Committee Meeting

of

ASSEMBLY TRANSPORTATION COMMITTEE

"Testimony and discussion of ideas on how to address gas price problems"

LOCATION: Student Center Ballroom
Rowan University
Glassboro, New Jersey

DATE: September 22, 2005
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John S. Wisniewski, Chair
Assemblyman John J. Burzichelli
Assemblyman Jack Conners
Assemblyman David R. Mayer
Assemblywoman Mary T. Previte
Assemblyman Brian P. Stack
Assemblyman Jeff Van Drew
Assemblyman Francis L. Bodine
Assemblyman John C. Gibson
Assemblyman Joseph R. Malone III
Assemblyman Kevin J. O'Toole

ALSO PRESENT:

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

Christopher Jones
Assembly Majority
Committee Aide

Jerry Traino
Assembly Republican
Committee Aide

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ASSEMBLYMAN JOHN S. WISNIEWSKI (Chair): Good morning, everyone. Would you please take your seats?

I'd like to call this meeting of the Assembly Transportation Committee to order. I'm John Wisniewski, the Chairman. We have members of the Transportation Committee, and we have individuals who are also substituting in. I'd like to welcome Assemblyman Joe Malone, Assemblyman Jack Conners, Assemblyman Jeff Van Drew, Assemblywoman Mary Previte -- who normally don't sit on the Committee, but are filling in for other Committee members who could not be here today.

I just would like to do a couple of housekeeping details. This is being recorded to prepare a transcript. So everything you say will be preserved for a long time to come. Unlike normal committee meetings, though, I do not believe this is being broadcast on the Internet. So you won't be able to go home and bring it up on your Web browser.

We're trying to conclude this meeting by 1:00 p.m. If you have written testimony, we would appreciate receiving a copy of that written testimony, and we would appreciate it also, therefore, that if you have spoken testimony that you do not read the written testimony. We can read that ourselves, but just try and paraphrase. I would ask that we not try to duplicate testimony that's already been given, but to expand on it.

And with that, I would like to offer to Assemblyman David Mayer the opportunity to do an opening.

Assemblyman.

ASSEMBLYMAN MAYER: Thank you, Mr. Chairman.

Good morning, ladies and gentlemen.

Mr. Chairman, I want to thank you and members of the Committee for coming here to South Jersey, bringing this issue here for our residents to comment on and for us to further explore, on what we began last week. I'd especially like to thank those of you who have come long distances to the 4th Legislative District. I also wanted to thank Rowan University for hosting this event. Rowan is a big part of our community here, in Glassboro and the 4th Legislative District, and I want to thank them.

This is a very, very important issue that really needs to be further explored so that we can ensure that we're doing everything that we can for New Jersey consumers. I found last week's Committee hearing to be very informative. Certainly there are questions that still need to be asked and answers that still need to be given. And that is something that I am hoping for this afternoon and this morning.

So, Mr. Chairman, I thank you for bringing this Transportation Committee to the 4th Legislative District, and I thank the members for your participation today.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

On behalf of the Minority, Assemblyman Gibson.

ASSEMBLYMAN GIBSON: Thank you, Mr. Chairman, and let me add my welcome to this Committee -- and a Committee that I'm a member of -- to South Jersey, to compliment the Committee on very timely hearings that are taking place on this very important subject. Last week's hearing resulted in a number of disclosures and information. It was very enlightening for the Committee. And hopefully, many of the near-term solutions that -- some of which the Minority Party has already introduced and has in the hopper, can be transferred to this Committee, so that action can be taken and the consumers of New Jersey can take the benefit of not only the Minority Party's ideas, but the entire Committee's ideas.

So, again, I thank you, Mr. Chairman, for the opportunity to welcome you to South Jersey and to proceed with this very informative hearing.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman -- both of you, for your openings.

One of the issues that the Committee heard about and discussed at the last meeting was the fact that consumption is, in part, one of the issues that drives the price of the commodity -- of the crude oil and of the gasoline that we all use in our vehicles.

With us today is an individual who has a long career in State Government. He had been head of the Board of Public Utilities when it was the Department of Environmental Protection and Energy a few years back. He's now with the Center for Energy, Economic and Environmental Policy at Rutgers University. I give you Scott Weiner.

Mr. Weiner.

S C O T T A. W E I N E R: Thank you very much, Mr. Chairman.

I want to thank you and the members of the Committee for this opportunity to participate. It's good to see many of you and to be back in this forum again. And I appreciate and am honored by the invitation to share some thoughts with you.

I want to start out by concurring with those who would characterize the issue as a demand-driven market. It is one of the factors, but it is a very important factor. And as we think about options and policy opportunities for government action, I think we have to concentrate on the fact that more than ever the dynamics of the oil market are shaped by the global demand for oil and not just the boom-and-bust cycle of production, which had been, historically, a driver. And all of us have been around long enough that we know that whenever there's a market fluctuation in any commodity, government is often called upon to address the impacts upon the state's consumers. Yet when the discussion turns to long-term market placed strategies, to address some of these in a more wholistic way, government is often told that it has no role in that long-term vision and that the marketplace should be left to itself to determine its own winners and losers, and policies and outcomes.

I would like to begin by sharing some thoughts this morning on a view on the role for government in addressing, specifically, gasoline pricing and other transportation fuels. When dealing with marketplace commodities, supply and demand do count. And the opportunity that is at hand for state government, I believe, and particularly New Jersey State Government, resides on the demand side of the equation.

And in thinking about first, price signals, I know I'll be echoing comments of some others, including my colleague Clint Andrews, who you met with last week. We should be sure that we're providing accurate price signals for market and consumer response. Distortions and abuse in supply and demand dynamics should be aggressively pursued to protect against price gouging and the impacts of other market distortions. Activities under a heading of consumer protection, public information disclosure, such as this Committee is doing, is invaluable.

Tax policy is also a tool in our collective tool chest. Everybody is familiar with the idea of tax incentives for certain types of vehicles, hybrid vehicles, other types of vehicles. There are other opportunities to provide financial or fiscal incentives.

We saw, around the country, a quick move towards looking at the gas tax. It's appealing, as a short-term solution. It's fraught with dangers that I know this Committee has considered and discussed, so I'll be one of those who add a cautionary note. But demand incentives can also produce prompt results. And they can produce prompt results by directly impacting the consumption of petroleum products, in this case specifically gasoline, both in the short-term and the long-term. Initiatives that come to mind are, again, ideas like credit on high-efficiency vehicles; or the State procurement, more importantly, of high-efficiency vehicles, regardless of the technology, whether it be hybrid or any other technology that produces the efficiency.

The power of public procurement should never be underestimated. And it has always interested me that there has been an obstacle to its effective use. I will admit that when I was a member of the Executive Branch, although that seems like many moons ago, we had difficulty moving State government away -- to set as a rule -- which still is, to my understanding, is not in our government -- that life-cycle cost should be considered when procuring certain types of commodities or products, whether they be appliances or vehicles. I can't think of a reason in the world why, for routine-duty vehicles, the State is not requiring high-efficiency fuel vehicles be procured, period. I don't know why not. And the amount of energy that would be saved and the cost savings to the State would certainly be demonstrable and measurable.

I'd like to turn, just for a few minutes, to some thoughts about initiatives to address longer-term solutions. And this raises, I think, a different set of issues. And it calls into question the role of state government, which I believe at times has been inappropriately referred to as central planning -- that state government has no role in thinking about the growth of a market or trying to help shape the dynamics of a market, and that there seems to be a dichotomy of false choice between planning and true markets.

To be successful, any type of intervention, whether it be by a private company or by a public entity such as state government, I believe requires a strategic approach that will align related, in this case, State resources and activities. In short, the choice that's before us in this state, and frankly other states, is whether we as a state want to be an innovator or an adopter. And I don't mean that in a pejorative way. Lots of companies, lots of states make decisions all the time. And in fact, there's a cliché phrase that there's often a rush to be second -- let somebody else be the pioneer, let somebody else figure it out, and then we'll adopt it. It is a very legitimate corporate and government strategy. Yet, at times, states take the opportunity to develop strategic initiatives and, in fact, become an innovator, and in doing so bring a whole collection of benefits to the residents of their state.

Modern technology development and evolution needn't be, and sometimes is, thought of in this kind of discussion as the outcome of random acts. Somehow or another, it just happens. Some of you may know that our research center did a study on the potential opportunity for New Jersey doing this kind of strategic initiative in the area of hydrogen fuel. When we sought funding for that, more often than not, we were approached with the comment, "The market will just take care of it. There's no role for government in it, and there's certainly no role for academic policy analysis." As you would anticipate, I disagree with that analysis. Things just don't happen. Strategic initiatives are developed.

Let me give you an example. Some of you may be familiar with the California fuel cell partnership. That was a partnership, a strategic alliance, that clearly involved the state of California, along with -- this goes back to 1998, 1999, when it was initiated -- fuel cell developers, such as a former employer of mine, Ballard Power Systems; petroleum companies, hydrogen developers, methanol companies, all coming together in a collaboration to collectively pool their resources and strategically move California as the place where fuel cell vehicles would likely be introduced, because of the other factors that are aligned -- the state's environmental regulations, the state's history toward transportation innovation, the dependence of the motor vehicle, and the like.

Those types of initiatives involving hydrogen are not limited to California. In Michigan, one would anticipate, because of the presence of the auto industry, the state there has again launched a strategic initiative to put Michigan towards the center of the universe of hydrogen research and development. Similarly, in our region, New York and Connecticut -- because of the presence of fuel cell companies, the applications for hydrogen as a fuel -- have launched similar initiatives.

In our study, we took a look at whether or not there was an opportunity for New Jersey to do something similar, but in a slightly different area. Hydrogen fuel, and particularly the deployment of hydrogen vehicles, among other things, is caught in the classic chicken-and-egg cycle. Automobile companies say, "We could build them relatively soon, not tomorrow, but relatively soon. But, by the way, there's no infrastructure." Fuel companies say, "We could develop a fuel infrastructure," and companies such as Shell have set up business units devoted to hydrogen, "but, by the way, there's no vehicles to fuel." It's not an unusual situation. But somehow this needs to be broken.

But in the process, there's an opportunity for some states, some companies, to take a look at the issue of hydrogen infrastructure, particularly fueling infrastructure, and carve out a niche for themselves, or itself, as a leader and a center of that activity, potentially bringing a whole bundle of other benefits to the state, in terms of employment and economic growth and development, technology development, and the like.

The question we looked at for the State of New Jersey was whether or not such an opportunity existed. Our conclusion, in July of 2004, when that report was issued, was that there very possibly was that opportunity, but there was some preliminary analysis that had to be done first. We had to decide as a State, is this the kind of strategic initiative we wanted to devote our resources, and our energy, and our policies to? And in order to do that, we suggested a couple of preliminary steps, one of which was launched earlier this week with the support of the Board of Public Utilities, and that was the creation of a Hydrogen Learning Center, which will facilitate debate and discussion on this topic. A second, which remains unaddressed, was that New Jersey institute a statewide planning process, an analysis process similar to that done in other states -- what's known as a visionary road map. Where, if at all, should New Jersey be on the development of hydrogen?

The type of strategic analysis that I described for hydrogen is, of course, applicable to other technologies in the long run. And although there is a natural tendency to look at ways to affect fuel consumption, as we should, either through new technologies -- hydrogen, other emerging technologies, biofuels alike, demand response alike -- there are other activities that fall outside of the fuel sector that also need to be continued and explored, and I'd be remiss if I didn't mention them. And of course, that falls into the area of mass transit -- which can be viewed as a demand strategy -- as well as planning strategies, the development and continued development of transit villages and other compact and walkable developments.

Needless to say, I could go on for a long time on these topics. I appreciate the opportunity to share these preliminary thoughts, and happy to respond to any questions the Committee may have.

ASSEMBLYMAN WISNIEWSKI: Thank you, Scott.

I'm sure Committee members have questions.

I would just like to take the first crack at it. There seems to be, for a long time, an inability to actually get, whether it be government or private sector, or anyone really, to fully become invested in alternative fuel vehicles or hybrid vehicles. You pointed out, back when you were in the Executive Branch, there was a push to have LNG vehicles. Today there is talk of the hydrogen highway and the project being conducted in California.

And it just seems, as you pointed out, there's this fall off between having the infrastructure to deliver the fuel or having the cars to use the fuel. Neither side seems to be willing to go first. What does government do to make that happen?

MR. WEINER: Mr. Chairman, I think there are a couple of things I'd like to share. One is patience. I'll make a confession now -- certainly greater patience than I had some 10, 12 years ago, when there was a push for compressed natural gas, as well as propane as an alternative fuel. I was the DEPE Commissioner at the time and had the clever idea of trying to get our natural gas companies in the state to help underwrite a demonstration of compressed natural gas vehicles. And we were able to do that to no one's surprise. The vehicles at the Department of Transportation and DEP were converted to compressed natural gas. We had a station put at the Department of Transportation facility in Ewing, and that's about as far as we ever got, because the market wasn't responding. We weren't able to invest other people in it. We didn't take recognition of the need to build out an infrastructure, to build up marketplace demand.

We talked a lot about a highway. In fact, we were working at that time, with then Governor Cuomo, about building a CNG corridor that could get people from Albany to Washington and be able to fill up with compressed natural gas. It sounded great, but if you saw a map where those compressed natural gas facilities went, they went nowhere near the main interstate highway system that would get you there. There were lots of good individual activities that were well-intended that reaped some benefits of their own, as limited as they may be, but they weren't linked together as a strategic initiative with an appropriate time horizon.

So I know there's been talk in reference to the hydrogen highway of California. And I think when one looks at the hydrogen highway of California, it seems to be a logical extension of the California fuel cell partnership, and to some extent it is. But the initiative was, I suggest, was ahead of the industry's capability to deliver either vehicles or fueling stations to support it, but particularly vehicles. So there has to be an alignment of the technology development.

If somebody said, "What about an idea of a hydrogen highway," -- and, Mr. Chairman, I'm aware of your interest in that subject -- "that New Jersey participate in." Number one, I'd say I think it should be thought about, but not in the context of the next year or two, but as a strategic initiative that we move to. Because if there is going to be hydrogen in our region, it is going to pass through New Jersey one way or another. And if there's going to be an infrastructure, it needs to be developed, and we have a lot of elements that could put us in the center of that development and capture that economic activity.

So rather than looking at the specific hydrogen highway, I would urge the Committee to think about ways that we could position New Jersey to be at the forefront of thinking about how do we make this a reality. And whether one argues about fuel cell vehicles being commercially available by 2015 or 2020 or 2025, I'll just suggest that when I was at Ballard, we and our partners -- which were no slouches, they were and are Ford Motor Company and Daimler Chrysler -- were predicting that in the model year 2008, you'd be able to walk into your car dealer and buy a fuel cell car. Everybody was a little bit ahead of the marketplace and the technology development. I wouldn't abandon the idea. I would just put it in the context of the technology development, the need for coordination among the region, and understand the role, and the very effective role, the State can play in being a catalyst.

Now, to the area of alternative fuel vehicles, I would suggest that a great thing the State could do is to set a fuel efficiency requirement for its own fleets. Don't pick winners and losers. Don't pick the technology and say, "So many have to be hybrids and so many have to be ethanol fuel vehicles." Pick a performance standard and then, in conjunction with the marketplace, let the government procurers figure out which car is going to deliver the performance that will meet that standard. I think it is an action that this Legislature could do quickly, and it would reap immediate benefits both in terms of reduction in fuel consumption, in terms of reduced costs to fuel the cars, and also unleashing the power of procurement of the State.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Mayer, and then Assemblyman O'Toole.

ASSEMBLYMAN MAYER: Thank you, Mr. Chairman.

Mr. Weiner, thank you very much for your testimony this morning and, certainly, discussing the role that government plays in addressing the gas crisis. And I believe, as you do, that government should lead by example.

Now, I was particularly interested in your discussion on the power of public procurement and looking at high-efficiency fuel vehicles that the State might be able to purchase, as you were just discussing. I have drafted, along with Assemblyman Michael Panter, legislation that would require -- the State would purchase vehicles, or the county, municipal governments, even the school districts -- that would require them to purchase vehicles, that are used by public officials, that would meet fuel-efficiency standards. The draft would require vehicles that are rated in the top 25 percent for fuel economy, according to the corporate average of fuel economy standards. What you're saying is to not only do that, but then to take a look at the performance standards and allow procurement officers to meet those standards? Is that too--

MR. WEINER: Yes. I'm familiar with the concept of your legislation. I'm familiar with the details of it. Of course, whenever there's a reference to CAFE standards, that opens a whole other discussion that the Committee might want to set aside some time on. I'm among those who believes that CAFE standards could be and should be increased -- that Congress has been remiss in doing that. And that from a national perspective, if CAFE standards were increased it would have the result of lowering demand. There is a body of published work, and there's obviously a dispute as to what the economic impacts would be to the economy as a whole. But relying upon a certain body of published research, I'm among those who believe that the impact will be both economic growth for the economy as a whole, as well as the creation of jobs.

Having said that, the question now for the State is, if you set your procurement standard at that top 25 percent tier of CAFE, many might argue that you're setting the bar too low. Maybe it should be a higher percentage of the CAFE standard. And in some cases, maybe the State -- and now, in looking at marketplace dynamics, working cooperatively with other states in the region, setting a standard that may even exceed that in certain ways or respects, a certain segment.

The effectiveness of collaborative action among states in the marketplace, with efficiency, was recently concurred in and endorsed by the Legislature and the Governor in the signing of the Energy Efficiency Standard legislation for certain appliances. So I think, Assemblyman, from my personal point of view, you're exactly on the right track. I might urge you to think about setting the bar a little bit higher.

ASSEMBLYMAN MAYER: Okay. Thank you very much. I appreciate your comments.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you, Chair. And thank you for hosting a second meeting. I appreciate your concerns about moving from central and south, and hopefully north Jersey is next. And I didn't mind the two hours and 10 minute drive coming down here. And I'm sure my south Jersey colleagues won't mind their trip next week.

Scott, I've heard about you. I've read about you. I respect your background. And I just have a thought. As you're talking about what other states have done and talk about this hydrogen infrastructure, I mean, did New Jersey get a failing grade for not properly preparing for their energy needs? And when you're answering that, let me just-- You said the word *patience*. And I'm saying when I was in grammar school I remember reading and seeing the energy concerns we had then. So for over three decades the State of New Jersey has realized that we have a real problem with either consumption, conservation, or production. And you tell me patience, and I suspect from my son, 30 years from now is going to say, "Dad, what have you guys done to make sure we can meet our energy needs here in New Jersey?" And Scott, give us an answer.

MR. WEINER: Oh, a very fair question, and I apologize. I must not have been clear. My comment about patience was in response, specifically, to the hydrogen highway. If it was a proposal to move today towards the creation of a hydrogen highway and New Jersey's participation in it, I would say a little patience there. Because I think that we might be running the risk of putting ourselves ahead of the marketplace. I'm not counseling patience at all on other issues. And while I believe that New Jersey has very effectively -- certainly in the past 15, 17 years that I've been at or near New Jersey energy policy -- that we have done an effective job of planning and preparing, I think we could do better. I think we could do better in areas of State procurement. I think we could do better in looking at how the State, through the setting of standards, through the setting of guidelines by making information available, can help New Jersey.

This is not only true in the transportation fuel arena. There's a lot happening in electricity supply, natural gas supply, and the like. New Jersey, today, as a state, is viewed as one of the leaders in the area of preparation and planning for the new electricity marketplace, and also natural gas marketplace. But there are things that we can do. For today's topic, gasoline -- if somebody asked me, "What's something that can be done today?" What should be done today is we should look in our house, as public entities, and we should require the purchase of the most fuel-efficient vehicles we can. It would be like saying, "Let's have a recycling program in the state, but, oh, by the way, New Jersey is not going to--" You say “Government is not going to recycle, but we’re going to urge everybody else to do that.”

ASSEMBLYMAN O'TOOLE: Thank you, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: We should lead by example.

MR. WEINER: Well said.

ASSEMBLYMAN WISNIEWSKI: Assemblyman Malone.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman. I want to say I appreciate very much the call that Assemblyman Dancer and I had, to have you -- have some hearings, or for the Speaker to bring us back in Session. This issue probably, from my perspective and people I talk to, is probably, next to property taxes, the biggest issue that they face today.

I was interested in hearing from Mr. Weiner. The thing is, that I get, it’s really more of a kitchen table issue. It’s nice for us to talk about what we’re going to do over the long term. What I’m concerned about and what I think most people are concerned about is what is the issue, how did we get here, and what are we going to do in the short term to mitigate the problems that people have being able to afford to drive to work? And even worse case scenario, what are people going to be able to do to pay to heat their homes this winter? I think that we have to look very critically at those two issues, then have sort of a short-term answer and a long-term goal.

I, right now, see some really catastrophic problems coming up this Fall and Winter with people not being able to pay to go to work and not being able to heat their homes. And I would like to know from you, with your vast background, what do we tell people, at their kitchen table, how to cope with this issue in the next four, five, six months?

MR. WEINER: That's a fair question. The discussion takes place even at my kitchen table. And I think at some point, as you all collectively sit here, there is a tendency, as we've seen in other states, to look at tax policies, gas taxes to bring down costs. I'm not going to repeat questions that I'm sure that have been raised before this Committee and your colleagues over the past week, as to the pros and cons of doing that. I will observe that I think we've all observed gasoline prices going down over the course of the past few days and few weeks. They're still very high and they still have a real economic impact.

I'd also like to share the thought, going back to something that Assemblyman O'Toole just asked me, which is: had we as a state, had we as a nation addressed issues of consumer demand, as well as supply -- I'm focusing on demand today -- but consumer demand 10 years ago, the impact today would not have been as great as it is today. I understand that doesn't solve the problem at the kitchen table.

I also think you'll find, as I'm sure you found at your discussions last week and this week with the supply sector of the industry, may shed some light as the things they could be doing to help enhance supply into the region. And the one observation I make is, we are in a market today, and marketplaces respond to supply and demand issues. I think we need to be vigilant, as the State has to watch out for consumer fraud or price gouging. I think that if we can initiate some prompt demand responses, we'll get that. And around the kitchen table, I know that sometimes carpooling has come back up. These sounds like Band-Aids, but they're real approaches to juggle an economic burden that's being placed on people.

But in our quest to solve today's problem -- I don't want to minimize that at all -- we shouldn't overlook the longer-term solution, because if we had done that-- I was the BPU president, in 1990, at the time of the invasion of Kuwait. Immediately before I came into office, during the transition period late in 1989, maybe you may recall we had a threat and a somewhat actual natural gas shortage in the state, where we had to deal with that. There are tools that are available, but the reality is it's hard sometimes to insulate against that marketplace dynamics of price increases. And those price increases send signals that send a message. Because we would simply not be having this discussion today if prices were the level they were six months ago. But we should have been having this discussion today.

ASSEMBLYMAN MALONE: I don't want to sound frustrated, but I guess I am frustrated. And I don't know what happened at the last meeting, Mr. Chairman, but I think that we really, in the interim, have to come up with looking at how, in the State budget, we're going to be able to afford people the opportunity to heat their homes. I think we have to look at New Jersey Transit and other forms of mass transportation as being as effective and efficient as possible, maybe putting on extra routes or extra trains. All of these things, in the short term, have to be given a real close scrutiny so that the public, in general, does have some alternatives where they're possible. If you're in this part of the state, if you don't have a car, you can't exist. But I think that we need to address those in a short term. And I would hope this Committee, through its work, is going to push transit and other avenues of mass transportation, and press them as much as possible to make sure that they are effectively dealing on the day-to-day basis with this issue.

MR. WEINER: Let me concur on that, Assemblyman. And I may have -- seemed to give short shrift, at the end of my remarks, to the role of mass transit. They're real alternatives and there are things and decisions that state government can make, in terms of accessibility and affordability of transit, also. Because those costs are going up, too. There is the ability -- it takes 10 years, nationally, to infuse-- If CAFE standards were increased tomorrow, it would take 10 years to really infuse the benefit throughout the nation, as a whole, because of the time it takes to turn over the vehicle fleet. Well, that's true when you look at a macro level.

When you look at a micro level, when I went out and bought my hybrid, I got the benefit the next day. I'm now driving a Honda Civic Hybrid, and getting probably 40 to 50 percent better mileage than I would have gotten before.

There are things the State can do to incent people to do that, through tax credits or tax deductions or other incentives to make that individual purchase possible, and allow the micro benefit to occur immediately. And that's another tool that you could look at.

ASSEMBLYMAN WISNIEWSKI: Thank you, Scott.

And Assemblyman, I know that you made a very valid point. We need to be trying to get as many people to take benefit of mass transit where possible. The other day New Jersey Transit unveiled its new multi-level railcar. A 10-car train of that will have 30 to 40 percent more capacity than an existing 10-car train. We'll be able to move more people with the same amount of energy, and that's certainly something that we should urge Transit to speed up the delivery, and put those into use as soon as possible.

If there are no other questions--

Assemblyman Conners.

ASSEBMLYMAN CONNERS: Mr. Weiner--

First of all, Chairman, I didn't attend the previous meeting, and thank you for chairing these meetings. It clearly is important.

I just want to reflect on something. Mr. Weiner, I'd like you to reflect on something. I believe it was back in the 1970s, maybe '74, where we had the fuel shortage. And those of us who can remember waited in lines -- not only did you wait in the line for a long time, but all you could get was $3 worth of gas. And if my memory serves me correctly, after that, all of a sudden the car manufacturers began making smaller cars. I didn't imagine that the Hyundai suddenly came about.

I have an article here today from Ford, "Ford poised for big, hybrid" -- it's probably not a good word, *big* -- "a big, hybrid push." But we started making smaller cars. I would go into supermarkets -- every other row of lights was out, because we needed oil to generate electricity. And we were talking about public transportation as we moved into the '80s and '90s. Every time we wanted to develop a new train route, for example, there would be people saying, "Not in my backyard." And perhaps there's a things we didn't do, because people didn't want it in their backyard.

We increased the speed limit. I've been hearing that on TV -- CNN -- everyone is saying if you drive 65 miles an hour, you're going to use substantially more gas than you do if you drive at 55 miles an hour. We did increase the speed limits on just about most of the major highways here in New Jersey. And not only did we increase them to 65, I would argue that people seem to be driving 75 miles -- or they all seem to be passing me at 75.

So history has repeated itself, and we didn't seem to learn anything from the '70s, and we ended up with Hummers and 6,500-, 7,000-pound vehicles that, if you don't turn the engine off, they probably -- you don't get any gas in your car.

And as you reflect on that -- we may be the same age -- as you reflect on that, why didn't we learn our lesson there? What happened?

MR. WEINER: If I could answer that with accuracy, I'd probably be someplace else at the moment. (laughter) But my comment, Assemblyman, is it was many factors, and I would offer the word *culture* as one of them. It's a culture we have in this country, and it's a culture of consumption. And it's a culture that consumption is fine -- and I think we are about the same age -- and we stayed in gas lines. We had a supply disruption. It's interesting to note that although the price impact has been dramatic and it has hit families very hard, the fact of the matter is, you can still get fuel. It's a different type of problem, but it comes back to a question of culture.

Why is it that if we travel to Europe, we will see auto manufacturers that will have essentially the same model cars, but their fuel efficiency will be much higher? Even the build out of the car, the accoutrements to the car, may be more modest. The cars are smaller. It's a question of culture.

Now, as a state, looking at the state level, we have had a very successful and dramatic cultural evolution of sorts when you think about recycling. I'm also old enough to remember, and as a local municipal official at the time, of mandatory recycling. And even those of us who supported the concept feared what it would be like to tell residents in our communities they now had to separate their garbage into different buckets and carry it out to the curb. And it quickly was adopted because the residents of the state understood the value of it, and the State was leading by doing that. It's a question of culture. We have a culture of consumption. So as soon as we could begin to be more confident in the supply of gasoline, the demand for high-efficiency vehicles, low-mileage vehicles began to decrease. The ability to build SUVs began to increase. They have their place. I will admit to having one. It has served me well over the years.

But one of my personal disappointments -- and I believe this is part of our national culture -- is some SUV manufacturers are touting their hybrid technology, but that hybrid technology has been deployed in order to gain better performance, rather than higher efficiency and fuel mileage. They'll say it's higher efficiency. And there's one manufacturer, who I think we all know, who will say that you get the power of a V8 with a V6. Frankly, I would have liked to have seen higher mileage from the mid-30s, up to the mid-40s or low 50s, and then that would have been a compelling shift. And there's more than one manufacturer that's doing that. That's the culture. That seems to be the marketplace.

Now, I also believe there's another chick in a egg in this country, which is that often consumers in this country are ahead of manufacturers. Manufacturers will say, "We'll sell anything if people -- we thought there was a demand for it. If people wanted smaller cars, we'll build smaller cars. People want more fuel-efficient cars, we'll build that."

I think sometimes the power of procurement of a state can help test that theory and can help create a demand pull, in order to get those kind of vehicles. And when I talk to my kids about gas lines, they think I'm from Mars.

ASSEMBLYMAN WISNIEWSKI: Thank you.

I also would like to welcome Assemblyman Stack for joining us this morning.

Commissioner Weiner, President Weiner, thank you for joining us today.

Oh, I'm sorry. Assemblyman Gibson, you have a question.

ASSEMBLYMAN GIBSON: I don't have a question for the Commissioner, but I do have an observation. And Assemblyman Conners and myself go back to the time when we should have learned lessons. I learned lessons at the time. At the time, I was in business and we started a four-day week. And therefore, the employees didn't have to drive to work on Fridays, and that was the trend. I haven't forgotten those lessons, and I'm very conscious when I purchase my car. I worry about the gas mileage. I drive a Buick. I get 25 miles to the gallon.

Mr. Chairman, I wonder what the Committee members are driving? Would that be an interesting thing to ask the Committee members what they're driving, what they drove here today, and what's their gas mileage that they get?

ASSEMBLYMAN WISNIEWSKI: I drive a SUV. I get 14 miles a gallon. Guilty as charged. (laughter)

ASSEMBLYMAN GIBSON: Thank you, Chairman.

Well, we'll be learning our lesson, all of us, and the state as a whole.

ASSEMBLYMAN WISNIEWSKI: Thank you, Commissioner, again. Thank you.

MR. WEINER: Thank you. Thank you.

ASSEMBLYMAN WISNIEWSKI: I'd just like to -- this was a topic. And those of you who were with us at the last meeting, the issue of how this nation, in the late '70s and early '80s, had a coherent, national energy policy that had the effect of reducing our oil consumption by some 30 percent. And when the price of that oil went down and the price of the fuel we used to generate electricity and drive our cars went down, it became less of an important issue. And I think you heard that echoed by President Weiner in his comments. It's a market-driven reaction. And when it's cheap, it's not as painful, and it's not a concern. We're now at a point, though, where the concern is heightened, and we need to use this as an opportunity to try and increase efficiencies and save energy in some fashion.

I would next like to call one of the producers of that energy, John Ponticello and Tom Skok, from the ConocoPhillips Bayway Refinery.

Before you start testifying, just make sure you identify yourself and your organization so that we have it for the record.

JOHN C. PONTICELLO: Okay. My name is John Ponticello, from--

ASSEMBLYMAN WISNIEWSKI: Press the button so the green light's illuminated.

MR. PONTICELLO: My name is John Ponticello, from the Bayway Refinery. I'm the Plant Manager. And with me is Tom Skok. He's senior counsel from our headquarters office.

Before I start, I'd like to thank Commissioner Weiner, on behalf of the Bayway Refinery. Back in 1993, we went through a transition from one owner to another. And when Commissioner Weiner was in the Florio administration, he was very instrumental in helping us to make that transition go very smoothly and flow very well for us. And we certainly do appreciate that kind of support.

Good morning, Mr. Chairman, distinguished members of the Assembly Transportation Committee, the staff, interested citizens, and other parties. As I mentioned, I'm John Ponticello. I'm the Plant Manager for the ConocoPhillips Refinery up in Linden, New Jersey. With me is Tom Skok, senior counsel, from our Houston headquarters, who is here to respond to questions the Committee may have involving issues around marketing for ConocoPhillips.

Thank you very much for the opportunity to provide you with an overview of the Bayway Refinery, which will be celebrating 100 years of service coming up in the year 2009. So we are starting to prepare to celebrate that event. I, personally, have 27 years of experience in the oil industry, starting my career at the Bayway Refinery in 1978. My career took me through many different jobs at the refinery. I then left, in 1996, to help start up a refinery down in the Philadelphia area -- the Trainer Refinery. I worked through that transition. Subsequently, in 2000, I was promoted to Plant Manager for the Alliance Refinery down in Louisiana, just south of New Orleans. And more recently, I returned to the New Jersey area, back in April of 2004, and I'm very happy to be back home.

Overall, we have a very good news story to tell on behalf of our 950 coworkers at the Bayway Refinery. We're investing in the facility. We're hiring new people, and we're in the process of addressing various infrastructure issues associated with having a plant of the age of the Bayway facility. In 2004, the refinery's payroll was in the order of $60 million. Since then, we've hired more than a hundred new hires, since the beginning of this year, including process operators, maintenance workers, as well as various engineers. So as we go forward here, the payroll has certainly gone up north of that $60 million.

And in addition, on a day-in, day-out basis, we have about 200 contractors working in the refinery, just working on maintenance. That excludes the capital work that's going on that I'll talk about. Those contractors work maintenance, engineering, and other support roles. We pay more than $9 million in property taxes, on an annual basis, on 1,350 acres of property that support our facility.

As a result, please allow me to outline a little bit about our operations. In 2004, Bayway's annual refined throughput was 93 million barrels, which is just shy of 4 billion gallons of throughput through the refinery. The refinery's nominal crude oil processing capacity is 238,000 barrels a day. This makes Bayway the second largest of the eight major fuel refineries on the East Coast, based on crude oil processing capacity. The crude oil that we run at Bayway comes from fields around the Atlantic Basin, from places such as the North Sea, West Africa, and offshore

Canada, as well as a few other places down toward South America, on occasion.

In addition to the crude oil, we purchase what we call feed for our cattle, or the cracking unit, or partially refined feed stocks. And this boosts our total production up to around 275,000 barrels per day, on average, which is about 11.5 million gallons per day of product that we produce at Bayway.

All of our crude oil and feedstocks come into the refinery via tanker. We have nine long-term charter vessels. These are doubled-hulled and double-bottomed vessels that call on Bayway. And in addition, we do charter other vessels, as needed, to bring crude to the facility.

Bayway produces a range of fuels, including gasoline, home heating oil, low-sulfur diesel fuels, jet fuel, fuel oil. We also produce light gases such as propane and butane, and we produce polypropylene, which is a product that's used to make the plastics that you see every day. And we also make some petrochemical feedstocks. These products are shipped to market via pipeline, barge, and trucks.

In 2004, ConocoPhillips sold all our retail stations in the Northeast, so Bayway is effectively a merchant refinery. An interesting fact is that if all of our gasoline production was sold in New Jersey, Bayway would supply more than five out of every 10 gallons of gasoline that's consumed within the state. However, we also sell our gasoline to resalers in New York, Connecticut, and Pennsylvania, as well as other states.

Over the past year, our throughput -- our term for production levels and reliability, which is how well the plant runs -- have been very good. To achieve a level of performance such as this, our workforce concentrates on three basic fundamentals or refinery principles. The first is working safely; the second is to comply with applicable laws, regulations, and procedures that govern our facility; and the third is to ensure that we run reliably.

We have found that if we perform well in these three fundamental areas -- safety, compliance, and reliability -- the refinery should be up and running well when markets are favorable and that should allow us to make a profit. Again, the focus is on these three fundamentals. And in the end of the day, the profitability of the refinery should take care of itself.

To help us run reliably, become more efficient, and lower our operating costs, we are much higher than refineries in other states. Over the past five years, we've made significant investments in the refinery, including: We've spent $140 million on a turbine that helps to produce electricity and steam that's consumed in the refinery. We spent $250 million on a polypropylene plant that makes plastics from a feedstock supplied from the refinery. And we perform major maintenance projects, or what we call *turnarounds*, on our catalytic cracking unit and our crude unit, as well as other associated processing units. And this allows the refinery to continue to run reliably day in and day out.

Chairman Wisniewski specifically asked us to explain turnarounds, which are large-scale projects during which we clean and perform maintenance on equipment while the process unit is shut down. The turnaround timing is based on the units historical performance. Planning often begins a year or more in advance of the shutdown. If a unit performs as expected during its run, the turnaround will be taken at a predetermined interval. Depending on the process, the length of time between turnarounds can range from as short as 18 months to as many as six years for some of our major units. Our overall goal is to plan a turnaround and complete it on a schedule to minimize downtime and maximize efficiency.

A good analogy that I could make is to ask you to think a little bit about your car. We periodically shut down and rebuild process units like some folks have to rebuild car or truck engines or transmissions, and have them overhauled. We do the same thing, and again the interval is every 18 months to sometimes as long as six years. Turnarounds are scheduled at appropriate periodic intervals in the interest of having refinery process units run safely and reliably for the long haul.

This year, ConocoPhillips initiated a $200 million project at the Bayway Refinery to make the next generation of clean fuels, which will significantly reduce sulfur in gasoline and diesel fuel. To put this investment into context, when one company calculated the cost of clean fuels, they elected to shut down two mid-size refineries in the Midwest. ConocoPhillips subsequently purchased one of those refineries. The other refinery was subsequently shut down and dismantled.

So we're pleased that ConocoPhillips is investing in Bayway's clean fuels project. In 2006, the fuels we produce will be even cleaner burning than they are now. This will benefit New Jersey, our region, and in particular, the urban areas around here.

This week, in fact, we have more than 700 unionized craft workers affiliated with the Building and Construction Trades Council employed by contractors at the refinery, installing and revamping equipment for our Clean Fuels project. We have a positive relationship with the trades. We collaborate with them to ensure that they know and follow safe work practices at the refinery.

On a more global note, we compete with refineries in our region, the Gulf Coast, and overseas. When comparing costs with our domestic competition, we find that in New Jersey our utility costs, including electricity, are among the highest in the nation. Our labor costs are much higher here than in the Golf Coast, where many U.S. refineries that ship product into our region are located. And the regulatory environment is among the strictest in the nation.

While these and other factors increase our operating costs, there are about 15 million people living within 35 miles of Bayway. This gives Bayway a location advantage over some of our competitors.

Against the backdrop of increasing demand and tightening supply that you heard previous testimony on, ConocoPhillips has announced that the company is planning strategic investments totaling $3 billion in the refining sector of our company. While the funds will be spread around the company, we're optimistic that we'll be able to identify and develop opportunities for the Bayway Refinery.

On another front, earlier this year, ConocoPhillips entered into a voluntary agreement with the Federal EPA to fund $60 million in environmental upgrades at the Bayway Refinery. So as you can tell, if you look over the next couple of years, we've got a fair amount of work coming our way.

We understand that the Committee is also considering how the Legislature can encourage more gasoline production in New Jersey. We believe that, in the base case, having the State support essential industries like ours is good public policy. It should be based on sound science and logic. There is a benefit to having refineries in this region. Eight refineries located in the Northeast make about 50 percent of the fuel that's consumed in this area. There's another 30 percent or so of our supply that is refined in the Gulf Coast and brought here via the Colonial Pipeline. That pipeline ends in Linden, New Jersey. And 20 percent of our fuel supply is shipped here in tankers that come from overseas locations, such as Europe.

As a result, the Northeast is dependent on sources outside of our region for about half of our daily fuel supply. Following Hurricane Katrina, Colonial Pipeline was out of service for several days and ran at reduced capacity for a while after it came back on line. During that period, as much as 30 percent of the region's supply was unavailable. So prices began moving upwards in the Northeast. At the same time, Bayway was running at full capacity. On the other hand, our Alliance Refinery, south of New Orleans, was shut down and is still down. Today, companies with Gulf Coast refineries are deciding whether to shut them down due to Hurricane Rita. And over the next couple of days, we'll see how that turns out.

The bottom line: Having refineries in New Jersey can help hedge against potential supply disruptions arising from events that occur outside of the state. When you consider this, encouraging gasoline production here makes sense. If Committee members are interested in this topic, we would be willing to work with the New Jersey Petroleum Council to develop recommendations for you to consider.

With respect to operating a refinery in New Jersey, Bayway has a philosophy that we have a responsibility to be a partner with our neighbors. For many years, we've had outreach programs in place that assist local charitable groups, schools, and other stakeholders.

For example, we host meetings of the Bayway Complex Community Advisory Panel, what we call our CAP, whose community members include more than 20 residents and officials from surrounding towns, who meet eight times a year with us to discuss issues of mutual interest. We also have received awards from the New Jersey Blood Bank, and others, in recognition of our commitment to the community. A good example is, in 1994, Linden Mayor John Gregorio successfully nominated Bayway for the NJBIA's New Good Neighbor Award for our investment in the polypropylene plant and our community outreach programs.

I'd like to end our testimony on this note, as we've touched upon many topics. We hope that this overview has been helpful. In closing, I'd like to thank you, Chairman Wisniewski and Committee members, for this opportunity to inform you about ConocoPhillips's Bayway Refinery. And at this point, Tom and I would be glad to try and answer any questions the Committee might have.

Thank you.

ASSEMBLYMAN GIBSON: Sir, your testimony was extremely interesting.

ASSEMBLYMAN BURZICHELLI: Excuse me, Jack, for just a moment.

ASSEMBLYMAN GIBSON: Oh, our Acting Chairman.

ASSEMBLYMAN BURZICHELLI: Thank you. Thank you.

Chairman Wisniewski has stepped away for just a moment, but will be rejoining us, and he asked that I help move the meeting along.

I have just a few questions, then Assemblyman Mayer, then Assemblyman Gibson, if that's okay, Jack, and anyone's welcome to join in.

First of all, welcome, and I mean that sincerely. You sit in the seat, and you're probably less than eight miles from three refineries -- the Citco Refinery, the Valero Refinery, and the Sunoco Refinery. So the benefits of refineries is something we understand in this part of the state, and we recognize our refineries as important industrial partners. And the relationship between the local communities and the refineries I mentioned, to my understanding, is very good. So when you mentioned the jobs, the contributions, it is greatly appreciated and recognized. And I don't want you to think that you're here today to be villianized or considered to be adversarial. Today we try to learn more, so we see if there is a role for State policy to insert itself.

And the few questions I have mainly involve inventory. And it may be away from what you could tell us, because I know there is the refinery unit, then there's the retail side. So you'll help maybe as much as you can, and if you can't, then you'll tell us that.

If I can get a sense on the size of the refinery based on what you mentioned, what kind of standing inventory-- On a day like today, when you're running -- hopefully, you're running at as much capacity as you want to run, as the machinery will handle. You're at a time when you're, I guess, considering building inventories of home heating oil, as well as making gasoline and the other products. What kind of standing inventory do you have today in gasoline? Not a hard number, just what you would consider a general number today?

MR. PONTICELLO: Within the refinery, I don't have--

ASSEMBLYMAN BURZICHELLI: You have to hit your buttons, I'm sorry. (referring to PA microphone)

MR. PONTICELLO: Within the refinery, I don't have an exact number off the top of my head. My guess would be probably somewhere in the neighborhood of maybe a million barrels or so of gasoline inventory.

ASSEMBLYMAN BURZICHELLI: I'm sorry. For a layman like myself, when you say a million barrels, that equates to how many gallons again? Is it 40 gallons or thereabouts?

MR. PONTICELLO: Yes. There's 42 gallons per barrel.

ASSEMBLYMAN BURZICHELLI: Okay. So are you suggesting that maybe you have finished gasoline product in excess of 40 million gallons, on inventory, ready to move out?

MR. PONTICELLO: It's really not--

ASSEMBLYMAN BURZICHELLI: Sorry about the mike system -- apparently, it shuts itself off if there is not continued--

MR. PONTICELLO: I'll get used to it.

It's really not as simple as that. To make a gasoline, you have to make-- We have various units that run to make the blend stocks. And then, of course, the blend stocks have to be blended to various grades. As you know, we make reformulated gasoline for the New Jersey area. We make conventional gasolines for other areas. We make premium gasoline. We make regular gasoline. So you need to take various components, as many as eight or 10 different components, that needed to be blended together to make the product. And then that product -- we tend to keep our inventories, especially in a market like this, as low as possible. We're trying to do everything we can do to take every barrel that we can make and move it out of the refineries as fast as we possibly can.

ASSEMBLYMAN BURZICHELLI: For the benefit of this Committee, I know that in the immediate aftermath of Hurricane Katrina, the Federal Government suspended the requirement of the various formulated gasolines from staying in one area, so inventories could move around a bit. Has that expired, or are you still permitted to move gasoline where available and where necessary?

MR. PONTICELLO: Yes. There's been some suspending of the Summer reformulated gasoline requirements, allowing us to blend Winter gasoline a little bit earlier and then to provide us with, perhaps, a two- or three-week window where we could blend a little bit differently. So, yes, we have taken advantage of that, but that transition would have come to pass around -- for us in the refinery, we would have started making the Winter gasoline around the middle of September anyway. So, yes.

ASSEMBLYMAN BURZICHELLI: My follow-up question goes -- and as we're trying to get a handle on where, again, our role may be -- if there is a role -- is getting an understanding of inventory. And when the price is established on a completed inventory batch, what that may be, how it moves from the refinery to the rack, and then handled to the wholesaler and on to the retailer. And I particularly, as a member of this Committee, have a real interest in that. And what we hear most often from the public is a sense of confusion as to how gasoline price could move on what seems to be a CNN report of either bad weather coming, or the world ending, or there's not going to be a barrel of oil somewhere; and then the gas station down the corner suddenly has got a 6-cent increase as they prepare to brace themselves for the uncertainty of what the next load is going to cost. So can you help us?

The standing inventory you have at the refinery, understanding it is in various categories, but at what point is the price determined, how that's going to move at the rack? If the inventory -- you obviously are not working on a demand, so you make it at 11:00 in the morning, it moves to the rack at 2:00 in the afternoon. Or do you work that closely?

T O M S K O K, ESQ.: Well, there are a lot of questions there. Can you kind of restate the last one?

ASSEMBLYMAN BURZICHELLI: My memory's not that good. I was hoping that someone else would remember. (laughter)

MR. SKOK: Well, the key question seems to be, when is the price at the rack determined? And usually that's determined on a daily basis. It's a very dynamic industry, and there are a lot of factors. Sometimes there's just simple emotion involved. But it's -- to our customers, many of them are on contract, we have various pricing clauses. And typically, the prices are pegged to a benchmark like OPIS rack prices, or Platts.

ASSEMBLYMAN BURZICHELLI: Tom, if you would, some of those -- OPIS stands for what?

MR. SKOK: OPIS is Oil Price Information Service. In fact, I think their headquarters are here in the state -- was it Wall Township? And they publish actual sales prices of various producers and sellers at various racks around the country. So that tends to serve as a benchmark for some level of the channel of trade. Other pricing mechanisms that are used are references to a Platts Oilgram. And again, that's a published pricing service. I think they're based out of Chicago.

But pricing the wholesale racks are, generally, a daily effort. You anticipate where the market might be going. The next day you establish your price. In our case we establish, in many parts of the country, the price for the next day's sale, at particular racks, at around 6:00 p.m. And that gets fed into our systems. We sell out of about 100 different terminals around the country. So you can imagine it's quite a dynamic process.

ASSEMBLYMAN BURZICHELLI: This particular area certainly has my attention, because I have a note here Chris has passed me, that we had asked OPIS to join us to help us, and they chose not to be with us. And this Committee does not have power of subpoena, not that we're suggesting there's anything criminal, or anything like that, taking place. But it's in this area where our interest lies, because if, in fact, the establishment of the price comes from a collection of information of what a market may or may not call for, or may or may not bear, as opposed to what it costs to make it-- And at your Bayway Refinery, for example, you understand what the crude costs, you understand your fixed overhead. But if the pricing is established in another arena, that's something that we need to try and understand. Because it seems, as the product moves forward, there -- speculation plays a very big role in this, and then, when speculation is fueled by fear and uncertainty, then this roller coaster ride seems to begin.

You're making gasoline. You're making it today. You made it yesterday. You're going to make it tomorrow. And it seems you understand your cost. It's a sophisticated business you're engaged in, and I respect it greatly. People take it for granted. And I recall not long ago where two liters of Coke-Cola was selling for more than a gallon of gasoline. And you look at that and say, "How could that possibly be?" So we knew something -- there was some odd balance at some point.

So, again, help us with the pricing side. So if you have inventory sitting, whether it be home heating oil today, or whether it be gasoline, you know what it cost to make it, but you haven't decided what you're going to sell it for until you avail yourself of these other, should we say, market test organizations that say, "You know what? You're sitting in the Northeast." And so, how does the price move at the rack? It's a good point for us to not understand it. So what happens then?

MR. SKOK: Again, is the question, how do we determine our price?

ASSEMBLYMAN BURZICHELLI: Yes. To do your wholesale. If a guy pulls up with the 8,000-gallon tank that's going to haul it into Bayonne and put it to the gas station.

MR. SKOK: I don't mean to mislead you that we refer to everybody else's price. That's just a point of reference as to where the prices are today. And then our pricing department, which is based in Houston, Texas, and who I provide legal counsel to on a day-to-day basis, anticipates what the supply is going to be. They sit right next to our commercial department that deals with our supply availability at different parts around the country. And they also anticipate what the demand is going to be. And using the published prices of sales that actually occurred, that are reported either on OPIS or Platts, they use that as a point of reference to determine what our next day's price is going to be. The biggest part of that decision-making process is, what is our supply and what is our expectation of (indiscernible) demand is going to be?

ASSEMBLYMAN BURZICHELLI: So Mr. Ponticello, from your side, on the refining side, you're almost off the hook. Your role is to make it, keep the plants safe, keep it running efficient, and be a good neighbor. And then the ball gets turned over to the marketing side, who then decides what that product you made may or may not be worth to the general public at the time. How often is the price adjusted at the rack? Is it daily, is it hourly?

MR. SKOK: We anticipated that question might come. We have priced upwards only once a day. Generally, our price adjustments are made once a day. They can either go up, go down, or stay the same. I have determined, in anticipation of this meeting, that on more than one occasion in a 24-hour period, we've gone down. But we've not gone up more than once in a 24-hour period, in some parts of the country.

ASSEMBLYMAN BURZICHELLI: And maybe my last question, so other members can jump in, not to dominate this. And the question about what you have, in general, in standing inventory in gallons of gasoline is awkward for you to answer because of the different grades of gasoline and things of that nature. So I certainly won't press to suggest putting all those together -- what you have in standing inventory. Home heating oil is home heating oil. Can you give us a sense of where you are this time of the year in standing, finished product, home heating oil waiting to move out?

MR. PONTICELLO: We typically don't have a lot of storage on site. And we typically don't sit on inventory. As you go through the Summer, most of what we're making out of the distillate barrel is low-sulfur diesel, which we move out and sell to truckers and the like. As we move into the Winter and as the demand is there, a lot of that low-sulfur diesel will move towards heating oil sales. And as the demand is there, we'll also move that through the system. As we make it, essentially, it leaves the refinery. We don't have the luxury, if you will, of doing a lot of building of inventories and drafting of inventories -- storing things in the Summer to sell them in the Winter. It would take a lot of investment in tankage to do that. So essentially, when you have a refinery that size and those many barrels going through the refinery on a daily basis, we tend to make the stuff and move it out as quickly as we can.

ASSEMBLYMAN BURZICHELLI: Very good. I thank you for the information. It's helpful. You can appreciate that some of us, as laymen-- Some on this Committee are very, very smart; others of us struggle to understand this dynamic, especially in how the price is established, as we again try to learn what contributes to the speculation. And if, in fact, there are business practices that would be helpful, that we may be able to participate in causing to be implemented, that will take some of the sting out of the results of speculation. And I'm sensing it's very complicated, since as you've talked to us about how you establish the price, it doesn't seem to be, like, one place. It's not based on your cost. It's based on what the market pay, and that's part of the issue we face.

That being said, Assemblyman Mayer, then Assemblyman Gibson, and anyone who would like to jump in.

ASSEMBLYMAN MAYER: Thank you very much.

John, I'm one of those who struggle, so I'm trying to understand this issue.

But, gentlemen, thank you very much for your willingness to participate and answer questions this morning. I'm interested in knowing -- and I have two quick questions. I'm interested in knowing whether or not the New Jersey consumers bear more of a burden as it relates to the amount of jet fuel that is produced in this state or that's required in this state. Last week, at our hearing, Dr. Andrews, from Rutgers, said that New Jersey -- there is a disproportionate amount of jet fuel that's consumed here. And I'm wondering, number one, how much is, if any, is produced by your refinery, and do you agree with that type of statement?

MR. PONTICELLO: Well, I'm not sure I understood the statement that he made. I can tell you that we do make jet fuel at the refinery. We deliver a jet fuel by pipeline to the local airports. And the amount we make varies based on the type of crudes we're running. It could be as little as 10,000 barrels a day to as many as, sometimes, 25 or 30,000 barrels a day.

ASSEMBLYMAN MAYER: And what percentage is that of your output?

MR. PONTICELLO: Well, I'd say it's probably -- we run, say, 230,000 barrels a day of crude, and we make anywhere from 10 to 30,000. So you're talking, maybe, up to 5 or 10 percent of what we make could be jet fuel at times.

ASSEMBLYMAN MAYER: Okay. And just to kind of follow up on what Assemblyman Burzichelli was talking about -- last week I asked questions about zone pricing. And I don't know if you're able to kind of tell me what zone pricing is and how you arrive at that point?

MR. SKOK: Yes. And by the way, I've been in the energy business for 35 years this coming January, and worked for, as a lawyer, for several different oil companies, including our predecessors, through mergers -- Tosco, Phillips Petroleum, ConocoPhillips. And we have a network of independent service station dealers who buy directly from us on the West Coast. Unlike the East Coast, I hasten to add -- going to Mr. Burzichelli's questions. We don't sell to the retailer dealer in the street. On the West Coast, where we do, zone pricing is used to price at a particular service station level or in a particular community based on the level of competition in that community.

I'd like to at least dispel what I think has become a bit of a misnomer about zone pricing. Some people refer to it as an oil company's opportunity to extract higher prices in communities based on its demographics; i.e., higher-income communities, you charge more. Really, it's a process used by many oil companies, not just ours on the West Coast, to respond to competition that our independent dealers are facing on their four corners in their communities. And in recent years, that competition has been heightened by the entry into the gasoline business of these big box stores. So it's a model used to price, sort of, almost on a location-by-location basis, therefore the concept of zone. But it's designed to respond to the competition in that area.

And in a zone pricing model, the oil company studies and procures from services, like Lundberg -- who's often in the press -- Lundberg pricing surveys, information about what the DTW, dealer tank wagon, price is being paid by competitive dealers in a particular community. And based on that information, an oil company might decide to be the same as, higher than, or lower than the relevant competitors for that independent dealer.

Does that make any sense?

ASSEMBLYMAN MAYER: Well, so this is not a formula, per se, that you can tell us this morning exactly how you come up with this level of competition. What are the factors -- the factors that you said were tank prices? Last week, we had testimony that in certain zones there was one outlet -- that some of the folks had one outlet in these zones. How does this all -- I'm just leery of how this works and how prices are established through zone pricing. And I just don't understand the concept of that.

MR. SKOK: Yes. It's hard to explain, but there are different factors that go into the analysis of what the price will be for the truckload of gasoline that's delivered to an individual station or a group of stations in a particular zone in a community. The chief factor is what is the -- who are the competitors? What is their pricing position on the street? And where does your oil company want to be relevant to those particular competitors?

ASSEMBLYMAN MAYER: And I hope you understand my concern that when you have the five large oil companies that, perhaps, are using zone pricing, they're your competitors. And if they're all in this same process trying to figure out what your competitor is doing -- and I'm just concerned since we don't understand how, and no one's able to really explain exactly how, zone pricing works -- and we only have five major oil companies that are really, to my knowledge, are engaging in this. And we have some where we have one outlet in these zones. It's just not only very confusing, but it's just -- it alerts me to try to figure out exactly how this works and what we can do to learn more about it.

MR. SKOK: I hate to respond this way, but you might have to ask those oil companies who have independent dealers in this state to address those kinds of concerns for the dealers in this state. We sold our assets. We had the Mobil branded assets. And in 2004, we sold our Mobil branded assets, which included independent dealers in New Jersey and Pennsylvania, to Getty Petroleum Marketing Company. So we're not in the zone pricing business here in the state, so I can't speak to what others might be doing.

ASSEMBLYMAN MAYER: Great. Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Gibson.

ASSEMBLYMAN GIBSON: Thank you, Mr. Chairman.

I have two questions for these witnesses. We have a law on the books in the State of New Jersey, which I'm sure you're aware, where the retailers can only change their price every 24-hours. And I think that's appropriate under the current circumstances. They seem to be caught in a catch-22 situation, or some sort of catch situation, where their costs can change several times in a day. We're considering, at least on this side of the aisle, introducing legislation where the wholesalers would be subject to the same 24-hour restriction. We'd like your reaction to that.

MR. SKOK: Frankly, is that unique to New Jersey? Because I've been dealing with legislative matters and statutes affecting gasoline pricing in various states in which we do business, and frankly, I've never seen that anywhere else. It's actually an interesting law. And I don't have any complaints with it, and I don't think our company would have complaints with it, with respect to our wholesale pricing.

The administrative burden of changing prices more than once a day for a-- If we were to do that-- We sell in, I think, 32 different states at 100 different terminals. And even though we have sophisticated computer systems, I should tell you that the administrative burden of changing prices more than once a day in our system is pretty massive. So I know of no reason why we could not live with that kind of a burden at the wholesale level.

ASSEMBLYMAN GIBSON: Thank you. We're very happy with that answer.

My second question has to do with the fact that we're watching Louisiana, now the Gulf Coast, and the fact that you're a major producer here in New Jersey, and we're very impressed with the statistics you gave us. What provisions, what plans do you have if you were faced -- and you're part of that -- where your plan is with a Class 1 or Class 2 hurricane. What would happen?

MR. PONTICELLO: Well, we do have emergency response plans for the refinery. And we do plan ahead for the hurricane contingency. As a matter of fact, I can tell you that in the past I've worked in this refinery when Hurricane, I believe, Gloria came through in the late '80s, '87, '88 time frame. I worked at the Trainer Refinery here in Philadelphia when Hurricane Floyd came through. And just recently, I worked for three-and-a-half years in the Alliance Refinery, the one that was recently shut down because of Katrina. I could tell you that a year or so ago I asked for the emergency response plans for hurricane preparedness for Alliance be sent up to Bayway. And on a periodic basis, annually, we take a look at those emergency response plans and we update them.

And again, in the event of something that major coming this way, there's many steps you take ahead of it. And then ultimately, if there's a very large hurricane coming at you of a very high severity, you would start to take steps to slow the refinery down and eventually shut the facility down. I could tell you -- I do know for a fact that those steps were put in place as recently as two or three weeks ago at the Alliance Refinery down in Louisiana, and they worked. In their case, they actually shut the place down and locked the gate, because it was a very large hurricane.

We have plans like that in place up here as well. We make provisions for bringing in food and cots, and things of that nature. And we have a contingent of people who we would keep around to ensure that we save out the refinery. So the bottom line is, we do plan for that and various other contingencies. We have an emergency response plan for the refinery, yeah thick, and we treat it very seriously.

ASSEMBLYMAN GIBSON: Thank you.

Thank you, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Van Drew.

ASSEMBLYMAN VAN DREW: Thank you, Mr. Chairman.

I know you may not be able to answer this question with an exact number, but just in generality, because I know there are other factors, from the time that you receive a barrel of crude to the time that it's pumped in the vehicle that went to the gas station down the street today, approximately how long is that?

MR. PONTICELLO: That's a good question. I don't know that I would spend a lot of time thinking through how long that takes. But when we bring in a crude ship, it takes about -- say it's a 600,000 barrel vessel -- we try to pump that vessel off within 24 hours. That ship then goes into crude tanks. The crude, before we process it, needs to be dried. And typically, that's another process that takes, roughly, 24 hours. Then the crude has to get pumped through the processing units. If I had to guess from the time it started in the plant to the time it got to our intermediate product tankage, if you will, you're probably talking another 12 hours, maybe 18 hours. I'd have to do that calculation. Then the products need to be blended to a finished product. That's a process that could probably -- again, on a continuous basis this is occurring -- but maybe another day or so. And from there, we ship it out of the refinery. The process of shipping it out of the refinery into either our terminal or putting it on a barge and sending it to another facility, and then from there working its way to the retail system, I could only venture to guess how long that would take. But that may take another couple of days to finally get to the point where it's at a gas station, maybe longer.

ASSEMBLYMAN VAN DREW: In the research I've done, they said sometimes as long as, anywhere, 30 to 60 to 90 days.

MR. PONTICELLO: I could potentially believe it is as long as that. It depends on where you're shipping it to. If you're going to put it on a barge and send it somewhere three or four days away, that will delay things. In our case, we have a terminal right next door, so it goes into a tank, into a truck, off to the gas station, and it could be much shorter.

ASSEMBLYMAN VAN DREW: The reason that I asked that is, through the Chair, because it has been of interest, I know, to my constituents and members of the Committee, that often when a barrel of crude is bought -- the lag in time between when it's actually pumped into the vehicle, there is a tremendous price change that occurs. There's an increase, obviously, in the cost per gallon of gasoline. Yet that barrel of crude was bought at a much lower price. We've seen that as we've gone through the various catastrophes and emergencies that have occurred. And I know you didn't really have a specific -- and I know the folks from OPIS aren't here. And I know there seems to be -- and I mean this very respectfully. I don't mean to be disrespectful -- almost a magical formula that nobody within the industry, whether it's the refiners, the wholesalers, or anybody else can quite put their finger on as why the prices go up, how they're determined, but they seem to continue to go up. They seem to continue to rise.

And I know one of the concerns we have -- we understand when a product costs you more that you have to charge more. But I guess there's two questions I would ask you: One of the reasons that the product supposedly is costing more -- gasoline now -- is because supply went down because of the hurricane and because of other problems. Yet I know profits have radically risen, and I believe the profits of your company have radically risen -- some of the greatest increases in the history of the company. So when you're producing less product in some areas, because there's a shortage, how would you explain that the profits (*a*), have risen so much? How is that price determined? And how are you able to do that when nobody else seems to be able to put their finger on it, and I've asked a good number of folks about those questions?

MR. SKOK: Again, I'm not sure I know what the question is.

ASSEMBLYMAN VAN DREW: We want to know the magic. I want to know, since there seems to be -- so magic, in relating to how the price is determined, and at the same time there seems to be, again, what's happened along the Gulf Coast. The reality is, where there's been a supply problem there of less product, the price has gone up and the profits have gone up -- even though less product is being produced. That's unusual. In many other industries, in order to make more profit, you have to produce more product. I'm asking you, specifically, why that is?

MR. SKOK: Again, I don't understand the question. You're going to have to dwindle this down a little bit for me.

ASSEMBLYMAN VAN DREW: Okay. There's been a tremendous storm along the Gulf Coast. We're good so far, okay?

MR. SKOK: I'm with you.

ASSEMBLYMAN VAN DREW: Okay.

MR. SKOK: And there's a big one coming.

ASSEMBLYMAN VAN DREW: And there's a big one coming. And because of that there is less product out there, there's less oil being produced. There's less gasoline actually being produced, forgive me. And at the same time, even with less being produced because of the shortage, I would suppose, the profits of the companies have gone up, even though they have less product to work with. Now, I'm asking you to explain to me specifically (*a*) why that happens? And secondly, based on the fact that when a barrel of crude is bought, there's a good deal of lag time involved, and that the barrel of crude that was used to make the gas that we got pumped into our cars at the height of the crisis was bought at a much lower price than the barrel of crude that was being bought during the crisis, why the price went up when it was bought at a cheaper price. In other words, you bought something for less -- and I'm not blaming you folks. And respectfully, I'm glad you're here and appreciate your being here. Yet the price we're all paying is more. And hence, I believe that's one reason that profits are at a record high.

MR. SKOK: Well, first of all, I'm not in the financial end of our company's business, nor is John. But I think there's a misunderstanding about pricing profits in the oil companies, because it includes-- What you're seeing in the public press includes profits arising from the sale of crude oil. If your question is, how high have our profits gone with respect to our refining and marketing organizations, which directly relates to the price of a gallon of gasoline that consumers buy, that's a different story. And I'm not sure at the end of the day that you're going to see in our annual report or our next quarterly report that our profits in the refining and marketing sector have gone up dramatically.

ASSEMBLYMAN VAN DREW: Respectfully, through the Chairman, the numbers that I received are by looking on the Web sites of ExxonMobil, Shell, these companies. And they are boasting the largest profits in their history, and it is the largest profits in their history. So that's the information we're using, not just press accounts. It is their own information encouraging investors to invest in their companies.

MR. SKOK: I would have to ask ExxonMobil and Shell to speak for themselves.

ASSEMBLYMAN VAN DREW: Are you an attorney?

MR. SKOK: Yes, sir.

ASSEMBLYMAN VAN DREW: You're a good one.

Thank you, sir.

MR. SKOK: All right. Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you, Chair.

Going back to a common theme through the last couple of meetings, I've always asked what is the State's role and what can we do today, or tomorrow, to assist with this crisis, or management that we've talked about. I've heard testimony, sir, that, through the Chair, that you have reinvested $200 million in one of your plants to reduce some of the sulfur byproduct, which I assume is better for the environment. My question is, does that, number one, increase capacity for you? Does that give you a greater capacity to produce more, or does it just make more of an environmental product?

And the second question is, did the State of New Jersey help with that investment? And the third question -- I'll finish with this -- what can the State of New Jersey do to help ConocoPhillips, or others, to either be more environmentally in tune, to create capacity, to incentivize you to build a structure that makes our needs being -- will be able to meet our needs in the next decade or two decades?

MR. PONTICELLO: Let me handle that. I guess the Clean Fuels project that are referred to is exactly what you said it was. It's going to help us reduce the sulfur level in our gasoline and the sulfur level in our low-sulfur diesel, to an ultra-low sulfur diesel, to meet the regulations that are coming into effect next year. Those were not expansion projects, but nevertheless, they were necessary for us to be able to maintain the facility operating. And every refinery has to make the decision as to whether to invest in these things or to shut the place down. I venture to say, over the last 20 or 25 years, we've gone from having over 300 refineries in this country to something in the neighborhood of 148 or 150 refineries.

So capacity -- the number of refineries in the United States has gone down. But at the same time over that same period of time, refining capacity in the United States has actually climbed. Because as people do various projects, they tend to increment themselves into larger refineries. This particular project hasn't done that.

But as I mentioned, ConocoPhillips has recently announced that they're looking to put $3 billion into their refining industry of their company here in the United States. And we are very hopeful that there will be a share of that that gets spent at the Bayway Refinery. We do have some good ideas. We see some opportunities. And over the next several years, we will be investing, hopefully, in that refinery to not only continue to improve the infrastructure, but also, hopefully, to improve our ability to make clean products, such as gasoline and diesel.

Now, in terms of the other question you asked, in terms of what could be done to help? We've got some ideas. I think there's some things that we can talk about. One suggestion that's come up is something that I guess is in place in other states called *industrial nodes*, where if you're in a particular area of the state that's known to be industrial in nature, potentially the rules and regulations around expanding or committing or doing some of the things that you need to do -- maybe that burden can be eased to hopefully streamline the process and help things along. There's things like that that we can talk about. We've got other ideas, certainly. To the extent that you'd like to engage in those discussions, ourselves along with the New Jersey Petroleum Council will be happy to sit down and talk about things of that nature.

ASSEMBLYMAN O'TOOLE: Thank you, Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Assemblyman Burzichelli, and then Assemblyman Malone.

ASSEMBLYMAN BURZICHELLI: I'll be very brief. And actually, John, you had answered some of the questions -- Assemblyman O'Toole sort of opened the door. Because I was curious -- with the footprint you have, the real estate you have -- is there potential for your refinery to expand? In addition to the investment in existing technology and getting better efficiencies out of what you have, is there room to expand there?

MR. PONTICELLO: I think, at the end of the day, we've got a fair amount of acreage there. There's probably some limitations. But the bottom line is, I don't see any major impediments from the standpoint of how much room we have there to get bigger. I don't see that as a huge impediment. Frankly, it's probably going to center more around what kind of returns you can get for doing that. The industry has shown returns over the last 20 or 30 years of something in the neighborhood of 6 or 7 percent. So if you're going to build a new refinery, and you're going to ask somebody for $3 billion, you need a return more robust than that sometimes.

ASSEMBLYMAN BURZICHELLI: Did you think 10 years ago, as your career was moving forward, that you'd see a day where refineries are suddenly almost appreciated again in America after years of saying, "Please get them out of here"?

MR. PONTICELLO: I think I've been waiting for this day for 27 years.

ASSEMBLYMAN BURZICHELLI: Thank you, Mr. Chair.

ASSEMBLYMAN WISNIEWSKI: It goes to prove the old adage, that every dark cloud has a silver lining. (laughter)

Assemblyman Malone.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

In your opinion, has New Jersey been oil company friendly?

MR. PONTICELLO: In all honesty, I think New Jersey does appreciate us. I think you have to look at the various things we try to do, though, in-- You've got to look at the positives. You've got to look at the areas where there could be some opportunities for improvement. I think we have a very good relationship with the community that we're in. I think the city of Linden has treated us very well. The mayor has treated us very well. And I think we work very, very closely and very well with our neighbors.

I think, in terms of the regulations in the State of New Jersey, there's some things that go well and some areas that could certainly improve. Over the years, you look at the EPA and OSHA regulations and you look at some of the restrictions and some of the requirements that are put on us, and from a day-to-day basis, you could argue that some things are too stringent. But at the same time, I look at the waterways and I look at the air around not only the refineries in New Jersey, but around the country, and I see dramatic improvements. I think that things have gone very, very well. And I think a lot of things we've been asked to do flat out makes sense, as long as our refinery and all the other refineries in the country are on a level playing field.

In the long haul, I do think that there are some things we could do to enable refineries and other manufacturing in New Jersey to thrive. But at the end of the day, I also think this refinery has done very well by being in this state for the 95 or so years that it's been here.

ASSEMBLYMAN MALONE: What is the reason why the number of refineries has decreased? If we have enough crude that's coming in, and you can't refine it fast enough or enough of a volume -- I mean, if, in fact, it is a refinery issue, what caused those refineries to close?

MR. PONTICELLO: I guess the folks from the New Jersey Petroleum Council might be in a better position to answer that one. I can tell you, if you look back in the days when those refineries were closing, refineries were not running at 95 or 96 percent of capacity. They were probably running down in the low 80s. At the same time, some of the environmental regulations were requiring refineries to invest hundreds of millions of dollars, and a business decision needed to be made whether it was worth doing that with the returns they were getting or whether it wasn't worth doing that. And subsequently, some of the less efficient refineries were forced to shut down. So that kind of put us where we are. The current environment certainly wasn't envisioned, as was just pointed out, even a few years ago.

ASSEMBLYMAN MALONE: What percentage of the fuel that we utilize in New Jersey actually is produced here in New Jersey? Do you know off the top of your head?

MR. PONTICELLO: Yes. In the comments that I went through, I'd say about half of what is consumed in this area is produced locally, and 30 percent or so comes in via pipeline from the gulf, the Colonial Pipeline. Maybe another 20 percent or so comes via vessels from Europe or South America, or other venues.

ASSEMBLYMAN MALONE: To follow up on Assemblyman Van Drew's question, I think that really is a simple question. And you, as a good lawyer, give a complicated answer. But I think really -- it's really an issue if John Doe Gas Company or gas station gets a tank, a tankload of gas today, and they pay $2.50 a gallon. And we hear on the news that a barrel of oil goes from 64 up to $68 a gallon. It seems to be an immediate price increase that day or the next day from $2.50 a gallon up to 2.65 a gallon. How do we correlate the price increase of a barrel of oil in Saudi Arabia to the fact that John Doe gets his gas raised the next day when the tank of gas that's in the ground actually costs that guy $2.50 a gallon? Why is it, because of Saudi Arabia and that barrel of oil, that John Doe pays more the next day on gas that that guy paid $2.50 for? That's a simple question and really deserves a simple answer.

MR. SKOK: Well, consider this answer. And I'm speaking now from having observed what independent dealers do in our West Coast operation where we have the 1,200 independent dealers. And indeed, on the East Coast here, we have about the same number, but we own the Mobil branded assets after ExxonMobil was required to divest it. The independent dealer makes the independent decision about what he or she is going to charge at the pump at his or her service station. Consider the fact that that independent dealer is anticipating, based on what he or she has seen going on in the marketplace, that if I don't raise my price today for what I have in the ground, I can't afford to pay for that truckload that's coming tomorrow.

ASSEMBLYMAN MALONE: Well, so in essence, really, it's-- We're paying on the future. And yet, conversely, if crude dropped, which it did the last week or so -- what, $3 or $4 a barrel -- the price of gas didn't drop that amount. Somebody, someplace is not answering Assemblyman Van Drew's question, and it really puts all of us, I think, as elected officials and oil company officials, in a very, very bad light. And I think that-- The questions I get, I'm trying to look at them from a kitchen table's perspective. And that's where they're coming from. They just want answers. If there's a legitimate answer for why that gas in the ground that the guy got for 2.50-- No other industry that I know of do you pay in advance.

If some guy gets clothing in, you pay for what that product cost that particular guy. If that guy is running that close to the margin that he can't afford to pay for the increased cost, then something is wrong someplace. We should not be paying in advance for oil that's being pumped out of the ground in Saudi Arabia that won't get here for two months today. And then when it goes down, we don't see that same rapid fall. So somebody needs to get an answer to Assemblyman Van Drew and myself as to what that is. And I just think it's something that the public demands, and I think that we as officials have to keep asking that question.

So I don't know if I'm going to get any different answer, but I think that's really the question. It is a simple question and deserves a simple answer.

ASSEMBLYMAN WISNIEWSKI: Assemblyman -- and I appreciate that question -- and Assemblyman Van Drew, part of that was the subject of testimony at the first hearing. And we do have with us today Mr. Benton and Mr. Dressler, who might be able to shed some light on that when they come up to testify later.

I just have one concluding question for ConocoPhillips. Do you own any oil production facilities, or are you just simply a refiner?

MR. PONTICELLO: Yes. We are pretty significant upstream producers. We do produce oil from various places around the world. We produce oil up in Alaska off of the North Slope. We're up in the North Sea.

ASSEMBLYMAN WISNIEWSKI: So, I think one of the areas where the Assemblymen were going is, is you own a well. And oil comes out of that well. And you've owned that well for two years. Two years ago, that well was generating revenue at $30 a barrel. Today that well is generating revenue at $68 a barrel. You keep the difference. It's not costing you any extra to produce that oil. Your cost of production, of running the pump to get the oil out of the ground -- assuming there hasn't been a change in the reservoir pressure or anything like that -- is essentially the same. It hasn't changed, correct?

MR. PONTICELLO: Well, the fact is, all that stuff is very dynamic and is changing. On a daily basis, we are trying to continue to maintain our production levels, and there's various technologies you employ to do that. Some of them are more costly than others. I'm not an upstream guy. I'm not in a real good position to answer your questions, but I think it's a little bit more dynamic than you're portraying. But when you do look at the profitability that was mentioned earlier, again, the answer that Tom gave did talk to the fact that there is a difference between upstream earnings, which is the production of crude oil, which ConocoPhillips does, and what's happening in the downstream sector, which is refining. And that's the area that I'm more familiar in.

ASSEMBLYMAN WISNIEWSKI: And I think my point is, it's just one area that we haven't looked at -- and perhaps it's even beyond the purview of a state legislative body -- is that upstream production. Assuming all the parameters of squeezing that oil out of the ground have not changed, if it was-- Well, I know it changes, but it doesn't change on a daily basis. I mean, there was an interesting article in the *New York Times* magazine talking about Saudi Arabia and their methods of production and how that is analogous to the United States. But if you were getting $30 a barrel on January 1 and you're getting $70 a barrel on September 1, it's a safe bet, at least from my chair, that your costs in producing that barrel of oil have not gone up $40. That's a reflection of the market conditions that have put a premium-- And because you own the well, you benefit from that increased cost, correct?

MR. PONTICELLO: Presumably. (laughter)

ASSEMBLYMAN WISNIEWSKI: Okay. Thank you, gentlemen. I appreciate your testimony today.

MR. PONTICELLO: Thank you.

MR. SKOK: Thank you.

ASSEMBLYMAN WISNIEWSKI: I would next like to call Assemblyman Jeff Van Drew -- has asked for an opportunity to testify.

ASSEMBLYMAN VAN DREW: Thank you, Chairman.

I guess I'll sit over here. The Minority side might be nicer to me if I sit as a witness.

I appreciate you having these hearings, obviously. I think they have been productive. My viewpoint -- and I appreciate the testimony that just occurred -- perhaps, is a little bit different than some of the folks might have. The reality is that the profits have been at record heights. The reality is everybody's paying more for gasoline. The reality is, is that there's a relationship very often between wholesalers, refiners, and big oil that is so complex and so tortuous and so difficult to follow, and quite frankly, at times it is almost a little bit like magic. Nobody seems to be able to put a firm answer or to be able to give you a significant answer to some of the most basic questions: Why does a product cost as much as it does? Why does it cost so much more in such a rapid amount of time, when to produce it, it doesn't cost more? And Assemblyman Malone addressed that.

I think it's because in this industry it is so much speculative- and market-driven that it really does affect what the price is. And the most important part of all this is, it is a necessity. It is not something-- We're not dealing with diamonds. We're not dealing with gold. We're dealing with gasoline and diesel, which is the lifeblood of what makes this country go and continues to -- needs to make this country go.

So in the process, as this was all happening, Chairman, as you know, I looked into this. And interestingly enough, there's one state that has a model. Without question, it is a different state with a different set of circumstances in a different part of the world actually -- and it's the state of Hawaii. But there are some remarkable similarities. In the state of Hawaii, they have had record problems for many years. They pay higher prices for gasoline. And quite frankly, they should pay higher prices for gasoline, because of their location. They are more remote. They only have two refineries. It is certainly a more difficult situation for them. But the prices that they were paying were abnormally high, and they were actually being taken advantage of, in some sense.

So I've had the opportunity to have lengthy discussions with the Majority Leader of Hawaii, and will continue to have those discussions. And we are in the process now -- I'm in the process of drafting legislation that would be modeled, in some ways, after Hawaii, and in many ways not. And I just want to go through that -- for the sake of time, I know we're busy -- very quickly.

The reason we did it, again, is because I respect the free marketplace and the way the free marketplace works. This particular industry, because of the mergers and acquisitions and the changes that have occurred, I believe to some degree is an oligarchy where there is a tremendous amount of control of the market in the hands of very few. And for that reason -- as it has been done in the past, similar to the way electric companies, to some degree, need to be regulated when the competitive, free enterprise entrepreneurial system isn't working -- I think that you do need government regulation.

Hawaii, as I said, had this problem. And what they did is, they established a cap on wholesale prices. And it really isn't a cap. What it is, it's managing the wholesale profit. And again, it's similar to what goes on with electric companies. We are drafting legislation, and we have it in an outline form, in a rudimentary form. Very shortly, that legislation will be completed. And when we go into lame duck session, I will be dropping that legislation, and I certainly do hope that some members of the Transportation Committee will be co-sponsors. It would establish, in the Division of Consumer Affairs, in the Attorney General's Department of Law and Public Safety, a board. And this board would be granted the oversight to see what is happening with wholesale prices, to regulate the wholesale prices, as they do in Hawaii, and to use a host of factors. And I'm not going to go into detail. It's very complicated.

And the one issue that we have to be very careful, very careful on the approach, is that we don't create a supply problem and, quite frankly, that we still allow people to make a profit. But it doesn't have to be an excessive, obscene profit. The numbers that we would use would be based on the baseline price for regular unleaded gas, location adjustment factors, marketing margin factors, zone price adjustment factors, mid-grade adjustment factors, and premium adjustment grade factor. Some of this is currently done in Hawaii.

The bottom line is, it is a complicated index. The legislation is relatively simple in scope, in that it would be, in essence, regulating wholesale profits. So that when speculation is going on, when these types of changes are going on, we can still ensure that the people in the State of New Jersey are paying a fair price for gasoline.

Some of the questions you might ask me -- is it best addressed at a state level? Quite frankly, I don't think it is. I think our President, and I think the Congress, and I think the Senate needs to step forward. I agree with Assemblyman Malone that this is, virtually, an emergency situation. I believe that it would be better addressed at the Federal level. Unfortunately, it has not been. I don't believe it's been addressed in the aggressive fashion that it should be, and I believe it's our responsibility, as legislators, when that doesn't happen, to still continue to do the best that we can do for the constituents that we have in our state.

The second question would be -- do we think we're going to create a supply problem? I don't believe so. That doom and gloom was said in Hawaii. I had my press conference in Trenton on September 1. It is when that legislation was established in Hawaii as law. I'm happy to report to you, when you're going to hear more about this in future weeks, that in speaking with the Majority Leader there, and if you read the press accounts, actually Hawaii -- a state with the highest gas prices in the United States of America -- now has some of the lowest gas prices in the United States of America, and they are not having supply problems. Because there's still a very healthy profit to be made.

I believe this is something that we absolutely do need to look at. And finally say, on one piece that I would do -- I say this to Maureen as well. I was thinking of something out loud that I didn't say to you -- is, we very well may want to look at our New Jersey legislation, at being able to remove that cap, whether the Governor determines it should be removed or the Legislature determines it should be removed. We're in an emergency situation now. Again, I don't believe that government best regulates the free market enterprise system, other than when we have emergencies and when we don't have a good competitive process. I think it may be incumbent upon us to build into that legislation that when the cap is not needed, it could be removed. It is working in Hawaii with different parameters. I believe it can work in the State of New Jersey, and I hope to move forward with the legislation.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

One of the things you're talking about in regulation -- there was a discussion at the last Committee meeting about some of the regulations we have now in effect in New Jersey. And they only take effect if the Governor declares a state of emergency. In your view, do you think this current situation is something that warrants that, or should we change the law that would allow those regulations to take effect absent a state of emergency?

ASSEMBLYMAN VAN DREW: Thank you, Chairman.

Through the Chairman, I believe that -- while we're pretty close to an emergency, and I guess it's determined by everybody's perception, and certainly the Governor is the one to ultimately make that choice -- I believe we should change it. I believe that in this case we should be able to move forward and do something. Best dealt with at the Federal level, because we're going to have to be very careful if we do this in New Jersey. And we are going to aggressively pursue this and work with Hawaii and the legislature there. We have to be careful that we don't create even an increased demand in New Jersey. Because if we do this, we'll have lower gas prices than the other states around us, as we used to. Because of that issue, I think we need to be particularly careful, but I do think it's worthy to go forward.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Does anyone have any questions for the Assemblyman?

Assemblyman Gibson.

ASSEMBLYMAN GIBSON: Thank you, Mr. Chairman.

Assemblyman, I appreciate your initiative on this issue.

Hawaii is different than New Jersey in a number of ways. But I also call attention to Europe. Some time ago, I was in Europe, and gas here was selling at that time, I guess, for maybe $1.25 a gallon, or something like that. In Europe, they were selling it, by the liter, not even by the gallon, and it was about triple our expenses. And I was curious. Why are they triple our gas costs, and when they're closer to the Mideast where all this crude is produced? I don't have the answer to that.

But the one thing I would caution you on, on your proposed legislation: that, for what it's worth, that the Office of Legislative Services, which drew up your bill, or is in the process of drawing up your bill, has rendered an opinion that your proposed initiative will stand the constitutionality test. However, it is uncertain whether the law may be found to be unconstitutional as authorizing an uncompensated regulatory taking, or as a burden on interstate commerce. I just call your attention to that, so that before it's finally crafted, if you can solve all those problems and the consumer can be protected.

ASSEMBLYMAN VAN DREW: Thank you for those questions. We've actually done, which I can share with you, Assemblyman, some -- and through the Chairman -- some additional research since that time, and it seems that it would bear the constitutionality test, in light of some of the activities that occurred in Puerto Rico. And I believe that was back in the 1970s, and we can share that information with you.

The second issue, as to Europe, is little -- we don't produce nearly enough of our own energy. They produce even less of their own energy, and they have problems over there. So we do still have the Gulf Coast, and Texas, and those areas where we're producing some, and that does affect the pricing scheme as well.

ASSEMBLYMAN BURZICHELLI: The Chairman has stepped away to attend to a bit of business.

Any other questions or contribution? (no response)

If not, thank you, Assemblyman, very much, and for the initiative as well.

ASSEMBLYMAN VAN DREW: Thank you.

ASSEMBLYMAN BURZICHELLI: Let's see who we have next to call on -- all coming up together -- Craig Copeland, Gasoline Retailers, I have a notation for Mobil; Balkar Saini, please come forward. I'm sorry on the last name. I see that you're a LUKOIL distributor, or LUKOIL retailer. And Bill Dressler and Pat -- Pat, I can't pronounce your last name. I'm sorry. Come on forward. I should be able to pronounce that. Let's bring everyone up together.

And Bill and Pat, you were with us at the last meeting. You were very helpful at educating us.

We have a few members that have stepped away.

And since I did such a poor job in correctly pronouncing your names, Nancy has asked that each of you identify yourself for the record, so the record can understand who's helping us.

WILLIAM DRESSLER: My name is Bill Dressler. I'm the Executive Director of the New Jersey Gasoline Retailers Association.

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

CRAIG COPELAND: My name is Craig Copeland. I'm a Mobil branded dealer in Middletown, New Jersey.

BALKAR S. SAINI: I'm Balkar Saini. I am LUK branded, but not no more.

ASSEMBLYMAN BURZICHELLI: Thank you very much.

As a group, you have been able to listen to some of the testimony that went on here this morning. Good questions, not a lot of clear answers, as far as just straight-line answers. I'm interested in the fact that the refiners make gasoline and establish prices not on what it cost to make it, but by another group that decides what it costs. It all affects all of you. Let me begin by letting any of you make a comment that you think would be helpful to this continuation and discussion today.

Do you want to start, Bill?

MR. DRESSLER: If I may start, yes.

First of all, I commend the Committee for the efforts that they're putting forth to try and resolve some of these problems that we're faced with. Secondly, the Chairman said that maybe we could throw some light on some of the questions that were asked here with respect to the way things were priced. I would respectfully submit that I'm as ignorant to that fact now as I have been for the last 20 years. We've asked that question, and my predecessor, he used to say, "When the price of crude goes up, it comes over by jet plane, and when it goes down, you have two guys in a rowboat pulling a tanker." So that question, of course, has been asked time and time again, and the answer to that still lays in limbo. And I don't think any of us are ever going to get an answer to it. Frankly, I think it deserves an answer. And maybe one day -- I guess we can never say never -- maybe one day we'll get the answer to that question.

ASSEMBLYMAN BURZICHELLI: Anyone else?

Pat.

MR. FIUMARA: I'd like to speak about zone pricing again. The counsel for ConocoPhillips, I must say, did a very good job of dancing around a lot of questions. And the one question that was asked about zone pricing, I'm surprised he said what he said. He said that they used the price on an individual basis, on an area basis, and look at the different areas and control the price from that. They go up or down according to what they find in that area. So what they're doing is, they're micro-managing. And this is the point that they have contested that they don't do. They say that the price is set by the gasoline dealer. And in his statement, he said that they're micro-managing, using zone pricing, which is exactly what I testified last week about, that the dealer doesn't have the chance to set his own price. Because if he goes up on his price, the company will go up with him. If he tries to go down on his price, the company doesn't always reciprocate by going down on the wholesale price.

That's why there should be one basic wholesale price for the dealers. A rack price should be decided, and then the dealer should have the freedom of the marketplace, which most other businesses do have, in order to control the price of the fuel according to what he needs to exist in his location. And it shouldn't be something that no matter what he does, he has big brother watching him and controlling every move that he makes.

A lot of talk has been going on about dealers gouging. And we talk about different percentages. Last week, they talked about percentages on gasoline. Unfortunately, most dealers price on pennies per gallon, instead of percentages. And I just made a couple of quick notes. If gas is at $2 a gallon, most dealers are making between 10 and 15 cents. So at 10 cents, they're making 5 percent. At 15 cents, they're making 7.5 percent. If gas goes up to $3 a gallon, at 15 cents profit, they're making 5 percent; at 22.5 percent (*sic*) profit, they're making 7.5 percent; and at 30 cents profit, which I don't think anybody is making right now, they'd be making 10 percent. If you compare this to other industries and other businesses, I don't think you're going to find another business around that marks their product up as low as the gasoline retailers do. They just can't exist on it. And unfortunately, the gasoline retailers can't exist on it, too.

Now, we're talking -- those percentages are gross percentages. Out of those percentages right now, at $3, you're talking about 9 cents for credit cards. So you're talking almost 5 percent of the percentages I just gave you, going just to take a customer's credit card, which is leaving them with 1, 2 percent on the product that they're selling. And then you ask why they have to raise their price as the market goes up in order to replace their inventory. If you think about the percentages, think about the demonstration that was given last week about a cup costing a dollar and selling it for $1.50. They sell their gross out and then they wait for the next gross to come in, and then they raise their price. Well, they're talking about 50 percent profit. They're not talking about percentages that are so minute that you must be able to get the money to go further.

Thank you.

ASSEMBLYMAN BURZICHELLI: May I, before we move to -- for clarification. And Bill and Pat, I think both of you, too, are in the best position to help us, for clarification. The relationship you have with the wholesalers require that the retailers pay for the inventory received. In very short order, there is no 30-day time. Tell us about that. What is the industry standard?

MR. DRESSLER: The industry standard is, when that gasoline is delivered, it's usually paid for on delivery, COD, or it's EFT'd out of your account the following day. In most instances, there's no lag time. So that when you receive that product, you own it. And what you do with it after that is determined by how much you paid for it and where your margin of profit is. Now, in most cases, if you are going to be -- over an extended period of time, your price remains constant, then what you do is you just take that margin of profit that you've anticipated you were going to make -- in most instances it's pennies, it's probably 8 or 9 cents -- and then you compensate later on, if the increase goes up, in order for replacement costs. But you don't have a 30-day lag, or you don't have a 60-day payment plan or any of that. It's a constant, and that's where the problems lie -- the replacement costs. And the accusations that many people look at and actually believe take place are unfounded because of that scenario.

ASSEMBLYMAN BURZICHELLI: Bill, is that just an old standing industry practice that -- at a time when gasoline was less demanding on a person's budget as it is today? Is it just something you just carried forward for many years? It's so unique, it seems, to the gasoline business.

MR. DRESSLER: Yes. That process has been, as long as I've been around. I started in this business when I was 11 years old. And you say, "Well, times were different then." No, at 11 years old I was pumping gasoline. And then I just migrated into the point where I've been here forever. I was told that I don't look as old as I am, maybe it's the gasoline fumes that kept me alive. I really don't know.

But yes, in answer to your question; I digress. It really is an industry standard that has never changed. When you get the gasoline, you pay for it. There were times when you had gasoline on consignment. And even today there are certain circumstances where the oil company will put a dealer into the location, and in reality, he's not a franchise dealer. He's a commissioned agent. That commissioned agent will get a load of gas, that gas is controlled by the company that he's working with. And he gets a certain amount of pennies, mostly, since he's at anywhere from 6 cents to 7 cents to sell that gasoline and pay his rent and all the other scenarios that go on with the business.

So there are varying areas. But by and large, the majority of the people who are in business today, there is no consignment. It's either you're a commissioned agent or you're a franchised dealer and you have a product contract, and you're locked into that one supplier forever until that contract, of course, expires.

ASSEMBLYMAN BURZICHELLI: It's the first time I'm hearing the term *commissioned agent*. Is that -- do they make up a significant portion of the population of those retailing gasoline in New Jersey or are they quite an exception?

MR. DRESSLER: Getty is probably the most prevalent as far as the commissioned agent is concerned. And there were some fears when Getty acquired the Mobil brand that that would be taking place throughout that particular area. We still don't know whether that's going to materialize or not materialize. The fact of the matter is, that a commissioned agent is really not in a position of making anything. I don't know how they even survive, because they do pay a rent for the facility they're in, and they are limited to what their earnings can be.

ASSEMBLYMAN BURZICHELLI: Very good.

If we moved down the panel, following you we have, I think, I guess, from the Mercantile Exchange, which many of us have a real interest in trying to understand how these commodities are traded at that level, because it's affecting all of you directly and all of us directly.

But I think the gentleman, on the end, has a particularly interesting story for us. Am I correct? Or you recently had an experience -- and maybe I have you mistaken, Balkar. Are you just leading a revolution of some kind?

MR. SAINI: Yes, I do.

I do a couple of stations, which I signed with ConocoPhillips -- those guys who are sitting over there. They sold like 800 stations, like a year and a half, to LUK, which is LUK today, Getty Petroleum. They bought it. Since those guys bought it, they have not come back. They have not given a price to the retailers. So it's really hard to survive with that kind of company. When I signed with them three years ago, they assured me that we would get a good price and cost per price. Three months ago, the LUK people, who does have Mobil stations, they came to me with a (indiscernible) brand with “Look,” they told me, “comparative price.” They would give me a comparative price. Two weeks ago, like the same thing, my price was so high I couldn’t compete with the market. I come close to a good price, so the customers gets on me because they don’t know what we have behind the curtain, is going on. So I talked with them, met with them a couple of times -- nothing has happened. So I decided myself, I can’t live with this company for the next seven years, so I covered their sign to sell unbranded gas. I do a (indiscernible) LUK station. I covered it. Since I covered it, I get volume, because I’m competing in the market. My price is 2.75 in Collingswood, which is my -- 2.74 is my point price if I’m buying from ConocoPhillips. And you think about that, with a $3 gallon of gas, as he said, like credit card fees are so high, other expenses there.

So I did decide myself, I can’t live with this company. So we did cover the sign, and I’m selling unbranded gas which is much cheaper than what I used to pay for LUK. The problem is, LUK wanted to make money. I don’t mind. But what’s for us? If we are not making money, if we are not pumping gas, we can’t do anything. So as of today, I’m very competitive selling gas, which is like bringing the customer in to give them a good price -- that’s the bottom line. We could have, maybe a couple of days ago, in East Windsor, against these guys. Those guys, they don’t care. Those guys would give us price, we pass to you guys. If we couldn’t get a good price, we can’t pass it to you. So the problem is oil companies, not your dealers. We are just making this much money, they are making that much money. (indicating)

And as this gentleman told, like -- Sunoco, it changed six times in a day, price. One day they changed six times. And I was changed 22 hours. “Drop the price, don’t pick up the price,” and they investigated me, “Why did you drop the price within 24 hours?” I mean, this kind of system we do have, we are living with that, but the bottom line is, you have to be tough. You have to really care about oil companies, who are the major player -- not we are.

Thank you.

ASSEMBLYMAN BURZICHELLI: We’re sort of losing our Committee, as we move through here. And we do have one more important guest.

And Assemblyman Stack has been quiet all morning. He probably traveled the longest distance. We don’t have a door prize for you, Brian. Unfortunately, we weren’t that well organized.

ASSEMBLYMAN STACK: No problem.

ASSEMBLYMAN BURZICHELLI: But you may have traveled the longest distance.

Does anyone have any questions for this group?

Dave, go ahead.

ASSEMBLYMAN MAYER: Just a quick question, if you don’t mind, for any of the panelists. I do share, Mr. Fiumara, your concern over zone pricing. Last week, we had someone -- Mr. Slocum from the Public Citizen group -- testify that competition is really controlled now by the five major oil companies who control 62 percent of the retail market. Would any of you agree that the stations that are owned or leased by the major oil companies, it’s really the major oil companies that, rather than the local dealer, that determines the competitive price in that area?

MR. COPELAND: I've actually dealt with ConocoPhillips before. They owned our Mobil contracts for a number of years. And I heard their discussion about pricing and zone pricing, and I'd like to add to that. From what we can gather, the way the price is truly set at the wholesale level, it starts-- It doesn't start from your operating costs and crude costs and all that. It actually starts at the street level. And from what we can gather, there's different names for it -- street back pricing, retail based pricing. But what they do is go out and survey the average price on a street on a given day or a given week among the major players, the minor players and they arrive at a price. And from there, they take that and then deduct what they call your support level or your margin, or whatever they determine should be your margin, or what they think is fair for you. They take that average price on the street, deduct your margin, and that becomes your wholesale price. So it really has nothing to do with delivery cost, production cost, any of that.

And that goes on among all the oil companies, as far as we can determine. So what happens is, particularly in this instance in the last two weeks, it's raised the bar, we feel, on what people have to pay for gasoline. It really -- and what we haven't discussed, beyond production and refineries and at the retail level, there's a big gap in between there where there's other classes of trade, like jobbers, distributors, things like that, where there's a lot of room for abuses between the refinery and our tanks at the retail level. Those guys just pick up product from the ConocoPhillips refinery--

Like in my case, the product is picked up at ConocoPhillips. It's repriced by the Getty and LUKOIL people, and they deliver it to my tanks, and sold as Mobil branded fuels. It's kind of a mess. It's a very, very convoluted relationship now between refiner, delivery people, and the retail level. But I think the important point is that retail based, or street back pricing, we believe is hurting consumers.

ASSEMBLYMAN MAYER: I appreciate your explanation, because that was a lot clearer than what I've experienced before. So I appreciate that. Again, I have concern over, if the figures are correct, 62 percent of the marketplace is controlled by the oil companies, who are then, if you're correct, going out and surveying the area to determine competitive prices -- are really surveying themselves, is the issue, and which would perhaps artificially increase the price of gas. And that's what I'm concerned about.

MR. COPELAND: As far as we know, they do include their own stations and their own competitive surveys. And sometimes they'll hire outside agencies to do that for them -- to go out and run surveys two or three times a week to determine where the market is going in that area. And we do believe that people in more affluent areas can be charged more. We know that individual stations, or station operators, can be their own zone. And we know that those people can be priced more or less for any reason at all -- if they like them or not, if they want to hurt them or not, if they want to help them or not. There really is no, as far as we can tell, not much logic to setting prices at the wholesale level. And when our margins are -- and when there's pressure on the margins and pressure from competition, there really is a squeeze play on dealers at the street level.

We can't vary very much outside what they believe to be our margin. When we do, we get punished. Our volumes go down, and the consumers punish us, especially when every day you read the editorials, "Hey, go buy gas at the very cheapest place you can find."

ASSEMBLYMAN MAYER: So they're telling you your margins, basically, in essence?

MR. COPELAND: They're telling us that we are free to set our retail prices. But with zone pricing, as we try to cover our costs and try to protect our margins and try to raise our prices, they can come in right behind you. And if they think you should be making 12 cents a gallon and you're making 14 or 15 cents, they can raise your price 2 or 3 cents. So no matter how high I go, they can keep going. And then the other competitors on the street -- in our case, we think, with our supplier, who in some cases was getting 20 or 30 cents higher than other suppliers in the area -- if my price on the street is that much higher than the guy across the street, that's also his opportunity to go up. As a competitor, he could say, "Well, gee, I can raise my price 10 or 15 cents and still be a hero. I can be below him pumping more gas, getting more margin." And in the meantime, I'm getting punished volume-wise. So what that does effectively is just keep raising the bar at the street level, raising the price, raising the margins and the profit from the middle guys and the delivery guys -- not necessarily the refiners, but the people who are hauling the gas and taking possession of the fuel for a short period of time.

ASSEMBLYMAN MAYER: Thank you.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman Mayer.

Jack, anyone else?

MR. DRESSLER: May I add to that -- that statement?

ASSEMBLYMAN BURZICHELLI: Bill, go ahead.

MR. DRESSLER: That's why you see the disparity in prices for like brands. You can see stations that will be across the street from one another with a divided highway. And one individual will be posting one price and the other individual will be posting another price, simply because his zone pricing is more than the other fellow. So it's more of a, as Craig alluded to, it's more of an individual basis as to what they're going to charge you for that gasoline, how do you react to what they want you to do, and what the traffic patterns are. So there's a lot of more variables than just simple equations.

ASSEMBLYMAN BURZICHELLI: Anyone else care to contribute? (no response)

Gentlemen, thank you very much for taking your time and sitting through it.

MR. DRESSEL: Thank you.

MR. COPELAND: Thank you.

MR. FIUMARA: Thank you.

MR. SAINI: Thank you.

ASSEMBLYMAN BURZICHELLI: We're going to -- next up will be-- Dan, I hope I pronounce the last name correctly. I have it phonetically as *Brewster*, is that correct, close? Dan is with the New York Mercantile Exchange, and we've been anxious to try and get an understanding and an education as to what's taking place in the commodity world related to these important commodities -- crude oil, natural gas, that sort of thing. So, Dan, I hope you'll be able to help us along and bear with us. And some of the questions may be a little bit rudimentary to start with.

I see our Chairman is going to return. I'm going to turn the gavel back to him, and a few others members will make their way in.

One of the things that we have learned and understood is that this issue is being driven from the top down, with that cost of a barrel of oil and whether or not that cost is the correct cost. And the thing we understand is, once that cost is established and once it moves, the ripple effect is almost instant. And that is a great concern for us.

I'm going to move this gavel back to our Chairperson, Assemblyman Wisniewski, and turn the meeting back over to him.

RICHARD K. WEINROTH, ESQ.: Good afternoon, Mr. Chairman.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Just make sure the green light is illuminated, and then give your name and affiliation for the record.

MR. WEINROTH: Good afternoon, Mr. Chairman and members of the Committee. My name is Richard Weinroth. I'm with the firm of Sterns and Weinroth. I'm here on behalf of the Mercantile Exchange. And I have with me Dan Brusstar, who is the Director of Energy Resource. I have, through the Chair, delivered to the Committee some background information which we thought might be of assistance to you. First, a report dated March 1, 2005, which is entitled, "A Review of Recent Hedge Fund Participation in NYMEX Natural Gas and Crude Oil Futures Markets." The participation of hedge funds has become of great interest to people lately. Second, I have testimony that was offered by the President of the Exchange, Dr. James Newsome, before the Energy and Commerce Committee of the U.S. House of Representatives. Third, I've passed out a copy of Mr. Brusstar's testimony, which he has promised that he will not read, but will paraphrase and then will be available for questions.

Thank you.

ASSEMBLYMAN WISNIEWSKI: Thank you.

DANIEL BRUSSTAR: Okay. Thanks, Chairman and the other Committee members. And we're happy to be here today to try and explain the gasoline prices. Oil is a commodity, and the oil industry is a very competitive industry, and the fortunes of the oil industry kind of rise and fall with the prices of the commodity. The NYMEX is the largest energy futures exchange in the world, and we have actually the only gasoline futures contract that's traded worldwide, and that gasoline contract is delivered in New Jersey at terminals in northern New Jersey. And actually, the New York harbor area, which is the area of northern New Jersey, is the most dynamic global trading hub for gasoline, and heating oil, and other oil products in the world.

We currently are setting the prices based on a very dynamic oil industry in northern New Jersey. It's a dynamic trade that includes the local refineries in the state. It includes the Colonial Pipeline, which connects the Houston refineries to New Jersey, and it includes a vibrant import market from Europe and Venezuela and other offshore oil companies. So it's a very dynamic market, and New Jersey has been the hub for that for many years.

Gasoline first started trading back in the early '80s, and we also started trading heating oil, which was our first commodity, back in 1978. So this is going on a long time, where New Jersey has been kind of the focal point for pricing for pretty much the entire world. Pretty much every gallon of gasoline that's sold is tied -- or the price is indicated off of a NYMEX price, which is freely traded, but we are regulated by the Federal Government. We have a lot of regulation which we oversee. We have market oversight, which is very extensive. We have limits on speculators. We have credit protection. We have a lot of regulations which we oversee ourselves and make sure that it's a fair and competitive marketplace.

And I think, just in the recent few weeks, we've seen the supply devastation which has happened down in Louisiana, and we're looking at another possibly devastating storm this weekend with the hurricane. Prices have responded, but at the same time, the industry has responded to those prices. And because of the competitive nature of the industry and because it's a healthy industry, they've been able to respond. There have been very few incidences of any supply disruptions. And I think our staff at the NYMEX has overseen what has happened in the last few weeks, watching closely all the activity. And basically what we have determined is that the market, through all the shock and devastation, has -- the market has performed well. And prices have responded. Now they're coming down. Temporary shocks do occur. But in the end, it's to the benefit of the consumer to have a healthy and competitive pricing market.

And I think, really, that's the conclusion of my remarks. And I think that, certainly, if you have any questions, if there's no time -- also, if you are interested--

ASSEMBLYMAN WISNIEWSKI: We have questions. I think we have questions.

MR. BRUSSTAR: Okay. I was also going to say I could invite you to come and visit us at the New York Mercantile Exchange, and where we can show you exactly how we function, how prices are set in gasoline and the oil markets.

ASSEMBLYMAN WISNIEWSKI: Is that an invitation for the Committee?

MR. BRUSSTAR: Exactly, for the whole Committee.

ASSEMBLYMAN WISNIEWSKI: I think we will take you up on that.

MR. BRUSSTAR: Yes. I think it's a very timely thing, and it would be good.

ASSEMBLYMAN WISNIEWSKI: Let me start off by thanking you for making the journey down--

MR. BRUSSTAR: Okay.

ASSEMBLYMAN WISNIEWSKI: --to be with us today and to be willing to answer some questions for the Committee.

I'll take the Chair's prerogative and ask the first question, which probably is in several parts. The price of gasoline, is it set exclusively by transactions on the New York Mercantile Exchange?

MR. BRUSSTAR: Well, for the-

ASSEMBLYMAN WISNIEWSKI: You have to hit your button again. (referring to PA microphone) There you go.

MR. BRUSSTAR: The prices that are traded on our commodity exchange are for delivery of gasoline at the wholesale level, which is at the barge level in the supply chain for transactions in New Jersey. And the price is actually based on an actual buy and sell transactions in the futures market. So I think--

ASSEMBLYMAN WISNIEWSKI: When you say the futures market, though, that future could be tomorrow, it could be next week, it could be next year.

MR. BRUSSTAR: Right. We currently offer trading in contracts that expire once a month. And we go out 12 months, so you can actually trade in any month that you like, going out 12 months.

ASSEMBLYMAN WISNIEWSKI: Maybe I understood your testimony incorrectly, but it seemed that you were saying that because of where the New York Mercantile Exchange is and where the delivery point is in New Jersey, that northern New Jersey is really the epicenter of the deliver of gasoline, based on the price set by the New York Mercantile Exchange.

MR. BRUSSTAR: Well, New Jersey is the delivery point for the NYMEX futures contract, which is the benchmark for setting gasoline prices.

ASSEMBLYMAN WISNIEWSKI: Are there other futures markets in the United States that set prices for gasoline contracts?

MR. BRUSSTAR: No. No. This is the only one.

ASSEMBLYMAN WISNIEWSKI: Let me just take that as a follow-up, then, to the next, which is, if the delivery point is in New Jersey and the futures market sets the price at *X* per gallon-- I was looking just before today's meeting, the price of gasoline in New Jersey is, at the retail level, about -- I paid $2.85 a gallon this morning for gasoline. In Iowa, gasoline can be had for $2.60 a gallon. Why would gasoline be cheaper in Iowa, where the transportation cost of getting there certainly has got to be greater than getting it to the Exxon station in Sayreville? Why would that price be lower and our price be higher?

MR. BRUSSTAR: Well, there are several factors that influence the price. And I think the New Jersey grade of gasoline is a cleaner grade of gasoline. It's reformulated gasoline, which is cleaner than the gasoline in the Midwest. That's one factor. You also have the location factor that will impact the price. And at the retail level, you also have the state taxes. The NYMEX price is a wholesale price, which is basically a barge delivery in the northern New Jersey area.

ASSEMBLYMAN WISNIEWSKI: But am I correct that the wholesale price for gasoline in Iowa is not going to be less than the wholesale price of gasoline in New Jersey?

MR. BRUSSTAR: Well, at times it could be higher or lower depending upon demand and supply forces. I think that, generally speaking, New Jersey, being kind of the focal point for oil commerce, both receiving product from the Houston refineries via pipeline and through the tanker deliveries from Europe and offshore, that New Jersey is one of the -- at the wholesale level, one of the lowest priced gasolines. But part of that is also -- there are environmental regulations, which are stiffer in New Jersey than in other states. So that will impact the price.

ASSEMBLYMAN WISNIEWSKI: Right. And maybe you're not familiar with this, but I guess the reason for the questioning is, is that -- historically, New Jersey had been nationally, or at least regionally, had the lowest priced gasoline. And that, historically, has held true for many years. During this recent price surge, the tables have been turned, and now New Jersey has the highest priced gasolines. We haven't changed regulations. We haven't changed tax policy. We haven't changed formulations. The only thing that's changed is bad weather in the gulf, war in the Mideast, and now our prices are higher than places that are several hundreds of miles away from here. I'm trying to understand if there's -- what's the market factor or force that causes gasoline in Iowa, which is set at the same wholesale price as gasoline in New Jersey, to suddenly be cheaper than it is here, when we're closer to the source?

MR. BRUSSTAR: Well, I think New Jersey is the price-setting area for gasoline. There may be delays in when the prices may move in further out regions. But generally, with New Jersey being the price-setting area for gasoline, the entire nation is going to follow New Jersey. There may be a time lag, there may be hiccups here and there, but generally, the benchmark price is set in New Jersey. And New Jersey will respond more quickly to shocks such as supply shock on the Colonial Pipeline or something in Houston, which will directly affect New Jersey. That will more quickly be priced in New Jersey as the benchmark.

ASSEMBLYMAN WISNIEWSKI: So are you saying that the folks in Iowa who are paying less for gasoline now can expect to get higher prices in the future? Kind of the ripple effect of higher prices in New Jersey hasn't made it out there yet?

MR. BRUSSTAR: Yes. That could be one explanation. I'd have to look at the details and exactly see what the analysis was there. But generally speaking, the prices that are set in New Jersey are going to -- they're really setting the price for the whole nation. And there may be pockets depending upon -- there may be a timing factor involved. But that's generally the case.

ASSEMBLYMAN WISNIEWSKI: Could it be profiteering that causes New Jersey's prices to suddenly exceed the nation?

MR. BRUSSTAR: I mean, I know that there's -- there already are pretty strict laws about price gouging. So the NYMEX, we don't get involved in the supply chain pricing at the retail level. But generally speaking, it's a very competitive commodity market. And if one company is not competitive in their price, they're going to be punished by less business. And there's also brand loyalty. And if that trust is broken, you're going to suffer in a competitive market.

ASSEMBLYMAN WISNIEWSKI: Thank you.

Any questions from members?

Assemblyman Burzichelli.

ASSEMBLYMAN BURZICHELLI: Good afternoon, Dan, and thank you for being with us, as I said as you were seated.

MR. BRUSSTAR: Okay.

ASSEMBLYMAN BURZICHELLI: And you're not in a hostile place. I don't think you had to bring an attorney, but we welcome your attorney nonetheless. (laughter)

A few questions to -- again, they'll be, probably, very simple questions. But you mentioned that gasoline was not traded as a commodity, not on your market, until the '80s; home heating oil too, roughly around '78. So what happened in advance of those years?

MR. BRUSSTAR: Well, I think, prior to that prices were set by different news services and publications, such as OPIS and Platts that were out there, that would call up people and try and find out what the prices were. It wasn't as transparent or competitive as it currently is. I think the market has -- also, you had price controls in the '70s and '80s, which were taken off, that made the market more dynamic and more open for people to see the prices. And I think that's one thing with the NYMEX price. Every day on the news you'll see the price of crude oil and gasoline almost on a daily basis. It's very much in the minds of the average consumer. It's a big part of the whole financial community. The outlook for consumer sentiment and inflation is all -- it's all an important part. But these prices are getting out in a very open environment. And being a commodity market, the oil industry has to compete and be competitive.

ASSEMBLYMAN BURZICHELLI: Does your exchange also handle the transactions on the crude oil, or is it simply on the finished product?

MR. BRUSSTAR: Yes, we do crude oil, the finished products, and natural gas. And we also have a propane futures contract. So we pretty much cover the whole gamut.

ASSEMBLYMAN BURZICHELLI: The Chairperson had touched on -- I'm trying to think who was seated. You weren't here yet. Assemblyman Malone had followed, with regards to talking about the -- I think are-- The individuals from the refinery were testifying that a barrel of crude oil, related to an oil company that is -- I guess the term we heard the other day was *vertical*. They had crude oil supply to refining, then to distribution for retail. That that barrel of crude oil at one point was $40, and pumping from the same range, whether it be Alaska or the North Atlantic, wherever it's coming from, that same barrel of crude oil, with limited new expense to extract it from the ground, is now selling for 68 and $70, wherever it happens to move from. So the average person wonders, "Well, what happened?" Because as we sit here now, although we hear conversations of potential interruption of supply, we recognize what the weather has brought. There's a new focus, I think, on trying to understand what's happening in your world. And as your exchange -- I don't mean you personally. I don't mean him personally, Rich. I mean, just what's taking place in the transaction world where everyone is entitled to make a profit; but how volatile is the movement in your markets, based on pure speculation, and how that affects all of us so very quickly and has ramifications into an economy that sometimes can either be harmed, or certainly slow to recover or slow to absorb it. So we're trying to understand and use the word *speculation*. I don't have a better word to use at the moment. But your group is in it -- again, not you personally. But in the exchange of these commodities, how quickly is it affected by just news? I mean, the weather's bad. We have a sense that a particular dictator somewhere is not having a good day or a particular religious leader has called, and that person to be assassinated -- and suddenly the barrel of crude oil goes up $4 and the gas station in Paulsboro sees a price increase the next day of 3 cents. Can you help? You talk about the market being better and transparent. Is information moving too quickly because of that? There's an opportunity for manipulation. Because some people may not have vision past the point of a commission check. And again, that's not directed at you; that's trying to understand.

MR. BRUSSTAR: Yes. I think one of the big functions of the NYMEX is that we oversee the market on a real-time basis. And we're looking at all the transactions to make sure that they are fair and that there's no manipulation, and we keep the speculative traders to a very small level. And the speculation in our market has -- even though you hear a lot of allegations of speculation, actually speculation is just a very small part of our market. It's dominated by big commercial companies that have real oil to sell. And so, really, our price is based on the best estimate of demand and supply at this time, and really all the factors that play into that. Oil is a strategic commodity, and it's a global commodity. And New Jersey is the key -- a strategic location for the pricing of that commodity -- and it's worked over the years.

I mean, just looking at the performance of oil companies over the years, they've probably been punished by lower prices more than they've actually profited by the higher prices. And the oil companies have to function in a competitive global commodity market, and that commodity market can punish their earnings just as often as they can reward the companies.

I think, right now, we're in a period where the refining sector may have some good profits, but if you look over a 10-to-20-year span, it's not been a good investment. And I think that now, with the refining sector, it's obvious that we haven't built new refineries and these prices now are probably a result of the fact that we haven't been building refineries. So I think this is all tied into, kind of, the market price. The market price for crude oil and gasoline and heating oil right now is reflecting that big situation, and I think governments have to be very watchful of that. It's good that you're having hearings, because the oil industry and, certainly, the NYMEX, where we're pricing -- we want to see a vital oil industry, especially in northern New Jersey where we're pricing the world's gasoline and heating oil.

ASSEMBLYMAN BURZICHELLI: If I can get a sense, before the other members weigh in with questions, I happen to have had an opportunity to see a documentary that had a theatrical release. It was called "The Smartest Guys in the Room." I don't know, maybe if you had a chance to see it-- Did you see--

MR. BRUSSTAR: No, I didn't see that.

ASSEMBLYMAN BURZICHELLI: It's called "ENRON, The Smartest Guys in the Room," and it talked about how the manipulation that occurred in the electric business in California -- and how that, eventually of course, caused collapse. Can you help me understand, in your world, is your compensation -- again, not personally -- but is there compensation on commissions, are the people that handle these commodities, are they salaried, or commissioned, or a combination?

MR. BRUSSTAR: Yes. It's a combination of salary and commission.

ASSEMBLYMAN BURZICHELLI: And we also learned today -- and I don't think it's a stretch to say -- that the record oil company profits are not so much coming from the refinery unit side, although they're doing better, it's coming on the other side, those who are invested in crude fields and are on that side of the world, is where the big hit is occurring -- that the barrel of oil has accelerated in its cost. So as we think about that-- We heard also, at a previous meeting -- and some of our members, they weren't with us then -- we heard about over-the-counter traders and these commodities being-- There's a certain segment that's unregulated. Did we understand that correctly?

MR. BRUSSTAR: Yes. There is an unregulated market, that companies can trade with one another in an unregulated forum. But really, the futures market has grown to such an extent that a lot of the OTC trading, or kind of unregulated trading, has kind of, probably, declined as the futures market has grown. But certainly, companies may buy and sell commodities privately where the price isn't seen publicly, and that's why the futures market has kind of been embraced by the whole oil industry, because it's a price that everyone can see and, really, it drives pretty much all the pricing across the board. Because NYMEX is there, you can always see that price and you know if your price is good or not.

ASSEMBLYMAN BURZICHELLI: Well, frankly, and we all can see the price -- and many of us would prefer not to see the price that we're seeing, because of the ramifications that are happening with it. Let's go around and see--

Assemblyman Van Drew, you're heading out? Are you leaving?

ASSEMBLYMAN VAN DREW: Pardon me?

ASSEMBLYMAN BURZICHELLI: Or do you have a question?

ASSEMBLYMAN VAN DREW: Yes, Chairman. I was going to leave -- now that you've announced that to the entire room, Chairman. (laughter) I did have a question, but unfortunately I have another meeting as well. May I ask one brief question before I go?

ASSEMBLYMAN BURZICHELLI: Please. We insist.

ASSEMBLYMAN VAN DREW: Thank you, Chairman.

Through the Chair, I know that we were talking about how the profits are upstream, but isn't the truth that most of the refineries also are held by or involved with or have interest with or contractual arrangements with, not only wholesalers but also refiners? That there is definitely a very strong relationship, that exists contractually and also through ownership and a combination of all that, among all these entities. I believe it is.

MR. BRUSSTAR: Well, yes. You have integrated refiners that have both refining and retail networks. And obviously, they are connected, and you can pretty much-- And that's very open, and you can see in their annual reports exactly how much refining they have and how much retail they have. But most of the companies, though, they still have to be competitive on that price, because the NYMEX is actively trading every day and setting a global commodity price. And with the hub being, you know, pricing in New Jersey, they still have to be -- they still have to use that market price. Even if you are a refiner, you still have to be competitive in your retail pricing. And if you're not, you're going to lose market share, and it's a very competitive market.

ASSEMBLYMAN VAN DREW: I understand what you're saying. But through the Chairman, the reality is the final price that we pay at the pump is to a great degree determined by big oil, because of the contractual relationships and because of the ownership relationships that exist among those three entities. I wanted to clarify that, when we say that it's upstream where the profit is. And by the way, I don't believe it's at the retailer. I think the retailer is competing hard and having a tough time. But upstream from that, both at the -- whether it's at the rack or whether it's the distributor wholesaler, or especially whether it is a refiner and big oil, there is a relationship there that's a very strong relationship. And when that profit exists, it's at multiple levels, and that there is, obviously-- Again, I'm just going to the fact-- Let me just say this--

MR. BRUSSTAR: Let me just comment one thing. I think it would be good for you to visit to--

ASSEMBLYMAN VAN DREW: Respectfully, may I just finish? The bottom line is, is that there has been record profits and we're paying record prices. And regardless of how we twist this around, turn it around, how we state it, what we say, what we do -- and you're in it to make a living and I understand that -- but the reality is that there are record profits and we're paying the highest prices we ever did before.

MR. BRUSSTAR: What I'd like to say is that-- I mean, from my perspective at the NYMEX, I see probably 40 or 50 very competitive wholesalers who are every day fighting it out. It's not five big oil companies. You have importers; you have companies that are very, very active at the wholesale level that are competing with the big refineries. It's a very competitive market. The import share, actually, in New York Harbor, which is the pricing point for NYMEX, importers account for more than 50 percent of the gasoline that's flowing through New York Harbor. So the refiners would actually say that it's not a fair market, that importers and wholesalers are too competitive. So the big oil companies have to compete, and the prices that we're paying are the most efficient price that the market can squeeze out. And it's not just four or five people setting the price. It's 40 or 50 people fighting it out for that price.

ASSEMBLYMAN VAN DREW: Through the Chairman, this will be my last question. And I am not an economist. It always seems to me that when there is healthy competition in any business or industry that prices get lower. When you have one clothing store within 50-square miles, that clothing store gets to charge more than if you have a clothing store on every corner. When you have competition, you have an increase in the competitive spirit as far as service, which doesn't relate to this, and also as far as price. And in this industry, it seems to me that price is the most determinate factor. So, frankly and respectfully, I don't understand that, because it seems to me if you have a healthy competitive spirit and you have that entrepreneurial endeavor going on, that you're going to see prices lower, not -- rather than higher. And again, what we've seen is record high prices, record profits, even in the sight that there's less product out there. So it seems to me that it is market driven and it is speculative, and that there are those that are reaping in huge rewards for what is, in some areas of our country and in our globe, a tragedy.

MR. BRUSSTAR: Well, I think the efficiency of the futures market reflects competition that goes far beyond just the three or four refineries that are in the state. And actually, I think it would be interesting, Assemblyman, for you to come and visit the NYMEX. You'd get a sense for what's really happening with pricing. And I would say that probably the oil price is probably as low as it can be, given the shocks and supply situation that we're currently seeing. And when you look at the catastrophe that just happened in Louisiana and what's happening in Houston, right now with the hurricane, prices could be a lot higher. And they're probably not higher because you do have a lot of imports.

What happened -- as soon as the price popped up, because of Hurricane Katrina, you had a flood of imports that immediately were being locked in to New Jersey and to Florida and to Louisiana. You have just very quick response by the oil industry. And by oil industry, I include -- it's not just a few refineries. It's these importers who are very competitive. It's just a lot of people who are playing in this arena. And it's very dynamic and it's -- the system is working well.

ASSEMBLYMAN VAN DREW: This really is the last thing I'm saying. This system may be working well for all of you. I don't think it's working well for the American people, but I thank you.

MR. BRUSSTAR: Okay.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman.

I was -- that was sort of going to be my comment as well.

We'll go around the table.

Joe, care to jump in? Anyone? Joe, Jack, first? Go ahead, Jack.

ASSEMBLYMAN GIBSON: Thank you, Chairman.

Based on the two hearings we've had so far, and trying to understand where the most sensitive area of the spiking gasoline has been, we can almost calculate the fluctuations based on the price of crude that's in the paper, or on the radios every day. We've seen and heard testimonies, and I believe it is accurate that the retailer does not contribute that much to the spike that we've seen in gas -- profits are minimal. We thought that perhaps the refineries, the wholesaler, was the biggest part of the spike. I'm not too sure, after listening to the total thing, and most of the testimony is it's market driven and very fair, a very efficient thing.

Nevertheless, the prices have spiked up. So we're going to ask you questions, and we are, in fact, asking you questions, and we appreciate your testimony. When there is speculation, I think, when there's an early frost in Florida, orange juice futures spike up. So why wouldn't that -- and it probably is -- isn't that a real big part of the spike that we're facing here? I'm looking forward to visiting your room where you price these things, people hold little pieces of paper, and they'll run around, and they try to get the best price, sale, and so on. I look forward to that. You have the same thing as all other futures that, every day, there's a limit that goes up, limit up, or something like that. Has that happened? And has that been going up, limit up, around these storm times? I haven't followed it.

MR. BRUSSTAR: Well, we've had-- Right after Hurricane Katrina, the one or two days immediately after the storm, there was a price move up that hit the limit. But since then, the market has stabilized and there haven't been any limit moves since then.

ASSEMBLYMAN GIBSON: People that buy these futures, sell these futures-- Well, before I get into that question, for instance today we're talking cattle, cattle futures. The price of cattle, the price of beef that you buy at our supermarket is certainly influenced by cattle futures. Every herd or every rancher doesn't necessarily compete in that, though. There's a certain amount of ranchers that probably sell their beef independent of the futures, don't need to enter into a contract, don't need to get that money in advance to do whatever raising of cattle they do. You have the only one, the biggest one in the world -- you've testified to that. But are there other oil people, oil producers that are independent of these futures that can go and do whatever they do and not necessarily be directly influenced by your market there?

MR. BRUSSTAR: Well, I think companies don't have to buy or sell a futures contract, but the price that they're going to get in the marketplace when they go to sell their oil -- like that rancher, when he goes and brings his cattle to market, that market price is going to be dependent on where the futures are trading. So the market price is going to be set there. So, indirectly, he will be affected by it.

ASSEMBLYMAN GIBSON: Okay, so you do set the market. Now, we worry about, we're concerned about where all these-- We've heard these questions, where all this excess profit is. And if there's something that we should be doing to protect the consumer, we want to consider that. It sounds like, to me, it's very possible that some of the excess profits, some of the excess money that's being made, has to do with people that are investing in your trading area so that they can protect, I guess, the wholesalers and the oil people that are in the business. There's people with just money that buy and sell these futures, and they're probably the people that could be, for the most part, contributing to the speculation and the high cost of the gas at the pump. Is that a fair conclusion?

MR. BRUSSTAR: I would say that the companies that are buying and selling futures, they're concerned about the price risk that they're facing as well. And they're only trying to protect their financial interests. And when you have refineries that have millions of barrels of oil that are in inventory, that inventory is going to change price based on the market. So these companies -- they're buying crude, they're selling gasoline, they're selling jet fuel -- they have a lot of fuel in inventory that's at price risk, whether that be up or down, and they can use the futures market to hedge themselves so that they don't take a loss on that oil that they're currently holding. So really, the oil companies use the futures markets to manage their inventories and manage their price levels so that they don't run into a credit crunch.

A number of the oil companies, just two or three years ago, had a lot of credit problems because of the high price of oil. And things have changed just in the last two years. Now companies such as Valero, who is a refiner here in the state, they went from having credit problems three years ago to being one of the star performers. So the fortunes of these companies can come and go very quickly based on the commodity price. And if these companies don't hedge, they're taking a big risk.

ASSEMBLYMAN GIBSON: I'm looking for another dimension here, not people that are in the business that have to do that. The cattle rancher, he then uses -- trades, just to oversimplify it. If somebody else in your market, in the futures market, that just contributes money, just contributes dollars for the right to make a profit -- based on the speculation that the cattle futures will go up during the period of time that he holds that -- I presume there's the same thing in the gasoline and the oil. Because if there are, then that dynamic is what's driving some of this price up, as opposed to the legitimate business people that have to protect their bottom line one way or another.

MR. BRUSSTAR: Right. And in my written testimony, I gave kind of a broader explanation of the role of speculators in the market. They, right now, in gasoline -- speculators are around 20 percent of the marketplace, which is a modest chunk, but they do provide liquidity in the marketplace and allow the most efficient price to be discovered. The more participants in a market, whether it's the importers, the refiners -- they provide participation in the market. Speculators have a role as well. They provide liquidity and they're buying and selling at certain prices as well. So in the end, you get a very liquid market. But one that is dominated -- about 80 percent of our open interest on the futures exchange is commercially driven. Those are companies that actually are in the industry and have oil to sell.

ASSEMBLYMAN GIBSON: Thank you very much.

Thanks for the longitude. (laughter)

ASSEMBLYMAN BURZICHELLI: Well, thank you, Jack. It was informative.

Joe, can you contribute?

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

The last two weeks, did we have a gasoline shortage?

MR. BRUSSTAR: Not in New Jersey.

ASSEMBLYMAN MALONE: Okay, then--

MR. BRUSSTAR: We had a pipeline in New Orleans with those -- there were about 10 refineries that were shut down.

ASSEMBLYMAN MALONE: But at any time, did we have a shortage?

MR. BRUSSTAR: Well, there were shortages locally, down around the Gulf Coast area. Mainly, because the pipeline -- the refineries were shut down, the pipeline was shut down, the power plants were all shut down.

ASSEMBLYMAN MALONE: So -- but if we didn't have a shortage in this area, and the demand basically stayed the same, what was the reason for the price increase?

MR. BRUSSTAR: New Jersey being kind of the pricing hub and the commerce hub for oil, you immediately had oil going on tankers and moving down to the gulf region. You also had a lot of imports, which were slotted to arrive in New Jersey. Those ships were diverted down to the gulf, down to Florida.

ASSEMBLYMAN MALONE: But we didn't have a shortage here?

MR. BRUSSTAR: Well, you had less supply coming in here. It wasn't a shortage.

ASSEMBLYMAN MALONE: Gas stations -- we didn't have gas lines; we didn't have problems, so there--

MR. BRUSSTAR: No. No. But you have a certain amount of gasoline and diesel fuel that were diverted, let's say, from our market, and that caused New Jersey to rise in price, although we didn't rise in price nearly as high as Houston did -- Houston and Louisiana where the local supply shock was much greater. Our prices went up in New Jersey and on the NYMEX, roughly -- let's say our prices went up, in a week-long period, let's say 50 cents per gallon. Whereas, in Houston, the prices were going up \$1.50 a gallon. So our price increase was mitigated because we have a lot of local refineries and some imports coming in. But where the supply shock took place in the South, the price impact was much greater.

ASSEMBLYMAN MALONE: But we don't have inventories around the country that mitigate some shock?

MR. BRUSSTAR: There's some inventories, actually, that were run down. The problem is, when you get into a panic-buying situation, and certainly with people fleeing the storm, obviously those stations are run dry because everyone's driving, getting in their car, and driving at the same time. And that's what caused a lot of the outages there, as people had to fill up immediately to drive.

ASSEMBLYMAN MALONE: That wasn't a shortage problem. That was just an intermittent demand in that area. You just couldn't get the fuel there quick enough to meet their demand.

MR. BRUSSTAR: Right. That's exactly right. And the market then -- the market is very responsive to those price signals. And what happened was, you actually had oil moving down to the gulf, where normally you don't see gasoline going from New Jersey down to the gulf.

ASSEMBLYMAN MALONE: But if you really don't have a shortage issue, is what happened two weeks ago, and right now, basically a hedge against future profits, that you do not want to -- you want to even out profits? If you do have some shortages, that you're going to maintain that profit level over a reasonable period of time?

MR. BRUSSTAR: Well, individual company profits don't play into the commodity price. And that's why these oil companies are basically -- they have to play by the market price. And when there's a supply shock-- Actually, when the market did respond to the shock, and now prices are falling back and they're adjusting and making up for that shock in the system, so to speak.

ASSEMBLYMAN MALONE: But we didn't have a crude shortage or-- I just can't-- I'm just trying to figure out--

MR. BRUSSTAR: Well, we had local shortages in crude. Because what happened, you had huge tankers of oil that are--

ASSEMBLYMAN MALONE: Just offshore, just waiting to--

MR. BRUSSTAR: --offshore, pulling into the Gulf Coast on a constant basis. All the offshore loading facilities were shut down. All the docks were shut down. You couldn't offload your crude to get it into the refinery. That's why the government released crude from our strategic reserve, because that crude's already onshore. It's in the ground. They could just pump it out directly. They didn't have to offload a tanker.

ASSEMBLYMAN MALONE: As of right now -- forget about what Rita is going to do or anything else -- as of right now, are we back-- What percentage of capacity for production and refinement are we currently, in the industry right now?

MR. BRUSSTAR: There's still roughly 5 percent U.S. refining that is still not running as a result of Katrina. And there's four major refineries in New Orleans that are still underwater, and they may be underwater for months. Some of those refineries may not even be up until next year.

ASSEMBLYMAN MALONE: What would that mean to the cost of gas at the pump -- that 5 percent?

MR. BRUSSTAR: That's hard to predict. We've gotten a lot of imports that have come in, that are slotted to come in now, to kind of cover the gap. So some of that will be kind of made up for. But it's hard to say. If you get another shock, if Hurricane Rita causes-- Right now, most of the Houston refineries are currently shutting down, and they're going to shut for about four days this weekend just as a precaution. And if there is severe damage and if they can't reopen next week, then you may have another supply issue. But for right now, I think the market has, kind of, started to get its balance.

ASSEMBLYMAN MALONE: When you talk to that competition -- competition amongst whom? I mean, who is competing against whom? If I drive around, there isn't going to be a whole heck of a reason to do gas shopping. You might get a penny different here or there, but where is the competition? If me, as a consumer--

MR. BRUSSTAR: Just driving down here today, I saw a station, just locally here, near Glassboro, that was 2.88 a gallon. And out on the Turnpike, it was--

ASSEMBLYMAN MALONE: The Turnpike isn't--

MR. BRUSSTAR: Yes.

ASSEMBLYMAN MALONE: The Turnpike, for most of us, isn't a good example.

MR. BRUSSTAR: But anyway, it was 3.07 on the Turnpike.

ASSEMBLYMAN MALONE: Yes.

MR. BRUSSTAR: So right there, you're talking 20 cents.

ASSEMBLYMAN MALONE: Yes, but for a while there, the Turnpike was lower--

MR. BRUSSTAR: Yes.

ASSEMBLYMAN MALONE: --because they had fixed weekly rates. So they were lower than most of your local gas stations.

MR. BRUSSTAR: Right.

ASSEMBLYMAN MALONE: I can understand the competition thing between maybe -- a global competition for crude, if you're talking about the increase in the economies of China or India. But I just can't see where this major competition is in the United States. It seems like it's almost like a fair trade item. If it goes through a mercantile exchange, and you're telling me that everybody -- you fixed a rate, and everybody uses that same rate, then really it's a fixed-price item. And there might be some slight variation of what it's going to cost, but really, in essence, is a fair trade item.

MR. BRUSSTAR: But the oil industry is not just four or five refiners. It's dozens of importers. It's wholesalers and traders who are working hard every day of the week to compete and kind of undercut their competition. It's a very competitive market. And maybe if you do visit the NYMEX, I can point out to you some of these companies that are -- and they're very active in northern New Jersey in the terminals. They all have terminal space. They're bringing in imports--

ASSEMBLYMAN MALONE: What if--

MR. BRUSSTAR: --and they're competing head-to-head with the big oil companies. And believe me, the big oil companies are not setting the price.

ASSEMBLYMAN MALONE: What if--

MR. BRUSSTAR: They still have to take the commodity price.

ASSEMBLYMAN MALONE: Theoretically, I guess one of the largest oil reserves in the world are in Russia. It's my understanding.

MR. BRUSSTAR: Right. I think they're -- behind Saudi Arabia, they're probably number two.

ASSEMBLYMAN MALONE: Okay. If Russia for some reason wanted a lot of cash, and they said, "Look, we're going to just come over here and we're going to bring every drop of oil we have that we can produce and ship. We don't want to go through the Mercantile Exchange. We're going to flood the U.S. market with our oil, and we're going to drive the price down." Can that be done?

MR. BRUSSTAR: Well, yes. They could sell all the oil they could and try and drive the price down. And that's happened with OPEC. OPEC drove the prices down in the '80s, and actually even in the mid-'90s. The prices got down where OPEC was flooding the market with oil.

ASSEMBLYMAN MALONE: Who set that price? Right now -- in the '80s and before then, you didn't really have your Mercantile.

MR. BRUSSTAR: Well, the futures price, though, is directly affected by what's going on in the market, because it's a reflection of all the market forces, basically the expectation-- I mean, if everyone sees Russia selling, the expectation is the price is going to go down, so it's priced into the crude oil price on the futures exchange. Because the futures, when it expires every month, you have to deliver physical oil for that futures contract. So the futures have to be a reflection of the market. Because eventually you've got to take delivery.

ASSEMBLYMAN MALONE: One last question, Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: Please.

ASSEMBLYMAN MALONE: How much refined product and crude are shipped out of this country to other countries?

MR. BRUSSTAR: Well, there's very little crude that's exported because there's a restriction on exporting U.S. crude. You're not allowed to do that. There's only -- I think the U.S. Government granted one waiver of that to sell some oil from Alaska to Taiwan or Japan. But that was the only instance where we've exported crude. Refined products -- there is an export that does go on. Most of the exporting is to Latin American countries. Right now, Europe is more of a diesel dominated market -- most of the cars in Europe are diesel. So they have a lot of excess gasoline. So usually what happens is, Europeans are importing gasoline to the U.S., because that's excess supply. And the U.S. will sometimes export to Europe if there's a shortage or some supply shock.

ASSEMBLYMAN MALONE: Thank you very much.

Mr. Chairman, I may take you up on your offer to go visit your Mercantile Exchange.

MR. BRUSSTAR: Okay.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman Malone. Very helpful.

Any other questions?

Assemblywoman.

ASSEMBLYWOMAN PREVITE: I really and truly want a kitchen table answer. Because when my neighbors talk to me, they're in the kitchen table, or over the lawn mower, or when they're digging their flowers. They don't want to talk about these complicated things, and I don't want to hear that kind of answer, because I don't understand those anyway. I understood you to say that what is happening with our prices in New Jersey are really affected by global and national issues. Am I correct in that?

MR. BRUSSTAR: Yes. That is correct. New Jersey is the main pricing point, and it's a very-- And actually it's a good thing, because New Jersey isn't dependent on just five refiners for its oil. It can get oil from imports from Europe, imports from different countries, and it has a pipeline from Houston, and it can actually get gasoline from Houston refineries. So it's diverse supply, which is a good thing.

ASSEMBLYWOMAN PREVITE: Then, why is it, when last year New Jersey had the lowest prices for gas in the nation, all of a sudden New Jersey has the highest prices in the nation? What made that happen? Why did that happen? All of a sudden from the lowest to the highest when we're affected like every other state in the nation by global factors?

MR. BRUSSTAR: Well, New Jersey is really the price leader. So your price will probably go up faster and the rest of the country will follow, but your price will also probably go down faster and the rest of the country will follow. Because imports will start to flood in, and your market in New Jersey will react more quickly than Iowa.

Is your microphone not working?

ASSEMBLYWOMAN PREVITE: I still don't understand. Then why were our prices lower for all this long time, and how many years our prices have been lower, all these long time. And now all of a sudden they're higher than anybody else's. I don't understand that.

MR. BRUSSTAR: Well, I think it's just a temporary market response to the shock that Hurricane Katrina brought to the industry. And everybody saw that, and nobody could have predicted that devastation. God forbid that doesn't happen to Houston this weekend. But what has happened though is, I think the industry is responding heroically -- the stories of what the oil companies were doing to get their people to safety and then going out and getting their refineries up again amidst all the destruction. It was pretty heroic what was happening. I mean, temporarily, you're going to pay a little bit more in response to that, but I think in the long run that's going to even out. And what's happened is, the efficient market in New Jersey has created probably the most efficient and lowest priced fuel across the board of any area. And actually, oil prices have not kept up with inflation over the last 20 years, and probably a lot of that is because New Jersey has been a very vibrant hub for pricing gasoline, where imports and everybody's competing. And it's been good for the consumer in the long run. In the short term, it's been very tough. But hopefully, the industry is going to respond and that will -- you'll see lower prices. There will be a market response to make up for those shocks.

ASSEMBLYWOMAN PREVITE: I just wanted to say that will not sell at my kitchen table, what you said to me.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblywoman.

I want to thank both of you for joining us. And as you leave here, I think you've been helpful to us, and you should know of our continued frustration. Because I really suspect that these prices, as they move, will push as far as they can until the pain is so great that then, only then, will they start to recede a bit. And with this new taste of this movement and the American public's ability to absorb this, and until the economy stalls and the people are really pushed to the limit, those who are enjoying these great record profits, those who are pulling the oil out of the ground -- and in your industry, those who are benefiting from those higher prices and the ability to trade them -- until it just reaches its limit, I don't know that we're going to have relief. Yes, we have hurricanes and we have storms, and they're certainly affecting us. But the rank and file person just doesn't quite understand what's happened and why these prices can accelerate so quickly and then take a while to come down. And I also fear that with the spike in prices, maybe someone thinks, "Well, if gasoline was

$3.11 in New Jersey, it's now a bargain at $2.87." But that home heating oil that's about to be delivered to a senior citizen -- at one point cost $370 -- is now going to cost near $800, is going to reach us to a point of crisis.

And we would like to take you up on your invitation to come and visit so we can understand your world a little bit better.

MR. BRUSSTAR: Okay.

ASSEMBLYMAN BURZICHELLI: So when we have our questions, they are more pointed, so that way maybe we can find out how we can be helpful.

Any other questions from the panel? (no response)

Thank you, gentlemen, very much, for joining us.

MR. BRUSSTAR: Okay. Thank you.

ASSEMBLYMAN BURZICHELLI: Now we have one other witness who has been patiently waiting. It's a person who represents a group of people who are caregivers. Please, if you can come up, Nancy, and introduce yourself. And I know that you'd like to speak, for the record, on the effects that these prices are having on the people that you represent.

NANCY TOLL PERILSTEIN, R.N.: Thank you.

ASSEMBLYMAN BURZICHELLI: Could we just have your name for the record, please?

MS. PERILSTEIN: Thank you. Thank you to the Committee.

My name is Nancy Toll Perilstein. I represent Nursefinders, a statewide home healthcare agency, as well as the Home Health Services and Staffing Association of New Jersey. I understand that one of my colleagues spoke last Thursday, or the 15th or 16th, in Trenton. I know all of you weren't there. I won't repeat that testimony, but I would like to talk to you briefly about our industry and how we are delivering home care to 18,000 people in the State of New Jersey, through the Medicaid Personal Care Assistance Program. Not only am I here representing the $10-an-hour certified home health aide, but the indigent, frail, and elderly, who are the Medicaid population in their home, who without the care of the home health aide in the morning can't function during the day.

You have written testimony, and what I'm going to discuss is not in that written testimony. I'm going to tell you about Mrs. C. in Atco, who lives with her husband, who is totally disabled, and her teenage daughter. She has multiple sclerosis and she can't get care. This is one of the few instances in my geographic area, in Camden County, where those in Camden aren't as affected, because our home health aides live in Camden and our population in Camden can be serviced. They're walking to work. They're taking buses. But the client in Atco who has multiple sclerosis can't get an aide to her home.

We are reimbursed $15.50 an hour. It's a fee for service. Out of that 15.50 comes the home health aide's hourly wage, the nurse's visit to supervise the home health aide. And yes, the nurses are affected by this gas crisis, but they can absorb it a little better than the $10-an-hour employee. And yes, we do have nurses turning down work because it is too far. But worse than that, we have people like Mrs. C., in Atco, who is getting no care and can't get up in the morning.

We have Mr. O. in Mt. Laurel, who is a quadriplegic, who tries to be as productive as possible. Once he's helped to get up and dressed and into his wheelchair, he goes off to work in his motorized van. But without someone coming to his home in the morning to get him up and dressed and into that van, he can't get to his place of business.

And this is the huge impact we're seeing in the home healthcare industry. And I represent not only Nursefinders, but the 200 other agencies throughout the state, my colleagues, that are having the very same problem. And in our industry, they work for us because they tell us when they can work -- around their children's school schedules, around their significant others' jobs -- as some work in the evenings, some work during the day. Whereas, in an institution, they're told when to come to work. When you work for a home healthcare agency, you select your hours. So they can tell us, "No, I can't do that client. No, I can't go to work there." We don't have much control except with the dollar. And there's only so far you can stretch $15.50.

Thank you.

ASSEMBLYMAN BURZICHELLI: Nancy, as we've been hearing, the ripple effect of the strain on the economy is so clearly demonstrated by your people who are trying to provide this service. Obviously, they're going to need more money at some point. Again, it all is a ripple effect.

The people that sat before you tell us that their market is working well, it's very transparent, and we should be rejoiceful that it's working so well.

And as Assemblywoman Previte said, you can't explain that over a kitchen table, because there's a major disconnect that's occurred here. And I think the word, frankly, in some areas, is *greed*. And I don't mean that on the retail side and the rank-and-file refiners, I mean at the top.

Any questions for Nancy, any clarification? (no response)

If not, we'll say thank you, Nancy. Your record is very clear.

MS. PERILSTEIN: Thank you very much.

ASSEMBLYMAN BURZICHELLI: On behalf of Chairman Wisniewski, we thank everyone who participated today. And let's absorb this information. The Chairman will make a decision if we will reconvene again. And from these two hearings, if there's not a third, we'll see what legislation is deemed to be appropriate that may well, in fact, be helpful.

Thank you all.

(MEETING CONCLUDED)