2,000 hours. Just statistics: these cars use two gallons of gas per hour, meaning that a driver education vehicle typically uses 4,000 gallons of gas per year. At a current statewide average for regular gas, \$3.12 -- according to yesterday -- the annual fuel cost for one drivers' ed vehicle would be \$12,480 per year. At this time last year, fuel costs for the same vehicle would have been \$7,600, at a state average of about \$1.90. And that is still almost more than double what it was two years ago.

An industry which is made up primarily of large, single vehicle businesses -- meaning a single-car operator, somebody who is just out there teaching somebody, or a drivers' ed teacher who works in the school system who is teaching kids behind the wheel-- They incur all these costs of operation, including the cost of gasoline increase. Single car operators I'm here mostly to represent today, because these are the guys who are calling my office, as the Vice President of the Driving School Association. These are the guys that I've known for the last 20 years, who are really getting hammered with the gas prices.

For New Jersey families already struggling to make ends meet, increased gas costs are forcing some parents to forego driver education for their children. The less children enrolled in drivers' ed courses puts both the industry's businesses at a financial risk, but it lowers the overall quality of drivers on our roads. For driving schools, we are still offering quality services to New Jersey residents, many of whom are learning how to drive for the first time. For how long and how effectively we will be able to do this under these conditions, who knows?

Escalating fuel costs may cause many driving schools to close. This will reduce the choices New Jersey consumers have for quality drivers' education. Reducing the amount of choices for drivers' ed in New Jersey will lead to students ill prepared to take to our roads, putting all of us potentially in harm's way, which is a direct contradiction to what we're trying to do in the Association.

I'm going to be very brief today. It's been a long day for everybody. In closing, I'd just like to thank both the Committee and those who testified. I have a much clearer understanding and explanation of the

gas prices. And from a layman's point of view, it seems to me that higher gas prices were not a direct result of retailers gouging. But due to the cutoff of the gas supply -- the pipeline -- it caused wholesalers to raise prices in anticipation of replacement gas.

I would like the Committee to look into what measures we can take to ensure that this doesn't happen again. In the event of a natural disaster or, worse yet, some type of terrorist act, what is going to stop this from happening again, or closing down my business when the pipeline gets shut down?

That's all I have to say. I'd be happy to answer any questions.

ASSEMBLYMAN WISNIEWSKI: Thank you very much, John.

Any questions from the Committee?

How many vehicles do you operate in your business?

MR. MILHACZHO: I operate, right now, 20 vehicles.

ASSEMBLYMAN WISNIEWSKI: Times \$12,000.

MR. MILHACZHO: Times \$12,000.

ASSEMBLYMAN WISNIEWSKI: That's a big gas bill.

MR. MILHACZHO: And my costs (*sic*) haven't gone up since this crisis has started. And we're at a loss.

ASSEMBLYMAN WISNIEWSKI: Are you charging more for--

MR. MILHACZHO: We're going to have to at this point, because we took a loss for the summer. We're potentially a semi-seasonal business -- driving schools -- because the kids are out of school during the summertime. So not unlike a shore business with the boardwalks, just about every owner that I know took a tremendous hit this year.

ASSEMBLYMAN WISNIEWSKI: John, thank you.

MR. MILHACZHO: Thank you.

ASSEMBLYMAN WISNIEWSKI: Next, I'd like to invite Lucille to give testimony.

Just give your name and your affiliation.

MS. KIENZT: Thank you.

I'm Carol Kientz, the Executive Director of the Home Care Association. Lucille was covering for me this morning while I was tied up in another meeting. She is on our Board of Directors.

And I thank you so much. I thank you for your patience in still being here with this very difficult issue.

I'm also here to speak to the impact -- the trickle down effect of all this, as all of you are feeling, as well. Our Association represents all of the variety of home care providers in our state: visiting nurses associations, hospital home care departments, private duty homemakers, home health aid services, nonprofit home health aid services, and so on. We are an organization which represents people for whom travel is essential. And we believe that what they're doing is essential for the State of New Jersey, as well.

As I've noted in my testimony, our State is trying to serve as a model, really, to move many of our long-term care services and other healthcare services out of the more expensive institutional arena -- nursing homes, acute care hospital beds -- and provide those healthcare services in the home and in the community, which is both where people are telling us they would rather have their health care, and which is more cost effective, ultimately, for the State, particularly our State Medicaid program.

But this is now at cross purposes with the rising gas prices, because home care is a service delivered to people in their homes. And, therefore, we have visiting nurses, physical therapists, home health aids, all of our home care staff traveling to our patients in the community by car -- by their own vehicles, by and large, because very few of our home care agencies can afford to operate a vehicle -- a fleet of their own. And so our staff are driving to their patients. And this is over a hundred thousand home care patients a year in New Jersey -- well over that.

We're trying to quantify the number of miles. So far, just 27 agencies in our membership have reported in with their 2004 miles. But it's already well over 14 million miles that were clocked in, in 2004, by their home care staff in the field, visiting patients. And so that is, obviously, a huge impact. Agencies are already reimbursing -- well, they were as of last week -- reimbursing at the 40.5 cents per mile, which was allowable by the IRS. And now they're trying to bump that up to the 48.5 cents per mile, which the IRS just approved in the wake of Hurricane Katrina. The problem is, our agencies cannot charge more for their services. Their rates, their reimbursements are largely predetermined by Medicaid and Medicare reimbursement. And, therefore, they are caught in the middle of trying to help their staff to continue to visit patients while not having the reimbursement coming into them to cover this sudden mushrooming cost. And we are already hearing of staff -- home health aids picking and choosing cases, and understandably so, saying "That case is way too far away. I'll be able to get to this case instead." It's obviously hurting our more rural areas, where travel is greater -- in somewhat greater percentages.

But it's hurting every town, every county, every visiting nurse and every home care agency.

We know that this Committee may not have, within its purview, all of the solutions that may be possible. And we don't know what the perfect solution is either. I've suggested in my testimony anything from a waiver on the State portion of gas taxes for these field staff, access to the State's gas pumps where State employees are able to fill up their cars, an emergency rate increase tempering mileage add on. Our colleagues in Pennsylvania and every state are now seeking the same kind of assistance from their governments. And at this point we're saying to you, we hope we can at least be in dialogue to try to figure out some reasonable solutions while you try to look at the bigger picture as well, and how to control this horrendous situation.

So we thank you, again.

And I have to say, as just an average New Jersey resident who's been sitting here for part of this time hearing you, I thank you so very much. This Committee has truly tried to drill down to the questions that need to be asked. And I'm truly appreciative of what you're doing.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you for that comment, and thank you for your testimony.

Does anyone have any questions? (no response)

Again, thank you. We appreciate it.

MS. KIENTZ: Thank you.

ASSEMBLYMAN WISNIEWSKI: And the final two individuals: Abigail Caplovitz, New Jersey PIRG; and--

Has anyone seen-- I saw Jeff Tittel earlier.

A B I G A I L C A P L O V I T Z: I think he'd be content to say it's okay at this point.

ASSEMBLYMAN WISNIEWSKI: Okay. (laughter)

MS. CAPLOVITZ: I mean, I can call him if you want.

ASSEMBLYMAN WISNIEWSKI: You can represent Jeff.

MS. CAPLOVITZ: I think he'll agree with pretty much what I will say.

Can you hear me okay?

ASSEMBLYMAN WISNIEWSKI: That microphone you're sitting at may not be operable.

MS. CAPLOVITZ: Hi.

Thank you very much for this opportunity to testify. It's been a really long and very interesting day. And I won't keep you much longer.

I first want to note the problem. You've heard them saying first do no harm. Well, there is harm that's already been done. New Jersey consumers know they're being gouged. They don't know exactly who's doing it. And I echo the last comment and appreciate you trying to figure out exactly where it's going. And we're going to be eagerly looking at those quarterly profits when they come out to try to answer that mystery.

It's quite a story we've been hearing about whose fault it isn't that these prices are so high.

I do note, though, that the gentlemen from Public Citizen had a lot of very interesting things to say about the structure of this industry that are quite important and, unfortunately, are not necessarily within the reach of this body to take much action on. I do want to underscore that the

five biggest oil companies -- the ConocoPhillips, the ExxonMobil, the BP, the ChevronTexaco, and the Royal Dutch Shell -- those all are compound names reflecting all those mergers -- have raked in more than \$48 billion in the first half of this year alone. So somebody is making money. There's no two ways about it. I can't get you the site, because I don't have it with me. But oil refiners now make about \$20 for every barrel of oil they refine into gasoline and heating oil, which is four times what they were making a year ago. So those margins that we were hearing about being so bad in the past clearly aren't anymore.

And these big picture factors really do need to stay on the radar. Also, that should be on the radar, is the history of these industries of not playing nice. I mean, I don't mean to be too critical. But when you saw Enron and the energy traders hold California over a barrel and jerk that market all over the place with artificial prices, artificial shortages of supply, it's worth noting that this FTC report that was written in 2001 noted similar sorts of behavior among the oil companies.

What happened was, the Midwest oil prices went up in the Summer of 2000, and the FTC investigated. And their March 2001 report has this description of a discussion with one unnamed refiner, "An executive of this company made clear that he would rather sell less gasoline and earn a higher margin on each gallon sold than sell more gasoline and earn a lower margin." Another employee of this firm raised concerns about oversupplying the market and thereby reducing the high market prices. A decision to limit supply does not violate the antitrust laws absent some agreement among firms. So the firms that withheld or delayed shipping additional supply in the face of a price spike did not violate antitrust laws.

Okay, fine. So it's not a conspiracy, it's not antitrust laws. But it's still market manipulation that's hurting the consumer. They've done it in the past, and I'm really appreciative that there's investigation going on. It would be nice to know if they're doing it now.

You noticed-- You hear all this talk about the refineries and shortages of supply, but their own graph showed that they're producing more gasoline now than ever before. It's not that there's not enough gasoline out there, not enough production capacity. So what's going on?

But that's the big picture. So we're in New Jersey. Well, in New Jersey--

You began, Mr. Chairman, by pointing out an interesting statistic. New Jersey has traditionally been a low-cost gasoline state. We've got low taxes, we've got in-state refineries. We've had cheap gas. Why is it, that after Katrina has happened, we now have above the national average in gas? You heard that little bit about the pipeline, but somehow it couldn't make sense in the end when you pressed him on his answers.

So there's some component of this high gasoline price going on in New Jersey, this gouging that's going on, that is New Jersey specific, or at least very, very close to local. And we really encourage you in your efforts to figure out exactly where that's happening and how. Because it's clear there's a local component.

In addition, though, a lot of the questions in the beginning had to do with, "What do we do now?" While consumers know they're getting gouged, and they're feeling the pain -- and the pain is going to be a lot worse, as you've been hearing, because we haven't even begun to see the effects of these gas prices. The cost of everything is going to go up because

of these gas prices. It's not just the fuel oil that's coming in the winter. It's not just the gas at the moment. It's all the services that are going to get jacked, because they have to mark up their prices. So we haven't even begun-- Consumers haven't even begun to feel the pain yet that these gas prices are bringing us.

So we need to really do something. What can we do? Well, one thing we can do is to improve the enforcement of the laws. And you heard the Director talk about -- maybe she needs a little more staff for that. And she definitely needs an increase in the strength of the law she's enforcing, the \$50 to \$200. You heard plenty about how that's an insufficient deterrent.

You also talked about the gasoline -- the gouging law -- how you need a declaration of a state of emergency. Well, we very much encourage you to look at, should that be changed -- should that threshold be changed? What should it be, before you can start looking at gas prices? Because, truly-- When you look at where places are in a real state of emergency, it seems hard that the Governor would be declaring one here. And yet, it seems quite clear that gouging is going on. And you should have the power to be looking at that.

Another thing you might want to consider when you talk about incentives-- The Federal government gives a \$25,000 tax break for Hummers. I don't know why. They do, but they don't give a tax break for Priuses. Your hybrids are, like, an \$8,000 tax break. New Jersey might want to look at some differential tax policies to reward the hybrids and to punish the extremely consumptive vehicles.

Another thing New Jersey might want to consider doing on the conservation end is more of what it's been doing. You recently passed a great energy efficiency act to improve the efficiency of eight appliances. There's a lot more appliances we could do. There's a lot of efficiency that can be gained. And we really urge you to start looking at that piece of it.

You also recently did the Clean Cars Act. We really appreciate that. But there is a lot more that can be done to make cars and other pieces more efficient. And we are very grateful you are doing it, and we encourage you to do more of that.

The consumer can reduce demand, both by changing these products and by responding to the price. And we consumers are going to do our best to do that. But we need your help in giving us those options, giving us the products we can buy, giving us the transportation alternatives. I heard somebody mention improving the tax treatment for using public transit. All these things to help us have other choices would be incredibly helpful.

And until this mystery of who's making the dollar is solved, we really appreciate your efforts on behalf of the consumer to find out.

Thank you very much for this opportunity to testify.

ASSEMBLYMAN WISNIEWSKI: Thank you for your testimony.

Does anyone have any questions? (no response)

Thank you, again.

Let me just use this opportunity to conclude. And if anyone else wants to make concluding remarks--

The one thing that seems very clear to me is that somewhere in this country there is somebody who owns an oil well. And that oil well was producing oil in May and April. And now, in August and September, the price for that crude oil is suddenly almost twice what it was a year ago -- or two years ago. And they're taking that money and putting it in their pocket. And the consumers are paying.

And as Abigail just testified, it's not just about having to, if you drive an SUV, pay \$100 to fill up your tank. But it's about, soon, when you go to the grocery store and buy a loaf of bread, or you go to the clothing store and buy a suit, that's going to cost more, because everything we eat, everything we wear comes by truck in one way or another. And those prices are going to be reflected throughout the economy.

I think we've only struck the tip of the iceberg today. There's going to be another Committee meeting on this topic next Thursday, location to be announced. And I certainly hope as many members as possible can be here.

And I see that we've lost most of the public, but, Jim, you'll spread the word about next Thursday. I appreciate it.

Does anyone have anything else they'd like to conclude with?

Assemblyman.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

I've had a very informative day. I have made some notations, and I'd like to summarize at the conclusion of the hearings. And, hopefully, after we do reach the conclusion of the hearings, you will-- I would urge you to get this Committee together so that we can consider what we were

hearing, and we can review some of the bills that you have before you, and we can move forward to help the residents of the State of New Jersey.

Thank you for your efforts in this matter.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

I'd like to thank the members of the Minority who have been here today to be participants.

Colleagues in the Majority, I appreciate your sticking this out until this later hour. This seems to be the Committee that has long meetings, and we appreciate your perseverance.

With that, we stand in recess.

(MEETING CONCLUDED)