

PUBLIC HEARING  
before  
SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE  
on  
SENATE BILL NO. 455  
(Prohibit motor fuel distributors, refiners, wholesalers)

Stem  
Bill

Held:  
August 12, 1982  
Room 2131  
Essex County College  
Newark, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank X. Graves (Chairman)  
Senator Frank E. Rodgers  
Senator C. Louis Bassano  
Senator Joseph Bubba

ALSO:

Geraldine K. Weltman, Research Associate  
Office of Legislative Services  
Aide, Senate Law, Public Safety & Defense Committee

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(Hearing opened by Senator Graves, Chairman.)

SENATOR WAYNE DUMONT: (Taping commenced approximately 15 minutes into Senator Dumont's testimony.)

I want to leave letters from Mr. Weinroth and Senator Zane with you to be included in my testimony. You may want to review them as part of the record. There is also a copy of a letter included from Senator Zane's constituent.

I have been dealing with some figures that indicate, as I mentioned earlier, that the total job per gallonage has grown about two and one-half times between 1971 and 1981, whereas the total taxable gallonage in the State has only grown approximately 460 million gallons out of well over almost three and one-half billion gallons. So, the percentage of total taxable gallonage of the jobbers has increased to 25.5% from 11.9% in 1971. The larger figure is for 1981, and that has grown substantially faster than the total taxable gallons sold in the State. I'm sure that the representatives of the oil companies will resent that because I believe that the jobbers and wholesalers have a much greater impact on business as a whole. There is -- usually believe true -- and that, therefore, they should not be exempted from the legislation that has been proposed. I don't want to leave that decision entirely to you. As I said, I have no objections to amendments being made as long as they are in the best interest of the people. That is what I am concerned about here.

I think we also have to consider the question of self-service here. While this has nothing to do with this particular Senate Bill, Mr. Chairman, I know you have a bill amendment which was released by your Committee for self-service. The dealers believe that this is legislation which is supported by the major oil companies because of that fact it would help cut down their cost of operation if there was self-service. I recognize that many of our constituents want self-service legalized in New Jersey because only in New Jersey and Oregon is it possible to have them. But, on the other hand, I don't think we should lose sight of the fact that in a full-service station in New Jersey, you are probably paying no more than a penny or two-cents a gallon more than a self-service station that sells gasoline in Pennsylvania. I happen to live on the Pennsylvania boundary line and, therefore, I know that is true because the tank wagon prices are lower in New Jersey because of less assistance to transport gasoline from the refineries. The tank wagon price permits the sale of full-service gasoline and makes it possible at little more than self-service stations in Pennsylvania nearby.

At the same time, I am concerned about the loss of jobs in New Jersey as there is loss of jobs because of self-service. The only kind of self-service that I can possibly support with my vote would be the kind of bill that would require, not just permit, a full-service lane or aisle in each station, along with a self-service aisle. No way would I vote for any legislation that would either require or permit only self-service because I don't think that is in the best interest of the people. People should have a choice, and therefore, that is tied in, in a way, to the divorce-ment legislation because I know many of the dealers do not feel that they want any kind of self-service unless they get divorce-ment first.

Those are the principal points that I wanted to cover here today. Naturally, I support the legislation. I hope that the amendments that you adopt, if you adopt any, would be reasonable amendments and what you consider to be in the best interest of the people. And, of course, incidentally, I am in support of the dealers because I think that the small business people in this State are the backbone of the economy -- not the large corporations, but the small business people.

That is the way retail gasoline service station operators give, and too often, they are operating under very slim margins of profit. I would like to see that changed so that each person in the State can lead a reasonably good life because I think that is what we are all interested in. We are not interested in an excessively good life for some people at the expense of other people. We're interested in everybody having an opportunity to lead a good life.

So, in that spirit, I sponsor this legislation offered to you, and I know you'll consider it fairly and seriously. I might add that while I would be glad to answer any questions from you or from anyone else that may arise, I shall not be able to stay long today because my wife is ill in a hospital in Phillipsburg, and I want to get back there. Therefore, while I would like to hear the testimony today, I am not going to be able to stay any length of time. I wanted to come to present my viewpoints in support of the legislation, and I urge you to consider it with great seriousness and fairness.

Thank you very much.

SENATOR GRAVES: Fine, Senator Dumont.

(Applause)

Hold off please. I guess some of you may have missed -- we were hoping that you would not give the demonstrations.

Georgia Hartnett, Assistant Vice President New Jersey Business and Industry Association?

I also want all of you in the audience to know that this hearing is being done on the same line as the self-service hearing. Where there are legislators present, particularly the sponsors, they are being offered the first opportunity to speak. And the rest, contrary to some reports that you may have heard, are people who notified our aide that they wanted to be heard. No Senator injected himself into the list as to who would be heard or what they would say. So, too, with this hearing. We are seeing for the first time, as all of us saw for the first time when we sat down at that public hearing, who wants to be heard. That is the first time we ever saw the list and it was the first time that we even knew it existed. And she alone made that list up and did it based upon when she was asked by those who wanted to be heard to be added to the list. So, to head off in tomorrow's newspapers, and your decisions as to who was being heard here today, this is exactly the same format that we had on self-service. The legislators first and those that identified themselves with her office that they wished to be heard -- we, as Legislators, have never seen this list prior to sitting down here today.

Georgia Hartnett? Is she here?

G E O R G I A H A R T N E T T: Members of the Senate Committee on Law, Public Safety and Defense, good morning. My name is Georgia Hartnett. I am Assistant Vice President of New Jersey Business and Industry Association. On behalf of our more than 12,000 member companies statewide, we appreciate this opportunity to present our views regarding Senate Bill Number 455.

The concept of retail divorcement of service stations from the ownership and operation of distributors, refiners, wholesalers or suppliers is not new. Similar legislation has been proposed in the past either on its own or as part of various legislative packages. Now, as then, we are opposed to this legislation.

Over the past years the Legislature and the Administration have both come to the recognition that economic development and the jobs that such develop-

ment brings with it are essential to the continued well-being of New Jersey. Our new Department of Commerce and Economic Development has been created in part to institutionalize within the structure of State government the improvement of our competitive image vis-a-vis other states. S-455, if enacted, will be antithetical to that concept.

It is clear when you study the movement of business enterprises throughout our country that corporations, both large and small, tend to gravitate to those areas where they can reap the greatest economic advantage and where there is the least infringement upon the free enterprise system. Legislative and regulatory action, which can be justified to protect the worker and the public at large, is not necessarily a disincentive to the attraction of business. However, this proposal will accomplish little except to send negative signals to prospective investors that New Jersey is a state which seeks to tamper with the foundations of the free enterprise system.

Only four of the fifty states have undertaken to insist upon some form of retail divorcement and those states have experienced problems with the legislation, not the least of which is increased cost to the consumer. Instead of improving competition, which we believe is the sponsor's intention, S-455 will deprive the consumer of the choice between purchasing gas at a company-owned or an independently-owned station. Even the U. S. Department of Justice, guardian of the antitrust arena, has taken the position that such legislation is anti-competitive and ineffective in remedying the basic problems confronting the independent retailers.

We are also concerned that the approval of S-455 or similar legislation will act as a precedent for the extension of this type of restriction into other franchise areas such as hotel/motel chains, fast food establishments, auto dealerships, etc..

In view of the this fact, you as legislators, must weigh the alternatives. Are you willing to send out the message that New Jersey is "anti-business" in return for the benefits that will be derived from implementation of this legislation, particularly when these benefits appear to be small?

The company-owned stations that would be affected by this proposal are few in number when compared to the total number of service stations in the State. Even Exxon, one of the largest refiners and one which provides thousands of non-service station related jobs to New Jersey residents, operates only a total of 43 stations in the State. Furthermore, when the last "gas crisis" hit in the Summer of 1979, the State was unable to turn to the independents, but was forced to seek help from the refiner-owned stations in maintaining Sunday hours to keep tourism alive. It is our contention, therefore, that a healthy mix of independent and company-owned stations has served the State well in the past and will continue to serve the State well.

In summation, we submit that S-455 will do little to assist the problems of the independent retailer, little to insulate the consumer from the rising cost of gasoline, and much to damage the image of New Jersey as a State where economic development and jobs are a high priority.

We appreciate your consideration of our views and urge you to cast your vote against releasing S-455 from this Committee.

SENATOR GRAVES: Any questions from the Committee?

William E. Halsey?

W I L L I A M E. H A L S E Y: Good morning, Mr. Chairman and members of the Committee. My name is William Halsey and I am a legislative representative for the New Jersey State Chamber of Commerce. We appreciate this opportunity to voice our concerns in regard to Senate Bill Number 455.

The State Chamber is a non-profit organization which is supported by the studious paying members of the business community. It provides information and acts as a spokesman for its members on a broad-range (inaudible) , protecting the growth and economic well-being of the entire State.

The State Chamber is seriously concerned with this legislation, not only with regard to the assumptions put forward by supporters of the bill, but with the threat of erosion of the principal of the free market economy and the potential (inaudible) nature toward other franchise operations in the State, which this bill represents.

In the first instance, we do not agree with the assumption by the bill supporters that enactment of this legislation will result in false savings to consumers. It is our contention that company owned and operated service stations are able to provide lower priced gasoline and longer hours of operation for their customers. Studies have shown, for example, that states that have enacted divorce in legislation -- the average price per gallon of gasoline at full-service stations has actually increased.

Mr. Chairman, as I have stated, the present system of franchising delivers gasoline to customers at the lowest price. It is the basic principal of economic life that the addition of any middle-man operation will add to the cost of the product. Minimizing the number of middle-men in the delivery chain results in a cost-effective, efficient means of delivery of this vital consumer good.

The Chamber opposes any governmental program that adds any unnecessary middle-man operation with a result in increases in costs to the consumer. If we contrast the situation of gasoline with that of agricultural products, I think the scenario becomes clearer. Farmers raise vegetables for sale in the market, and they receive "X" number of dollars for their product, but by the time the product reaches the market virtually unchanged, the price to the consumer is increased anywhere from three to five times. The only variables included in this change are the number of middle-men who provide no services other than packaging and delivering. The very nature of the free-market system requires each person handling the product in the delivery chain to receive some recompense for that activity. The more persons in the chain, the higher the level of recompense and, therefore, the higher this cost is to the consumer.

The delivery chain of gasoline follows fewer middle-men between the producer and the consumer, and thus minimizes delivery costs to the customer.

Mr. Chairman, as you know, New Jersey has one of the strictest franchise laws in the nation. This law has served over the years to protect the interests of the franchisee and the franchisor alike. This legislation, for the first time, would artificially discredit one industry from making the types of routine business decisions that are made by many segments of industry such as automobile dealers, fast foods and hotels, as was mentioned before by a business and industry association.

Do members of the Committee -- I ask you as legislators -- recognize the potential far reaching impacts of this legislation and the negative signal that it will send to the business community in making investment decisions?

Thank you very much.

SENATOR GRAVES: Thank you. Are there any questions from the Committee? Larry Ray, President of the Gasoline Jobbers' Division?

L A W R E N C E S. R A Y: Good morning, gentlemen. I strongly urge you to amend the bill before you, Senate Bill Number 455, to exclude gasoline jobbers.

My name is Lawrence Ray, and I am Vice President of Ray Petroleum Company, Dover, New Jersey and President of the Gasoline Jobbers' Division of the Fuel Merchants Association of New Jersey.

I am addressing myself to Senate Bill 455 and in particular to Paragraph 2, which state: "It shall be unlawful and a violation of the 'Unfair Motor Fuel Practices Act' P.L. 1953, C-413 (C.56:6-19 et seq) for any distributor, refiner, wholesaler or supplier..."

The words, "wholesaler or supplier," encompass the small independent businessmen operating within the State, who sell and deliver major brand and private brand gasoline, diesel fuel and lubricants, and to wholesale, retail and commercial consumer classes of trade. These independent small businessmen are known as "jobbers" and have historically been a vital link in the recognized chain of petroleum distribution in New Jersey.

Jobberships are mainly localized, family owned operations. Some have remained in the same family for 40,50 or more years. The average jobber owns his tank station and delivery trucks. He owns some service station properties in fee and has tenancy of other through lease agreement. He supplied these outlets, as well as owner operated locations and commercial and farm accounts, which in most of New Jersey have had their supply terminated by refiner suppliers. Jobbers pay mortgages, rentals, salaries and all taxes inflicted on any businessman. They create employment, support economic endeavors, and render a necessary service to the economic well-being of the communities they serve.

Because they are a localized operation, they maintain a more compatible and responsible relationship with their dealers and accounts than do refiner suppliers whose decisions affecting the New Jersey marketplace are made in Houston, Tulsa, Atlanta or some other remote city.

Jobbers, as a group, applaud the efforts of legislators who are trying to protect the small businessman, but are concerned that S-455 tends to treat jobbers as "predators" rather than as "prey" of producer refiners, the same as independent dealers. We attribute this to a lack of appreciation of what happened and is happening in the gasoline market place.

SENATOR GRAVES: We can notify staff to put all of your comments that are in writing into the record. I would be pleased if you would draw the line and get to what you want to say without all the reading.

MR. RAY: Okay. Basically, today jobbers are fighting for survival. Arco has terminated possibly as many as 20% of its jobbers since April and is prepared to cut more, according to Jim Morrison, the President of Arco. Morrison revealed that new gasoline figures demonstrated at Arco is well on its way to boosting its average retail sales and decreasing its wholesale sales. Prior to Arco's move in April, we delivered 70% of the gasoline they sell to jobbers and 30% to retail dealers. Since April, they have reversed that figure. They delivered 70% to their own retail dealers and their jobbers supply was only 30%.

Getty is trying to do the same thing, but in a different way. They have now devised a way to get control of a retail outlet without getting rid of the

retailer. Instead they come in and they let the retailer operate the bays, but they operate the pumps.

What is the advantage to Getty? The company gains control over the retailing and can price more aggressively so the station's volume can be boosted. That's great.

The oil companies are trying to control the retail price, and I am convinced that the reason for this is so that they can be in control of the whole market and eventually price whatever they want to.

It is just a long-range plan to take over retail gasoline. Basically, it is some of our problem.

Citgo imposed a type of penalty on their jobbers in May of 1982. They placed limits on contracts that the jobbers have up to 110%, while they didn't do anything to their dealers. If the jobber pulled over 110%, they charged him a penalty of five-cents.

Prior to 1973, between 50% and 60% of gasoline sold nationwide was through jobbers. Direct marketing by refiners was not profitable because it lacked tax advantages and was too costly. Since the embargo of 1973 and the nationalization of crude oil reserves, producer refiners are now looking into control of increased market share and shifting their profit centers to the marketing segment.

I can skip some of this.

SENATOR GRAVES: Would you please?

MR. RAY: Jobber margins are being eroded by producer refiners by raising the wholeslae prices and not changing their dealer tank wagon price to their own dealer and salary operated stations. Dealers who operate stations owned by jobbers are faced with buying gasoline at prices not competitive with dealers buying gasoline from producer refiners of the same brand and in the same market area. It has long been recognized that producer refiners could subsidize their downstream operations, direct dealers and salary operation by income from upstream operations, producing, refining, etc. Jobbers have no upstream income available unless it exists solely on the income from their marketing efforts.

I urge you to read my testimony only -- the parts that especially enumerate Exxon versus the Government of Maryland -- where the United States Supreme Court said that there was no problem in upholding the decision if other states passed a similar law. But if each state had different laws than Maryland's, then the whole thing might be invalidated. For this reason, I feel that divorcement laws should be similar to Maryland's law as soon as possible.

I urge you then in the interest of maintaining a competitive marketplace and in retailing an historic position, the retail jobber is an important factor in New Jersey's petroleum distribution system. We urge that jobbers and suppliers be omitted from any proposed divorcement legislation.

Thank you for allowing me to testify.

SENATOR GRAVES: Does any member of the Committee have any questions?

SENATOR BUBBA: Yes.

SENATOR GRAVES: Senator Bubba?

SENATOR BUBBA: First of all, do you have company operated stations?

MR. RAY: Yes, I do.

SENATOR BUBBA: So, what you are saying is that you would like to be permitted to have company operated stations, but you would not like the majors

to have it.

MR. RAY: Yes.

SENATOR BUBBA: Okay. The second point is, why haven't the majors tried to penetrate the company operated stations more at the present time because we don't have divorcement now?

MR. RAY: I think that they, personally, are trying to do it in an ongoing process. I think their first intention is to remove a wholesale segment from business and gain additional on profit margins there. Then, after that is completed, go into the next stage, which is retailing directly.

SENATOR BUBBA: Are you aware of how many company operated stations there are in New Jersey?

MR. RAY: Yes.

SENATOR BUBBA: How many? Percentage-wise.

MR. RAY: Percentage-wise? I don't think you can use percentage-wise in number.

SENATOR BUBBA: All right. How many?

MR. RAY: I know that there are at least three hundred of them.

SENATOR BUBBA; All right. So that is about 4%, maybe less.

MR. RAY: But the volume that those stations produce is great.

SENATOR BUBBA: Do you know what the number of company operated stations in the United States is? It is the same percentage unless you can refute that.

MR. RAY: I'm not aware of that.

SENATOR BUBBA: All right. Thank you.

SENATOR GRAVES: Are there any further questions?

Maureen Broglia, Legislative Aide, New Jersey Department of Energy?

Maureen, everyone else is coming up with prepared testimony. It will go in the record, and we ask you to brief it off.

M A U R E E N B R O G L I A: Good morning. I am Maureen Broglia, Legislative Aide to the New Jersey Department of Energy. With me today is Terry Dunn, an Energy Analyst with my Department, and if you have any questions, please ask her to respond. Thank you for this opportunity to testify on Senate Bill Number 455.

The Department of Energy does not believe that prohibiting distributors, refiners, suppliers and wholesalers of motor fuel from operating retail sales outlets is in the best interest of New Jersey consumers. What we are here to discuss today is the pricing opportunities offered to the New Jersey consumer --

SENATOR GRAVES: Maureen, would you just summarize instead of reading?

MS. BROGLIA: Well, I have.

SENATOR GRAVES: Thank you.

MS. BROGLIA: (continuing) -- opportunities offered to the New Jersey consumer due to the competitive forces which exist in the State's gasoline retail business.

There are roughly 5,000 stations in the State representing 23 companies which actively compete in this market. Only three percent of these stations are company operated. No one company has a share exceeding 16% of the market. According to a survey conducted by the New Jersey Petroleum Council in June of 1981, of the 5,000 stations, roughly 45% are leasee-dealer, 33% dealer owned, 22% jobber operated and three percent company operated. Company operated stations are clearly not predominant in this State.

Each form of marketing has its own advantages. As with any business,

every dealer must assess the costs and benefits of operating under a particular pricing strategy and choose the one best suited for the particular locality. A successful business must respond to current fluctuating market conditions.

The refiners themselves have been forced to adjust strategies over the past year. The decline in demand has resulted in higher than average inventories. The cost of maintaining these inventories has been rising while the value of the product has been diminishing. In order to move their product, many approaches have been tested, two examples being the dealer rebates and "discount-for-cash." The fact is that refiners are being forced to reconsider marketing practices in the true spirit of competition.

Based on the Lundberg Survey, dealer margins have dropped from roughly 13¢ per gallon in 1980 to 8¢ a gallon in 1982. Furthermore, it is important to note that refiners have reduced wholesale gasoline prices by roughly 8¢ per gallon over the past year. This Department contends that this is indicative of a healthy and competitive market.

Thank you very much.

SENATOR GRAVES: Are there any questions from the Committee?

SENATOR BASSANO: I have a statement. I have to disagree with what was said with regard to the -- on Page 2 -- "decline in demand has resulted in higher than average inventories. The cost of maintaining these inventories has been rising while the value of the products has been diminishing."

During the month of June, it was very difficult to try to get gasoline, not at the pumps, but for those people who are in the wholesale end of the business. Especially the jobbers had a very difficult time getting the product during the month of June. So, to say that there is a lot of product around is just not true. It has eased up now, and it is a lot easier to get the product now than it was in June. The fact is that the market was very tight at that time. The statement in this packet is not entirely correct.

MS. BROGLIA: I'm sorry, what did you say? Did you say that the statement was inaccurate?

SENATOR BASSANO: Excuse me?

MS. BROGLIA: You said that the statement was inaccurate?

SENATOR BASSANO: Yes, I did.

MS. BROGLIA: Do you want us to respond to that?

SENATOR BASSANO: Not necessarily.

SENATOR GRAVES: Does anyone else want to respond? Maureen, do you have further response?

TERRY DUNN: (responding) I could respond by saying the (inaudible) certain allocations placed by the number of the (inaudible) --

SENATOR GRAVES: Excuse me. Senator Rodgers can't hear you.

SENATOR RODGERS: Would you take the mike so that we all can hear you?

MS. DUNN: (continuing) I would only respond so far as to say that we are aware of the fact that a number of the companies that placed unlimited allocations in June -- they are the ones with (inaudible), as a matter of fact. However, that is not indicative -- I'm not sure. I missed part of what you said, but when you said that inventories are high, my statement referred actually to the standards of the past year, not the past three months. Inventories have been drawn down since then.

SENATOR BASSANO: That is what I was saying, that your statement is not correct when you say that inventories are large or were large. We went through a period this Spring when inventories were not large and when, in fact, people were being put back on allocation.

MS. DUNN: But we went through a period six months prior to that when they were, so you are talking you are talking about two months. I'm talking about a year's statement, not two months.

SENATOR GRAVES: Are there any further questions from the Committee?

All right, thank you.

Jerry Ferrara, Executive Director, New Jersey Gasoline Retailers Association?

Jerry, no restrictions.

(Laughter)

J E R R Y F E R R A R A: My first remark as far as the inventory control argument here before -- Right after Memorial Day, we had such a serious shortage here in New Jersey that I was on the phone to the Governor's Office. I was also on the phone to one of the Vice Presidents of one of the larger companies to change the allocation figure. The allocation figure was to be 125% of what they bought in January and March. The shore area stations, to use one example, got 17,000 gallons in June, whereas they should have been getting 51,000 gallons. We quietly arranged for that company to raise the allocation for the shore areas to what they did in June of 1981, so Senator Bassano was absolutely right. If that got out to the public that we were in that serious of a predicament and they were to run to Philadelphia cars, we would have really had a serious inventory problem in the shortage.

I want to get back to what I'm here for. I'd like to just briefly give you a background (inaudible) so you'll know where we come from as to what this problem is all about. You must recognize that in New Jersey -- you've heard this before -- 70% to 80% of the stations are leased or owned-controlled by a major oil company, meaning they either lease the land and, in turn, lease the station to the franchisee or they own the land outright. The balance of the gasoline supply is usually by contract with might be a truly private independent dealer. So, in essence, where they supply, they have complete control.

To give you some numbers, in 1972 there were 220,000 stations nationally. At the present time, there are 157,000. According to the United States Department of Energy Report, during the period from 1972 until 1979, while nationally the total of refiner supplied independent stations -- that means the "little guy" -- dropped 44%. The number of refiner direct company operated stations rose 25%. More importantly was their increase in gasoline volume from 536,445,000 gallons yearly to 1,144,333,000. They increased their percentage of gasoline sold through their stations by 100%. These are not my numbers, gentlemen; they are from the BOE Report, which we can make available to you.

To show you how the marketing price is predestined much more ahead of time than we have realized (inaudible) -- in 1972 one major company proposed a program to their Board of Directors for a major city on the East Coast. I can't use their name because this material basically was under seal, as I was part of an expert in a case with -- a city on the East Coast, not in this State, thankfully -- where they had 24 stations in 1972. The program was to eliminate those stations until they would all be company, directly run. By this time, that plan has been

implemented. There was a delay around 1973-74 in prices. In 1975 the record shows they started to think up again. In that particular city, where there were 24 stations in 1972, there are now 7, all company operated. I would love that to be public because one of these days those stations will put out one hell of a lawsuit.

Let's get back to New Jersey. In New Jersey in 1972 we had 6,000 stations; in 1981 there were approximately 4,800, and I predict by the end of 1982, we'll probably be down to 4,500 stations. What has been happening is that the various companies -- many of them -- Exxon, Citgo, Getty and others have been closing stations. Exxon had to, for instance, keep and dispose of its , as I understand it, approximately about 200 stations. They just started out by eliminating (inaudible) stations. There are two gentlemen whose job was to go around and tell these dealers where there was company owned property, privately owned property otherwise, that their contracts would no longer be renewed. When a dealer offered to buy his station, the answer that came back was that, "Well, if we sell to you, we'll have to pull the tanks out as potential leakers." To show you how the fallacy of that program without reiterating a lot of examples -- one station in Jersey City, privately owned, tanks owned by the dealer, pumps owned by the dealer -- he took an entire delivery of gasoline, which means 8,000 to 9,000 gallons, so there was no question of uneconomical to deliver on a tank load of gasoline. The father was part of the corporation and he died. They immediately, within two days, told that dealer that they no longer wanted to serve that station and used the excuse that there was no longer a contract.

We had a Congressman call me at half-past five on a Friday afternoon and tell me that that station would be out of gas that Saturday. Between getting on the phone to Exxon, in particular, and trying to work something out, we managed to get gasoline in there for Saturday -- Exxon gasoline -- so we don't question (inaudible) and it was eventually resolved. They gave him 90 days or thereabouts, but they stopped serving him. He had to go to an inbetween distributor/jobber from another branch.

Citgo has closed stations in the State of New Jersey and were giving the dealers the option if they wanted to go company operated, so they had their so-called "quick law" where they put a little thing (inaudible) all company operated. In a lawsuit of a number of dealers, they arranged to get the opportunity to buy and, in turn, had to go from other people.

Getty -- 7,200 (inaudible) Getty right now -- every station that becomes available, they either close it or open it as a company station. There are areas in this State, and I hope someone will testify to it later, where they closed down the stations, and the two dealers who were there couldn't compete with the local competition or with company competition with another major company there. Instead of doing what they did in "the old days" of helping this dealer compete by giving him a special allowance, they let him "go down the drain." The man opened up that station as a company, directly operated station in direct competition with another one of their dealers down the street where they were selling for as little as 9/10 of one cent over what it was costing their own franchise outlet down the street to buy gasoline.

BP: BP was in this marketplace during the crisis when they pulled out of the marketplace and turned over all their brands that were subsidiary brands called William Penn. They have mostly jobbers in New Jersey. They turned it over to William Penn and stayed out of the marketplace for several years in New Jersey. We feel that they may have stayed out of the marketplace because during the crisis, there was a rule that if there was a station and you pulled out a supply, you couldn't come back in.

It was kind of a "rule of thumb," I believe, for two years. They have since come back here, and everyone of their stations is direct, company, gas only, without any service whatsoever.

You'll probably hear Shell testify that don't have any company stations. But, about two years ago, with a flip of a pencil, someone decided that they didn't need as many Shell stations in this State. Number one, they eliminated the jobber in South Jersey so they had no Shell stations south of the Raritan. You may find one or two Shell stations somewhere around the border, but basically none. After the trauma of these dealers having to scramble to try to find a supply if the station wasn't company owned -- if it was a private, little dealer -- or the company franchise dealer tried to find the money to buy his station, the same routine went there: "We can't leave the tanks; we've got to pull them out because of a potential leak." Then they bestowed that they couldn't be sued later on. But even if you wanted to sell and make them harmless, there was no interest of any companies selling you their tanks. All of a sudden, and to use an example of one dealer, he went through the trouble of convincing him that "the world hasn't ended; we'll get you another supply." They changed their mind because now suddenly they found they have more gasoline available in that they thought they could agree on the consolidation of the station. Now the dealer would like to "yo-yo" on one end and we were down, then up, and then they were told, "We're not going to sell the station. We're going to maintain operations." What I am trying to point out is that it only takes one flip of a pencil to change a company's policy, and the independent dealer has very little to say about it.

In the 1982 theory in this State on divorcement, Exxon claimed they had 26 company operated stations, plus 14 on the Turnpike. They now have 43, not counting the Turnpike where they no longer operate. Meanwhile, what is happening between 100 and 200 small stations? They are closing down. If that isn't an example of trying to transfer the gallonage, I don't know what is.

Arco: Arco has been taking over a number of stations. They have a subsidiary company called Prestige. They fly the Arco emblem with the Prestige Company as the managing company. Throughout South Jersey where Arco was predominant, Prestige has been moving in. Arco has gone to what they call an AM-PM Store and they are allowed to stay open 24 hours. You buy your gas, you go inside and you pay for it, and hopefully, they think they can sell you some other articles. Most of our dealers will bid that (inaudible) and in so doing, Arco is not taken over in direct operations.

Let's take a look at the numbers again. In 1970 less than 50 company operations were in New Jersey. Today, according to Petroleum Council's figures of 1980, there are over 200, which probably doesn't include companies like Hess, Merit, etc., because I don't think those numbers were included in the API surveys. Unless (inaudible) are strategically placed, a company operation can eventually control or take over there. I have put a map on the desk of the Committee. If you will get a copy of it, I would like to illustrate just what can happen with company operated stations and how one place, very strategically, can affect the whole marketplace. We are talking about the City of Township of Clark in Union County. They recently erected an Exxon station within less than a mile away from 12 of the 16 stations serving the area. The other few are less than 2 miles away. In addition, 5 of them are Exxon franchised dealers over which Exxon has control of the property. It took over 10 years of fighting, appeals, the Council and court proceeding to take this commitment. Why were those stations so necessary? If you will look at the map, you will see that the Exxon station is placed

right in the heart of their own areas. You find 5 other stations there. The fact that the piece of property was so small, you wonder "what the devil" they wanted to do with it where with a service station, there was a question of entry and exit to the thing. It is very easy to foresee what can happen. With them controlling the other Exxon stations by raising the rents, by not renewing the underlying lease, if there is one, or if they own it, tell you that they want to close it up -- leave the tanks, etc. They can ultimately build the gallonage in that Exxon company operated station. What else happens then when they take care of just their own volume? Look at how they could literally, competitively by (inaudible) wipe out approximately 7 other stations within competing range. That is what you are going to see in many areas in the State whereas these stations are being placed.

I can cite many more examples, but I don't want to be redundant in doing so. I'm sure that before the day is out, you will hear about some reports and surveys from the opponents of divorcement. One they'll refer to is the study by the U. S. Department of Energy called "The State of Competition in the Gasoline Market." This study was mandated by the House, Energy and Commerce Committee because originally the Franchise Act in Washington had a divorcement piece of legislation and they called it the Title III Study. They will tell you how that study showed that there was no predatory pricing, no real problem with company stations. The truth of the matter is Bill Lane, who ran the study and who is -- I guess I can call him a friend of mine -- we don't fight that often -- who had two employees and took him six months to get it -- the study was over a year late. They never went into depth to review all the problems. Because of that, we try to haul them into towns and go around and find dealers who were wiped out. It was too time-consuming. They bounced around from 6 to 7 cities in the country. It was not generally accepted by the members of the House, Energy and Commerce Committee as being meaningful.

A subsequent study by J. W. Wurstman Association in Washington, D.C. showed how Florida worked. Then in one of the surrounding states, there was a study being proposed by a Professor Umbeck. There is a question whether that is his correct title or not. I don't know whether he is a professor or something lesser. His study from Purdue University has been used as a measure of what the marketplace is all about. If he were here today, I would want to question first, his background, his expertise and any prior studies he has made, if any -- at this point, I'm not too enamored about any professor of economics who comes in with a study, as we've seen some problems here in this State. But this particular study had no background. The questions were furnished to the companies to tell how competition existed around them, and maybe you'll hear some more later on.

The other question that came up here today was the possibility of amendments being proposed by somebody to permit companies that own less than 50% of a subsidiary to continue in the marketplace. I say to you, gentlemen, if that particular amendment were to be put in the legislation before you, we would open up a hole that tankers, three-abreast, could drive through. It would only be a simple matter of time before companies would set up subsidiaries. Arco, for one, could set up this Prestige thing and own less than that, and then they would, in effect, destroy the industry.

I would urge the Committee to release this bill so that the full Senate could have an opportunity to look at it, similar to what you did with self-service several weeks ago. That would make everything equal.

And just one last thing -- I almost passed up. To show the impact of what

they are doing with company stations, you can see a lot of sources of paper. I asked one of my field staff to make a quick survey in the county in which he works to see how many conversions they had. This is Middlesex County, and I'm going to just read his notes. There are 13 stations included: U-Free Gulf Oil dealer, now UBB Oil Company Pumper, meaning that is a gas only station, on Oaktree Road, Iselin, New Jersey; New Property BP, new station, pumper Route 1 near Green Street Circle, (inaudible), New Jersey; (inaudible) Phelps station closed and BP Oil Company took over, rebuilt station, pumper, Route (I think) 98 and Urstein Road, Sayerville; Sun Oil Company bought out dealer and went company operated, Route 98 & 35, Sayerville; Getty dealer and company (inaudible), corner of Bordentown and Urston Road, Parlin; Getty Oil Company took over, dealer went company operated, Summithill Road and Main Street, Spotswood; Chevron dealer and station, BP took over and made it pumper, corner of (inaudible), Perth Amboy; used to be a Mobil station, now being rebuilt, New Volume (inaudible) Oil Company (inaudible), Perth Amboy; was dealer (inaudible) company operated by Citgo and took it over as pumper, Smith Street, Perth Amboy; (inaudible) Sunoco station then opened up and built new pumper by the BP, New Brunswick area; Citgo station (inaudible) dealer that took over and made it a new pumper, company operated (inaudible) in Old Bridge; Citgo dealer then went company operated and opened on Main Street in South River; new station and new property, 101, North Brunswick, New Jersey, Hess Oil Company, pumper -- 13 of them at the most during the last two years. This was a quick survey of just one county. I'm sure if I were to ask my staff to do the rest, they would.

I want to thank you for your consideration, Senator, particularly for giving me the full time. I could have rambled on more than that, but I think in essence of time, I will put out an urge for the Committee to release the bill.

SENATOR GRAVES: Okay, we'll have to try to find some way of filling in the other four hours you still have to go.

Do any of the Senators have any questions for him? Senator Bassano?

SENATOR BASSANO: Mr. Ferrara, on the example that you gave us, why, in your opinion, would Exxon spend money for six gas stations when it would have been just as convenient, I would think, to have taken over one of their existing stations and renovated that as a company operated station?

MR. FERRARA: Probably for two reasons. Number one, the location is for (inaudible). Secondly, we have a Franchise Act in New Jersey that we just couldn't move in an take over one of those stations. So, he took the long-range view; here is the benefit of two reasons. One, they had that property and it was much easier to build a new one according to their lines. Their rebuilding and remodeling program wasn't in effect as it has been the last two years. You should have seen it. More importantly, if you look at it, it is in the center. It completed that whole area. That is the important part of that location.

SENATOR BASSANO: The second question I have is -- maybe you can't answer it. I don't know. It is with regard to self-service. Those states that have self-service gas stations -- are those self-service stations operated by the companies or are they non-company operated stations?

MR. FERRARA: (inaudible) all over the country. But the numbers I showed you, the number of dealers -- there is a 44% drop in the number of independent dealers, while it covers funding leaders of 25% increase in company op's, and meanwhile, the position they put those company op's increased their downers by 100%.

SENATOR GRAVES: Senator Rodgers?

SENATOR RODGERS: Jerry, I'd like to ask you the question, are you and your people in favor of the amendments to the Senate Bill as they have been projected?

MR. FERRARA: Well, most of the amendments where we were able to change (inaudible) change the bill to producers to refiners, while we would like to have the whole bowl of wax, we recognize that it did save -- even the jobbers, while we have some problems with some of that -- have been caught in the perverbial squeeze. Naturally, they use the jobbers to fight the dealers. They would have loved to do it in this State while they stood back and reaped the harvest at both ends. I think that I would go along with those amendments on the basis that we will be cleaning up a big part of the act and, hopefully, the jobbers will clean up their end.

SENATOR GRAVES: Senator Bubba?

SENATOR BUBBA: Jerry, I have a couple of questions. First of all, in your description of this piece of property in whatever town it is, where the Exxon Company came in a built a new station -- you, during the course of your testimony, and also during the course of some private meetings that you and I have had and also during the testimony for self-serve, you made several -- I won't call them charges, but several statements indicating that first of all, that the majors were squeezing the small businessman out of business. Certainly within the scope of some of the things that you described, that the major oil companies were operating in restraint of trade and exercising their ability as big business to develop monopolies -- or, let's say, to exercise their monopoly. Have you ever brought this to the attention of the Public Advocate?

MR. FERRARA: Well, years ago, at the Public Advocate's Office, when it first started its Antitrust Division, they had some problems. They didn't have the staff in its office; they wanted most of us to do the leg work, and right now, let me tell you, that is a national problem. Where we had the Justice Department investigate something pertaining to an individual dealer, when I asked them point-blank in the Grand Jury Room, "Why don't you turn around and go after the majors who have competitive reasons?" And he said, "That is too big for us. Let's stick to the little dealer." No, we haven't called on the Public Advocate. I don't think they are in a position to do it.

You can see what happened with the FTC hearings after eight years of trying to investigate the oil companies. At the present time, they called off that hearing, and much to the chagrin of many of their attornies who worked there eight years, it was too long and too prolonged. It would take us eight years of (inaudible) to find a provision of an antitrust suit.

SENATOR BUBBA: I don't know if I agree, but thank you for your statement. With respect to the Exxon station in Clark, didn't you just say a minute ago that the reason that -- when Senator Bassano asked you why they built the new station, why didn't they just take over another station -- didn't you say that the reason they did that was because of the Franchise Law in New Jersey? Would you explain that to me?

MR. FERRARA: Yes. Prior to 1971, a company which (inaudible) on thirty days' notice or less canceled out your supposed lease. In 1971 New Jersey wrote a Franchise Act which would be immodest, but I had a large part in drafting it. It did prohibit all types of franchising, and I don't mean just gasoline stations, but car dealers and Holiday Inns from being arbitrary and canceled out. That kind of stymied; then quickly the dealer would move in and take the station without reason. Since we have passed a National Franchise Act, which I was part of too and I'm not very proud of it, we'd like

to know (inaudible) loophole -- there is a clause in there that almost they're twisting around (inaudible). There is a loophole now that you can get it out but, remember it says, "That piece of property was bought ten years ago." That was just about the time or at least thereabouts that we had a Franchise Act. They couldn't buy the station. But, more importantly, I think it is more strategically located. That was the reason for it. It was a piece of available property. I don't know whether the other pieces of property held underlying (inaudible). It might be a privately owned piece of property. But this one, they don't. It is located in the heart of the traffic, as well as the Arco stations.

SENATOR BUBBA: All right. But, if I understand you correctly, the Franchise Law would make it very difficult for them, and the Franchise Law still exists today. I presume that the same difficulty with the Franchise Law that forced them into purchasing a piece of property would be the same law that would make it kind of difficult for them to take over stations.

MR. FERRARA: Regretfully, I have to answer "no" to that, even though (inaudible) because today we use economic strangulation.

SENATOR BUBBA: They operate and restrain a trade?

MR. FERRARA: Oh, well, they can't approve the restraint of trade. Some dealer testified -- To approve restraint in Jersey would mean, they told some dealers at one time, "You can't have it as a gas station." They told the dealer that he had to put it in writing. Now they just tell you to pull their tanks. There is no way you can economically compete with them. No dealer can fight his way into their act because they could find a way, and that is what they are doing. As the underlying leases come up, they don't renew them. Then they tell another dealer, "It is uneconomical for us to have this piece of property and we offer to sell it to you, but we have to pull the tanks out." Most dealers have no way to compete with that kind of pressure.

SENATOR BUBBA: Thank you. That is all I've got to say.

SENATOR GRAVES: We are going to have a 5 minute recess.

(5 MINUTE RECESS)

SENATOR GRAVES: Okay, we're going to start the testimony without them. To those of you who are about to testify, it really makes no sense to us whatsoever if you are going to be repetitive of what pertinent information we have already received. So, even if you are on the list that you have given to Jerry to present yourself, please just introduce yourself and let us know if what you are going to say has already been said. If you can remember who said it, then we can direct our findings in that particular direction. But, to have you and us sit here and repeat and repeat and repeat the same thing is something that the chair isn't going to permit to happen.

The next speaker will be Victor Ficuciello. Is he here? Oh, I'm sorry. Did I skip Maguire? I'm sorry; it's my fault.

C H A R L E S M A G U I R E: Senator Graves, Senators, ladies and gentlemen, thank you very much for giving me this opportunity.

My name is Charles Maguire and I operate the Shell Station in Ocean, New Jersey, which is south of the Raritan River. Gentlemen -- short and sweet -- I am against the bill on divorcement, and I would like to talk a little bit about some of the statements that have been previously made.

Senator Dumont, who is introducing the bill, stated he took part in a study in 1952 which brought about legislation in 1953, and part of this bill, perhaps, comes out of that. The Federal government a few years ago passed the (inaudible) bill, which only, in part, practices that. It went an awful long way in protecting the dealer and practically here in the lifetime lease.

My main competition is not (inaudible); it is from large, jobber, salary stations. It has been discussed today to exempt these people from the bill. I know personally from experience that Shell Oil Company, 6 or 7 years ago, did operate salary stations in the State of New Jersey. Shell got out of the stations and turned them over to dealers because they found out that the dealers could run them better.

One other instance I would like to see go, and that was the statement made by Mr. Ferrara about the one or two stations south of the Raritan River. Shell has at least 50 stations south of the Raritan River, which is a lot more than many other companies have.

Gentlemen, I am against the bill. I am especially against exempting special interest groups. I thank you very much for the time.

SENATOR GRAVES: Thank you.

Okay. Victor? I am going to emphasize repetition for the last time.

V I C T O R F I C U C I E L L O: Good afternoon. I would like to thank you for letting me voice my opinion today on divorcement.

My name is Victor Ficuciello and I am a Shell dealer, operating two stations, one in Monmouth County and one in Ocean County. I've been in the gas and retail business for twelve years.

Several months ago I went to Washington to let my feelings on divorcement and divestment be known to some of the Senators and Representatives. I felt I had to do this because I found out that officers of the Gasoline Retailers Association were going to Washington to voice their opinions and saying they represented views of all their members. This is not true since I have been a member, in good standing, in the New Jersey Gas and Retail Association for three years.

I feel this is happening on the State level in studying divorcement. As a member of the Association, I have never been polled as to my feelings on divorcement and the Association does not speak for all of its members.

Gentlemen, I am against Senate Bill Number 455. I do not feel it will eliminate unfair competition. Nobody really knows the effects of divorcement on the gas and retail department. I feel that it should be studied further and I also feel that divorcement should be dealt with and studied before this legislation.

Thank you.

SENATOR GRAVES: Thank you. Does any Senator have any questions?

Michael Shabo?

M I C H A E L S H A B O: Senators, gentlemen, my name is Michael Shabo and I operate two Shell stations in Bergen County. I would like to thank Senator Dumont for the legislation he has introduced; however, he has very good intentions in introducing that bill. The only problem or reservation I have is the constituents of such legislation. Nobody knows what is going to happen when this bill passes. I have been operating my station for twelve years, and I am making a very good living. Now, I don't know what is going to happen when this bill passes.

I have a family of three kids, a wife, and two parents whom I support. I know I can compete in the market the way it is today. What would happen later on when this bill passes, I have no idea, and I am really afraid of it if it does pass. It is

a fear of the unknown maybe, but it is a fact. So, that is the reason on which I am against the bill.

Another reason is, if it does pass the way it is written today, there have been so many amendments added to the bill. The bill that Senator Dumont introduced himself is a clean bill without any amendments. When you exclude the (inaudible) interest by the big jobbers, which are really the main tradition we have today, not the big corporate companies themselves -- I work for Shell as a dealer. Shell has no company or seller stations today. However (inaudible) in Bergen County is overmaking tradition, and here we are somewhat trying to exclude him from that bill. (inaudible) We all like to make money as a dealer. I am a businessman, and I like to make money if that bill turns out as it is intended. So, if that is the intention of the bill -- to make more money for the dealer, we would all say fine and good. But, we don't know the impact, so why don't we have someone study the issue first? If that is the result of the bill, fine and dandy. I'll be for it. As it stands right now, I am against it.

Thank you.

SENATOR GRAVES: I'm going to share with you what I have been discussing with my fellow Senators. We are not going to release this bill today. We will take the information. Senator Stockman isn't here, and there are not enough votes on the Committee one way or the other. Therefore, the chair orders that the bill will not be released today, but the public hearing will be closed today. After the transcription and Senator Stockman gets a chance to read it, then at either our next Committee meeting or the meeting thereafter, a decision will be made whether there are enough votes to release it with or without recommendation or whatever it might be. But, we will let the principals of both sides know that we will not even vote on it at that Committee meeting until you are both there. So, if Jerry or somebody else is going to be away on vacation or whatever it might be, we are not going to do anything that will support your right to be present. When you are here, we'll make that discussion.

All right, keeping that in mind, the next witness is W. Muiznieks.

W. M U I Z N I E K S: Good afternoon. I spent several hours writing my prepared statement, which I would like to give to the Committee. They can read it at their leisure because some of it is redundant in certain ways. However, standing here this morning and listening to what is being said, it seems to me that we are missing the point entirely.

In the audience there seems to be sitting two sets of good guys and two sets of bad guys. This is not the type of business we are in. For myself, the only reason that I can earn the living I do and to support my family in the way I feel they should be supported is basically by the fact that I have -- and you ladies and gentlemen are welcome to visit -- I think, one of the most modern stations in the State of New Jersey. I, myself, could not ever be able to afford the equipment or the facility I have. I could not make the money. I am a leasee/dealer and the oil company has provided me a facility for which they receive -- yes, indeed -- the company has said that my rent is going to go up. However, I also have a canopy, new storage tanks, and a brand new computerized dispensing system. If this does not warrant an increase in rent, then I don't know what we are doing in business. I have no qualms about the oil company making their money as long as I can make my share. The drain I have received on the oil company has let me operate in a very efficient way which means that I can deliver that product to the consumer. I am somewhat better priced at times than my competition. At other times, I can't.

The bill, as it stands, in my opinion, will not do a thing but open up a hole or a Pandora's box, if you want. It is just going to lead to more legislation. I believe that the dealers are happily protected by the existing laws. I would suggest to my fellow dealers that if there was anyone who did not go to an oil company to become the dealer that were dragged into the back room by an oil company, a gun put to their heads and said, "You are going to be a dealer," that would be an exception.

I chose to be a Shell dealer and I am proud to be a Shell dealer and I am proud with my association with the oil company.

Thank you.

SENATOR GRAVES: Where is your place, sir?

MR. MUIZNIEKS: Princeton Junction, sir.

SENATOR GRAVES: Robert Shaw?

ROBERT J. SHAW: Good afternoon, Senator. What I am about to read has not been said this morning or at any other time, so I would like to say, good afternoon and read my statement.

My name is Robert J. Shaw and I am the owner and operator of Mayfair Arco Servicenter, located at 3 Central Avenue in West Orange. I am here in favor of the divorce bill.

As a young dealer in 1962, I took over the Mayfair Esso Servicenter, which was located at Eagle Rock Avenue in West Orange. I worked many hours and long days to build up a business. At the time, I built it to do about 70,000 gallons, which in 1960 was a good buy.

In 1968-69 Esso then decided to purchase the piece of property up the street from my location and to build a new station (inaudible) in West Orange (inaudible). That is what I am talking about. There were several problems, and among them was the transferring of the permit from my station to the new one, as well as keeping mine open.

Humble Oil, at that time, went to the town fathers and discussed the situation and the problems that they had, and at that time, told the town fathers that Bob Shaw was taking over the station and in no way were they going to start the new station and have the old one closed. That is the town ordinance. It says in there that you can't operate within 2,000 feet of a building. So, we went to bat for the oil company, including myself. After lengthy discussions with Humble Oil, the town fathers approved the following: They realized that they did not want to build a new one, but with the town ordinance, they would have to close mine. I wanted to stay in business as long as I could. Number one, since Bob Shaw, who lives in town, has been in town for seven years and in business and runs a good business would be able to stay in his station until the new one is built. That is very important. Number two, that they would issue a permit to build a new station and at that time would hold back on the occupancy of the permit so that my station, which was 500 feet away would be closed first and then the new one could be opened all in a 24-hour period. So, in this way, I would not be out of business while they were constructing a new station.

At that time, Humble Oil agreed they would go along with this procedure. Representatives of Humble Oil Company and myself got together and started to design a program for the new station which would be open 24-hours a day and running a grand opening promotion, which we all did back in those days. I spent my own money in preparing several promotions in my own location. I turned my location into a 24-hour operation -- not then, but during a year, I turned my station into a 24-hour operation. That was in 1968-69. They started construction in the middle of 1969 and everything was fine with the town fathers and everybody was ready to go. My station is now open 24 hours.

Midway through the construction in January of 1970, with construction well under way, Humble Oil came to me and stated that they could not give the station to me as a dealer, that I would have to go to work for them as an employee, and they flatly refused at that time that I would go in as a dealer. Listen to this fellows; it has happened. After many discussions, they continued to refuse to allow the station to be dealer operated as was promised to the town fathers. What they did was they closed the station and they brought in another dealer to open that station. Okay? I was out.

After eight and one-half years of work, I was finally required to vacate the old station, and Humble Oil took over the new location with a manager. After two years of operation, operating as a full-service Exxon, they turned it into a secondary brand, Alert gas station, selling strictly gas only and operated by Humble Oil.

In those eight and one-half years of working that station, I had given Humble Oil checks totaling over three and one-half million dollars and that is directly to them. And, for what? They didn't even say thank you, Senator -- "just hand me the keys," and they closed the door. "We are building a new station and out you go."

Today, Senator, you have a law in front of you, a divorcement law to get the oil companies out of the retail end of the business. They are manufacturers, drillers and suppliers to the whole country for the whole nation, and they also have to be in the retail end of the business.

There is no other business that I know of where you have a manufacturer and supplier who also control the retail end of the business. All I can say is one thing. It is true that it happened to me, and I was literally born in the Esso family as both my father and uncle worked there, and it is happening again and again.

If you don't pass the bill for divorcement, you are going to lose a lot more independent, full-service stations in the State of New Jersey, as well as all over the country. I am very concerned with this. We need your help and we request your help.

I will be glad at this time to be open to any questions you might have concerning me, and I would like you to vote this bill out.

Thank you very much.

SENATOR GRAVES: All right. Do we have a copy of your testimony?

MR. SHAW: I can give you this one. Yes, Senator.

SENATOR GRAVES: All right, thank you.

Al Bayer?

A L B A Y E R: Good day, ladies and gentlemen, Senator Graves, my name is Al Bayer and I operate the smallest gas station in the State of New Jersey which is located at 419 West Union Avenue and has been open since 1924 anno Domini, which is the year of Our Lord.

Senators, I have a simple story to tell, a story that is true, but you might find it unbelievable. This is a story of B.P., British Petroleum and its subsidiary, William Penn. It is a story of one gas and two names. I only have one name. The quality of both is the same because they are one. The price is the only difference.

For a number of years, we were a Sinclair supplied dealer. Then, under

the terms of a merger agreement, our contract was assigned by Sinclair to B.P. We then pumped B.P. gas for about a year. At that time, B.P. "pulled the plug," pulled our franchise, and replaced it with a William Penn logo, which diminished our volume by 50% within a few weeks. All this happened without anyone consulting us or even letting us know the damages that would result in this action. Bud Gay, our District Sales Manager for B.P., told me the overall plan was for B.P. to market their own gasoline. I was not allowed to sell under the B.P. label although the bill heads on the delivery tickets ablazed with the B.P. logo and (inaudible).

B.P. bought the old Stanfield Oil Company after Standard Oil of Ohio bought. They went against the United States market and got the north slope of oil by buying through Standard Oil of Ohio, which got the north slope oil -- 53% in total volume (inaudible) B.P. Oil.

I'm for the Americans. I'm tired of all these foreigners buying up my country. The British own the pulpit of the United States of America -- the United States of the block. Everybody will be selling here but Americans. We all came here to be American citizens, not a bunch of foreigners. We don't have to "toot the horn" at old Europe where all these places have been fighting and fighting and fighting. Look at the Middle East; all the people do is fight.

SENATOR GRAVES: All right. Will you get back to the bill, please?

MR. BAYER: Yes, sir.

B.P. then bought a closed Sunoco station three blocks away and opened it using company employees and sold their gasoline at retail prices, which were lower than my wholesale prices most of the time. I could not compete. I could not remain competitive, and the gallons transferred right down the street to the B.P. I saw a lot of my customers down the street. There was nothing I could do. They were retailing gasoline for \$1.04.9 at the time, and we were paying \$1.07 wholesale. This story is repeated everyday in different areas of the State. That is why we need a divorce bill before it is too late. We're not talking about Hollywood either.

Has there been a sudden change in business methods? We could change our ways by buying at retail. I could go down the street and buy from B.P. and come back and sell it at a profit.

Without this legislation, I can't stay in business. I own my own place. I do not have the added burden of tenancy under these oil companies, and yet I am concerned with circumstances that I previously described. I could not compete with the manufacturer of the product I was dispensing.

It should be obvious to anyone that when retail prices at manufacturer's retail outlets are lower than the wholesale prices they charge their dealers, predatory pricing is being practiced.

I do not have the resources to pursue anti-trust litigation under the various laws that are applicable; therefore, I seek your help in obtaining the necessary help for the salvation of the small businessman in New Jersey. To this end, I dedicate myself and implore your help toward enacting this legislation that will support divorce.

Our founding fathers were for the small guy. I would like to quote Shakespeare: "We all have a role to play on the stage. Don't push me off. (inaudible) Is it to be or not to be?"

As I understand, the State of New Jersey in the 1950s passed a law -- I'd like to submit this for evidence -- that it is against the law to sell milk below cost, and I understand that it is against the law to sell gasoline below cost. But, I don't think there is one person in the room who could tell me what gasoline costs. The Arabs get it for free; we got it for free in the Mid-West. The American Indian had to move there --

SENATOR GRAVES: All right, sir. With all due respect, we have let you go on and on and on --

MR. BAYER: Thank you, sir.

SENATOR GRAVES: (continuing) If anyone else does it, they are going to be flagged right off of the microphone. Sum up.

MR. BAYER: Senator Graves, as a man of great understanding, I would hope that you would support Senate Bill Number 455, supporting the divorce bill.

Thank you, and may I submit this testimony?

SENATOR GRAVES: Thank you.

Robert Loring?

R O B E R T L O R I N G E R: Good morning, Senator, ladies and gentlemen. My name is Robert Loring and I will be brief. I operate a Getty service station on Beverly-Rancocas Road in Willingboro, New Jersey.

Allow me to explain why this legislation, I think, is needed. I will give you the view from the street, and the picture is not good, nor does the foreseeable future hold any hope if this legislation fails to become law.

My supplier, Getty Oil Company, is operating four adjacent locations using salaried employees at minimum wages in competition with me. They then sell the product for one to two-cents a gallon over the dealer tank wagon price they charge me, which they know is less than my cost. They know this because aside from being my competition, they are my supplier and, to add insult to injury, they are also my landlord.

Gentlemen, I run a tight operation. I don't have any employees who are excess or dead wood, and I assure you that my cost far exceeds two-cents a gallon. My rent alone to Getty is the equivalent of six-cents a gallon. On top of that, I have expenses such as payroll, heat, light, cleaning materials, permits, licenses, payroll taxes, Workmens' Compensation, unemployment taxes, Social Security taxes, telephone, electricity, toilet paper, office supplies, bank charges, interest, water and sewer charges, maintenance costs, soap, towels, windshield wipes, uniform rentals, and the list goes on and on.

If Getty has the same costs to bear, then you might ask, "how can they sell their gas cheaper than I?" Simply stated, they use their upstream profits, profits made on production, refining and transportation to subsidize the downstream operations in their company operated outlets.

How long will this last? Until the competitors, their dealers, are gone.

Predatory pricing is designed to eliminate competition. Once completed, they have the market to themselves, competition ceases to exist, and all of us are victimized.

Can you picture the ways these companies can predatorily price and at the same time, hide behind the antitrust laws? A substantial increase in our rent reacts in the identical manner, as an increase in the dealer tank wagon price (wholesale price). The elimination of maintenance carries the same reactions,

surcharging for credit card use, etc., etc., etc.

Certainly, we have antitrust laws, the Robinson-Patman Act, the Sherman Act, our State Antitrust Act, but to the small dealer or small businessman or woman, the discovery costs are so prohibitive, they make these laws almost nonexistent for us.

We don't want preferential treatment. All we ask is for you to allow us to compete fairly. Mandate all to start from the same starting point and for all to run the same distance. We don't think this is too much to ask.

Senators, we cannot compete against an oil company, especially when you handicap the little guy and extend every advantage to the big corporation. We don't blame you for this situation. You did not cause this problem; it just happened. You, however, can correct it, and I fervently hope you will by voting for this bill.

My Getty sales representative told me I was the only Getty dealer operating between Camden and Trenton. The rest are company operated. This area had to have at least twenty dealers last year. All are gone, except for myself, and I don't know how much longer I can hold out. We, all of us small businessmen, need your help. Won't you please respond?

I thank you for your courtesy, attention and time.

SENATOR GRAVES: Thank you.

Harry Lehman?

H A R R Y L E H M A N: I wish to thank you for the opportunity to speak on behalf of divorcement. I am for divorcement naturally.

As the statement in front of you shows, we have been in business since approximately 1919, a total of 65 years. I can't tell you the gas companies I've known. They will walk in and give you sixty days to pack your bags and haul it. They have no honor and they have no feeling for any involvement that you have given them. Whenever I had a problem with the product or something else, I got on the phone and discussed it with them.

They run Standard Oil, Esso -- they run all of them. They put me out after my grandfather piloted the business. Based on the pining back in 1919, they didn't care who you pumped. We had Sunoco and Standard Oil of New Jersey, the same station. Now, if we sell B.P., you can't sell Quaker State. They don't like that.

I think it is about time we put a control on the large company to the point that they can't govern what you and I do, work, eat or even sleep. Therefore, I am in favor of divorcement.

Please forgive my nervousness. I am not used to public speaking. I can joke and clown at the pumps because I meet people on a small basis term. I thank you.

SENATOR GRAVES: Thank you.

James Benton?

J A M E S B E N T O N: Good morning, Senator. Thank you very much for allowing me to testify today before you.

My name is Jim Benton and I am the Associate Director for the New Jersey Petroleum Council in Trenton, New Jersey. We are a trade association, representing the major oil companies which supply most of the gasoline and other oil products sold in our State.

Thank you for inviting me and allowing me to speak on this legislation. I hope you will consider what we believe to be the most important issue considered by you today.

This bill, usually referred to as divorcement, has a long and enviable track record as far as the legislation lies in our Legislature. Year after year the bill dies, only to be reintroduced and resurrected. It has been with us in basically the same form in various committees over at the Assembly, before the Senate, year after year and session after session.

SENATOR GRAVES: Jim, dig into the bill, will you, please?

MR. BENTON: Okay. It has been promoted nationally and in New Jersey.

What I would like to do for you today, Senator, with your permission, is just to detail very briefly the various instances that this bill has been considered, in what framework it has been considered, and --

SENATOR GRAVES: Relate to the bill. Tell us you are either for the bill or against the bill and why you stand in either direction.

MR. BENTON: Okay. I am against the bill.

SENATOR GRAVES: Tell us why.

MR. BENTON: The bill is seriously anti-competitive. It is special interest legislation and it is unnecessary and unjustified at this time.

Let me briefly turn to the Federal level. The Federal government enacted the Title III of the Petroleum Marketing Practices Act, which is referred to as the PMPA. The service station dealers and the major oil companies all lobbied on the Federal level on this issue, and in part of that legislation there was a Title III Study which was referred to earlier. That Title III study was dealt at the Federal level on the issue of integrated oil companies using their salaried stations versus their independent dealers.

It was a classic case of a special interest group pressing for an investigation of alleged abuses; then making a 180-degree turn when that result -- that investigation, which was a Federal investigation done by the Department of Energy, the Office of Competition, did not produce the desired results.

SENATOR GRAVES: Get it back to New Jersey.

MR. BENTON: Bring it back to New Jersey?

SENATOR GRAVES: Yes, bring it back to New Jersey. You represent all of the suppliers, all of the distributors. Right?

MR. BENTON: The major companies.

SENATOR GRAVES: Getty, Arco, Exxon?

MR. BENTON: Yes, sir.

SENATOR GRAVES: How do you respond to some of the horror stories -- that you may be the proper person to respond? You have heard some pretty pathetic cases related to this Committee here today that no matter what your inward feelings are about pre-competition of business that make you stop and want to take a quick, closer look at -- if there is any truth to what they have been saying -- that Getty and Arco and others have been doing. And, I want a response from you since you represent all of them. What basis of truth is there to some of these stories that you have just heard portrayed here today?

MR. BENTON: Fine, Senator. I'd be glad to.

SENATOR GRAVES: Good. Then respond.

MR. BENTON: The Federal government, when they undertook that study, alleged that there was no interference at all in the marketplace.

SENATOR GRAVES: I am a New Jersey State Senator, Chairman of this Committee. Okay? Let's get back to New Jersey. We've heard a half dozen stories portrayed here that make you stop and wonder what some of those above are making for decisions for those below. How do you respond to some of these?

MR. BENTON: Let me respond. We now know, in retrospect, that the industry overbuilt in the 1950s and 1960s, and nowhere is that more evident than here in New Jersey than all the marketplace. More stations than were necessary were constructed than were needed to supply our State's demands. The dealers lost part of their repair and automotive accessory business to aggressive, new mass-marketers such as retail buyer outlets, department store chains offering automotive repairs, specialty-type repair shops and auto stores. Modern automobiles will have longer maintenance intervals. They have become so complex that only the larger stations or dealers could afford to have sophisticated testing equipment and highly skilled mechanics necessary to repair and maintain them. Gasoline became more available at different convenience store locations, and these prices can afford lower prices because a lot of their fixed costs are largely paid by the sales of non-gasoline items.

The new network of interstate highways sharply changed traditional buying habits. Traffic patterns were shifted to make many of the small mom-and-pop locations who were formally a viable -- to make that, in fact, casualties.

Demand has shown a sizable drop because of higher gasoline prices and higher mileage cars, and the growing conservation attitude on the part of consumers.

Therefore, while some of the competitors, particularly here in New Jersey, may be hurting because of vastly changing circumstances, the competitive marketplace is, in fact, thriving, and government interference by a bill like this and by legislative action is neither necessary nor justified and will, no doubt, create more problems than it actually solves.

I want to remind you, Senator, that it is company operated stations which traditionally -- that includes New Jersey -- is the testing ground for new marketing ideas. They are often found at different high-investment sites which include other services such as car washes and car care centers and are training locations for new dealers.

When you consider all these facts within the framework of retailing, this situation is not unusual.

We believe there is room in the New Jersey marketplace for both types of stations. The franchised dealer is essential to the business, and we, too, as part of the major oil companies, want him to stay in healthy condition. There is no economic motivation for refiners to drive their dealers out of business. But, we strongly believe there is great danger in singling out one industry and placing restrictions on it that are not present in any type of retail, franchised industry such as fast food, hotel, auto dealers and many other marketers.

And to reinforce in New Jersey specifically, the franchised dealer is not without protection. We have heard a lot about what his protection is today. There is protection against discriminatory practices in large bodies of law. I won't go into the Federal law like the Petroleum Marketing Practices Act, which was enacted only four years ago to serve station dealers/operators --

SENATOR GRAVES: Not only won't you go into that, but you didn't respond to my questions. I would like a response as Chairman of this Committee to those questions. We've heard portrayed to us and amplified to us five specific cases that sound like somebody bigger than somebody else was crushing somebody smaller.

Would you give me a response to that? I know there are two sides to every story. Do you have time to give us a response or do you know what the response is?

MR. BENTON: To relate to an individual response -- the five individual situations that you pointed out, Senator, when there are over 5,000 service stations in New Jersey, 4665 of which we account for directly in our testimony, our prepared testimony today, to itemize five individual service stations and to detail their complaints would be, as an Association representative, right here and now practically impossible unless I had prior firsthand knowledge of those particular instances and could refer you directly to the company that was involved to answer it.

Suffice to say, under the Petroleum Marketing Practices Act, should the dealer have a particular problem and allege that he is being forced out of business, he only has to file, in a court action -- his witnesses are paid for, his court fees are paid for by the company in that action if **it is, in fact,** successful. And the question has to be answered, with those types of remedies available to him, how much protection is enough.

SENATOR GRAVES: Okay, then I'm going to do this. I'm going to give you a period of time to respond to each one of them on behalf of those companies. Okay?

MR. BENTON: I'd be glad to.

SENATOR GRAVES: I want a written response to each member of the Committee; get it to Jerry.

MR. BENTON: The danger in that, Senator -- there is an old expression that "all idiots walk in a single file," and the one that I saw did.

SENATOR GRAVES: Okay. I know some trails too. In the meantime, I sit in a little bit different position. I sit here with the boat; I sit here as Chairman, and I'm requesting -- I can't direct you to do something -- I'm requesting you to do something before I make a vote.

MR. BENTON: Senator, that request is answered by yourself.

SENATOR GRAVES: Senator Bassano wants to ask you a question.

SENATOR BASSANO: I have a question. I'm going to give you an example. You stated that there are laws now which would solve discriminatory practice. Let's assume that a major company is producing, or for some reason has 90% of the product available to it this year over last year. Will those people who are operating in non-company stations receive 90% or does the company themselves decide that, well maybe the station that is owned and operated by the company should receive 95% while dealer operated stations receive 75%?

MR. BENTON: Senator, respectfully, individual companies have their marketing strategies that best suits their individual needs. As an Association representative, I'm not able to respond to an individual company situation. Suffice to say, what I can tell you at this time is should that particular dealer or particular operation be judged to be anti-competitive and a discernatory practice, the dealer or the individual (inaudible) has only to file under the Federal Marketing Practices Act under the New Jersey Franchise Act -- it is one of the strictest in the nation -- to try to get that ultimate court belief. That is the way the system works, that is the way design works, and it has worked in the past.

SENATOR BASSANO: What I want to know is, Exxon, Shell or any other company giving preferential treatment to their stations that they own and operate during any assurance where there is a comeback as to production? That is what I want to know.

I don't think it is a very complicated question. If you have any idea as to the operations of the gasoline companies, you should know the answer. I would appreciate it if you would find out for me if you don't know the answer.

MR. BENTON: Senator, respectfully, I will defer those exact companies involved and answer their individual practices as a company. I feel very uncomfortable as an Association representative, detailing for you and perhaps an individual. It depends on whether they are a major marketer or a smaller marketer, whether they are an independent refiner or a major refiner. There are just too many details involved that I wouldn't want to, as an Association representative, come before you today and feel firmly grounded in fact that I am making, in fact, an accurate presentation that applies uniformly across the board when you have an industry that is competitive as the gasoline marketing industry is in our State.

SENATOR GRAVES: All right.

Art Price, Gasoline Tax Division, State of Maryland?

A R T P R I C E: Thank you very much, Senator.

SENATOR GRAVES: It is important that you respond to the direction of the chair.

MR. PRICE: Thank you, Mr. Chairman. I assure you I will be brief. My prepared statement and another packet of facts, figures and materials that we had prepared for your Committee were all in the suitcase last night, which was lost on the airplane. I am, therefore, standing before you with some notes that I put together that we think are assailing points that should be of interest to your Committee.

For the record, my name is Arthur Price and I am the Administrator of Motor Fuel Inspection Testing for the Comptroller of the Treasury for the State of Maryland. Our division is responsible for the collection of all motor vehicle fuel taxes, road tax and motor carriers law and on an elaborate consumer protection program that embraces the operation of a 4800 square foot laboratory in maintaining the quality control analysis of all petroleum sold in our state.

I have been in this capacity for twelve years, and prior to that, I worked for Cities Service Oil Company in retailing, the last eight years of which I worked in the capacity of Retail Marketing Manager for a four state area which included Maryland, Delaware, Pennsylvania and the District of Columbia. We, therefore, feel somewhat qualified to address the many facets of the retail marketing of gasoline on the-- (inaudible)

Our State Comptroller instructed me to share Maryland's experience with divorcement and to provide any information we may have that you might feel is beneficial solely under the moves of the will of the State of Maryland, but for the sole intent of enabling you to reach the proper decisions in the legislation before you.

Basically, the chronology of our divorcement law which was passed in 1974 was challenged through the courts until ultimately the Supreme Court upheld its constitutionality in the matter and its mandate issued in July of 1978. We, administratively, permitted company operated stations until July of 1979, one year beyond, because that one-year allowance time was in the original bill, and we felt obligated to carry out that obligation. In the meantime, while that bill was under challenge through the courts, there were two amendments placed upon it, which, in essence, exempted foreign cooperatives holding an interest in a producer or refiner

and in mass merchandisers who were subsidiaries of the producer and refiner. In our state it has affected Southern States Cooperative, which is similar to Agway that operates in your state, I believe, in the sense that Southern States held a one-third interest in Texas City Refining Company; Montgomery Ward, of course, being a wholly owned subsidiary of Mobil Oil Corporation.

While those two amendments were being challenged through the courts, 35 service stations were permitted to company operate up to and through December of 1981; therefore, we have had really three short years of implementation for the most part.

There were claims of pulling out of Maryland. The April issue of National Petroleum News carried a report prepared for API by a Professor Sorrenson from Florida State University who said, and I remember the quote, "Two companies have withdrawn from Maryland." This is absolutely not true; no one has withdrawn from Maryland, and we have the monthly motor fuel and tax returns as proof.

Amerada Hess closed seven stations that are still maintained in what I call a rigid system and could reopen at any time. Rumors prevail in our state that those seven stations are being offered for sale to another company who will reopen the dealer operation.

In addition to the seven stations that Hess closed, they have had dealer operations in our state for many years, and they continue to operate through dealers in our state.

Continental Oil Company, with about seven locations operating under secondary brand (inaudible) actually closed, but some of those were sold and are operational under another (inaudible) and an unbranded facility. Action Oil Company had fifteen stations company operated under secondary brands such as Hi-Fi, Pay Less, Bi-Lo and those were sold to Amoco who immediately rehabilitated them into modern facilities and the consumers benefited because at those locations they now have three grades of gasoline to select from whereby they only had two before.

Ultimately, and this a general statement, 80 stations closed. And it is certainly my professional opinion that those would have been deactivated under the respective company's normal annual evaluation process.

Maryland's Comptroller Goldstein told a Congressional Committee in September of 1981 that Maryland had benefitted greatly from divorcement, that consumers were enjoying better service and better prices, and he supplied that Committee with facts and figures comparing their own with other East Coast areas. He quoted the Lunberg Survey dealing with the number of stations closed since January of 1979. The particular Lunberg Survey indicated that more than 20% had been closed nationally and the region in which Maryland lies, 18% had been closed. But, specifically in Maryland, only 5.6% service stations were closed. There were also comparisons to prices and dealer margins contained. All were favorable to Maryland, and all of this information is in my missing packet, which I will certainly see that the Committee receives as quickly as I get back.

An oil company vice president stated at that Congressional Hearing that, "Fewer competitors actually reduce competition." He's right. That is what divorcement is all about. It puts more service, more competition, and more actors in the marketplace.

By illustration, there were 82 stations operated by BP that are now operated by 81 additional actors in the marketplace now leased to independent dealers which resulted in

intensifying competition and the consumer benefitting from that competition. To further support this, the most recent July 9 Lunberg Survey of 38 major markets reveals: Baltimore has the lowest dealer margin for unleaded than any of the other 38 states reported by the independent survey. Only 4 of the 38 cities or markets are lower than Baltimore for unleaded regular. The best of my ability recalls those specific numbers, which are in my presentation that I'll certainly get to you. I think I am very, very close.

I took a look at Baltimore, as we do periodically, and the major cities that are in the immediate South and the major cities that are in the immediate North. Normally this is Baltimore, Norfolk and Philadelphia, but for some unknown reason, Philadelphia was not reported in the most recent Lunberg Survey. Therefore, we moved up ironically to Newark. In that July 9 Lunberg Survey, it indicates that on regular grade gasoline, the dealer margin in Baltimore is 2.36¢. In Norfolk it is 7.76¢, and in Newark I believe it was 4.46¢. I do not recall the unleaded margin in Norfolk, but I do recall that the Newark one was 9.06¢ dealer profit of margin and Baltimore was 4.38¢ for unleaded. The lower the dealer profit, the more the consumer should save. One-cent in Maryland puts about \$20 million back into the pocket of the Maryland consumer.

In an effort to further analyze, illustrate and compare, I talked with the Director of the Virginia Department of Consumer Affairs and Agriculture that is under the jurisdiction of this type of monitoring calls. I learned that Virginia has 374 company operated stations. Ninety-seven of them are in the Norfolk area, and only perhaps 6 or 7 actors are running those 97 stations. I'm wondering how much lower that 7¢ profit would be if there were 97 additional actors operating those 97 stations instead of the 6 or 7. How much would the consumer save, and how much more stability is in that marketplace if all the "eggs weren't in one basket" as illustrated by the comparison between Baltimore and Norfolk dealer margins?

You have or will hear about an Umbeck Report in a post-divorcement study that showed Maryland's divorced stations increased as much, as in one instance, 1.9¢ per gallon following divorcement. I'd like to call it "humbug." It was conducted in October of 1981, just a few months after the Federal price controls were lifted and all profit margins had been frozen by the Federal government. For example, a fellow who was operating and was involved with only a 3¢ margin in a gasoline war -- gasoline alley type -- as compared to a fellow in an affluent neighborhood who got caught at the time of the freeze in an affluent neighborhood -- there was that period of time for those type of market conditions to shake out and level off.

Besides, one of the questions that I raised, is if that price increased 1.9¢, maybe the dealer tank wagon will be increased to that dealer and may get drawn up 19.9¢. I don't know.

That particular survey, for what it may be worth, indicated it was sent to seven major oil companies. It is interesting to note that one company didn't even respond to the survey. If you look at the report and interpret it as I have, it only embraces thirty or less of the stations that were involved in divorcement. Besides, Harry (inaudible) has some real problems with respect to his factors and some of theoretical rationale that I am not qualified to address.

They say liars figure , but figures don't lie. Please keep in mind

the figures I have quoted came from Lunberg Surveys and independent, neutral and unbiased organizations.

In that prepared packet that I promised, it contains specific price and dealer margin data taken over a period of time from the independent survey. In addition to that supplied to the Congressional Committees, that has been updated since that period of time. We have also placed in that packet the original of our divorce legislation, which was the survey, analysis and ultimate report conducted in 1973-74 for our Governor that actually (inaudible) our state's divorce law.

Those facts and conditions may be helpful to you in either drawing or not drawing a parallel between conditions in Maryland at that time versus those in New Jersey today. We believe that our consumer is really benefitting from divorce in the price he pays and services that are continually available to him and the elimination of any future potentials with respect to possible monopolistic practices.

I might close by saying there were 250 company operated stations and today there are none. We have provided regulations for a producer/refiner to operate on an emergency basis a company operated station for specific causes such as: if the dealer were to die, if he vacated the station in breach, or if he were evicted for cause -- in order to ensure the continuity of that company being able to continue that business and provide for the consumers in that neighborhood, we provided a ninety-day, automatic, company operated right. In this past three years, only one company has found it necessary to company operate in our state.

I thank you, and if you have any questions, I'll certainly try to answer them or get those answers for you.

SENATOR GRAVES: Are you going to leave what you have with us?

MR. PRICE: My notes? If they are readable --

SENATOR GRAVES: He opted that he would send what he has.

MR. PRICE: I can have them for you tomorrow, Senator.

SENATOR GRAVES: All right. Thank you.

Mr. Teschner?

A. C. T E S C H N E R: Gentlemen, this is a statement of BP Oil submitted by A. C. Teschner, Retail Division Manager, in opposition to Senate Bill Number 455.

SENATOR GRAVES: Just summarize it.

MR. TESCHNER: Right. First of all, I would like to indicate that some concerned employees recently obtained in a matter of just a few days some 13,000 signatures from concerned motorists in New Jersey about the potential affect of this bill.

In the interest of brevity, I will read less than the actual portions of my testimony, but I would like to have it all included in the record.

SENATOR GRAVES: It will be included in the record, but in the interest of me running the meeting, you just summarize.

MR. PRICE: All right. BP Oil is strongly opposed to Senate Bill Number 455. It represents anti-consumer, special interest legislation designed to remove a legitimate competitive force from the marketplace at a high cost to New Jersey consumers -- in the amount of about \$14 million per year. This bill will hurt not only consumers, but also thousands of company employees who will lose their jobs with our company and with others who operate stations with their own

employees. If enacted retail divorcement will be costly to New Jersey motorists. Elimination of company operated stations would immediately raise gasoline prices to motorists. A number of studies bear out this conclusion. The John R. Umbeck study -- in that the prices in Maryland did go up and the consumers did not benefit. This was an exhaustive investigation of Maryland service stations before and after divorcement. It showed that the average price of gasoline increased 1.9¢ per gallon at divorced stations and 1.0¢ per gallon at competitive non-divorced stations. If this same economic impact occurred in New Jersey upon enactment of Senate Bill Number 455, we conservatively estimate that motorists would pay about \$14 million more per year under dealer operation.

SENATOR GRAVES: How many stations do you operate in New Jersey?

MR. TESCHNER: Fifty-three.

SENATOR GRAVES: Fifty-three?

MR. TESCHNER: (continuing) When company operated stations were being eliminated in Maryland, there was an immediate push by the Dealer Association for dealers to raise prices. This prompted the Chief of the Antitrust Division of the Maryland Attorney General's Office to write the Association, warning them of possible antitrust liability.

I'd like to read a couple of paragraphs from that letter to Attorney General Victor Rasheed, who is the Executive Director.

"Dear Mr. Rasheed:

"In your February 6, 1979 Action Bulletin, you urge member/dealers to increase their prices because of new standby, emergency gasoline pricing controls and allocation regulations recently released by the Federal Department of Energy. Because your members are competing businessmen, your recommendation raises serious antitrust concerns.

"We interpret your recommendation as an invitation to your members to raise their prices to non-competitive levels. Should this recommendation be accepted, an agreement among competing businessmen affecting their prices will have been completed. Such agreement are per se unreasonable and, therefore, illegal under Maryland and Federal antitrust laws."

Dealers claim that if divorcement legislation is not enacted, major oil companies, through company operated service stations, will become a monopoly and totally control the marketplace. This is not the case. A real monopoly would exist if company operated stations, and the competition they represent, were eliminated by divorcement legislation. The power over the consumer that would be concentrated in the hands of one group, the dealer association, was demonstrated during the middle of the 1979 gasoline shortage. New Jersey dealers threatened to strike and close their stations in order to force the U. S. Department of Energy to allow them to raise gasoline prices and have their allocations increased. The threat of a strike was so real that the Governor solicited commitments from refiners to keep their company operated stations open and supply gasoline through them in the event of the dealer strike. This is just one instance which shows the need for both types of operations -- company operated and dealer operated stations -- to act as a check and balance in the marketplace for the benefit of the consumer.

Not only will retail divorcement cost the consumer money, freedom of choice and convenience, it will also jeopardize the livelihood and cause serious job dislocations for thousands of company station employees throughout New Jersey.

BP alone has over 800 full and part-time company station employees at 53 outlets whose livelihood would be impacted by this legislation. Their payroll and benefits in 1981 amounted to over \$4 million. This would be a stressful experience and would be taking place at a time when unemployment is high and jobs are difficult to obtain. I might just add that 30% of our managers are either minority or (inaudible) at the present time.

In conclusion, a large number of states have rejected retaildivorcement either through inaction or by legislative vote. Since the enactment of the Maryland statute, similar legislation has been introduced in 41 states and in the District of Columbia under pressure from dealer organizations. Thirty-seven states have seen such legislation for what it is-- special interest legislation to protect one group of competitors from another to the detriment of the consumer. It would be unfair to consumers if this legislation is passed and motorists in New Jersey find out that gasoline prices increase when company operated service stations are eliminated from their State. We urge you to totally reject the concept of gasoline retail divorcement as embodied in Senate Bill Number 455.

Thank you.

SENATOR GRAVES: Are there any questions? Senator Bassano?

SENATOR BASSANO: Very briefly, the report that you made mention of by the professor from Purdue -- who contracted with him to study that report and make that report?

MR. TESCHNER: I believe that was contracted by a number of mid-western small refiners who were concerned about the ripple effect divorcement would have and they wanted to have some evidence or denote facts as to what was going to happen once it happened.

SENATOR BASSANO: I appreciate that. Thank you.

SENATOR GRAVES: Mr. Reilly?

MR. TESCHNER: If you don't have a copy of that. Senator, I'd be happy to furnish one.

SENATOR BASSANO: I would appreciate that also. Thank you.

E D W A R D G. R E I L L Y: Senator Graves, members of the community, my name is Edward Reilly and I am Vice President of Marketing for the Atlantic Richfield Company.

You do have a copy of my prepared testimony and I am not going to refer to it, but the Atlantic Richfield Company is opposed to Senate Bill 455 for the reasons that are in that testimony, and those reasons have been pretty much covered here this morning.

I would like to take just a couple of minutes if I may to refer to what the Chairman refers to as divorce courts, or (inaudible) courts. I obviously can't speak for the Exxons or any of the other competitors operating in New Jersey, but I can and I will speak for our company.

To the best of my knowledge, on three occasions Arco has been mentioned this morning. (inaudible) on Mr. Ferrara, I thought for a minute that he was going to (inaudible) for major oil companies and he was going to skip Arco. I didn't know whether to be delighted at this point; however, he made three observations. First, in inference that we were closing service stations in New Jersey and going to self-involved prestige. As a matter of fact, of the 250 stations that fly the Arco flag, we have, at the latest count, 18 VSI's. Mr. Ferrara said that we were forcing

dealers to go to AM-PM and that AM-PM was an unsuccessful venture and his organization was too smart to partake in this. In fact, in New Jersey we have three AM-PMs, all successful, as they are across the country.

He also inferred that when you are selling service stations to dealers, we wouldn't even sell them the tanks -- that we were pulling the tanks out and forcing the dealer if he wanted to continue after the sale -- that we would sell him the station (inaudible) to buy new tanks. In fact, he is right. We don't sell the tanks; we give them, and we are delighted. What we do is test those tanks to make sure they are not leaking. If they are leaking, we do pull them. But, in every instance where there is a self-service station, and when we sell a piece of property, we always give our dealer the right for first refusal to purchase the station. Of 90% of the stations that we sell nationwide, it is our dealer that buys them. And, we always give them the tanks.

The answer to Senator Bassano's question -- if the Atlantic Richfield Company was allocating anywhere in this country, including New Jersey, our own company operated stations -- and those stations that are dealer operated get exactly the same amount of gasoline. They pay company operated stations the exact same price that our dealers pay. We at Arco are essentially a dealer operated company. We have only 370 company operated stations across the country and we've got more than 5,000 leasee contracted flying the Arco flag. The reason for that is simple. We believe that dealer operated is better than company operated. We believe that we at Arco are more profitable to a profitable dealer organization, and I see nothing that will change it.

Again, we are opposed to the bill in question for the reasons as outlined in my testimony. I'd be glad to answer any questions you may have.

SENATOR GRAVES: Okay, we are going to "wrap it up" with Fred Sacco.

F R E D S A C C O: Senator, my name is Fred Sacco. I am the Executive Vice President of the Fuel Merchants Association of New Jersey.

Senator, before you (inaudible) at me, try to give me the seven minutes. If I go over seven minutes, then (inaudible) at me, Senator.

This is a very important issue to my membership. We represent the very capable work of the retail motor gasoline market in New Jersey. I have given you a profile of our membership. I'm going to skip my testimony -- I'll file it with you. I will try --

SENATOR GRAVES: Take your seven minutes, Fred.

MR. SACCO: Okay. (continuing) We have 512 regular members and we have 29 that are gasoline only. That totals 541. We have done surveying through our membership through my whole tenure. We know automatically that we have 370 members who are in the home heating oil business only. Our previous survey indicated that.

In our survey for our membership, 142 companies responded. The total number of service stations in that population that are owned or leased are 517. We also supply 286 other independent retail dealers. Many of those were dealers who had been primarily abandoned by the major oil companies because they didn't fit into their seam of things. 813 service stations -- this is very important (inaudible) 609 of those service stations market less than 50,000 gallons of gasoline. It is a very important number because it will give you (inaudible).

We found a good mix of rural and urban -- 443 rural and 335 which is

classified as urban.

Now I'm going to give you the company operated service stations. We average on the number of companies with company operated service stations, and that is 61 companies, 3.2 company operated service stations per hundred. In our number, and again, Senators, this is very important -- the company operated service stations total 153 which have a market of less than 50,000 gallons a month. Then we have another 43 that are greater than that amount. Why do I keep singling out this 40,000 or less than 50,000 gallon number? If I could just go to my statement.

Okay, I've told you, Senators, 609 of our retail service stations. They are primarily independently operated service stations. They number 609 -- 75% supplied from the jobber segment, operated by independent retail dealers, and they are, let me quote, gentlemen, "they are part of the big push to eliminate the 30 to 40 thousand gallons per month service stations and concentrate on the pumpers." This statement is taken directly from the 1982 National Petroleum News Fact Book and it was cited in a discussion of major oil company marketing strategies. According to the Fact Book, "now the fuzz is off the peach. Retrenchment is expected to be in full swing in 1982." And that is why you can see the concern among the jobber community in New Jersey and the independent retail dealer in New Jersey.

The major oil companies gave you a survey, and I believe the number of their citing -- I haven't seen their statement, but I would assume that they are giving you a number somewhere around 200 company operated stations among twelve major oil companies. They say and I would assume that is is going to be somewhere -- I did some calculation -- and it is 3.9% of the station population. More importantly, gentlemen, they have not told you -- that 3.9% represents greater than 8% of the retail marketplace in New Jersey. If you measure the service stations that the gasoline jobbers supply and operate through a company operated fashion, they are going to have 4.4% of the service station population and they have approximately 3% of the (inaudible) -- 3% of the gallonage. That is equated with the major oil companies.

Senator, I would like to take one moment and just read you one more thing. We have had 39 of these company operated stations which are fuel oil dealers with one service station, all of which are less than 50,000 gallons a month. Most of them are affixed to their businesses, their buildings. I'll just cite one. Hardy's Oil Service -- in business since 1929 -- has a single, family run service station, pumping less than 30,000 gallons a month. They have been distributing gasoline and heating oil around the town of Medford since 1929. They are subject to the provisions of your bill if you do not amend the bill, S-455, and confine it to the refiners and producers. There is a lot at stake here.

There are people at stake here, people in terms of jobs. If, through the company operated stations of the major oil companies, they are able to increase their marketplace, their share of the market lifts by 10%. We are talking about roughly \$15 million a year -- \$15 million a year by just simply by moving 10% of the marketplace from dealer operated service stations back to company operated service stations. I would say that is a pretty worthwhile objective.

They will tell you major oil companies do not operate company stations in New Jersey. That may be so, but if I could just cite one more thing. Almost every major oil company in the country operates company owned stations. I'll cite

three. Three of them have more than a thousand: Amoco, Gulf and BP -- more than a thousand across the country. The gentlemen from Arco just threw a number at you -- 370. That is a poor company.

Let's talk about what their objectives might be. The State of Maryland seized upon the opportunity when they saw what was happening in the marketplace. With only 36 stations company operated, Exxon was able to corner a significant share of a marketplace that only had 2 billion gallons of gasoline annually. If their marketing strategy is the same, and if you'll look at the Exxon numbers, this is probably going to be (inaudible). They are going to have to come up with about 50 or more service stations company operated in New Jersey to be able to get the same market share they got in a 2-billion gallon station in a 3 billion gallon state like New Jersey.

I'm telling you right now, gentlemen, I've been (inaudible) company operated stations. Exxon has in New Jersey, but I would be willing to wager that within a very short period of time, (inaudible). I don't even know what the (inaudible). That is simply an extension of their marketing strategy.

Gentlemen, we represent the gasoline jobbers segment of the market that are independent retail dealers, and the independent retail dealers themselves -- we represent a "hit list" in the minds and the marketing strategy of the major oil companies. And don't let them suggest to you that they cannot come in here and operate a company.

When your colleagues enacted legislation in New Jersey to protect the franchise marketplace, one oil company -- the limb of the marketing BP or a region of BP out of New Jersey -- and (inaudible) in less than twelve months converted almost 90 company operated stations from independent retail dealers -- as the system mentioned of a piece of legislation adopted by the Legislature of New Jersey. I'll give you the documentation on that later on because I think that is significant to bear in mind where the marketing strategy of the major oil companies are going. We don't fit in it. That is the gasoline jobbers segment. I cited to you 39 company operated stations, family owned for about 75 years.

Gentlemen, please, feel it in your consideration to amend this bill, to take my segment of the marketplace out -- because we don't belong in there -- we are no real threat to the independent retail dealers in New Jersey. We supply 600 of them. Amend this bill and leave it at just the refiners and producers. Don't give them an opportunity to squirm out because they have the best legal minds in the world and the capitalize on them.

Gentlemen, thank you very much for your consideration. I will leave my full testimony with you. It is a lot more pertinent. I will entertain any questions that you might have, Senator or Senators.

SENATOR GRAVES: Are there any questions?

Anyone who has any written or pertinent information that you want to leave, please leave it.

(Question from the audience - inaudible)

SENATOR GRAVES: If you want to know if you can cross-examine any of the witnesses, the answer is no.

(Question again from audience - inaudible)

SENATOR GRAVES: The answer is no. That is right. Relay them to anyone that you feel will be representative of you and they will submit it to us.

All right, the hearing is ended.

(Hearing concluded)

STATEMENT ON BEHALF OF

NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

Before

SENATE COMMITTEE ON LAW, PUBLIC SAFETY AND DEFENSE

Re:

Senate Bill Number 455

August 12, 1982

Essex County College  
Newark, N.J.

Members of the Senate Committee on Law, Public Safety and Defense, good morning. My name is Georgia Hartnett. I am Assistant Vice President of New Jersey Business and Industry Association. On behalf of our more than 12,000 member companies statewide, we appreciate this opportunity to present our views regarding Senate Bill Number 455.

The concept of retail divorcement of service stations from the ownership and operation of distributors, refiners, wholesalers or suppliers is not new. Similar legislation has been proposed in the past either on its own or as part of various legislative packages. Now, as then, we are opposed to this legislation.

Over the past years the legislature and the administration have both come to the recognition that economic development and the jobs that such development brings with it are essential to the continued well-being of New Jersey. Our new Department of Commerce and Economic Development has been created in part to institutionalize within the structure of state government the improvement of our competitive image vis a vis other states. S.455, if enacted, will be antithetical to that concept.

It is clear when you study the movement of business enterprises throughout our country that corporations, both large and small, tend to gravitate to those areas where they can reap the greatest economic advantage and where there is the least infringement upon the free enterprise system. Legislative and regulatory action which can be justified to protect the worker and the public at large is not necessarily a disincentive to the attraction of business. However, this proposal, will accomplish little except to send negative signals to prospective investors that New Jersey is a state which seeks to tamper with the foundations of the free enterprise system.

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Only four of the fifty states have undertaken to insist upon some form of retail divorcement and those states have experienced problems with the legislation, not the least of which is increased cost to the consumer. Instead of improving competition, which we believe is the sponsor's intention, S.455 will deprive the consumer of the choice between purchasing gas at a company-owned or an independently-owned station. Even the U.S. Department of Justice, guardian of the antitrust arena, has taken the position that such legislation is anticompetitive and ineffective in remedying the basic problems confronting the independent retailers.

We are also concerned that the approval of S.455 or similar legislation will act as a precedent for the extension of this type of restriction into other franchise areas such as hotel/motel chains, fast food establishments, auto dealerships, etc.

In view of this fact, you as legislators, must weigh the alternatives. Are you willing to send out the message that New Jersey is "anti-business" in return for the benefits that will be derived from implementation of this legislation, particularly when these benefits appear to be small?

The company-owned stations that would be affected by this proposal are few in number, when compared to the total number of service stations in the state. Even Exxon, one of the largest refiners and one which provides thousands of non-service station related jobs to New Jersey residents, operates only a total of 43 stations in the state. Furthermore, when the last "gas crisis" hit in the summer of 1979, the state was unable to turn to the independents but was forced to seek help from the refiner-owned stations

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in maintaining Sunday hours to keep tourism alive. It is our contention, therefore, that a healthy mix of independents and company-owned stations has served the state well in the past and will continue to serve the state well.

In summation, we submit that S.455 will do little to assist the problems of the independent retailer, little to insulate the consumer from the rising cost of gasoline, and much to damage the image of New Jersey as a state where economic development and jobs are a high priority.

We appreciate your consideration of our views and urge you to cast your vote against releasing S.455 from this committee.

66 Morris Ave. P.O. Box 359 Springfield, N.J. 07081 · (201) 379 1100

**Gasoline Jobbers Division**

**Fuel Merchants  
Association  
of  
New  
Jersey**

SENATE BILL S 455

MY NAME IS LAWRENCE S. RAY, I AM VICE PRESIDENT OF RAY PETROLEUM CO., DOVER, NEW JERSEY AND PRESIDENT OF THE GASOLINE JOBBERS DIVISION OF THE FUEL OIL MERCHANTS ASSOCIATION OF NEW JERSEY.

I AM ADDRESSING MYSELF TO SENATE BILL 455 AND IN PARTICULAR TO PARAGRAPH 2 WHICH STATES: "IT SHALL BE UNLAWFUL AND A VIOLATION OF THE "UNFAIR MOTOR FUELS PRACTICES ACT" P.L. 1953, C 413 (C.56:6-19 et seq) FOR ANY DISTRIBUTOR, REFINER, WHOLESALER OR SUPPLIER:

THE WORDS, "WHOLESALER OR SUPPLIER," ENCOMPASS THE SMALL INDEPENDENT BUSINESSMEN OPERATING WITHIN THE STATE, WHO SELL AND DELIVER MAJOR BRAND AND PRIVATE BRAND GASOLINE, DIESEL FUEL AND LUBRICANTS, TO WHOLESALE, RETAIL AND COMMERCIAL CONSUMER CLASSES OF TRADE. THESE INDEPENDENT SMALL BUSINESSMEN ARE KNOWN AS "JOBBER" AND HAVE HISTORICALLY BEEN A VITAL LINK IN THE RECOGNIZED CHAIN OF PETROLEUM DISTRIBUTION IN NEW JERSEY.

JOBBERSHIPS ARE MAINLY LOCALIZED, FAMILY OWNED OPERATIONS. SOME HAVE REMAINED IN THE SAME FAMILY FOR 40, 50 OR MORE YEARS. THE AVERAGE JOBBER OWNS HIS TANK STATION AND DELIVERY TRUCKS. HE OWNS SOME SERVICE STATION PROPERTIES IN FEE AND HAS TENANCY OF OTHERS THRU LEASE AGREEMENT. HE SUPPLIES THESE OUTLETS AS WELL AS OWNER OPERATED LOCATIONS AND COMMERCIAL AND FARM ACCOUNTS, WHICH IN MOST OF NEW JERSEY HAVE HAD THEIR SUPPLY TERMINATED BY REFINER SUPPLIERS. JOBBERS PAY MORTGAGES, RENTALS, SALARIES AND ALL TAXES INFLICTED ON ANY

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BUSINESSMAN. THEY CREATE EMPLOYMENT SUPPORT CIVIC ENDEAVORS AND RENDER A NECESSARY SERVICE TO THE ECONOMIC WELL BEING OF THE COMMUNITIES THEY SERVE.

BECAUSE OF THEIR LOCALIZED OPERATION THEY MAINTAIN A MORE COMPATIBLE AND RESPONSIBLE RELATIONSHIP WITH THEIR DEALERS AND ACCOUNTS THAN DO REFINER SUPPLIERS WHOSE DECISIONS EFFECTING THE NEW JERSEY MARKET PLACE ARE MADE IN HOUSTON, TULSA, ATLANTA OR SOME OTHER REMOTE CITY.

JOBBER, AS A GROUP, APPLAUD THE EFFORTS OF LEGISLATORS WHO ARE TRYING TO PROTECT THE SMALL BUSINESSMAN, BUT ARE CONCERNED THAT S-455 TENDS TO TREAT JOBBERS AS "PREDATORS" RATHER THAN AS "PREY" OF PRODUCER REFINERS, THE SAME AS INDEPENDENT DEALERS. WE ATTRIBUTE THIS TO A LACK OF APPRECIATION OF WHAT HAPPENED AND IS HAPPENING IN THE GASOLINE MARKET PLACE.

TODAY, JOBBERS ARE FIGHTING FOR SURVIVAL. ARCO HAS TERMINATED POSSIBLY AS MANY AS 20% OF ITS JOBBERS SINCE APRIL AND IS PREPARED TO CUT OFF MORE, SAYS JIM MORRISON, ARCO PRESIDENT. MORRISON REVEALED NEW GASOLINE SALES FIGURES DEMONSTRATING THAT ARCO IS WELL ON ITS WAY TO ITS GOAL OF BOOSTING RETAIL SALES AND DECREASING WHOLESALE SALES. UNTIL RECENTLY, HE SAID, 70% OF ARCO'S GASOLINE WAS SOLD TO JOBBERS AND 30% WAS MARKETED THROUGH DIRECT-SUPPLIED DEALERS. NOW THE FIGURES ARE REVERSED.

"WE DECIDED WE HAD TO REDRESS THAT BALANCE IN OUR OWN SELF-INTEREST," MORRISON SAID.

GETTY, IN AN EFFORT TO BOOST GASOLINE SALES AT SOME STATIONS, HAS DEVISED A NEW WAY TO GAIN MORE CONTROL OVER RETAILING WITHOUT BOOTING DEALERS OUT OF THEIR STATIONS. COMPANY OPERATES THE PUMPS ONLY.

WHAT'S THE ADVANTAGE TO GETTY? THE COMPANY GAINS MORE CONTROL OVER RETAILING AND CAN PRICE MORE AGGRESSIVELY SO THE STATIONS VOLUME CAN BE BOOSTED.

"OIL COMPANIES ARE TRYING TO CONTROL THE RETAIL PRICE AND THIS IS JUST PART OF A LONG RANGE PROGRAM TO TAKE OVER GASOLINE RETAILING," SAYS JACK HOUSTON, EXECUTIVE OF GEORGIA DEALER ASSOCIATION.

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IN MAY, 1982, CITGO IMPOSED A TYPE OF PENALTY ON THEIR JOBBERS. IF A JOBBER LIFTED MORE THAN 110% OF CONTRACT MAXIMUMS HE WOULD HAVE TO PAY AN ADDITIONAL \$.050 PER GALLON. YET DIRECT SUPPLIED STATIONS RECEIVED ALL THE PRODUCT THEY REQUIRED.

IN THE PERIOD PRIOR TO 1973 BETWEEN 50% and 60% OF GASOLINE SALES NATIONWIDE WERE THROUGH JOBBERS. DIRECT MARKETING BY REFINERS WAS NOT PROFITABLE BECAUSE IT LACKED TAX ADVANTAGES AND WAS TOO COSTLY. SINCE THE EMBARGO OF 1973 AND NATIONALIZATION OF CRUDE OIL RESOURCES, PRODUCER REFINERS ARE NOW LOOKING INTO CONTROL OF INCREASED MARKET SHARE AND SHIFTING PROFIT CENTERS TO THE MARKETING SEGMENT.

DURING THE EMBARGO OF 1973, FROM THE PERIOD BEGINNING IN JANUARY AND INTO 1974, THE METHOD OF VOLUNTARY ALLOCATIONS ELECTED BY THE REFINER-PRODUCER REDUCED SUPPLY TO JOBBERS AND INDEPENDENT DEALERS.

THE PRODUCT SUPPLY WAS ROUTED TO THEIR OWN STATIONS, EITHER LEASED TO DEALERS OR SALARY OPERATED BY THEIR OWN COMPANY PERSONNEL. THIS RE-ROUTING OF SUPPLY CAUSED CONGRESS TO IMPLEMENT THE FEDERAL ENERGY ADMINISTRATION, AS CONGRESS REALIZED THAT SMALL BUSINESS FORMED A VITAL LINK IN THE DISTRIBUTION SYSTEM, IN MOST CASES OPERATING IN THE LESSER POPULATED AREAS OF THE STATES WHERE THERE WAS LESSER PROFIT FOR THE REFINER PRODUCERS.

SINCE JANUARY 28, 1981, WHEN PRICE AND ALLOCATION CONTROLS WERE LIFTED, PRODUCER REFINERS HAVE REVERTED TO 1973-74 PRACTICES. SUPPLIES ARE BEING CHANNELLED TO LEASEE DEALERS AND SALARY OPERATED STATIONS. JOBBER MARGINS ARE BEING ERODED BY PRODUCER REFINERS RAISING WHOLESALE PRICES AND NOT CHANGING THE DEALER TANK WAGON PRICES TO THEIR OWN DEALER AND SALARY OPERATED STATIONS. DEALERS WHO OPERATE STATIONS OWNED OR LEASED BY JOBBERS ARE FACED WITH BUYING GASOLINE AT PRICES NOT COMPETITIVE WITH DEALERS OPERATING STATIONS OWNED BY PRODUCER REFINERS OF THE SAME BRAND AND IN THE SAME MARKETING AREA. IT HAS LONG BEEN RECOGNIZED THAT PRODUCER REFINERS COULD SUBSIDIZE THEIR DOWNSTREAM OPERATIONS, DIRECT DEALERS, SALARY OPERATION, BY PROFITS FROM UPSTREAM OPERATIONS, PRODUCTION, REFINING ETC. JOBBERS HAVE NO UPSTREAM

THE EXISTENCE OF DOWNSTREAM SUBSIDIZATION BY REFINER SUPPLIERS WAS ACKNOWLEDGED BY CONGRESS WHEN IT PASSED PUBLIC LAW 95-297, JUNE 19, 1978, REFERRED TO AS THE "DEALER DAY IN COURT" BILL, WHICH UNDER TITLE III REQUIRED AN EIGHTEEN MONTH STUDY OF THE SUBSIDIZATION PROBLEM BY D.O.E. AND THE FEDERAL TRADE COMMISSION.

IN ITS DELIBERATIONS IN THE "EXXON CORP. VS. GOVERNOR OF MARYLAND" CASE (DIVORCEMENT), THE U. S. SUPREME COURT FELT THERE WOULD BE NO PROBLEM IN UPHOLDING ITS DECISION IF OTHER STATES PASSED SIMILAR LAWS. THUS, IF EACH STATE'S DIVORCEMENT LAW IS DIFFERENT FROM MARYLAND'S AND FROM EACH OTHER, THE RESULTING DISSIMILARITY MIGHT INVALIDATE THEM ALL. FOR THIS REASON, WE FEEL ANY DIVORCEMENT PROPOSAL SHOULD BE AS SIMILAR TO MARYLAND'S LAW AS POSSIBLE. FOR THE FORESTATED REASONS WE RECOMMEND THAT ITEM #2 in S 455 BE MODIFIED TO READ: "IT SHALL BE UNLAWFUL AND A VIOLATION OF THE UNFAIR MOTOR FUELS PRACTICES ACT" ETC. FOR ANY PRODUCER REFINER.

IN ADDITION TO MARYLAND, CONNECTICUT AND VIRGINIA HAVE DIVORCEMENT REGULATIONS IN EFFECT THAT EXCLUDE INDEPENDENT JOBBERS. A DIVORCEMENT BILL, EXCLUDING JOBBERS, HAS BEEN INTRODUCED INTO THE PENNSYLVANIA LEGISLATURE.

IN REGARD TO THE MARYLAND DIVORCEMENT EXPERIENCE, ARTHUR PRICE, ADMINISTRATOR OF MOTOR FUEL INSPECTION FOR MARYLAND, HAS PROVIDED SENATOR STROM THURMOND WITH THE FOLLOWING COMMENTS:

PRICE SAID THAT "THE LIFTING OF FEDERAL CONTROLS IN JANUARY, 1981, MEANT THAT DIVORCEMENT BECAME THE MOST PROMINENT DIFFERENCE IN THE MARKET-PLACE." BASED ON THAT FACT, THE NATIONALLY RECOGNIZED LUNDBERG SURVEY INDICATES THAT: THE APPARENT DEALER MARGIN ON UNLEADED REGULAR GASOLINE IN BALTIMORE DROPPED \$.0534 in 1981 OVER 1980 WHILE IN NORFOLK THE REDUCTION WAS \$.0272.

"THE BENEFITS TO THE CONSUMER AT A TIME WHEN DIVORCEMENT IS THE PRIMARY DIFFERENCE IN THE MARKETPLACE ARE CLEAR," PRICE SAID.

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HE ADDED: "WE BELIEVE THIS ATTRIBUTABLE TO DIVORCEMENT: THERE IS NO OTHER FACTOR COMMON TO BOTH MARKETS, TO THE BEST OF OUR KNOWLEDGE."

PRICE SAID THAT "DIVORCEMENT BUILDS STABILITY IN THE MARKETPLACE BY REDUCING THE CONDITIONS AND FREQUENCY OF DEALER CHANGES NORMALLY AT THE DISCRETION OF THE MAJOR OIL COMPANY (LESSOR).

"WE DO BELIEVE DIVORCEMENT INCREASES COMPETITION AND THE AFORE- MENTIONED FIGURES SUPPORT THAT BELIEF IN THE FORM OF LOWER POSTED RETAIL PRICES AND LOWER DEALER MARGINS, BOTH OF WHICH BENEFIT THE CONSUMER. THE APPROXIMATELY 300 STATIONS OPERATED BY 12 MAJOR OIL COMPANIES ARE NOW BEING OPERATED IN ESSENCE BY 300 INDIVIDUAL SMALL BUSINESS PERSONS, THEREBY PLACING MORE 'ACTORS' IN THE MARKETPLACE AND GREATLY INCREASING COMPETITION."  
(SUPER SERVICE STATION, JUNE 1982)

DESPITE THE MARYLAND EXPERIENCE JUST REFERRED TO, IF JOBBERS, AS WELL AS REFINERS AND PRODUCERS, ARE PREVENTED FROM OEPRATING SERVICE STATIONS IN NEW JERSEY, THERE WOULD BE LESS VIABLE COMPETITION LEFT IN THE MARKETPLACE AND INDEPENDENT DEALERS COULD CONCEIVABLY HAVE A PROTECTED ENCLAVE IN REGARD TO ESTABLISHING PRICES ON THE STREET. JOBBER SUPPLIED STATIONS ARE STILL A VIABLE COMPETITIVE FACTOR IN THE MARYLAND MARKET PLACE.

IN THE INTEREST OF MAINTAINING A COMPETITIVE MARKETPLACE AND IN RE- TAINING THE HISTORIC POSITION OF THE INDEPENDENT JOBBER AS AN IMPORTANT FACTOR IN NEW JERSEY'S PETROLEUM DISTRIBUTION SYSTEM WE URGE THAT JOBBERS, AS SUPPLIERS, BE OMITTED FROM ANY PROPOSED DIVORCEMENT LEGISLATION.

THANK YOU FOR ALLOWING US AN OPPORTUNITY TO OFFER OUR COMMENTS.

AUGUST 12, 1982

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

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TESTIMONY  
OF  
MAUREEN BROGLIA  
LEGISLATIVE AIDE  
NEW JERSEY DEPARTMENT OF ENERGY  
BEFORE  
THE  
SENATE COMMITTEE ON LAW, PUBLIC SAFETY AND DEFENSE  
ON  
SENATE BILL 455  
NEWARK, NEW JERSEY  
AUGUST 12, 1982

GOOD MORNING. I AM MAUREEN BROGLIA, LEGISLATIVE AIDE TO THE NEW JERSEY DEPARTMENT OF ENERGY. ACCOMPANYING ME TODAY IS TERRY DUINN, AN ENERGY ANALYST WITH MY DEPARTMENT. THANK YOU FOR THIS OPPORTUNITY TO TESTIFY ON SENATE BILL NO. 455.

THE DEPARTMENT OF ENERGY DOES NOT BELIEVE THAT PROHIBITING DISTRIBUTORS, REFINERS, SUPPLIERS AND WHOLESALERS OF MOTOR FUEL FROM OPERATING RETAIL SALES OUTLETS IS IN THE BEST INTERESTS OF NEW JERSEY CONSUMERS. WHAT WE ARE HERE TO DISCUSS TODAY IS THE PRICING ADVANTAGES OFFERED TO THE NEW JERSEY CONSUMER DUE TO THE COMPETITIVE FORCES WHICH EXIST IN THE STATE'S GASOLINE RETAIL BUSINESS.

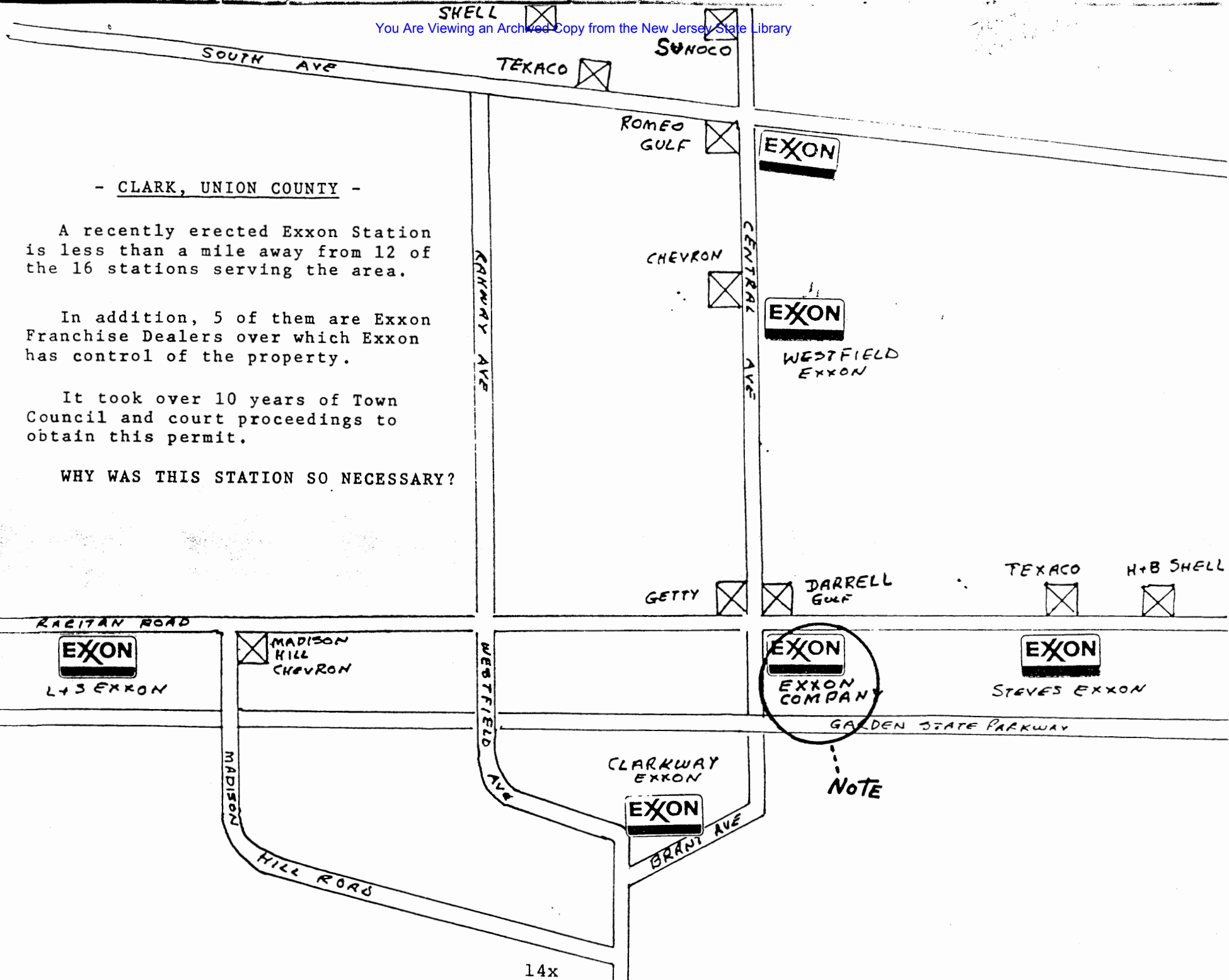
THERE ARE ROUGHLY 5,000 STATIONS IN THE STATE REPRESENTING 23 COMPANIES WHICH ACTIVELY COMPETE IN THIS MARKET. ONLY THREE PERCENT OF THESE STATIONS ARE COMPANY OPERATED. NO ONE COMPANY HAS A SHARE EXCEEDING 16% OF THE MARKET. ACCORDING TO A SURVEY CONDUCTED BY THE NEW JERSEY PETROLEUM COUNCIL IN JUNE 1981, OF THE 5,000 STATIONS ROUGHLY 45% ARE LEASEE-DEALER, 33% DEALER OWNED, 22% JOBBER OPERATED AND THREE PERCENT COMPANY OPERATED. COMPANY-OPERATED STATIONS ARE CLEARLY NOT PREDOMINANT IN THIS STATE.

EACH FORM OF MARKETING HAS ITS OWN ADVANTAGE. THE DEALER-OWNED STATIONS HAVE THE ADVANTAGE OF BEING SUBJECT ONLY TO STANDARD OWNERSHIP COSTS RATHER THAN HIGHER RENTAL FEES. FULL-SERVICE STATIONS PROVIDE SERVICES WHICH IN TURN CONTRIBUTE TO PROFITS THAT A GAS 'N GO OPERATION CANNOT DEPEND ON; IN THIS WAY

THERE IS AN ADDITIONAL AVENUE AVAILABLE TO RECOVER FROM A REDUCTION IN GASOLINE SALES. THE GAS 'N GO OPERATIONS ARE GENERALLY HIGH VOLUME WITH LOW OVERHEAD COSTS. THE PRICING ADVANTAGE ENJOYED BY THE TYPICAL GAS 'N GO COMPANY-OPERATED STATIONS IS ONE THAT IS INHERENT TO THEIR MARKETING STRATEGY. AS WITH ANY BUSINESS, EVERY DEALER MUST ASSESS THE COSTS AND BENEFITS OF OPERATING UNDER A PARTICULAR PRICING STRATEGY AND CHOOSE THE ONE BEST SUITED FOR THE PARTICULAR LOCALITY. A SUCCESSFUL BUSINESS MUST RESPOND TO CURRENT MARKET CONDITIONS.

THE REFINERS THEMSELVES HAVE BEEN FORCED TO ADJUST STRATEGIES OVER THE PAST YEAR. THE DECLINE IN DEMAND HAS RESULTED IN HIGHER THAN AVERAGE INVENTORIES. THE COST OF MAINTAINING THESE INVENTORIES HAS BEEN RISING WHILE THE VALUE OF THE PRODUCT HAS BEEN DIMINISHING. IN ORDER TO MOVE THEIR PRODUCT MANY APPROACHES HAVE BEEN TESTED, TWO EXAMPLES BEING THE DEALER REBATES AND "DISCOUNT-FOR-CASH". ANOTHER GOOD EXAMPLE IS THE CHANGE IN WHOLESALE PRICING. HISTORICALLY, LEASEE-DEALERS HAVE PURCHASED PRODUCT AT THE DEALER TANKWAGON PRICE. THIS PRICE INCLUDED THE COSTS FOR TRANSPORTING PRODUCT FROM THE TERMINAL TO THE DEALER AS WELL AS FEES FOR OTHER SERVICES INCLUDING TRADEMARK AND CREDIT CARD OPTIONS. THIS ASPECT OF THE GASOLINE INDUSTRY IS NOW CHANGING. MORE AND MORE COMPANIES ARE SELLING PRODUCT AT THE RACK, OR TERMINAL, PRICE. TRANSPORTATION COSTS ARE BEING ASSESSED BASED ON THE ACTUAL HAULING DISTANCES. PRICES ARE BEING ADJUSTED TO REFLECT THE TRUE COSTS. THE FACT IS THAT REFINERS ARE BEING FORCED TO RECONSIDER MARKETING PRACTICES IN THE TRUE SPIRIT OF COMPETITION.

BASED ON THE LUNDBERG SURVEY, DEALER MARGINS HAVE DROPPED FROM ROUGHLY 13 CENTS PER GALLON IN 1980 TO 8 CENTS PER GALLON IN 1982. FURTHERMORE, IT IS IMPORTANT TO NOTE THAT REFINERS HAVE REDUCED WHOLESALE GASOLINE PRICES BY ROUGHLY 8 CENTS PER GALLON OVER THE PAST YEAR. THIS DEPARTMENT CONTENDS THAT THIS IS INDICATIVE OF A HEALTHY AND COMPETITIVE MARKET.



- CLARK, UNION COUNTY -

A recently erected Exxon Station is less than a mile away from 12 of the 16 stations serving the area.

In addition, 5 of them are Exxon Franchise Dealers over which Exxon has control of the property.

It took over 10 years of Town Council and court proceedings to obtain this permit.

WHY WAS THIS STATION SO NECESSARY?

Good morning:

My name is Vilis MUISNIEKS aka. Will.  
I have operated a shell station in Pinakotalet since 1965.

My family and I came to this Great Country in 1948 escaping our native LATVIA after the second take over by the Russian Communist forces.

After my formal education and military obligations were completed, I a family man now, decided that if I was to work as hard as I did, it might as well be for myself. Not having great personal wealth, I needed something ready made. After more than a year's search I made my decision. I signed a lease with Shell oil Co, for they had an accepted trade mark, quality products a proven business system and mode of operations. But more than that - they had both the means and willingness to provide for future by developing new products, and systems something I could not afford on my own.

General new legislation such as Bill 455 will destroy me - and whether they believe or not most dealers.

To remove incentives and from a major oil co. to further their research and development and to upgrade their retail outlets will only leave uncertain sources of supply and decline in the quality of the retail outlets.

I for one am most ready to push our U.S. consumer Unbranded, Untied, Nuclear fuel, from old fashioned and non accurate equipment.

General men I beg you, do not listen to the voices that in the name of saving will destroy the retail gasoline business, just to further their own endeavors.

I believe that to mandate chaos in the market place will in no way serve the U.S. consumer.

my future hopes and plans (unless you change them today) are to operate a modern facility. Serving a tried, Branded fuel, with the Best possible service and lowest prices that I can afford. With the advent of Self Serve I will be able to expand my hours of operation as now the customer will help me to stay open during these low profit periods.

I am proud to be a Shell dealer, I asked to be one and I am.

My name is Robert J. Shaw and I am the owner and operator of Mayfair Arco Servicenter, located at 3 Central Avenue in West Orange. I am here in favor of the Divorcement Bill.

As a young dealer in 1962, I took over the Mayfair Esso Servicenter, which was located at Eagle Rock Avenue in West Orange and worked many hours and long days trying to build up a business.

In 1968-1969, Esso then decided to purchase the piece of property up the street from my location and to build a new station. Several problems, among them was the transferring of the permit from my station to the new one as well as keeping mine open.

Humble Oil, at that time, went to the Town fathers and discussed the situation and the problems that they had, and at that time told the Town fathers that Bob Shaw was taking over the station and in no way were they going to start the new station and have the old one closed. After lengthy discussions with Humble Oil, the Town fathers approved the following. No. 1 - Since Bob Shaw, who lives in town, has been in town for seven years and in business and runs a good business would be able to stay in his station until the new one is built. No. 2 - That they would issue a permit to build a new station and at that time would hold back on the occupancy of the permit so that my station, which was 500 ft. away would be closed first and then the new one could be opened all in a 24 hour period.

At this time, Humble Oil agreed they would go along with this procedure. Representatives of Humble Oil Company and myself got together and started to design a program for the new station which would be open up to 24 hours a day and running a grand opening promotion. I spent my own money in preparing several promotions in my own location.

- 2 -

In January of 1970, with the construction well under way, Humble Oil came to me and stated to me that they could not give this station to me as a dealer and that I would have to go to work for them as an employee and they flatly refused at that time that I would go in as a dealer. They also gave me the date of October 1st to get out of my location. After many discussions, they continued to refuse allowing the station to be dealer operated, as was promised to the Town fathers. After eight and a half years of work, I was finally required to vacate the old station and Humble Oil took over the new location with a manager. After two years of operation as a full service Exxon, they turned it into their secondary brand, Alert gas station, selling strictly gas only.

In those eight and a half years of working that station I had given Humble Oil checks totalling over three and a half million dollars and all for what - and then they said thank you very much, we are building a new station and out you go.

Today, Senator, you have a law in front of you, a Divorcement law to get the oil companies out of the retail end of the business. They are manufacturers, are drillers and are suppliers to the whole country for the whole nation and they also have to be in the retail end.

There is no other business that I know of where you have a manufacturer and supplier who also controls the retail business. All I can say is one thing. It is true that it happened to me and I was literally born in the Esso Company as both my father and Uncle worked there and it is happening again and again.

If you don't pass this bill for Divorcement, you are going to lose a lot more independent full service stations, in the State of New Jersey

as well as all over the Country. I am very concerned with this. We need your help and we request your help. I will be glad, at this time, to be open to any questions you might have concerning my case and I would like you to vote this Bill out. Thank you.

My name is Al Bayer and I operate the service station located at 419 W. Union Avenue, Bound Brook, New Jersey.

Senators, I have a simple story to tell you, a story that's true but many may find it unbelievable. This is a story of B.P. (British Petroleum) and its subsidiary, William Penn. It is a story of one gas and two names. The quality of both is the same because they are one. The price is the only difference.

For a number of years, we were a Sinclair supplied dealer then under the terms of a merger agreement our Contract was assigned by Sinclair to B.P. (British Petroleum). We then pumped B.P. gas for about 6 weeks. At this time, B.P. pulled our franchise and replaced it with a William Penn logo, which diminished our volume by 50% within a few weeks. All this happened without anyone consulting us or even letting us know in advance that this was about to take place. Bud Gay, District Sales Manager for B.P. told me the overall plan was for B.P. to market all their brands through company operations including the William Penn brand which I had at that time.

I was not allowed to sell under the B.P. label although the Bill Heads on the delivery tickets were ablazoned with the B.P..logo or label.

B.P. then bought a closed Sunoco station three blocks away and opened it using company employees, selling their gasoline at retail prices which were lower than my wholesale price most of the time. I could not compete. I could not remain competitive and the gallons transferred to the B.P. station. I saw my customers in there as I passed by. There was nothing I could do.

They were retailing gasoline for \$104.9 at the same time we were paying \$1.07 wholesale. This story is repeated every day in different areas of this State. That is why we need this legislation before it's too late.

- 2 -

Has there been a sudden change in business methods?? Perhaps we should change our ways like buying at retail, selling at wholesale and make a profit that way. Realizing we won't succeed that way either we are forced to rely on the passage of this legislation.

I own my own place. I do not have the added burden of tenancy under these oil companies and yet under the circumstances I previously described, I could not compete with the manufacturer of the product I was dispensing.

It should be obvious to anyone that when retail prices at manufacturer's retail outlets are lower than the wholesale prices, they charge their dealers that predatory pricing is being practiced.

I do not have the resources to pursue anti-trust litigation under the various laws that are applicable, therefore I seek your help in obtaining the help necessary to the salvation of the small businessmen/women in New Jersey. To this end I dedicate myself and implore your help toward enacting this legislation. Thank you.

~~Submit Testimony~~ Submit Testimony

Al  
Boyer

## State Charges Store Sells Milk Below Allowed Price

By Beth Kalet

Allan Case, owner of The Corner Store in Baptistown, has been charged by the state Department of Agriculture with violating the state's Milk Control Act by charging too little for milk at his store.

A hearing is set for tomorrow in Trenton. The department is seeking an injunction prohibiting Case from selling milk at less than \$1.82 per gallon, according to Woodson Moffett Jr., director of the Division of Dairy Industry of the state's Department of Agriculture. The Corner Store now sells milk for \$1.78 a gallon.

State law forbids retailers to sell milk below their cost. Moffett alleges that Case is selling his milk below cost. Case says this isn't true.

According to state regulation, a retailer determines his own minimum selling price by adding at least 17 cents per-gallon handling costs to his per-gallon purchase price.

Case says he pays about \$1.71 per gallon for his milk. He protests the state's law requiring the 17 cents per gallon handling charge.

According to research done by Moffett's office, Case pays \$1.73 per gallon.

Retailers who can prove they spend less than 17 cents per gallon to handle milk or that local competition demands they charge less, can petition Moffett.

As Moffett explains it, while there is no state-set minimum selling price for milk, there is a "floor" price. New Jersey discontinued its minimum milk price limit in 1980 in favor of the current plan.

The 17 cents-per-gallon handling charge is the handling cost "for the most efficient dealers and stores in the state," Moffett says. He added that he doubts whether a small store like The Corner Store could handle milk for less.

In addition, he says that Case has never applied to his office asking to charge less.

Case claims his costs are not that high. Although he doesn't make a profit on milk, he says he doesn't lose money on it. "I sell milk as a leader to bring people into the store."

The Milk Control Act was established to "provide a stable market free from destructive competition," says Moffett. He notes that in states which have dropped price controls, brief periods of low milk prices have been followed by a collapse of small, independent dairies resulting in exorbitant milk prices. "Milk prices in New Jersey are among the lowest in the nation," he said.

The state's suit against Case asks for a fine of \$50 for the sale of the first gallon of milk sold in violation of the act, and \$200 for each additional gallon sold. Moffett says these fines are fixed in the act, which was initially adopted in 1933.

The suit claims the state first became aware of Case's alleged violations in March. Case was selling milk for \$1.74 a gallon, but he told Moffett he was competing with the Rustic Liquors and Gourmet Deli Shop in Kingwood, which was selling milk at \$1.78 a gallon, according to the suit.

After the Rustic learned it was not in compliance with the Act, that shop raised its price to \$1.83, according to the suit.

Case, however, raised his to \$1.78 and was still in defiance of the act, the suit says.

(As of yesterday the Rustic's price is back down to \$1.78.)

Case has written a letter to Gov. Thomas Kean, asserting that the absence of a state-set minimum milk price entitles him to charge the lowest price he can.

My name is Robert Loring and I operate a Getty service station on Beverley Rancocas Road in Willingboro.

Allow me to explain why this legislation is needed. I will give you the view from the street and the picture is not good nor does the foreseeable future hold any hope if this legislation fails to become law.

My supplier, Getty Oil Company, is operating four adjacent locations using salaried employees at minimum wages, in competition with me. They then sell the product for 1 to 2 cents a gallon over the dealer tankwagon price they charge me which they know is less than my cost. They know this because aside from being my competition, they are my supplier and, add insult to injury, they are also my landlord.

Gentlemen, I run a tight operation. I don't have any employees who are excess or dead wood and I assure you that my cost far exceeds two cents a gallon. My rent alone to Getty is the equivalent of 6 cents a gallon. On top of that, I have expenses such as payroll, heat, light, cleaning materials, permits, licenses, payroll taxes, Workmens Compensation, unemployment taxes social security taxes, telephone, electricity, toilet paper, office supplies, bank charges, interest, water and sewer charges, maintenance costs, soap, towels, windshield wipes, uniform rentals and the list goes on and on.

If Getty has the same costs to bear then you may ask, how can they sell their gas cheaper than I. Simply stated, they use their upstream profits, profits made on production, refining and transportation to subsidize the downstream operations in their company operated outlets.

How long will this last? Until the competitors (their dealers) are gone.

Predatory pricing is designed to eliminate competition. Once completed, they have the market to themselves, competition ceases to exist and all of us are victimized.

Can you picture the ways these companies can predatorily price and at the same time hide behind the anti-trust laws. A substantial increase in our rent reacts in the identical manner as an increase in the dealer tankwagon price (wholesale price). The elimination of maintenances carries the same reactions, sur-charging for credit card use, etc.etc.etc.

Certainly, we have anti-trust laws, the Robinson-Patman Act, Sherman Act, our State anti-trust acts, but to a small dealer or small businessman/woman the discovery costs are so prohibitive, they make these laws almost non existent for us.

We don't want preferential treatment. All we ask is for you to allow us to compete fairly. Mandate all to start from the same starting point and for all to run the same distance. We don't think this is too much to ask.

Senators, we cannot compete against an Oil Company, especially when you handicap the little guy and extend every advantage to the big corporation. We don't blame you for this situation.. You did not cause this problem, it just happened. You, however, can correct it, and I fervently hope you will by voting for this Bill.

My Getty Sales representative told me I was the only Getty dealer operating between Camden and Trenton. The rest are company operated. This area had to have at least 20 dealers last year. All are gone except for myself and I don't know how much longer I can hold out. We, all of us small businessmen need your help. Won't you please respond?

I thank you for your courtesy, attention and time.

My name is Harry Lehman 3rd and we operated an Esso, then an Exxon station at Broadway and Sunset Blvd. in West Cape May for over 50 years.

My father and grandfather preceded me at this location. After all those years, Exxon decided to close the outlet and they offered to sell us the property. If we purchased the property, they would remove the pumps and tanks leaving us to seek new suppliers and to install our own tanks. The reason they gave was that this location was not profitable to them and our tanks were getting old.

The asking price was beyond our ability to pay while the gallonage we pumped was typical of seashore stations.

Exxon like the other companies, wanted to consolidate the volume into giant pumpers, selling large quantities of gasoline and motor fuels.

The convenience and competitiveness are being eliminated or sacrificed for higher profits.

If something isn't done to halt this elimination process, the consuming public will be left to the mercy of the big marketers and the small and medium sized dealers will have gone.

We are watching the elimination of competition and the beginning of an era of control and monopoly that is worst than the past.

You can change this by enacting this Bill on behalf of all of us. Preserve free enterprise by protecting what we have left.

Exxon is eliminating almost 100 locations this year. Where will the people who used these stations go?

The oil companies control can be held at bay if this divorcement legislation passes,

On behalf of the three generations of dealers in our family, I ask you to vote to support divorcement. Thank you.

1980	miles gals
Jan.	20,700
Feb.	20,702
Mar.	26,454
April	26,548
May	33,954
June	38,252
July	70,266
Aug.	57,798
Sept.	37,449
Oct.	25,478
Nov.	8,700
Dec.	12,750

Lehman's Exxon

TESTIMONY OF  
NEW JERSEY PETROLEUM COUNCIL  
BEFORE  
SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE  
AUGUST 12, 1982

Mr. Chairman, Members of the Committee:

The New Jersey Petroleum Council is a trade organization representing oil companies which supply most of the gasoline and other oil products sold in our state.

The Long History

The matter before you today in Senate 455, sponsored by Senator Dumont, usually referred to as "divorcement", is one of those topics of legislation which seems to have nine lives. Year after year it dies, only to be reintroduced and resurrected. It has been with us in basically the same form in various committees, including this one, session after session. Similar bills have been pending in several other states as well as in Congress. "Divorcement" has been promoted nationally and in New Jersey by organizations of service station dealers for the purpose of bettering themselves economically under the guise that it will benefit consumers

This is not the case. In reality, this type of legislation is seriously anti-competitive. It is special-interest legislation in the sense it would remove competition from the marketplace for one special group of retailers.

It is not as if the concept of divorcement -- which would force refiners and jobbers to give up operating their own service stations -- is a new idea. It isn't.

#### The Federal Level

The Federal Department of Energy in a study mandated by Title III of the Petroleum Marketing Practices Act (PMPA) was directed to report to the Congress on the state of gasoline marketing. The service station dealers supported this study.

It was the most comprehensive study done at the federal level on the issue of integrated oil company competition using salaried stations versus dealers.

Here is a classic case of a special interest group pressing for an investigation of alleged abuses, then making a 180-degree turn to condemn or reject the investigation when it does not produce the desired results. The result of the study by the Office of Competition was a 268-page report titled "The State of Competition in Gasoline Marketing." What it found was that there had not been a massive movement by refiners into direct retail selling of gasoline. It found no evidence that companies had mounted campaigns to drive dealers out of business. It found no evidence of predatory pricing or that company-operated stations were being subsidized by refiners. The official government study recommended against enactment of retail divorcement legislation.

The U.S. Department of Energy, the Justice Department and the Federal Trade Commission have since taken positive action to oppose retail divorcement. In fact, no federal executive

agency supported retail divorcement legislation in Congress. These agencies have testified in opposition when bills are considered at the federal level. The result is history at the federal level, and similar to that in many states, where the organized dealer group promoting these efforts has been rejected by Congress many times over, as recently as this Spring, after lengthy hearings.

#### Other States Action

Partly because of these experiences, divorcement laws have been defeated in other Legislatures again and again. In all, since the first divorcement law was enacted in 1974, there have been 156 divorcement bills failing to pass in the various states and District of Columbia. Of the handful enacted, one has since expired, another is considered close to repeal and another has been twice amended.

The best-known example, where divorcement is a fact, is Maryland. Neutral observers who have examined what happened there after divorcement will tell you the law hasn't worked. Exhaustive studies have shown that, despite all claims to the contrary, Maryland consumers did not benefit. The divorcement law there, similar to the one being debated today, essentially resulted in less competition, less availability of gasoline, less convenience in buying it and overall higher prices. According to a detailed economic study, the average price per gallon at full service stations, after divorcement, increased about 4.7¢ per gallon. There were brand name suppliers forced to withdraw from the state.

In a court action, the U.S. Supreme Court observed that, while the Maryland law was enacted constitutionally, the consuming public might be injured by retail divorcement and that the evidence presented cast some doubt on the statute's wisdom. The U.S. Department of Justice noted that "...it also is reasonably clear that over the long run consumers will pay higher prices as a result."

Another nearby state, Connecticut, also has tried a divorcement law. It has had big problems there, too, and already has been amended. For example, the state Transportation Department found independent dealer operation of stations on the state Turnpike had resulted in shoddy service, fewer hours of operation and much higher prices. So the Legislature quickly deemed it necessary to again allow direct operation of these stations by oil companies.

#### The New Jersey Experience

Yet the backers of this type of bill keep making the same old charges. They discount national and state government studies and statements. They dismiss university professors detailed analysis and testimony. I believe the records speak for themselves and are well researched, documented and available to you on the record.

Let's closely examine the number of company-operated stations. The annual survey conducted by the New Jersey Petroleum Council major company members revealed approximately 200 company-operated stations out of slightly more than 4,600 surveyed. I have included the most recent study in my prepared presentation. These figures may be verified and submitted for

the record by contacting the New Jersey Division of Taxation, which keeps records and listings of all service station operators by law in this state. The national statistics are similar. The federal DOE found that on a nationwide basis, the number of refiner-operated stations between 1972 and 1980 increased by less than 100. While stations operated by independent and small refiners went up by about 500, the stations operated by the large integrated companies actually went down by more than 400. Professor Umbeck of Perdue noted in testimony recently, "If company-operated stations continue to increase their market share at the rate since 1972, it would take them just under 200 years to complete the job."

An examination of the total taxable gallons sold in New Jersey would illustrate best the market share changes during the most recent ten-year period. The jobber or wholesaler gallonage has increased from 11.9% market share in 1971 to 25.5% share of all gallons sold in New Jersey during 1981. Yet despite these facts certified by the Division of Taxation that doubling of market share has occurred, some backers of divorcement suggest the majors are to blame. The jobber community is also among the fastest growing segments of the marketplace in the nation.

#### Gasoline Marketing: A Competitive Industry

It is the overwhelming consensus of those who have studied the matter that the retailing of gasoline is one of the most competitive segments of American industry. Over the years, this segment has undergone major changes as marketing strategies have responded to changing demands of consumers.

These changes have brought about limited service stations -- the gas-only type -- which emphasize low price and high volume. They have brought about the self-serve station, which exists in 48 other states but not New Jersey.

Perhaps you have noticed that the divorcement issue always heats up in New Jersey when movement begins on bills to allow self-service stations. The two issues are entirely separate and have to be considered that way. But the retailers' group has been successful in the past in promoting divorcement -- a trade-off we cannot accept -- to effectively block the self-service issue. Perhaps this year the tactic won't work.

It is true that the total number of service stations has continued to decline. But the reason for that has not been, as the dealers allege, because of a takeover by companies. The basic reasons are many. For example:

1. We now know in retrospect that the industry overbuilt in the 1950's and 1960's. More stations were constructed than were needed to supply the nation's demand.
2. Dealers lost part of their repair and automotive accessories business to aggressive new mass marketers, such as retail tire outlets, department store chains offering automotive repairs, specialty-type repair shops and auto stores.
3. Modern automobiles, while having longer maintenance intervals, became so complex that only the larger stations or dealers could afford to have the sophisticated testing equipment and highly-skilled mechanics necessary to repair and maintain them.

4. Gasoline became more available at convenience store locations. These can offer lower prices because their fixed costs are largely paid by sales of non-gasoline items.

5. The new network of interstate highways sharply changed traditional buying habits. Traffic patterns were shifted to make many of the small mom-and-pop locations casualties.

6. Demand has shown a sizable drop because of higher gasoline prices, higher-mileage cars and the growing conservation attitude on the part of consumers.

Therefore, while some competitors may be hurting because of vastly changing circumstances, the competitive marketplace is thriving and government interference is neither necessary or justified and will create more problems than it solves.

#### A Free Marketplace

It is the company-operated stations which have traditionally been the testing ground for new marketing ideas. They are often found at high-investment sites which include other services such as car washes and car care centers and are training locations for new dealers.

When you consider these facts within the framework of all retailing, this situation is not unusual. Objective studies disclose that nearly all franchising-type industries use both dealer and company-operated outlets. There are markets where dealer-operators may not wish or be able to take the risk involved and where company-operated stations are more economical.

We believe there is room in the New Jersey marketplace for both types of stations. The franchised dealer is essential to our business and we, too, want him to stay in healthy condition. There is no economic motivation for refiners to drive their dealers out of business. But we strongly believe there is great danger in singling out any industry and placing restrictions on it that are not present in other retail industries, such as fast food, hotel, auto dealers and many other marketers.

The franchised dealer is not without protection. He clearly is guarded against unfair competition and discriminatory pricing by a large body of laws. Among them are the Federal Trade Commission Act, the Robinson-Patman Act, the Sherman and Clayton Acts, the Petroleum Marketing Practices Act and our own New Jersey Franchise laws, which many consider the strictest in the nation. The Federal Petroleum Marketing Practices Act, enacted only four years ago, specifically protects dealers from non-renewal of leases for the purpose of converting leased stations to stations operated with company employees and provides for court and witness fees paid by the company. The question has to be considered of how much protection is enough. Further legislation, such as this, would be protectionist and anti-competitive.

Finally, there is often heard at these hearings, usually from dealer spokesmen, references to the so-called "little guy." Who really is this "little guy?" I do not claim it to be the companies since they have to be relatively large to do the huge world-wide job of producing and refining this needed

product. It isn't the dealer either who has a formidable presence. The true "little guy" is the person who pays at the pump. I do not believe that person is protected by removing from the New Jersey scene any class of marketing operations that can offer him good service at lower prices. Yet removing that type of operation is exactly what this bill would do. I hope once and for all you will give this idea the defeat it deserves. The evidence that it is needed is simply not there.

Thank you for your attention.

. Bill Does Not Achieve Intent The oil marketing industry is very complex and competitive. Divorcement affects only one small segment of industry and does not affect all company marketing operations similarly.

. Far-reaching State Economic Impact This bill represents a major change in New Jersey Franchise Law. It will lead to many similar industries (fast food, auto, hotel, etc.) seeking legislation.

. Strict Legal Remedies Already Protect the Dealer The Federal Petroleum Marketing Practices Act (PMPA) and the New Jersey Franchise Act offer dealers the protection they claim they deserve, and specifically under PMPA provide for dealer court costs and witness fees in a successful complaint.

Legislation such as this bill proposed by Senator Dumont should be carefully scrutinized and studied to make certain such interference by government in the marketplace is necessary, justified and beneficial. We believe it creates more problems than it solves, at the expense of the consumer.

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8/12/82

# News Release



New Jersey Petroleum Council  
A Division of the American Petroleum Institute

• 170 West State St., Trenton, New Jersey 08608

• Phone: 392-0800 (609)

FOR IMMEDIATE RELEASE

Newark -- Senate bill 455, sponsored by Senator Dumont, designed to prohibit companies from operating service stations, was branded "anti-consumer, unjustified and unnecessary" by the New Jersey Petroleum Council in testimony delivered today.

The major purpose of this bill is to once again confuse the movement toward self-service gasoline marketing. The reality of the bill is seriously anti-competitive, special interest legislation designed to remove competition for one small group of retailers at the expense of the general public.

. Statistics Do Not Support There is no trend toward company operated stations, according to Petroleum Council statistics, which can be verified by the New Jersey Division of Taxation or New Jersey Department of Energy.

. Similar Studies Have Opposed Divorcement The Federal Department of Energy Office of Competition, the Anti Trust Division of the U. S. Department of Justice, the state Department of Energy have opposed divorcement on prior occasions before many national and state committees. In fact, no federal executive agency has supported divorcement.

August 2, 1982

TOTAL TAXABLE GALLONAGE \*

SOLD IN NEW JERSEY

<u>Year</u>	<u>Total Taxable Gallorage</u>	<u>Total Jobber or Wholesaler Gallorage</u>	<u>% of Total Taxable Gallorage</u>
1971	3,039,212,655	360,937,411	11.9%
1976	3,418,829,483	448,723,654	13.1%
1977	3,470,232,034	448,201,803	13%
1978	3,456,849,636	726,427,923	21%
1979	3,615,105,381	766,809,906	21.2 %
1980	3,530,840,194	821,975,443	23.3 %
1981	3,497,874,627	890,913,029	25.5%

\* Source: New Jersey Division of Taxation  
Motor Fuels Department.

# Boycott trial can start

## Constitution doesn't exempt gasoline dealers from antitrust suit

By NANCY KESLER  
Staff reporter

Businesses that temporarily halt sales to protest government policies aren't automatically protected from antitrust action by First Amendment redress provisions, a federal court recently ruled.

The question is unique in antitrust law, which usually involves unfair practices by businesses to drive out competitors.

The ruling also clears the way for a trial in a class action suit against a gasoline retailers' trade association.

The Pennsylvania and Delaware Service Station Dealers Association refused to sell their products during the height of the 1979 gasoline shortage, contending that the government's allocation and pricing policies were unfair.

The shutdown during the weekend of July 13, 1979, affected about 30 percent of the stations in New Castle County, and a few stations downstate. The strike, which also took place in several other states, got the federal government's attention, and a compromise was reached on July 16, the association said.

But the shutdown also got the attention of Dale Osborn of 37 Caxton Drive, New Castle, who was planning a trip to the beach that weekend. He contended that he had to cancel his trip and went to considerable time and trouble — 43 miles of driving — looking for gas.

He was in no mood for compromise. A week later, he filed a class action suit in U.S. District Court in Wilmington, contending that the association members — 3,700 in the two states — had violated antitrust laws. He said retailers had con-

spired to raise and fix prices, and had cost Delaware and Pennsylvania motorists inconvenience and extra money.

Osborn wants the court to set aside a Department of Energy agreement to increase the maximum profit margin for retail gasoline sales. He also wants triple damages for himself and other motorists who suffered during the strike.

Lawyers for the association originally argued that Osborn couldn't sue because the dealers' boycott wasn't an effort to restrain trade. Instead, they said, it was part of the association's effort to seek redress of its grievances against the government, an action protected by the First Amendment.

U.S. District Judge Walter K. Stapleton ruled there is no blanket exemption when commerce provisions bump into First Amendment provisions. He said that would "require courts to sanction conduct that severely restricts competition even when there is a minimal threat to First Amendment values."

He reasoned that "a boycott, along with its communicative component, has a coercive economic effect, which ordinarily may be regulated without seriously jeopardy to First Amendment interests."

The 3rd U.S. Circuit Court of Appeals agreed.

Now the parties in the suit are working toward a trial date. The case has been split into two parts — one to decide the antitrust issue and one to decide how the association could compensate the consumers that Osborn claims to represent.

In the antitrust part, the court will deal with the issue of whether the boycott was a conspiracy, and if it was, whether it represented an unreasonable restraint of trade.

Osborn contends that consumers were deprived of a competitive market and that the dealers wanted to raise and fix prices.

The association doesn't deny the boycott, but it continues to contend that it was an act of free speech, not an antitrust violation. Its lawyers argue that its effect was not to stifle competition, but to focus on unfairness.

If the association loses on the antitrust issue, the judge will then decide what effect the boycott had on consumers and how they can be compensated.

Osborn's attorneys argue that the boycott was illegal and forced the Department of Energy to change its price margin policy. That, they say, makes the policy change illegal.

Using that reasoning, the 15-cent hike in gas prices that occurred between the time the policy was changed and when the government decided to deregulate retail sales would become the basis for a damage claim, which could affect all gasoline buyers in both states.

If Stapleton doesn't declare the policy illegal, the damage claim would focus only on Delaware and Pennsylvania motorists who had trouble buying gasoline during the boycott period.

But association lawyers see great problems with the case as a class action. They argue that the class of consumers that Osborn claims to represent is simply too vague and unmanageable.

*Wilmington Morning News*  
3-23-82

From: Newark Sunday Star-Ledger  
Section Three: Page 2  
Date: August 8, 1982

### ***Self-serve gas***

While gasoline prices were soaring to undreamed of heights, frustrated New Jersey motorists were anxiously waiting for the Legislature to legalize self-service at the pumps — as 48 other states had already done.

After five years of stalling, the Senate Law, Public Safety and Defense Committee has finally released — without recommendation — a bill to achieve this purpose.

Eliminated from the measure are amendments that had been tacked on earlier in a deliberate maneuver to sabotage the legislation. These provisions would have required stations to maintain at least one island of full-service and would have barred refiners and wholesalers from operating retail stations. The first provision would have limited the potential savings of a self-service station; the second would have seriously restricted competition among retailers, to the detriment of consumers.

Motorists who have traveled in other states are aware of the savings they pocketed by pumping their own gas, savings of three to five cents or more a gallon. But some key legislators have been against legalizing do-it-yourself savings, citing a concern for the elderly and handicapped and ignoring the obvious fact that there are elderly and handicapped in the 48 states that enjoy self-service.

Opposition to the bill has not been coming from older or disabled residents; it is coming from station owners who want to keep things the way they are for their own self-interest.

Motorists who are willing to pump their own gasoline are entitled to the savings which result from their effort. They have been denied these fruits of their labor for too long. The Legislature should recognize this and make up for lost time by moving speedily to legalize self-service stations.

NEW JERSEY PETROLEUM COUNCIL  
SERVICE STATION SURVEY  
TWELVE MAJOR OIL COMPANIES\* - MAY 17, 1982

Total number of stations carrying the brand or brands of these companies	4,665
Total number of stations operated directly by these companies	182
Ratio of company-operated stations to total number of stations	3.9%
Total number of stations leased to dealers	1,960
Total number of stations owned by dealers	1,880
Number of dealer-operated stations changed to company-operated stations since 1981	21
Number of company-operated stations changed to dealer-operated stations since 1981	5

Balance of stations are jobber or distributor operated.

\* AMOCO  
ARCO  
BP  
CHEVRON  
CITGO  
EXXON  
GETTY  
GULF  
MOBIL  
SHELL  
SUN  
TEXACO

STATEMENT OF  
BP OIL INC.  
[A WHOLLY OWNED SUBSIDIARY OF  
THE STANDARD OIL COMPANY (OHIO)]

TO THE  
NEW JERSEY SENATE LAW, PUBLIC  
SAFETY AND DEFENSE COMMITTEE

REGARDING SENATE,  
NO. 455

BY

A. C. TESCHNER  
RETAIL DIVISION MANAGER  
BP OIL INC.  
PHILADELPHIA, PA

AUGUST 12, 1982

NOTE: Portions marked with an asterisk will be presented orally.

STATEMENT OF  
BP OIL INC.  
[A WHOLLY OWNED SUBSIDIARY OF  
THE STANDARD OIL COMPANY (OHIO)]  
REGARDING SENATE,  
NO. 455  
AUGUST 12, 1982

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INTRODUCTION

- \* This is a statement of BP Oil Inc. submitted by A. C. Teschner, Retail
- \* Division Manager, in opposition to Senate, No. 455, an act supplementing
- \* the "Unfair Motor Fuels Practices Act" approved September 18, 1953.
- \* As introduced, Senate, No. 455 would prohibit refiners of petroleum products from opening or operating retail gasoline outlets with company personnel. In addition, the bills would require uniform application of voluntary price allowances and rentals and equitable apportionment of fuels during a shortage.
  
- \* BP Oil Inc. is strongly opposed to Senate, No. 455. It represents
- \* anti-consumer, special interest legislation designed to remove a
- \* legitimate competitive force from the marketplace at a high cost to New
- \* Jersey consumers -- in the amount of about \$14 million per year. This
- \* bill will hurt not only consumers but also thousands of company employees
- \* who will lose their jobs with our company and with others who operate
- \* stations with their own employees. While we regard all of the provisions
- \* of the bill as unnecessary and unwarranted, our major concern is with the
- \* retail divorcement provision which would prohibit us from having our own
- \* employees operate stations. As a result, our comments will concentrate on the misgivings of retail divorcement. We feel certain that others will address the remaining onerous provisions of the bill.

RETAIL STATION DIVORCEMENT

- \* Senate, No. 455 was introduced in response to organized dealer allegations that the reduction in the proportion of gasoline volume moved through dealer outlets since 1972 was the direct result of a concerted effort by refiners to eliminate dealers. They contend that refiners have engaged in predatory pricing and have subsidized company-operated stations with profits from other operations.
  
- \* These accusations do not stand up in the face of facts. The significant decline in the number of service stations during the 1970s was caused by rapidly changing buying patterns of the American motorists and a basic change in service station economics. It was not part of a concerted effort by oil companies to eliminate dealers.
  
- \* By the mid-1970s, consumer buying patterns for gasoline and automotive products were rapidly moving away from predominant use of conventional service stations and gasoline prices had spiraled, slowing the growth in demand. At the same time the cost of running a conventional service station increased substantially as payroll, equipment, utilities, taxes and service expenses soared. Low volume outlets could not cover costs. Direct expenses of 2¢-4¢ a gallon were common for efficient gas-only stations, while costs at full facility outlets were frequently running two to four times those levels. The combination of market segmentation and basic economics resulted in a large number of conventional station closings.

Congress, under Title III of the Petroleum Marketing Practices Act, required the Office of Competition of the Department of Energy to assess the pricing practices of petroleum marketers.<sup>1</sup> Their study concludes that the decline in the proportion of sales through dealer outlets was the result of changes in consumer preference, not predatory pricing at nor subsidization of company-operated stations.<sup>2</sup> Rather, company-operated stations were operating profitably. The report shows that no inequities other than those created by governmental regulations themselves existed in the marketplace. Since these regulation inequities were removed by decontrol of the petroleum industry in January 1981, Senate, No. 455 can only result in creating new inequities in the marketplace -- protecting dealers at the expense of refiners, who also compete in the petroleum industry. The result will be a market with less competition, not more, and an industry burdened again with unnecessary and costly regulations.

BP operations in New Jersey are consistent with the Title III findings. We are not engaged in predatory pricing nor subsidization of our company-operated network.

- \* If enacted, retail divorcement would be costly to New Jersey motorists.
- \* Elimination of company-operated stations would immediately raise gasoline prices to motorists. A number of studies bear out this conclusion:
- \* The latest study -- January 1982 -- The Economic Effects of Retail Marketing Divorcement, A Maryland Study by Professors John R. Umbeck and
- \* Jack Barron of Purdue University, concludes that Maryland divorcement
- \* reduced competition among gasoline retailers, raised retail prices and

\* did not benefit consumers. This was an exhaustive investigation of  
\* Maryland service stations before and after divorcement. It showed that  
\* the average price of gasoline increased 1.9¢ per gallon at divorced  
\* stations and 1.0¢ per gallon at competitive non-divorced outlets. If  
\* this same economic impact occurred in New Jersey upon enactment of  
\* Senate, No. 455, we conservatively estimate that motorists would pay  
\* about \$14 million more per year under dealer operation.<sup>3.</sup>

\* When company-operated stations were being eliminated in Maryland, there  
\* was an immediate push by the Dealer Association for dealers to raise  
\* prices. This prompted the Chief of the Antitrust Division of the Maryland  
\* Attorney General's Office to write the Association, warning them of  
\* possible antitrust liability. The references concerning this incident  
\* are attached to this testimony.<sup>4.</sup>

Further, in Maryland, after divorcement was in operation and while price controls were still in effect, the Department of Energy ordered 160 service station operators to reduce their prices and pay fines for overcharging their customers for gasoline. Two hundred additional stations were issued warnings for overpricing, but to a lesser extent. This action by the DOE followed a near 100% census conducted by the comptroller's office in Maryland which showed that one out of every five stations in the state was overcharging. While these citations may reflect closer scrutiny of prices in Maryland than in other states, they may also show the environment which develops when competition is lessened by the removal of one class of competitor (refiner-operated stations).<sup>5.</sup>

\* Dealers claim that if divorcement legislation is not enacted, major oil  
\* companies, through company-operated service stations will become a monopoly  
\* and totally control the marketplace. The fact is that only about 7.5% of  
\* the service stations in New Jersey are company-operated and they account for  
\* 11% of the state volume according to the DOE Title III Study. That hardly  
\* represents a monopoly. A real monopoly would exist if company-operated  
\* stations, and the competition they represent, were eliminated by divorcement  
\* legislation. The power over the consumer that would be concentrated in the  
\* hands of one group, the dealer association, was demonstrated during the  
\* middle of the 1979 gasoline shortage. New Jersey dealers threatened to  
\* strike and close their stations in order to force the U. S. Department of  
\* Energy to allow them to raise gasoline prices and have their allocations  
\* increased. The threat of a strike was so real that the Governor solicited  
\* commitments from refiners to keep their company-operated stations open and  
\* supply gasoline through them in the event of the dealer strike.<sup>6</sup> This is  
\* just one instance which shows the need for both types of operations --  
\* company-operated and dealer-operated stations -- to act as a check and  
\* balance in the marketplace for the benefit of the consumer.

\* Not only will Retail Divorcement cost the consumer money, freedom of choice  
\* and convenience, it will jeopardize the livelihood and cause serious job  
\* dislocations for thousands of company-station employees throughout New  
\* Jersey. All company-station employees -- managers, assistant managers,  
\* mechanics, bookkeepers, cashiers, island salespersons -- will have to find  
\* new employers, needlessly disrupting income continuity and benefits that  
\* come with being associated with a substantial company. While many of the  
\* positions would still be in existence if stations converted to dealer

operation, it is highly probable that the new dealer would select employees other than those presently at the station. And, of course, present managers who do not have the financial resources, currently between \$20,000 and \$40,000, or desire to become a dealer, would be out of a job.

- \* BP alone has over 800 full and part-time company-station employees at 53
- \* outlets whose livelihood would be impacted by this legislation. Their
- \* payroll and benefits in 1981 amounted to over \$4 million. This would be a
- \* stressful experience and would be taking place at a time when unemployment
- \* is high and jobs are difficult to obtain.

SUMMARY

- \* In conclusion, a large number of states have rejected retail divorcement,
- \* either through inaction or by legislative vote. Since the enactment of the
- \* Maryland statute, similar legislation has been introduced in 41 states and
- \* in the District of Columbia under pressure from dealer organizations. To
- \* date only four states and D.C. have passed bills. Most states have seen
- \* such legislation for what it is -- special interest legislation to protect
- \* one group of competitors from another, to the detriment of the consumer.

Petroleum regulations were lifted 19 months ago. Legislation such as Senate, No. 455 runs counter to the move to lift government controls from the marketplace and allow the consumer to benefit from competition in a

- \* free market. It would be unfair to consumers if this legislation is passed
- \* and motorists in New Jersey find out that gasoline prices increase when
- \* company-operated service stations are eliminated from their state. We urge
- \* you to totally reject the concept of gasoline retail divorcement as embodied
- \* in Senate, No. 455.

FOOTNOTES

1. The State of Competition in Gasoline Marketing - Final Report, U.S. Department of Energy, Office of Competition, Washington, D.C. (January 1981).
2. Exhibit 1.
3. The Economic Effects of Retail Marketing Divorcement - A Maryland Study, John R. Umbeck and Jack Barron, Purdue University (January 1982).
4. Exhibit 2 and Exhibit 3.
5. Exhibit 4.
6. Exhibit 5.

0002Em

EXHIBIT 1

RELATIVE SHARE OF VARIOUS  
CLASSES OF TRADE  
(FOR 28 LARGEST REFINER-MARKETERS OF GASOLINE)

<u>Channel of Distribution</u>	<u>Relative Share 1972</u>	<u>Relative Share 1979</u>	<u>Relative Share Change 1972-1979</u>
End Users	9.6%	5.7%	-3.9%
Company-Operated	6.6	11.0	+4.4
Dealers	50.7	36.9	-13.8
Branded Jobbers & Unbranded Independents	33.0	46.4	+13.4

SOURCE: The State of Competition in Gasoline Marketing, U.S. Department of Energy, Washington, D.C., January 1981.

0002Em



EXHIBIT 2

9701 ELLINGTON ROAD SUITE 212  
GREENBELT, MARYLAND 20770  
AREA CODE (301) 341-1000

*Greater  
Washington/Maryland Service Station Association*

MEMBER NATIONAL COUNCIL OF PETROLEUM RETAILERS

WOODY COLE  
*President*

BULLETIN #3  
February 6, 1979

VICTOR RASHEED  
*Executive Director*

WARNING TO DEALERS... DON'T BE CAUGHT

The new standby, emergency gasoline pricing controls and allocation regulations just released by the Department of Energy, give it the authority to freeze gasoline prices at the price posted anytime in the 60-day period, immediately prior to the regs being implemented.

THERE IS A STRONG PROBABILITY THE EMERGENCY REGS WILL BE IMPLEMENTED IN EARLY APRIL...SO LOOK OUT!!!!

In the event of an extended supply shortage as now appears to be inevitable dealers caught with unrealistic prices in a period of shortages-could be quickly forced out of business.

This is no longer a competitive situation. This has become a matter of survival. Dealers will need every cent of allowable profit to offset the anticipated supply shortage if they are to survive.

Our information is that with several majors, (Shell, Texaco & Arco), already granted permission to use the larger of either 1972 or 1977 volumes as a base period for future allocations, another five or six including Exxon, Amoco, Gulf & Mobil are down at D.O.E. for the same thing.

The new regs also give D.O.E. the right to maintain a retail price differential between regular and unleaded gasoline. Unleaded wholesale prices will also be allowed to increase.

Shell has increased four cents in recent weeks, because it has had to purchase gasoline on the spot market. This is rapidly drying up and the price is going out of sight.

Jobbers and independents are being forced to raise prices because their costs are much higher in many cases than dealer's tank wagon. This means that dealers are now in the driver's seat. The majors are more concerned with protecting their dealers than independents and jobbers. They want you to survive. If you are hurt by your allocation, don't be afraid to ask your district manager for a rent adjustment.

WASTE OIL DONATIONS FALTER

Since the association switched its waste oil program to Baumgardner's Waste Oil Service, the old pickup contracts are not being used.

Dealers and drivers have been confused as to the amount being donated to the association. As a result we are enclosing a coupon with a return envelope for you to specify the amount you wish to donate to the association. This will be made up into a new master list so that drivers will automatically issue you a check for the dealer's share and a duplicated credit slip for the amount donated to the association. Donations will be acknowledged by us each month. This money has been a great help to G.W.M.S.S.A..

The going rate is 10 cents per gallon and all Waste Oil Service drivers have identity cards signed by Vic Rasheed. Their trucks all have three-axles, silver tanks with red cabs.

Atlantic and others are still representing themselves as collectors for the association. This is not true. Waste oil is also still being stolen at night. Please take the precautions necessary to guard against this theft.



THE ATTORNEY GENERAL  
ANTITRUST DIVISION

ONE SOUTH CALVERT STREET  
11TH FLOOR  
BALTIMORE, MARYLAND 21202  
301-383-2087

April 24, 1979

Victor Rasheed, Executive Director  
Greater Washington/Maryland Service  
Station Association  
9200 Edmonston Road  
Suite 212  
Greenbelt, Maryland 20770

Dear Mr. Rasheed:

In your February 6, 1979 Action Bulletin No. 3, you urge member/Dealers to increase their prices because of new stand-by, emergency gasoline pricing controls and allocation regulations recently released by the federal Department of Energy. Because your members are competing businessmen, your recommendation raises serious antitrust concerns.

We interpret your recommendation as a invitation to your members to raise their prices to non-competitive levels. Should this recommendation be accepted, an agreement among competing businessmen affecting their prices will have been completed. Such agreements are per se unreasonable and therefore illegal under Maryland and federal antitrust laws.

We recognize that there is a fine distinction between keeping your members informed regarding important new regulations that effect their businesses and encouraging price collusion. Your Action Bulletin No. 3 may have crossed that line. Although we cannot say that the Attorney General will not pursue an antitrust action against you and your Association should evidence of an agreement among dealers to raise prices be forthcoming, we strongly recommend that you undertake the following actions to dispell the effects of your February 6th Bulletin.

Victor Rasheed, Executive Director EXHIBIT 3  
April 24, 1979 (Page 2)  
Page 2

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First, immediately inform your dealer/members that as independent businessmen they must make their own judgments regarding prices.

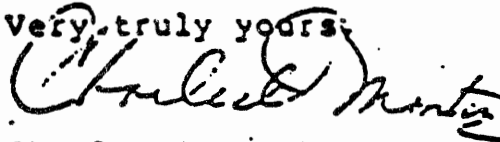
Second, inform your dealer/members that acceptance of the recommendations in your February 6th Action Bulletin regarding retail prices could subject them to antitrust liability.

Third, notify your dealer/members of the Attorney General's concerns by distributing a copy of this warning letter to them.

As gasoline shortages become increasingly serious, the members of your Association should recognize that any allegations of price collusion or concerted price gouging by dealers will be thoroughly investigated and prosecuted by this Office. Illegal profiteering at the expense of Maryland motorists will not be tolerated. By the enactment of innovative gasoline marketing legislation, the Maryland General Assembly shown confidence in your claims that without unfair competition from company operated stations, vigorous competition among retail dealers will continue to exist. Any indication that the competitive environment among your dealers has been restrained by your Association's activities will be promptly dealt with in the future.

Please contact me if you have any questions regarding this matter.

Very truly yours:



Charles O. Monk, II  
Assistant Assistant General and  
Chief, Antitrust Division

COM:ph

# 160 gas stations in Md. ordered to reduce prices

By KAREN E. VANDENBERG

The federal Department of Energy has ordered more than 160 service station operators in Maryland to roll back their prices and pay fines totaling \$25,000 for overcharging customers for gasoline.

The overcharges totaled \$30,000, and the dealers have agreed to "pay back" that amount to their customers by rolling back prices below their maximum price ceiling for a time, the department said.

Each dealer was fined an average of \$154, a department spokesman said. He could not say what the highest and lowest fines were.

In addition to ordering fines and roll-backs, federal energy officials issued

## List of Maryland service stations found overcharging for gasoline.....As

warnings to 200 other service stations in the state who were also alleged to be overcharging, but by lesser amounts.

The actions are the result of a 14-month investigation of about 340 stations in the state by the department's Office of Enforcement, which was prompted by a survey earlier this year by the state comptroller's office. The comptroller's survey found that one of every five stations in Maryland was charging more than federal price regulations allowed.

In doing the survey, auditors from the comptroller's office visited 1,173 of Maryland's 3,369 stations. No other state has ever undertaken such an exhaustive survey of gasoline prices, federal energy officials said.

In the Department of Energy's own investigation, investigators visited more than 300 stations and audited the dealers' books, according to Jack Vandenberg, a spokesman for the department's Economic Regulatory Administration.

In issuing the warnings, however, the department relied on the information supplied by the state comptroller's office, he said.

Of the stations that were audited, 160 of them were found to be overcharging, a few by as much as 11 cents a gallon. The average overcharge was about 2 cents a gallon, Mr. Vandenberg said.

The largest number of stations were in Prince Georges county, Montgomery county, Baltimore and Baltimore county.

Another 150 stations were found to be in compliance, Mr. Vandenberg said, and 25 stations still have to be audited.

Nearly all of the stations found to be overcharging have signed consent orders

with the department, thereby agreeing to pay the penalty and roll back prices to ceiling levels or below. Some may already have rolled back their prices as directed, Mr. Vandenberg said, because they were audited more than a month ago.

Fines were assessed according to the amount of overcharging involved and the length of time for which the violation occurred, Mr. Vandenberg said.

In signing the consent agreements, the department does not officially charge the stations with any violations and the dealers do not admit or deny guilt.

However, two dealers who are alleged to be in violation have contested the department's findings. As a result, energy officials have issued them notices of probable violation, and they will have an administrative hearing.

If found in violation, they will have to roll back prices and pay fines.

These two dealers, whom Energy Department officials declined to name, are alleged to have overcharged customers by more than \$3,000.

The department's list of stations signing consent orders named only 134. The others were not listed because of a department policy of not releasing names until 10 days after an order is signed, Mr. Vandenberg said.

A final list will be issued later.

The maximum price ceilings are different for each dealer, and are determined by a formula developed by the department.

Reprinted from:  
THE BALTIMORE SUN  
April 29, 1980

(with permission)

Dealers take the wholesale price they pay for their gasoline and add on 16.1 cents a gallon to pay for their operating expenses and profit margin. They add the state and federal taxes onto that amount to come up with their ceiling.

At the time of the audits, which took place in March and April, gasoline cost more than \$1.20 a gallon at most stations.

In the letters of warning to the 200 dealers, the Energy Department reminded the dealers how to compute their price ceilings and told them that if they are overcharging they should roll back prices immediately.

If the dealers who were warned are found to be overcharging in the future, they will be dealt with more severely, Mr. Vandenberg said.

He would not reveal the amount by which these dealers were alleged to be overcharging. To do so, he said, would be to alert service station operators as to how much they can overcharge while receive only a warning instead of a fine.

Officials of the state comptroller's office and the Department of Energy yesterday praised the cooperation between the state and federal agencies in the investigation.

After completing its survey, the comptroller's office had turned over all its information to the department.

"The initiative and cooperation by Maryland officials is an excellent example of benefits to consumers that result from effective coordination between federal and state governments," the department said.

# Byrne orders \$5-\$7

EXHIBIT 5

## minimum buy

By DAVID HARDY

Gov. Byrne imposed minimum purchase restrictions on New Jersey gas buyers yesterday and then announced that a few major oil companies have agreed to distribute "several million gallons" of July fuel to service stations this weekend.

The new plan dumps the at-least-half-empty-tank requirement for motorists but sets a minimum purchase of \$5 for four-cylinder cars and \$7 for larger autos. These purchase restrictions will not apply on toll roads such as the Garden State Parkway and the New Jersey Turnpike, where \$3 limits are in effect.

Byrne said he felt the minimum purchase requirement was necessary because "enforcement of the half-tank rule is spotty at best" and had not significantly reduced the long lines at service stations.

The governor's announcement on the new minimum-expenditure rule and the promise of additional fuel were made at a Statehouse press conference immediately following a three-hour meeting of Byrne and officials of 10 major oil companies — Arco, Ashland, British Petroleum, Chevron, Citgo, Exxon, Gulf, Shell, Sun and Texaco.

### Crunch to be averted

The meeting was called by Byrne in hopes of averting the severe gas crunch that will develop this weekend at gas pumps if the 3,000-member New Jersey Gasoline Retailers Association carries out a planned shutdown scheduled to begin on Sunday.

The closings, which could last

through July 4, are in protest against skimpy allocations and frozen margins, according to association Executive Director Jerry Ferrara.

Byrne said he hoped the "assurances" by oil companies to begin delivering the July allocations early would induce more of the gas stations to stay open. He said that the oil companies agreed to make Sunday deliveries, "and this involves a sacrifice by them because they'll have to pay double time to deliverymen."

According to Byrne, "most" of the oil companies also agreed to keep their company-operated service stations open on Sunday. But considering that these comprise a very small percentage of the 5,100 service stations in New Jersey, they are not likely to materially ease the crisis that would result from a mass shutdown by the independents.

### Plan to go through

Ferrara, reached at a convention in New York State, said late yesterday that the association members still planned to go through with the shutdown Sunday. He declined to say whether the shutdown would last more than one day, but he predicted that at least 80% of the association's members would close.

When informed about Byrne's imposed minimum-purchase regulation, Ferrara said the governor's latest step would only cause gas stations to "ex-

haust their daily quota of gasoline faster."

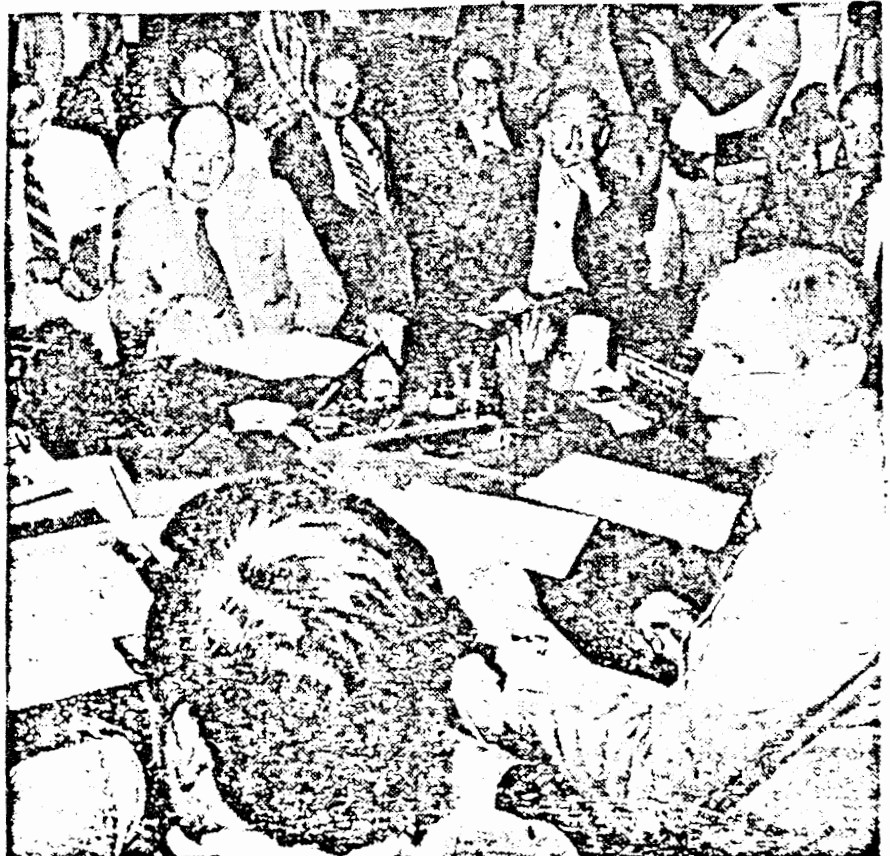
He said that under present conditions the average service station "has barely enough gas to sell for more than an hour anyway."

Even Byrne conceded at the press conference that the new minimum-purchase rule and the promise of additional fuel offered no real assurance that motorists would have sufficient gasoline for the coming holiday weekend.

In fact, the governor cited the "panic psychology among drivers" as the real obstacle in bringing the gasoline crisis under control.

"We don't have a guaranteed plan yet, but we may be back here every week until we do," Byrne said.

Flanked by dozens of oil company executives as he spoke to reporters, Byrne carefully avoided attacking the oil companies in the same fashion as State Energy Commissioner Joel Jacobson.



Gov. Byrne (right) meets with oil company representatives in his Trenton office.

SUBJECT:

SENATE BILL 455

BEFORE THE:

SENATE LAW, PUBLIC SAFETY  
AND DEFENSE COMMITTEE  
NEW JERSEY SENATE  
AUGUST 12, 1982

PRESENTED BY:

E. G. REILLY, VICE PRESIDENT  
RETAIL MARKETING  
ATLANTIC RICHFIELD COMPANY

THOSE WHO ADVOCATE PASSAGE OF LEGISLATION SUCH AS S.B. 455 ARGUE THAT IT IS NEEDED IN ORDER TO STOP THE DECLINE IN THE NUMBER OF STATIONS OPERATED BY INDEPENDENT DEALERS. THEY RATIONALIZE THAT THIS DECLINE HAS BEEN CAUSED BY AN INCREASE IN THE NUMBER OF REFINER-OPERATED STATIONS AND THE ALLEGED PREDATORY PRICING PRACTICES OF SUCH STATIONS.

IN MY REMARKS TODAY, I WANT TO ADDRESS THESE CONTENTIONS BY STRESSING THE FOLLOWING MAJOR POINTS:

- FIRST, THE DECLINE IN THE NUMBER OF STATIONS OPERATED BY INDEPENDENT DEALERS IS THE RESULT OF CHANGES IN CONSUMER BUYING HABITS AND ECONOMIC FACTORS AFFECTING GASOLINE MARKETING.
- SECOND, THERE IS NO RATIONALE TO SUPPORT THE VIEW THAT MAJOR REFINERS WILL DRIVE THEIR OWN INDEPENDENT DEALERS OUT OF BUSINESS.
- AND THIRD, THAT PASSAGE OF THIS LEGISLATION WILL LEAD TO HIGHER PRICES, SINCE IT IS AXIOMATIC THAT ELIMINATION OF COMPETITORS FROM A MARKETPLACE RESULTS IN BOTH LESS COMPETITION AND PRICE INCREASES.

LET'S CONSIDER THE DECLINE IN DEALER OPERATED STATIONS. LOOKING BACK OVER THE LAST FEW YEARS, RADICAL CHANGES HAVE PERMANENTLY ALTERED THE WAY GASOLINE IS SOLD. PRIOR TO THE ARAB EMBARGO, GASOLINE WAS INEXPENSIVE AND DEMAND WAS INCREASING. COMPETITION WAS FIERCE AS THOUSANDS OF NEW SERVICE STATIONS WERE BEING BUILT NATION-WIDE.

THIS PICTURE WAS ABRUPTLY AND IRREVERSIBLY CHANGED BY THE EMBARGO AND THE EVENTS WHICH FOLLOWED. THE COST OF CRUDE OIL SKYROCKETED AND THE RESULT WAS DRAMATICALLY HIGHER GASOLINE PRICES. REACTING TO THESE HIGHER PRICES, MOTORISTS BEGAN TO CONSERVE BY PURCHASING LESS GASOLINE--A TREND THAT CONTINUES THROUGHOUT MOST OF THE COUNTRY TODAY.

WITHOUT QUESTION, PRICE HAS BECOME THE DOMINANT FACTOR IN SHAPING THE GASOLINE BUYING HABITS OF CONSUMERS. AGGRESSIVE MARKETERS, RECOGNIZING THIS, HAVE INTRODUCED A VARIETY OF INNOVATIVE MARKETING STRATEGIES THAT ENABLES THEM TO OFFER MORE COMPETITIVE PRICES.

FOR EXAMPLE, PURCHASING GASOLINE AT SELF-SERVE PUMPS HAS BECOME ENORMOUSLY POPULAR WITH MOTORISTS BECAUSE OF THEIR LOWER PRICES. "GAS AND GO" STATIONS, WHICH IN ADDITION TO SELF-SERVE ACCEPT CASH ONLY, HAVE ALSO PROVED HIGHLY SUCCESSFUL. THESE MODES OF OPERATION CAN OFFER MORE ATTRACTIVE PRICES BECAUSE THEY ENABLE THE DEALER TO SIGNIFICANTLY CUT OVERHEAD COSTS. OTHER PRICE-ORIENTED BUSINESSES, SUCH AS CONVENIENCE FOOD STORES WHICH OFFER MOTORISTS ONE-STOP SHOPPING AS WELL AS SELF-SERVE GASOLINE, HAVE ALSO BEEN SUCCESSFUL IN ATTRACTING LARGE GASOLINE VOLUMES. THEN THERE ARE THE MASS MERCHANTISERS, SUCH AS SEARS AND WARDS, WHO HAVE ENTERED THE GASOLINE BUSINESS WITH SUCCESS.

THE SMALL VOLUME DEALER WHO PROVIDED FULL-SERVICE AND HISTORICALLY RELIED ON SERVICE WORK FOR MUCH OF HIS INCOME NOT ONLY FACED GROWING COMPETITION FOR GASOLINE SALES, BUT ALSO SAW HIS PROFITS FROM SERVICE WORK ERODED. DURING THE PAST FEW YEARS, COMPETITION HAS INTENSIFIED IN THIS AREA AS SPECIALTY TUNE-UP AND

MUFFLER SHOPS HAVE PROLIFERATED, NEW CAR DEALERS HAVE AGGRESSIVELY SOUGHT MORE BUSINESS FOR THEIR SERVICE BAYS, AND MASS MERCHANDISERS HAVE CAPITALIZED ON THE "DO-IT-YOURSELF" TREND.

ECONOMIC FACTORS HAVE ALSO PLAYED A ROLE IN THE TREND TOWARD FEWER STATIONS. ACROSS-THE-BOARD HIGHER OPERATING COSTS HAVE ADDED TO THE PRESSURES THAT BESET MANY DEALERS. ANOTHER FACTOR IS THE RELATIVELY FEW NEW STATIONS THAT HAVE BEEN BUILT DURING THE PAST FEW YEARS. OIL COMPANIES HAVE FOUND IT INCREASINGLY DIFFICULT TO JUSTIFY NEW CONSTRUCTION WHEN CONFRONTED BY INFLATIONARY LAND AND BUILDING COSTS, HIGHER INTEREST RATES AND LOWER DEMAND. FINALLY, THERE WAS THE ADVERSE IMPACT THAT ALLOCATION AND PRICE REGULATIONS HAD ON INDEPENDENT DEALERS.

BUT WHILE BUSINESS CLOSINGS ARE ALWAYS LAMENTABLE, THERE IS A POSITIVE SIDE. THOUSANDS OF INDEPENDENT DEALERS WHO OPERATE SUCCESSFUL SERVICE STATIONS TODAY HAVE BENEFITED FROM VOLUMES FORMERLY SOLD BY MARGINAL FACILITIES THAT COULD NOT ADAPT TO NEW MARKET REALITIES.

THE PATTERN OF DECLINE IN THE NUMBER OF SERVICE STATIONS HAS CLEARLY BEEN DUE TO CHANGES IN CONSUMER BUYING HABITS AND ECONOMIC CONDITIONS. AND SINCE INDEPENDENT DEALERS OPERATE THE VAST MAJORITY OF SERVICE STATIONS, THEY HAVE NATURALLY SUFFERED THE LARGEST LOSS.

PROHIBITING REFINERS FROM OPERATING STATIONS WILL NOT ALTER OR REVERSE THESE BASIC MARKET TRENDS.

THE SECOND AREA I WANT TO COMMENT ON IS THE CLAIM THAT MAJOR REFINERS WILL FORCE THEIR INDEPENDENT DEALERS OUT OF BUSINESS. THERE IS ABSOLUTELY NO RATIONALE TO SUPPORT THIS CONTENTION. TO BEGIN WITH, MAJOR REFINERS HAVE A HUGE INVESTMENT IN THE ASSETS OPERATED BY THEIR BRANDED INDEPENDENT DEALERS. IT DEFIES LOGIC THAT A REFINER WOULD INITIATE A POLICY THAT WOULD DAMAGE ITS NETWORK OF INDEPENDENT DEALERS. ANY ACTION THAT WEAKENED ITS BRANDED DEALER OPERATION WOULD ONLY SERVE TO UNDERMINE THE REFINER'S COMPETITIVE POSITION AND THEREBY REDUCE ITS PROFITS.

PROponents OF RETAIL DIVORCEMENT LEGISLATION ACCUSE REFINERS OF PREDATORY PRICING THROUGH THEIR COMPANY-OPERATED STATIONS TO THE DETRIMENT OF THEIR INDEPENDENT DEALERS. ATLANTIC RICHFIELD CAN ONLY SPEAK TO ITS OWN OPERATIONS, BUT OUR COMPANY-OPERATED FACILITIES, WHICH ARE RUN BY A SUBSIDIARY COMPANY, ARE LEASED FROM US ON THE SAME TERMS AS OUR INDEPENDENT DEALERS. COMPANY-OPERATED STATIONS AND INDEPENDENT DEALERS LOCATED IN THE SAME GEOGRAPHIC AREA BOTH PAY THE SAME PRICE FOR ARCO GASOLINE. IF THESE COMPANY-OPERATED STATIONS SOMEHOW POSE A "THREAT" BY OFFERING A LOWER PRICE, IT IS MADE POSSIBLE ONLY THROUGH GREATER EFFICIENCIES.

THE FINAL POINT I WANT TO MAKE IS THAT REMOVAL OF AN ENTIRE CLASS OF COMPETITORS WILL INEVITABLY RESULT IN HIGHER PRICES. AS I MENTIONED EARLIER, PRICE HAS BECOME THE SINGLE MOST IMPORTANT FACTOR IN SHAPING MOST MOTORIST'S GASOLINE BUYING HABITS. IT IS LITTLE WONDER, THEN, THAT REFINER-OPERATED STATIONS, WHICH ARE FOR THE MOST PART CONVENIENTLY LOCATED AND FEATURE MODERN MARKETING TECHNIQUES SUCH AS SELF-SERVE WITH COMPETITIVE PRICES, ARE SELECTED BY SO MANY CONSUMERS.

WE BELIEVE THAT CUSTOMERS ARE BEST PROTECTED BY MARKETS IN WHICH MULTIPLE SUPPLIERS ARE ALLOWED TO VIE FOR THEIR BUSINESS. DIVORCEMENT LEGISLATION IS DESIGNED TO BENEFIT ONLY A LIMITED NUMBER OF INDIVIDUAL DEALERS, BUT CONSUMERS AS A WHOLE SUFFER WHEN SUCH LEGISLATION IS ENACTED.

THOSE GROUPS SUPPORTING SPECIAL INTEREST LEGISLATION MANDATING RETAIL DIVORCEMENT COMPLAIN ABOUT LOW PRICES AT COMPANY-OPERATED STATIONS. IT IS EASY TO CONCLUDE THAT IF REFINER-OPERATED STATIONS ARE PROHIBITED, THE CONSUMER WILL END UP PAYING MORE. SUCH LEGISLATION, MOREOVER, REFLECTS THE VIEW THAT DEALERS ARE THREATENED WITH EXTINCTION PRIMARILY BECAUSE OF THE PRACTICES OF MAJOR REFINERS. THIS IS NOT TRUE.

THE RETAIL BUSINESS IS CHANGING, BUT WE BELIEVE THESE CHANGES ARE THE NORMAL RESULT OF COMPETITIVE FACTORS AND ECONOMIC CONDITIONS THAT AFFECT ALL MARKETERS. INDEPENDENT DEALERS ARE SURVIVING AND WILL CONTINUE TO SURVIVE IN THIS CHANGED ENVIRONMENT.

MANY PROMINENT GOVERNMENT BODIES HAVE REJECTED THE CONCEPT OF DIVORCEMENT. BOTH THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ENERGY HAVE RECOMMENDED AGAINST BILLS THAT WOULD FORCE MAJOR REFINERS TO CEASE OPERATING COMPANY STATIONS. THE UNITED STATES CONGRESS REJECTED DIVORCEMENT LEGISLATION IN 1978. STATE LEGISLATURES HAVE ALSO OVERWHELMINGLY REJECTED RETAIL DIVORCEMENT.

ATLANTIC RICHFIELD AGREES WITH THE POSITION TAKEN BY THESE GOVERNMENT BODIES. IT IS OUR OPINION, AS IT WAS THEIRS, THAT DIVORCEMENT LEGISLATION DOES NOT SERVE THE BEST INTEREST OF EITHER DEALERS, JOBBERS, REFINERS OR THE AMERICAN CONSUMER.

ARCO Petroleum Products Company  
515 South Flower Street  
Los Angeles, California 90071  
Telephone 213 486 1277



E. G. Reilly  
Vice President  
Retail Marketing

August 5, 1982

The Honorable Frank X. Graves, Jr.  
Chairman  
Senate Law, Public Safety  
and Defense Committee  
New Jersey Senate  
Trenton, New Jersey

Dear Senator Graves:

I will present oral testimony before your Committee in opposition to Senate Bill 455. In the interest of time, my oral testimony will deal with those sections of the bill dealing with retail divorcement. We have other comments and concerns relative to this bill which are outlined in this letter. We respectfully request that these comments be entered into the record.

SB-455 calls for refiners to extend all voluntary allowances uniformly to all retail service station dealers. This provision ignores the fact that competitive conditions vary by locale and are not uniform throughout the state. Refiners supplying dealers throughout New Jersey would be hard pressed to keep their dealers competitive versus dealers supplied by competitors operating in local areas only. Mandating uniform statewide allowances inhibits competition and results in higher prices to the consumer. There are already in effect laws which insure that similarly situated dealers who purchase similar quantities of motor fuel at the same time and place pay the same price. Additional legislation in this area serves only to impose rigidities and extra costs on the system with no offsetting benefits to anyone.

SB-455 would provide for equal apportionment of all motor fuel uniformly during periods of shortages. We believe such provisions to be unnecessary, anti-competitive and unworkable. Allocation laws of all types, whether at Federal or State level, have been failures. They mismatched supply with demand, impeded innovation, subsidized marginal operations and favored some competitors versus others. It is

The Honorable Frank X. Graves, Jr.  
August 5, 1982  
Page Two

generally agreed by both government and industry experts that mandated government allocation was a failure and the market oriented approach to allocate supplies is the best mechanism to utilize in coping with any future shortages.

We also oppose Section 2(c) which deals in part with applying "all equipment and service station rentals uniformly to all retail dealerships". Atlantic Richfield treats its dealers fairly and equitably. Proposals such as this are unnecessary and unworkable and attempt to involve government in areas where legislation is not required.

We appreciate having the opportunity to offer our recommendations relating to this important legislation.

Yours very truly,

E. G. Reilly

My name is Fred Sacco. I am Executive Vice President of the Fuel Merchants Association of New Jersey. Our organization is comprised of 541 members. Approximately 370 of these members are involved in the delivery of home heating oil to residential customers throughout New Jersey and are therefore not affected by Senate Bill 455.

However, a recent survey of our membership revealed that we have another 39 members that would be compelled to forfeit a part of their family-run businesses if Senate Bill 455 is not amended to affect only the major refiners and producers who are now attempting to control the distribution of crude oil from the well through the service station pump.

These 39 members are home heating oil distributors who diversified their businesses through the inclusion of one small, family-operated service station. Many of the long-time fuel dealers years ago added service stations to their businesses merely as a convenience to their customers. In many cases, these stations today service areas that the majors would not handle.

I'd like to cite several examples of the types of operations that will be affected by this bill: Harriett's Oil Service, in business since 1929, has a single, family-run station pumping less than 30,000 gallons per month. The Harriett family has been distributing gasoline and heating fuel in and around the town of Medford. According to Harriett, "no one could make a sufficient income from the gas station alone." Therefore, he feels that he would be forced to close his station before he could lease it to someone else to run it-- a requirement demanded by S-455 as it now stands.

Fredericks Fuel and Heating Service of Oak Ridge would be forced to change many of its currently successful customer relations policies without the use of its company-operated service station. According to

-MORE-

65x

-2-

John Fredericks, the service provided by this station, which only distributes approximately 25,000 gallons of gasoline per month, has increased good will among his customers. It is Fredericks' opinion that "S-455 just isn't fair to people like us who have diversified our businesses."

In operation since the 1930's, W.L. Rife, Inc. of Mount Holly, is another company that will be adversely affected by this bill to an even greater degree than the two previously mentioned dealerships. Kathleen Barto of W.L. Rife reported, "We tried to diversify our business and make our company more profitable; and now we seem to get hurt at every turn."

Barto's retail service station outlet is currently managed by Barto's brother. He keeps the station open seven days per week from 7 a.m. to 9 p.m. This outlet distributes approximately 40,000 gallons of gasoline per month. Barto said that since her fuel oil demand was diminishing, the company "had to recapture some profit areas."

Senators, I have outlined just three instances, however, I could deliver a litany on 36 more company-operated stations with similar profiles.

In our survey, we heard from more than 100 other members, some of whom have company-operated service stations. These members either distribute gasoline only or distribute both gasoline and home heating oil as well. In aggregate, they own or lease 517 service stations and supply motor fuel to an additional 286 independent retail service station operators. Among the 803 service stations supplied by more than 100 of my members involved in the gasoline business, there are 157 company-operated stations.

You may find it interesting that of the 803 service stations listed in the survey, before you, more than 600 of these retail service stations

sell less than 50,000 gallons of gasoline per month. Senators, 75% of these service stations are a part of the "big push to eliminate the 30 to 40 thousand gallons per month service stations and concentrate on the pumpers." This statement is taken directly from the 1982 National Petroleum News Fact Book and was cited in a discussion of major oil company marketing strategies. According to the Fact Book, "now the fuzz is off the peach. Retrenchment is expected to be in full swing in 1982."

Senators, it is obvious that the editors of the Fact Book are declaring that these retail outlets are the final stumbling block to the marketing strategies of the major oil companies.

If you will look at the chart I have distributed to each of you, you will note a fairly even split between the urban and rural composition of the service station population -- 443 are rural and 335 are urban.

I would like to refer you back to those 39 dealers who now have company-operated stations which distribute less than 50,000 gallons per month. Among the additional 157 company-operated stations you will find 114 which pump 50,000 gallons or less.

Senators, please look at the tremendous differences between the major refiners and producers and the company-operated facilities to which I am referring.

I believe that the New Jersey Petroleum Council reported its survey results to you and discovered that 12 oil companies reported operating approximately 200 service stations, or 3.9% of New Jersey's service stations.

Senators, the Petroleum Council obviously failed to report the possible existence of at least another 100 company-operated service stations in this state. They include, among other biggies, Hess and Merit service stations.

The representatives of the major oil companies have also been quick to point to another half dozen major oil companies who do not have company-

-4-

operated stations in New Jersey. Let me assure you, Senators, that nearly every major oil company has company operations as a part of their marketing strategy.

Just to cite one example, and I believe I am accurate: The Petroleum Council reported either none or one company-operation for Gulf. Gulf alone has more than 600 company-operated service stations in other states.

Another company they reported to you as not having any company operated stations is probably Mobil. Let me assure you that it would require only the whim of one marketing executive outside of New Jersey and the stroke of his pen to change that situation. In 1972, Mobil, in retaliation to the New Jersey Legislature's enactment of franchi protection legislation in a period of only 12 months, managed to change approximately 90 dealer stations into company operations. That can happen again. You can do something to stop it by reporting S-455 out of Committee today amended for full Senate consideration.

I'd also like to emphasize the difference between the company-operated station of the majors as opposed to the ones operated by my members.

Just totaling the company-operated service stations that were reported to you by the Petroleum Council, excluding Hess and Merit, who account for approximately 75 more stations -- NJPC's figure represents 3.9% of New Jersey's service stations -- but more than 10% of the gasoline market. Our members, on the other hand, represent 4.4% of the company-operated service station population and distribute 3% of the gasoline consumed in the New Jersey marketplace.

The company-operated service station issue has only just begun in New Jersey. If I might, I'd like to single out Exxon to illustrate this point. In fact, they happened to be the major litigan in the U.S. Supreme Court case which upheld the state of Maryland's divorcement law.

In Maryland, this major company operation of about 36 stations, through salaried employees, captured an impressive market share in a state consuming approximately 2 billion gallons annually.

I don't know how many of Exxon's company operations were reported to you by the New Jersey Petroleum Council. But it seems reasonable that if their objectives in this state are to achieve the same goal they achieved in Maryland, we could be looking to them to operate at least 70 stations in order to garner the same market share in a state like ours, which consumes slightly more than 3 billion gallons of motor fuels annually.

Gentlemen, in conclusion, I want you to be aware that what we are talking about here is the fact that half of my members who operate gasoline stations have one on-premises service station as part of their company operation. It is not fair to ask them to give up this small facility. I ask that the retail divorcement provision be restricted to refiners and producers. In today's economy, no small businessman in any industry can afford to have one of his profit-making centers taken away from him.

The gasoline jobbers, as well as the independent dealers they supply and the independent dealers supplied by the major oil companies are on a hit list. The stalkers are out there -- but , you can slow them down by releasing S-455 with a recommendation to the Senate that they adopt it quickly.

It is truly an action in the interest of New Jersey's motoring public.

*Fred Sacco*

66 Morris Ave. P.O. Box 359 Springfield, N.J. 07081 (201)379-1100

**Fuel Merchants  
Association  
of  
New  
Jersey**

FUEL MERCHANTS ASSOCIATION OF NEW JERSEY  
MEMBERSHIP PROFILE 1982

Total Regular Membership	512
Total Gasoline Only Membership	<u>29</u>
Total	541

Previous survey data indicates more than 370 distribute only Home Heating Oil.

Companies responding to retail service station questions-142

SERVICE STATION INFORMATION

Total number of retail service stations owned or leased	517
Total number of retail independent stations <u>supplied only</u>	<u>286</u>
Total	813
Total number of retail service stations marketing less than 50 thousand gallons per month	609
Total number of retail service stations classed as rural	443
Total number of retail service stations classed as urban	335

Company Operated Information

Average number of company operated stations per company (61 companies) = 3.2 per company

Total number of company operated stations marketing less than 50 thousand gallons per month	153
Total number of company operated stations marketing more than 50 thousand gallons per month	<u>43</u>
TOTAL	196

# AMERADA HESS CORPORATION

TELETYPE: 710-998-0873  
CABLE ADDRESS: HESSOIL

1 HESS PLAZA  
WOODBIDGE, N. J. 07095  
(201) 636-3000

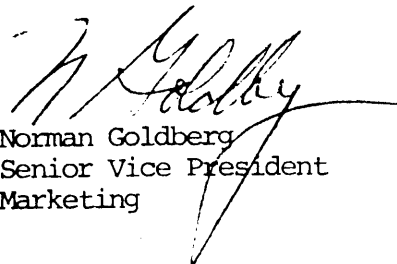
August 9, 1982

Senator Frank H. Graves, Jr.  
Hamilton Plaza  
Paterson, NJ 07505

Dear Senator Graves:

I would appreciate it if you would read the attached statement of Amerada Hess Corporation into the record at your hearing on Senate Bill 455.

Very truly yours,



Norman Goldberg  
Senior Vice President  
Marketing

NG:pas  
Attachment

STATEMENT OF NORMAN GOLDBERG,  
SENIOR VICE PRESIDENT OF MARKETING,  
AMERADA HESS CORPORATION  
BEFORE  
NEW JERSEY SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE  
AUGUST 12, 1982

Gentlemen:

I am Norman Goldberg, Senior Vice President, Marketing, of Amerada Hess Corporation.

Amerada Hess Corporation (Hess) is an independent gasoline marketer selling petroleum products at retail through 102 Hess-branded gasoline stations in New Jersey. Hess-branded stations have been operating in New Jersey since 1960. Hess operates refineries in Purvis, Mississippi and, through a subsidiary, in the U.S. Virgin Islands. Hess has recently applied for necessary permits to reopen its Port Reading, New Jersey refinery.

Of the 102 Hess stations in New Jersey, 43 are operated by lessee dealers and 59 by Hess employees.\* All Hess company-operated stations and all dealer stations are full-service. As of July 31, 1982, the 59 Hess company-operated stations employed 910 people, with a total annual payroll of approximately \$5.5 million.

Hess urges your Committee to reject Senate Bill 455 which your Committee is considering. Hess strongly opposes Senate Bill 455 which would prohibit Hess and other petroleum refiners from operating gasoline stations with their own employees and require that all such stations be operated by independent dealers.

Hess believes divorcement bills are unnecessary, anti-competitive, opposed by Federal interests, and against the best consumer interests of the people of New Jersey.

1. Adverse Effects on New Jersey Motorists

Divorcement legislation, such as Senate Bill 455, harms the motoring public by eliminating from the market place an efficient and reliable method of marketing gasoline. Modern

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\*Listed on attached sheet.

company-operated gasoline stations have historically priced their gasoline at or near the lower end of the market and tend to pass on to their customers the savings inherent in large volume operations. Moreover, Hess's company-operated stations are well known for their high degree of service and cleanliness. In addition, virtually all of Hess's New Jersey stations (55 of 59) remain open 24 hours each day, 365 days a year, so that the driving public can rely on Hess's efficient and reliable service at all times.

Many of our dealer-operated stations offer the public these same price and service qualities. But Hess has no control over its dealers' prices, and dealers often price Hess gasoline at the upper end of the price spectrum. Nor are we able to control the service offered by dealers as carefully as the service of our own stations. Indeed, the majority of our New Jersey dealers (26 of 43) are not presently opened 24 hours each day.

We are certainly not opposed to a healthy, profitable dealer body. Successful dealer stations are an important feature of our gasoline marketing effort. We believe, however, that a mix of independent dealer and company-owned stations provides increased competition which directly benefits the New Jersey consumer and indirectly benefits the independent dealers by insuring a healthy, efficient petroleum industry. Such benefits should be encouraged by the legislature absent some showing of why such competition is harmful to the citizens of New Jersey.

2. The U.S. Government Position on Divorcement

The Department of Energy's Office of Competition, the Federal Trade Commission, and the Antitrust Division of the Department of Justice have all recently testified against divorcement provisions in a proposed Federal bill that would have prohibited certain refiners nationwide from operating gasoline stations with their own employees.\* The three Federal agencies' opposition to divorcement was based generally on the anticompetitive impact of divorcement and their conclusion that alleged predatory practices of refiners toward their dealers simply do not exist.

Almost by definition, divorcement bills are anticompetitive since they remove efficient marketers. However, the principal concern of proponents of divorcement bills has been the imagined intent of refiners to drive their dealers out of business to take over their stations for themselves. In enacting Title III of the Petroleum Marketing Practices Act,\*\* Congress directed the Department of Energy to study the possibility that refiners'

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\*Testimony of Leonard Coburn, Acting Director, Office of Competition, U.S. Department of Energy, and William F. Baxter, Assistant U.S. Attorney General, Antitrust Division, Department of Justice, before the U.S. Senate Committee on the Judiciary, October 21, 1981; and Testimony of Donald B. Rowe, Bureau of Competition, Federal Trade Commission, before the House Energy & Power Subcommittee, June 11, 1980.

\*\*15 U.S.C. §2841 (1978)

"subsidization" of retail operations was predatory or threatened competition at the retail level. In its final report to the Congress in January 1981, the DOE concluded that the information they had studied revealed no evidence of retail subsidization as part of a predatory campaign against independent dealers.\*

On January 18, 1979, John H. Shenefield, then Assistant U.S. Attorney General for Antitrust, testified before the Virginia House of Delegates on retail marketing divorcement legislation. Mr. Shenefield stated that after considering the arguments made by proponents of divorcement statutes,

"Divorcement legislation may ... be both an unnecessary and ineffective remedy to the problem of unequal bargaining power of the larger integrated oil companies."

In Mr. Shenefield's view, the franchise protection statutes and the application of the antitrust laws provide adequate existing legislative authority to prevent assertion of unequal bargaining power.

"Absent persuasive evidence that divorcement legislation would bring about any real improvement in petroleum marketing, that remedy should not be adopted if there is any likelihood that it would bring about significant undesirable consequences such as increased retail prices."

\*Office of Competition, Department of Energy, Final Report - The State of Competition in Gasoline Marketing, January 1981 at Preface.

### 3. The Maryland Divorcement Experience

The Maryland experience with divorcement demonstrates why the divorcement bill as now proposed in New Jersey is against the public interest. The Maryland divorcement law was passed after the embargo of 1973, because of a perception that refiners were favoring their own company-operated stations, and discriminating against their independent dealers, on allocations of available product. However, as a result of the divorcement law, experience has shown that Maryland consumers have been hurt. According to testimony before the U.S. Senate Judiciary Committee in October of 1981, Maryland's divorcement law caused high-volume, low-priced, company-operated stations either to close or be converted to dealer-operated stations. On the other hand, dealer margins in Maryland have increased compared with margins in other locations, and, most importantly, the retail price of gasoline in Maryland has increased compared with other locations.\*

A recent study by John Umbeck, Professor of Economics at Purdue University, on the economic effects of the Maryland divorcement legislation, confirms that divorcement causes higher prices and fewer gasoline stations. Professor Umbeck concluded that:

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\*Testimony of Dr. Phillip E. Sorensen, Florida State University, before the U.S. Senate Judiciary Committee, October 21, 1981.

"when divorcement doesn't result in station closings but forces a change to a more costly method of operation, the average self-service gasoline price at the station affected rises approximately one cent while the average full-serve price rises close to five cents."\*

Professor Umbeck also observed that if a station closed as a result of divorcement, average self-service prices at competing stations would rise, while average full-serve prices were not significantly affected. However, Professor Umbeck estimated that even a slight increase could result in annual increased expenditures by Maryland consumers of over ten million dollars.\*\*

Hess was forced to shut its Maryland stations. Because of similar legislation, Hess closed its stations in Connecticut as well. The Maryland stations employed 81 people with an annual payroll of about \$800,000 before they were closed; the Connecticut stations employed 105 people at an annual payroll of about \$660,000. None of these stations was reopened by dealers, and in the event of divorcement in New Jersey, we do not intend to put unknown and untried independent dealers in the stations we must close.

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\*Barron and Umbeck, Prohibiting Retail Gasoline Sales by Refiners and Producers of Petroleum: The Economic Effects, Purdue University, January 1982, p. 34.

\*\*Ibid, p. 35.

Divorcement laws in New Jersey would also discourage any expansion by Hess in New Jersey markets where we do not now have stations. If Hess must expand by permitting others to operate gasoline stations we build ourselves (at property and construction costs in the hundreds of thousands of dollars per station), we may choose not to expand. For example, Hess has undertaken no new construction of gasoline stations in Maryland and Connecticut, two states in which Hess markets, since divorcement laws went into effect, and contemplates no new construction in those states.

Hess believes that divorcement is wrong and that Senate Bill 455 should not be passed by your committee or the New Jersey Legislature.

We appreciate the opportunity to express our views.

COMMENTS ON  
NEW JERSEY  
SENATE BILL 455  
GASOLINE RETAIL DIVORCEMENT

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COMMENTS ON  
NEW JERSEY  
SENATE BILL 455  
GASOLINE RETAIL DIVORCEMENT

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SECTION I

EXECUTIVE SUMMARY

This paper sets forth the position of the Cities Service Company with respect to divorcement of integrated refiners from direct retailing of gasoline (SB 455). Cities Service Company is an integrated crude oil producer-refiner/marketer that markets gasoline and other motor fuels under the CITGO brand. Cities Service is directly affected by retail gasoline marketing divorcement as approximately 350 retail units are company operated nationwide with 19 units located in New Jersey. Indeed, because of the importance of its company-operated "Quik Mart" convenience stores to its gasoline marketing strategy, retail gasoline marketing divorcement would harm Cities Service more than most of its larger competitors.

Retail gasoline marketing divorcement legislation is a political response to the decline in number and market share of independent retail gasoline dealers (or marketers). It is based upon the mistaken belief that this decline is attributable to the predatory growth of direct retail marketing operations by major refiners.

In reality the decline in the number of retail gasoline dealers is the result of changing market conditions, supply interruptions, increased price sensitivity of consumers and reduced gasoline demand. The trend in gasoline marketing, as in other forms of retailing, is toward fewer retail outlets and greater volumes per outlet.

-2-

In the case of Cities Service Company, innovative marketing strategies were called for if Cities Service was to survive as a retail marketer of gasoline. Other mid-sized domestic refiners also adopted innovative marketing strategies when faced with competition from:

- o Larger refiners that have better brand recognition, larger advertising budgets, huge national dealer networks and greater customer brand loyalty;
- o Independent refiners and chain marketers that are efficient operators and very price competitive.

The federal regulatory system of price and allocation controls contributed to the demise of gasoline retailers by preventing existing retailers from converting low-volume outlets, dependent upon declining sales of automobile services and accessories, to high-volume gas only outlets. Unable to adjust to changing conditions many retailers were forced to close their doors.

An in-depth Congressionally-mandated study of gasoline marketing performed by the DOE confirmed:

- o There has not been a massive movement by refiners into the direct retailing of gasoline.
- o No evidence was found of a predatory pricing campaign by refiners.

-3-

- o The decline in the number of retail dealers was due to changing economic and marketing conditions.
- o This decline was aggravated by federal price and allocation controls.

The support for these conclusions is graphically presented in charts included in this folder.

For the reasons given, Cities Service believes that changing market forces aggravated by federal controls, rather than a predatory growth of direct retail marketing operations by major refiners, is at the core of the decline in the number of retail gasoline marketers. Retail gasoline marketing divorcement cannot and will not stem this decline.

Cities Service Company also believes that retail gasoline marketing divorcement legislation cannot be justified on other grounds. Significantly, branded gasoline dealers of New Jersey already enjoy substantial federal and state franchise protections unique to gasoline marketing. The antitrust laws guard against unfair competition and discriminatory pricing. Further protection of gasoline retailers would insulate them from normal market forces and fair competition.

Whether divorcement can succeed in protecting gasoline retailers from the forces of change which they fear is doubtful. What is certain is that divorcement will

reduce competition and increase the retail price of gasoline paid by the consumer. It is anti-consumer, special interest legislation in its worst form. This conclusion is shared by many noted experts in law, economics and gasoline marketing. (See Section VIII - The Consumer and Retail Divorcement.) It has also been documented in a Cities marketing survey of gasoline prices in Maryland, where divorcement has been implemented, and prices in similar markets where refiner-operated outlets continue to compete. (See Sections III, IV and V.)

Although Cities Service opposes divorcement legislation, it is not insensitive to the concerns and needs of its retailers. In response to these needs Cities Service has developed both a rack pricing program for dealers and an innovative set of leasing practices which afford maximum flexibility to the CITGO dealer.

IN CONCLUSION, CITIES SERVICE OPPOSES RETAIL GASOLINE MARKETING DIVORCEMENT LEGISLATION BECAUSE:

- o THE DECLINE IN THE NUMBER OF RETAIL DEALERS IS DUE TO MARKET FORCES, AGGRAVATED BY FEDERAL PRICE AND

-5-

ALLOCATION CONTROLS, RATHER THAN PREDATORY  
MOVEMENT OF REFINERS INTO DIRECT RETAIL  
MARKETING OPERATIONS.

- o ADEQUATE PROTECTION ALREADY EXISTS FOR  
GASOLINE RETAILERS UNDER THE PETROLEUM  
MARKETING PRACTICES ACT, FEDERAL ANTITRUST  
LAWS AND THE NEW JERSEY FRANCHISE LAW.
  
- o DIVORCEMENT IS ANTICOMPETITIVE, SPECIAL  
INTEREST LEGISLATION WHICH WE BELIEVE WILL  
INCREASE THE RETAIL PRICE OF GASOLINE, PAID BY  
THE CONSUMERS OF NEW JERSEY.

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SECTION II

THE STATE OF COMPETITION IN GASOLINE MARKETING

TITLE III STUDY

A final report submitted to Congress by the U.S. Department of Energy found no evidence that refiners and other suppliers of gasoline subsidized retail sales with profits from other operations.

That conclusion is contained in the second and final of a two-part report from DOE's Office of Competition to Congress required under Title III of the Petroleum Marketing Practices Act.

The final report incorporates the data used in the preliminary analysis, and expands the analysis considerably based upon additional data and subpoenaed documents from nine petroleum marketers, and includes recommendations for action to preserve and enhance competition in gasoline marketing. The final report supersedes the preliminary report issued April 30, 1980 which also found no evidence of predatory pricing. The final report consists of two books; Book I contains the extensive analysis of the data while Book II is devoted to the analysis of the subpoenaed documents.

The findings of the final report confirm the findings of the tentative analysis. The key findings of the final report are as follows:

- 1) There has not been a massive movement by refiners into the direct retailing of gasoline. Based upon a detailed analysis of nationwide and statewide trends, a handful of refiners, in limited marketing areas, account for the present movement of refiners into the direct retailing of gasoline.
- 2) No evidence has been developed from a detailed analysis of five major marketing areas--Atlanta, Boston, Fort Wayne, Houston, and Los Angeles, using a variety of analytic techniques, that refiners are subsidizing the sale of gasoline at retail as part of a predatory campaign. To the contrary, the final report finds that such sales are made for pecuniary reasons and not for predatory reasons. When viewed in light of the increase in sales of gasoline to independent marketers collectively, this evidence becomes more convincing.

-2-

- 3) Changing economic and marketing conditions are primarily responsible for the movement to high volume, self-service stations and away from the low-volume, full-service network. Changing consumer preferences, increasing operating and construction costs, changing expectations of developments in crude oil markets, and competition from highly efficient independent marketers were the driving forces behind these changes. Under the regulatory system developed in the 1970's, dealers as a group may have been unable to participate in this trend to higher volume outlets.
- 4) The price and allocation regulations of the Department of Energy are the most anticompetitive factors operative in today's gasoline market and are a driving force behind the trends found in this final report.
- 5) The documents subpoenaed from nine integrated oil companies confirm and support the analytic findings indicated above.

As a result of these findings, the DOE has made the following recommendations:

- 1) The immediate and complete decontrol of gasoline marketing is the most beneficial step that can be taken to establish a functioning, competitive gasoline market at this time.
- 2) Legislation such as targeted divorcement will not alleviate the perceived uncertainties of independent marketers resulting from gasoline decontrol and should not be enacted.
- 3) Vigorous antitrust enforcement is sufficient protection for all competitors in a decontrolled gasoline market.

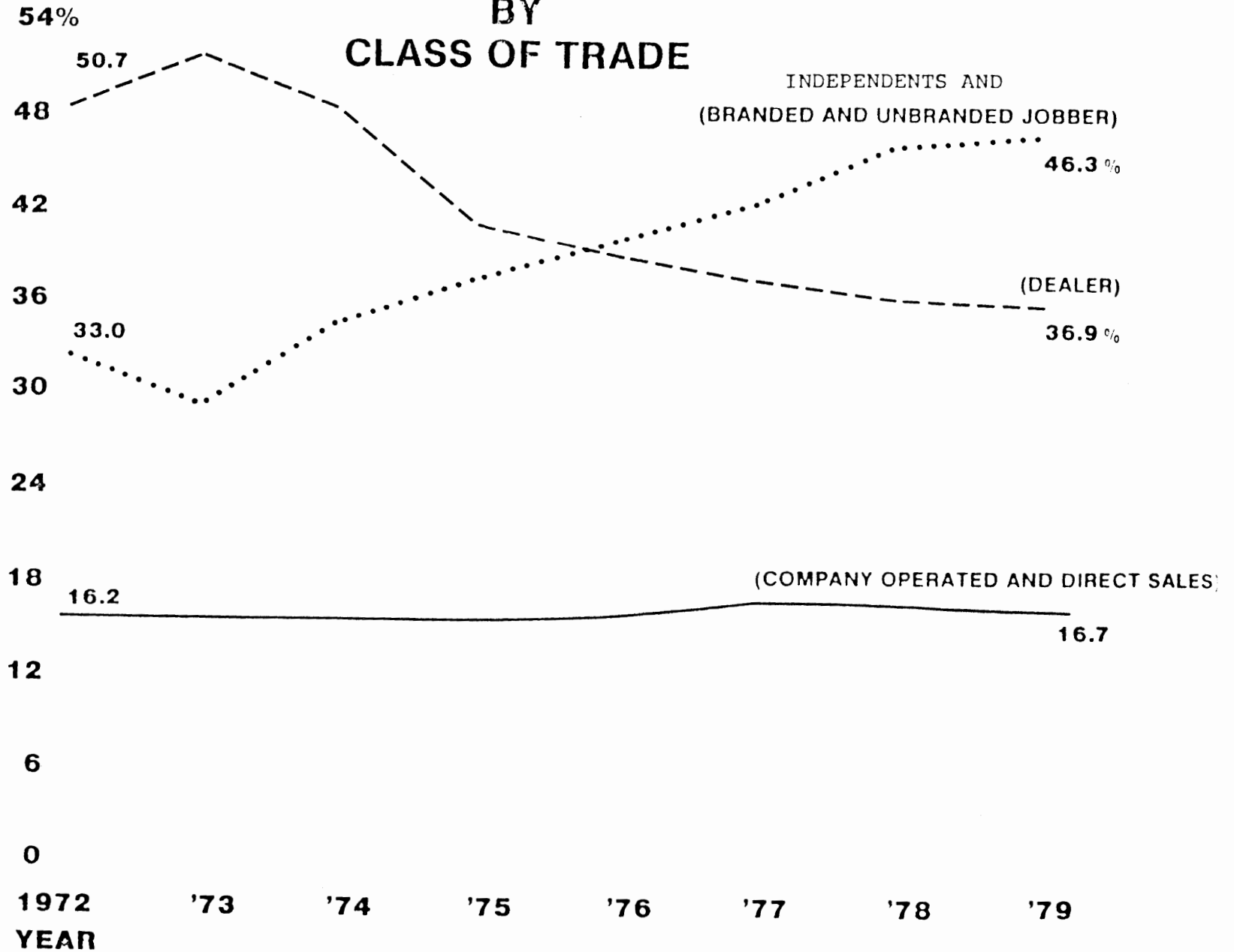
DOE's Office of Competition is responsible for evaluating the structure, conduct and performance of the energy industry and for developing affirmative policies to enhance competition.

GASOLINE MARKET SHARE  
BY CLASS OF TRADE

The shift in gasoline market share went primarily to the jobber segment during the period from 1972 to 1978 when gasoline controls were in effect. Sales directed to the consumer by refiners through company operated stations and to consumer accounts remained almost constant during the period.

# GASOLINE MARKET SHARE BY CLASS OF TRADE

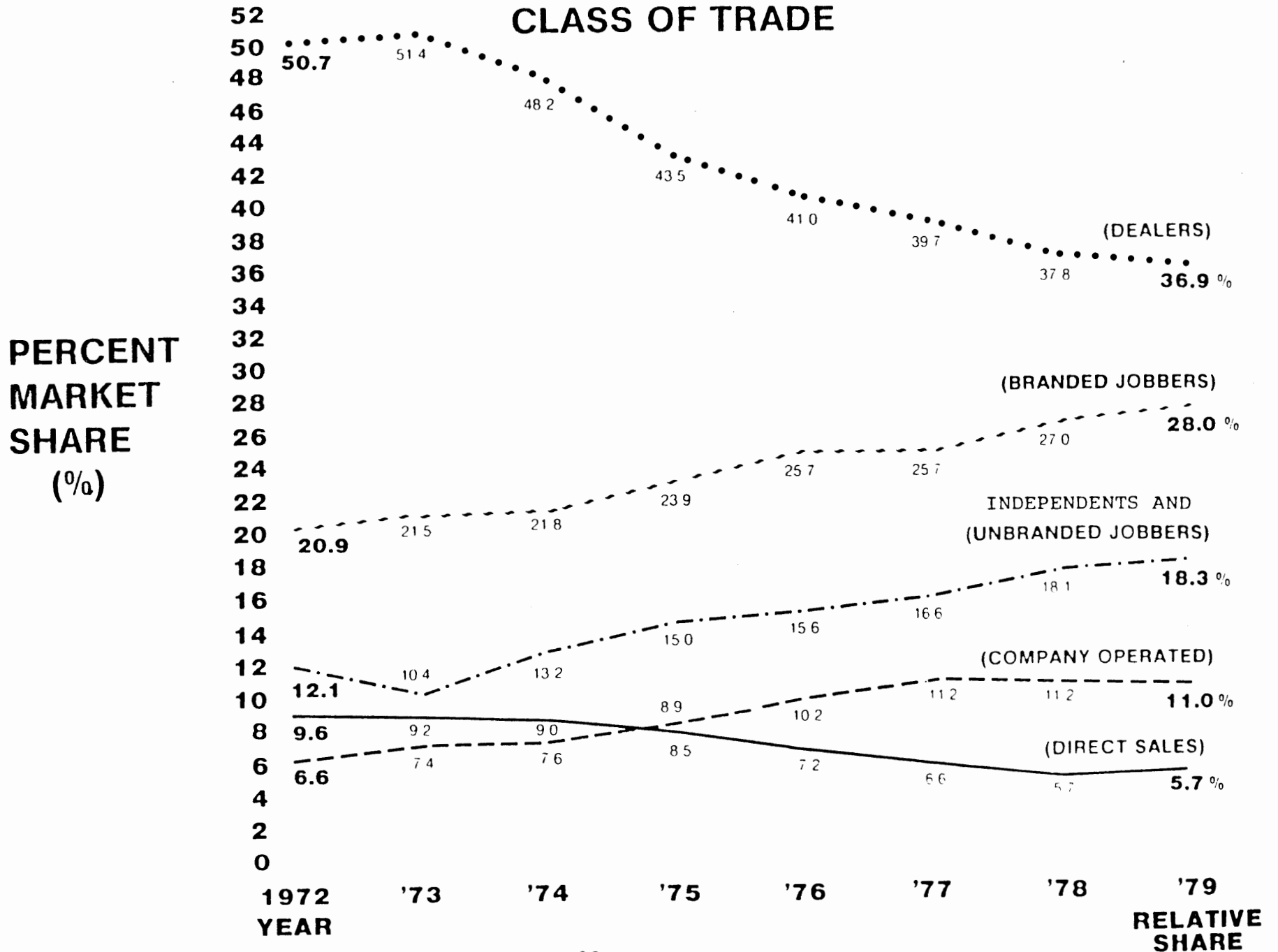
PERCENT  
MARKET  
SHARE  
(%)



GASOLINE MARKET SHARE  
BY CLASS OF TRADE

During the period from 1972 to 1978 while controls were in effect, the dealer market share decreased 13.8% (50.7% - 36.9%). During the same period of time, the market share of company operated stations increased by only 4.4% (11.0% - 6.6%). This demonstrates that a change of only 4.4% in market share over a period of six years could not be properly categorized as a "take-over of gasoline marketing."

# GASOLINE MARKET SHARE BY CLASS OF TRADE



LESSEE DEALERS  
AVERAGE VOLUME PER MONTH

This chart demonstrates the positive aspects of a strong branded marketing program. The larger companies continue to command a higher average volume per outlet because of brand acceptance, market penetration, credit cards, advertising and other factors related to a strong branded marketing program. The increase in volume from 1972 to 1978 demonstrates that a segment of the market prefers purchasing gasoline from dealer operated stations. With the exception of Group IV, as the number of dealer operated stations declined, the average volume per station increased.

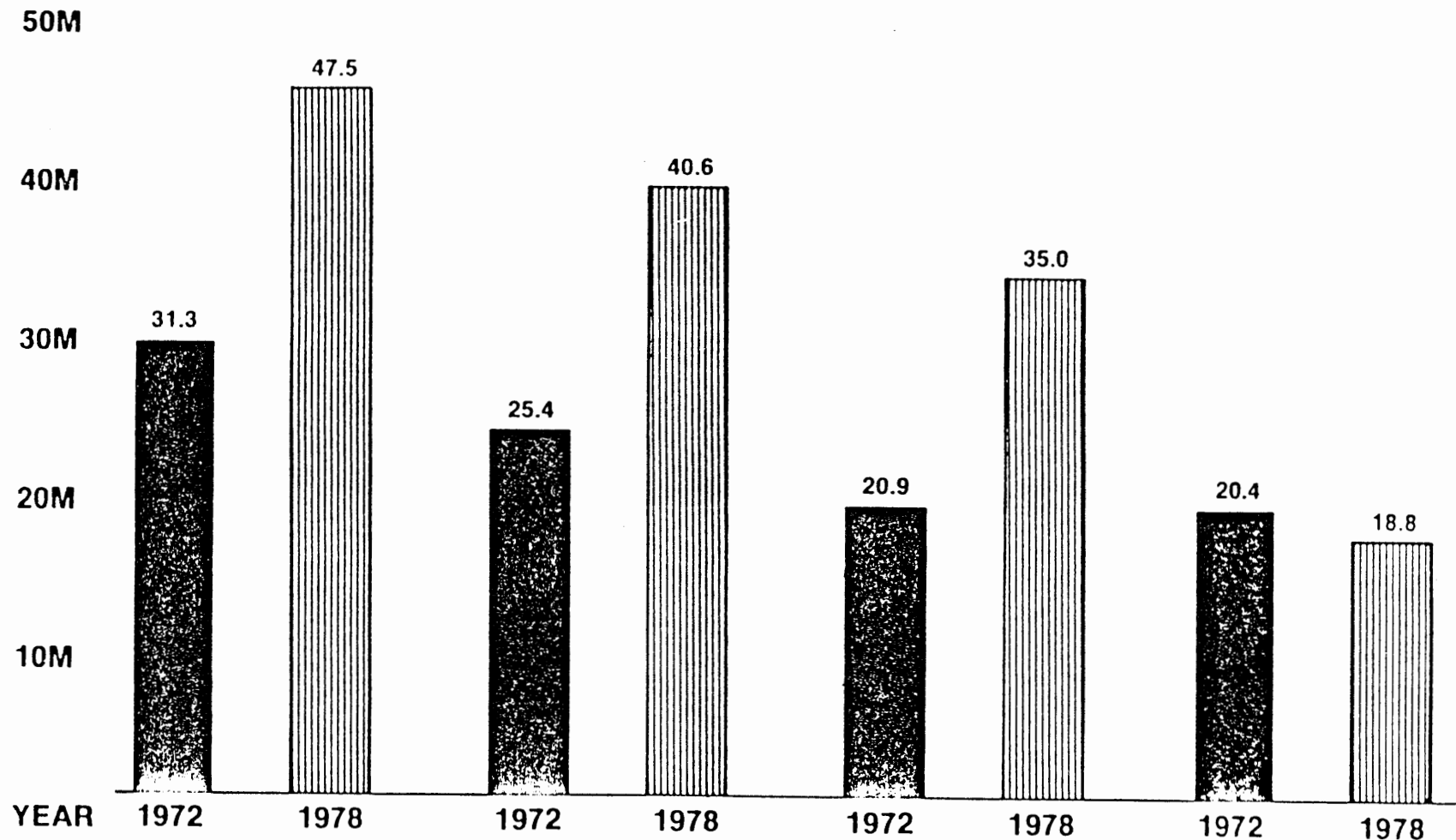
GASOLINE MARKET SHARE

EXHIBIT B

# LESSEE DEALERS

## AVERAGE VOLUME MONTHLY-PER DEALER 1972 VS. 1978

GALLONS PER MONTH



- GROUP I
- EXXON
  - AMOCO
  - SHELL
  - TEXACO

- GROUP II
- GULF
  - MOBIL
  - ARCO
  - CHEVRON

- GROUP III
- SUN
  - SOHIO/BP
  - UNION
  - PHILLIPS

- GROUP IV
- MARATHON
  - CONOCO
  - ASHLAND
  - CITGO

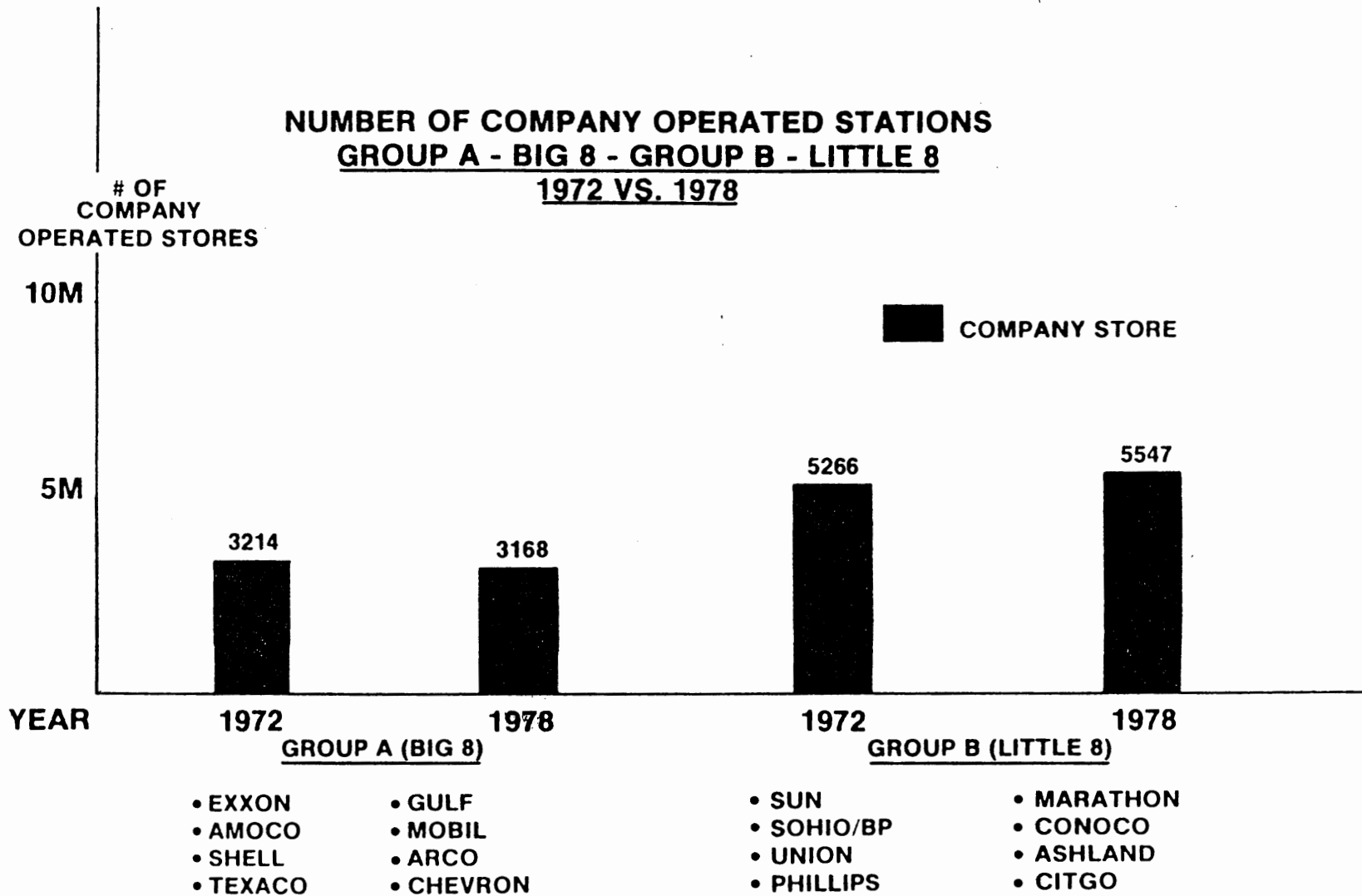
EXHIBIT D

NUMBER OF COMPANY OPERATED STORES  
NATIONALLY

This chart indicates that there was no significant growth in the number of company operated stations in the top sixteen company grouping.

Group "A" actually showed a decline of 56 stations while Group "B" increased by only 281 retail outlets. These facts do not support the claim by the proponents of Divorcement that the majors are attempting a "takeover" of the retail service station business.

To pass anti-competitive, anti-consumer legislation on the speculation of what might occur is irresponsible and not in keeping with the responsibilities of the State Government.



INFORMATION SOURCE "THE STATE OF COMPETITION IN GASOLINE MARKETING"  
U.S. DEPT. OF ENERGY

TA 36-65 PAGE 174

SECTION III

THE PRICE OF RETAIL DIVORCEMENT

Retail gasoline marketing divorcement, particularly its impact on consumers, has been a volatile subject since its conception. We believe that retail gasoline marketing divorcement will needlessly increase the retail price of gasoline purchased by the consumer. This belief is supported by a market analysis of Maryland gasoline prices prepared by Cities Service Company. It is a conclusion shared by many noted experts in the fields of antitrust law, economics and gasoline marketing.

The Maryland law became effective in July 1979, however, until November 1981, Cities was in litigation with Maryland. Pending the outcome of that litigation, the courts permitted us to continue our direct retail marketing operations. This gave us a unique opportunity to monitor, on a regular basis, the posted pump prices of our competitors. We also have direct retail operations in the Richmond, Virginia, and the Atlanta, Georgia markets. We consider these markets similar to Maryland except that all refiners are permitted to operate retail outlets in these cities.

We have prepared an analysis of the difference in the observed pump prices in Richmond and Atlanta as compared to those in Maryland. The basis of this comparison is as follows:

- o MARYLAND--we observed the pump prices of approximately 124 competitors of our stores.
- o RICHMOND--we observed the pump prices of approximately 29 competitors of our stores.
- o ATLANTA--we observed the pump prices of approximately 93 competitors of our stores.
- o In order to insure an unbiased analysis, no CITGO prices were included.

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- o The study reviews prices on a quarterly basis-- from fourth quarter 1979 through first quarter 1981.
- o The pump prices utilized are observed pump prices not weighted by volume.
- o Pump prices were adjusted for taxes and pipeline transportation costs with respect to these markets.

The results of this survey are presented graphically on the attached charts. The light shaded bar represents leaded regular grade gasoline; the dark shaded bar represents unleaded gasoline. The charts indicate the excess of the retail gasoline price in Maryland (expressed in cents per gallon) over the average pump price of gasoline in Richmond and Atlanta.

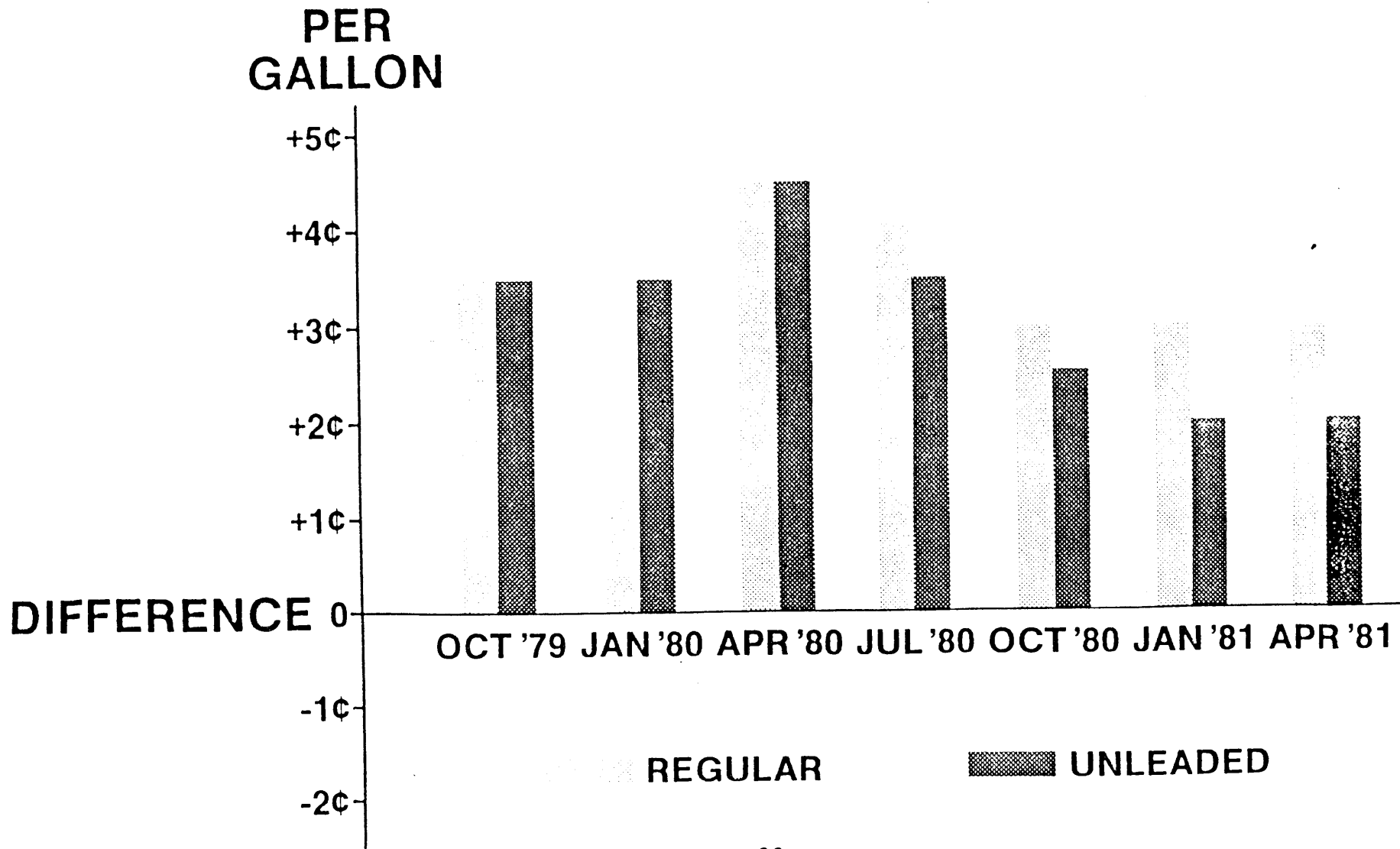
The results indicate that in every quarterly analysis the consumer in Maryland was paying more (from 1 cent to 4.5 cents more) than the consumer in the other cities. This analysis indicates that on a national basis the additional cost to the consumer would be in the billions of dollars each year, perhaps as much as \$3.5 billion per annum.\*

The cost to Maryland consumers, based on the results of the Cities' survey would exceed \$35 million during 1980.\*

The foregoing analyses are consistent with the conclusions of noted gasoline marketing experts trained in law and economics. Substantial support exists for the conclusion that retail gasoline marketing divorcement is bad for consumers.

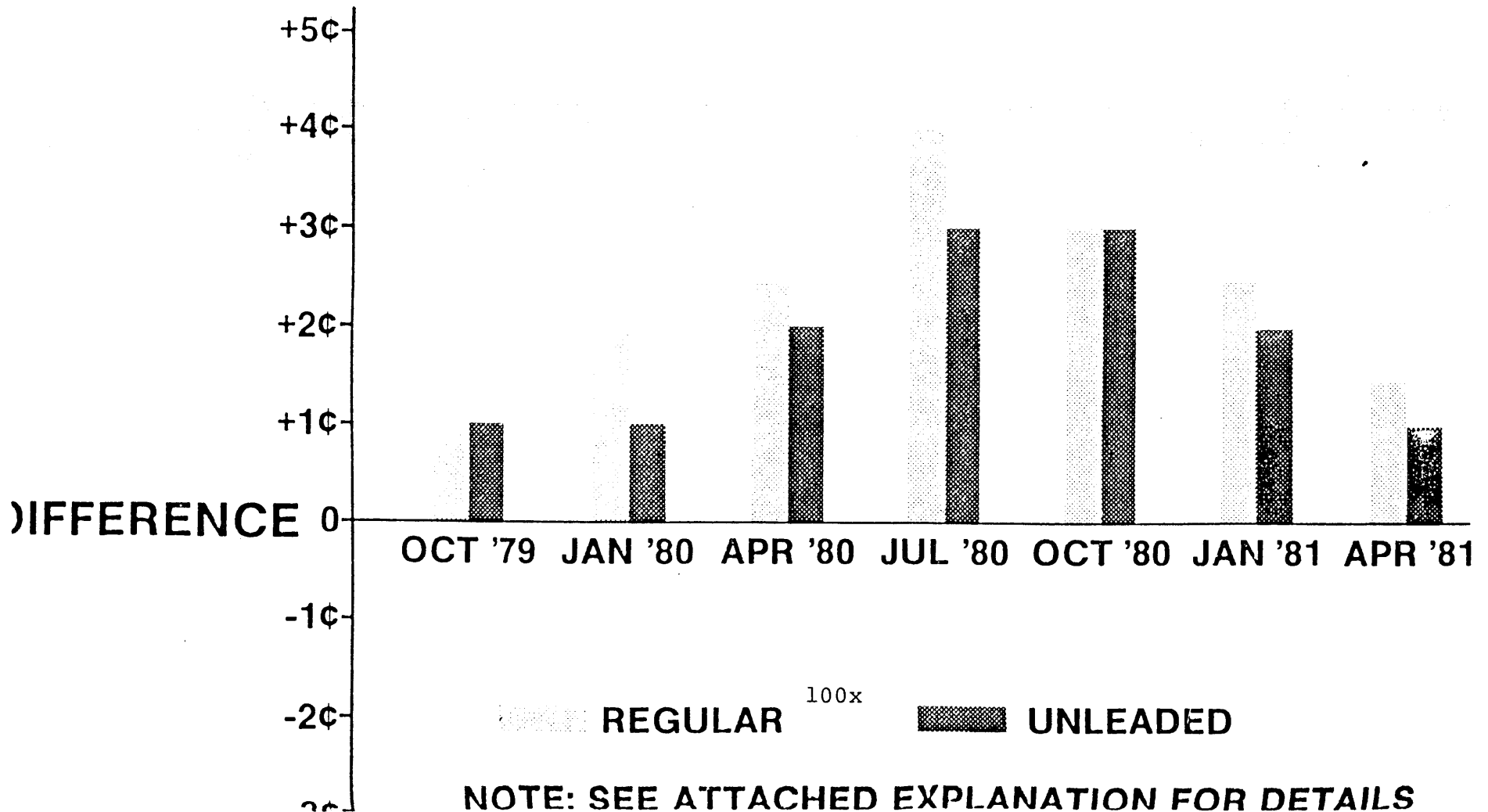
\* Based on NPN Fact Book-(1981) data on gasoline consumption.

# DIVORCEMENT COST TO CONSUMER (MARYLAND VS. ATLANTA)



# DIVORCEMENT COST TO CONSUMER (MARYLAND VS. RICHMOND)

PER  
GALLON



EXCERPTS FROM ...  
COMPETITION IN GASOLINE MARKETING IN THE U.S.

A Statement Before the  
Subcommittee on Antitrust, Monopoly and Business Rights  
of the  
Committee on the Judiciary  
United States Senate

by  
Dr. Philip E. Sorensen  
Professor of Economics  
Florida State University  
Tallahassee, Florida

## Competition in Gasoline Marketing in the U.S.

### Divorcement

The theory behind divorcement of major refiners from marketing is that these refiners have subsidized their company-operated stations in an attempt to drive their dealers out of the market.

Subsidization as part of a strategy of predatory pricing would make economic sense only if the potential gains to be reaped in future years (when monopoly prices could be charged) exceeded the present losses which would be incurred. Given free entry into gasoline retailing, and in view of the probability of antitrust action to correct for any acquired monopoly power, a predatory pricing strategy would be highly unlikely. One must wonder, as well, why the major refiners who have invested billions of dollars in a distribution system based upon independent dealers and jobbers would seek to destroy the very businesses whose success is so obviously critical to the success of the refiners themselves.

In many cases, the findings of the Title III Report, the most painstaking study of the question of refiner subsidization yet attempted, have clearly refuted the hypothesis of predatory pricing by the major refiners. After studying this issue using a variety of analytical techniques, the authors of the Report concluded that "refiners are more than covering the incremental costs of marketing gasoline through their company stores," and that where refiners have increased their operations at the retail level, this was done "for pecuniary reasons and not as a predatory device."<sup>16</sup>

The other side of the predatory behavior argument, the allegation of "predatory costing" by means of unjustified increases in dealers' rents, can be shown to be equally without merit. The most important factor in the rise in dealers' rents over the past five years has been the ending of the freeze on the level of rents which was imposed by the federal government in August of 1971 and not removed until November of 1975. This freeze coincided with the period of some of the most rapid inflation in U.S. history and with a rise in the level of interest rates to historic highs. Since all property-related costs such as taxes, ground rents charged by third parties, and maintenance costs had risen along with the general price level in the years after 1971, it would be expected that rents charged by refiners would also rise.<sup>17</sup>

The issue of "predatory costing" by refiners in the setting of rentals for service station properties was evaluated in the Title III Report. Comparing rentals charged by refiners in five U.S. cities with the rentals required to achieve a "breakeven" return on investment in the dealer-operated stations involved, the Title III Report concluded that in 14

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<sup>16</sup> Title III Report, p. 68.

<sup>17</sup> Costs of new service stations have reached the half-million dollar level, according to a story published in the National Petroleum News, August 1980, p. 56.

- 2 -

or 15 of the 17 cases studied, the actual rentals charged by the refiners were lower than the "breakeven" rentals required to earn 12 percent on the estimated value of the stations.<sup>18</sup> This analysis is confirmed by many recent stories in the financial press, suggesting that U.S. refining companies are earning below-normal returns on their investments in marketing properties.

The U.S. has only limited experience with the effects of refiner divorcement from retail marketing, but the experience to date suggests that consumers have a great deal to lose if divorcement is mandated on the national level. Following the decision of the U.S. Supreme Court in the case of Exxon, et al. v. Maryland (1978), the state of Maryland proceeded to enforce its 1974 statute providing for the divorcement of all refiner-operated service stations. Some 248 stations which were company-operated prior to the Supreme Court's decision were affected. While most of these stations were converted to dealer operations, 36 were closed as of April 1981 and a few others still remain in operation by refiners pending legal appeals.

In testimony favoring (divorcement legislation), Louis I. Goldstein, Maryland State Comptroller, attempted to justify Maryland's divorcement statute by comparing the absolute levels of retail prices for unleaded regular gasoline in Baltimore with prices in four other cities and the U.S. average price over the period June 1980 to February 1981.<sup>19</sup> Such a method of comparison, however, is totally invalid as evidence of the price effects of refiner divorcement in Maryland. Differences in levels of state and local taxes and differences in the wholesale cost of gasoline in the different cities cited by Mr. Goldstein are sufficient to explain the differences in levels of retail prices in those cities. The time period chosen for these comparisons is also not a relevant one.

A more logical method of assessing the impact on consumer prices of divorcement in Maryland would be to compare relative changes in retail prices (excluding taxes) or in retail margins which occurred in Maryland and in the U.S. as a whole in the period following the final effective date of divorcement in Maryland. Unfortunately, price and margin data are available only for Baltimore, but these data may be presumed to be representative of changes in prices and margins which were experienced in Maryland generally.

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<sup>18</sup> Details of this analysis are reported in the Title III Report, pp. 180-82.

<sup>19</sup> Statement before the Subcommittee on Energy, Environment and Safety Issues Affecting Small Business of the Committee on Small Business, House of Representatives, March 31, 1981.

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The final date for refiner divorcement of service stations in Maryland was July 13, 1979. Thus the base month used for comparison is June 1979--the last full month of operation prior to divorcement. Eight categories of gasoline sales are reported in Table 6 for Baltimore and for the U.S. on average. In order to present a better picture of the general level of prices (and margins) reached in Baltimore and in the U.S. after the date of final divorcement, average prices (and margins) for the full year 1980 are compared to prices (and margins) which existed in June 1979.

Table 6 indicates that for all eight categories of gasoline sales, increases in net-of-tax retail prices and retail margins in Baltimore were significantly greater than increases in prices and margins in the U.S. generally in the period following divorcement. In June 1979, retail margins for all eight categories of gasoline sales were lower in Baltimore than in the U.S. generally. Retail margins rose progressively in Baltimore (relative to the U.S.) after the final date of divorcement, and on average for 1980 retail margins for all eight categories of gasoline sales were higher in Baltimore than in the U.S. generally. The relative increase in retail margins in Baltimore after the final date of divorcement was between 1.75¢ and 3.90¢ per gallon.

The results reported in Table 6 are not surprising. Some of the most price competitive sellers in the market were forced out of operation in Maryland by the divorcement bill. While other sellers (chain marketers or jobbers-retailers) may fill this low-price niche to some degree as time passes, the consumers in Maryland will still have lost considerable freedom of choice.

The Divorcement (legislation is an) extremely clumsy instrument for addressing the problems of some gasoline dealers in some areas of the country. The bill would deny participation in the retail market to many major refiners who have not increased their participation in refiner-direct sales of gasoline. It would deny these refiners the flexibility to use company-operated stations as vehicles for testing new marketing ideas and new products, as part of training programs for dealers, and as a method of entering new markets or protecting their branded marketing program in declining areas. Most importantly, divorcement would force an important class of competitors out of the gasoline market, reducing the variety and extent of competition and ultimately leading to higher consumer prices.

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Table 6.

Comparison of Changes in Retail Gasoline Prices (Exc. Taxes) and Retail Margins in Baltimore and in the U.S.

Retail Prices (Exc. Taxes) (cents per gallon)	Leaded Regular		Unleaded Regular		Leaded Premium		Unleaded Premium	
	Self Serve	Full Serve	Self Serve	Full Serve	Self Serve	Full Serve	Self Serve	Full Serve
Baltimore, June 1979	68.46	69.86	73.08	74.33	74.96	75.94	78.26	79.59
Average for 1980	103.55	108.51	108.40	112.61	111.77	114.22	116.61	118.46
Increase in Baltimore Prices	+35.09	+38.65	+35.32	+38.28	+36.81	+38.28	+38.35	+38.87
U.S., June 1979	72.76	74.70	74.87	78.76	78.73	80.52	80.68	82.53
Average for 1980	102.90	107.35	108.15	111.76	112.05	114.66	115.37	118.23
Increase in U.S. Prices	+30.14	+32.66	+33.28	+33.00	+33.32	+34.14	+34.69	+35.70
RELATIVE INCREASE IN RETAIL PRICES (EXC. TAXES) IN BALTIMORE	+4.95	+5.99	+2.04	+5.28	+3.49	+4.14	+3.66	+3.17
Retail Margins (cents per gallon)								
Baltimore, June 1979	10.16	11.51	11.10	12.30	11.49	12.14	11.84	13.16
Average for 1980	9.35	14.46	10.56	14.89	13.37	15.29	13.46	15.52
Change in Baltimore Margins	-0.81	+2.95	-0.54	+2.59	+1.88	+3.15	+1.62	+2.36
U.S., June 1979	12.07	14.10	12.60	14.48	12.96	14.77	12.66	14.58
Average for 1980	8.73	13.15	10.31	13.91	11.93	14.47	12.23	15.02
Change in U.S. Margins	-3.34	-0.95	-2.29	-0.57	-1.03	-0.30	-0.43	+0.44
RELATIVE INCREASE IN RETAIL MARGINS IN BALTIMORE	+2.53	+3.90	+1.75	+3.16	+2.91	+3.45	+2.05	+1.92

Sources: Lundberg Survey data, as reported in Platt's Oil Price Handbook, 1979, pp. 57-58; and National Petroleum News Factbook Issue, Mid-June 1981, p. 94

SECTION V

STATEMENT ON SENATE BILL #1266

John R. Umbeck

Economist

Purdue University

Before

Pennsylvania

ENVIRONMENTAL RESOURCES AND ENERGY

COMMITTEE

My name is John Umbeck. I am currently a professor of economics in the Krannert Graduate School of Management at Purdue University. I am not an expert on the marketing of petroleum products. My expertise is in a field of microeconomics called industrial organization which is concerned with the ways in which individuals and firms will compete under a variety of social and legal environments. This includes predatory practices in a free market. To date I have published several articles in our leading professional journals and a book on competitive practices. I have provided expert testimony at the Federal Trade Commission and other government agency hearings and served as a consultant for private businesses. More recently, my work on the air traffic control industry has received national recognition through the press and television media.

#### INTRODUCTION

In Pennsylvania, as in most other states, gasoline is marketed through retail stations which are for the most part operated by independent franchised dealers. However, about 10% of the gas stations are run by refiners which hire salaried employees. For the last several years the dealers have been claiming that the refiners are trying to drive them out of business by selling gasoline through their salaried stations at prices which are so low there remains no profit. They claim this pricing policy, called "predatory pricing," will eventually force dealers to close and allow the refiners to establish a monopoly position in the retail market. To prevent this, the dealers are suggesting that divorcement legislation should be enacted now. This, they argue, will keep out monopolies, lead to lower prices and better service for the consumer.

My purpose in testifying on Senate Bill #1266 is to present the academic point of view concerning predatory pricing. In addition, I will present some of the findings from my study of the Maryland divorcement experience and relate them to the Pennsylvania petroleum market. These recent findings will refute the dealers' claims and show conclusively that divorcement will not benefit consumers.

#### PREDATORY PRICING - The Logic and The Facts.

The notion of predatory pricing is at least as old as Adam Smith. Two hundred years ago he wrote about the power of a "combination of strong men to eradicate weak ones by low or unremunerative prices, and having secured a monopoly to commence a legal pillage of the public." However, it was not until the Standard Oil of New Jersey case in 1911 that the concept was formally developed. Standard Oil was accused of, among other things, establishing and maintaining a monopoly through the systematic use of predatory pricing tactics. For the first time in American history, a United States company was found guilty of predation.

The predatory pricing argument is quite simple. To illustrate, suppose that there are two companies X and Y selling the same product. Both X and Y have the same production and marketing costs, that is neither is more efficient than the other. X now charges his customers a price for the product which is below his per unit variable cost. Customers who previously bought from Y now buy from X forcing Y to either close shop or match the price cut. However, since the new price is below variable costs, the total revenues are insufficient to maintain operations. Eventually, Y will be forced out of business, leaving X free to exploit his monopoly position and raise prices to a level higher than they were before the price war. Why should X be the one that survives the

price war? Because he has a source of funds which is unavailable to Y, usually in the form of monopoly profits from some other market.

Standard Oil was viewed by the public as an invincible monopolist who systematically crushed its competition through price predation. The argument was so convincing that not only was predatory pricing singled out in anti-trust legislation, but it went unquestioned by economists for almost 50 years. Since 1958 there has been a renewed interest in this anti-competitive practice. Both the logical and factual basis for the argument has come into question. We shall review both in the remainder of this testimony.

The notion of a price being predatory is inextricably tied to the concept of cost. Just the observation that one producer is selling at a price lower than another does not indicate predation. It may reflect only the results of good, healthy competition. Yet, to add that one's price is below cost, is to say nothing. In our example of firms X and Y, what if X had lower per unit variable costs than Y? X could charge a price which would cover his costs but, if matched by Y, would force Y to ultimately close shop. Surely we do not want to call that predation and make it illegal. That would only protect inefficient, high cost producers and lead to higher consumer prices. On the other hand, suppose X had higher per unit variable costs than Y. If X now charged a price below his costs, Y could still operate profitably while X would eventually go out of business. Again, we would not want to label this predation; stupid, maybe, but not predation. Similarly, we would not want to label predatory the result of entry into an industry. If X was currently selling in a market where the price was above his per unit costs, he would be

enjoying excess earnings which would attract other competitors. If Y now enters this market with identical costs, the increased supply would force X to lower his price. To the casual observer this could look like predation, as X lowers his price only when Y comes into the market. In fact, the lower price was forced upon X by Y to the benefit of all consumers.

Predatory pricing is one of those concepts which seems simple enough until you try to give it a precise meaning. One possible definition would be "a price chosen deliberately to drive out your competition and for no other reason." Unfortunately, the intent implied by "deliberate" is not observable and, as such, is not useful. However, the usefulness of this definition will be discussed in more detail later. For now we will use it just for purposes of examining the logic of the argument.

Before going into the theory of predation, one thing should be made explicit. In business, as in the jungle, survival matters. The business that makes a buck wins, those that do not, lose. The only way to make profits is to limit your activities to those for which the gains exceed the costs. The successful business is run by individuals who make their decisions on the basis of dollars and cents. This is not to say that they are omniscient and never make mistakes. It assumes only that they consider the profitability of each major decision carefully before implementation. Given this, we will be asking the question, "is predatory pricing profitable to the predator?" The answer is not as obvious as most people might believe. There are several reasons why predation may not be profitable. These are discussed below.

Let us return to our simple example of two gas stations, X and Y. X is a refiner operated station and Y is franchised by the same refiner. Each station is currently retailing one million gallons per year at a price of \$1.22. If their wholesale price is \$1.15 they are enjoying a 7¢ per gallon markup and making \$70,000 per year. Now the refiner decides to drive the franchised (dealer) station out of business and monopolize the retail gasoline market. He does this by lowering the retail price at his own company station to \$1.15. At first glance, this would appear to cost him only \$70,000 per year, however, on closer examination it will be seen to cost him \$140,000 per year. The reason for this is because to be successful in driving out the dealer, the company operated station must not only sell to his own customers at a loss but also to the dealer's customers. If he sold only to his own customers and refused to sell to anyone else, his price war will have no effect on the dealer. The dealer could continue to sell his one million gallons at \$1.22.

In Pennsylvania, the dealers are citing figures which show a steady decline in the number of dealer stations since 1972. They are claiming that refiners are subsidizing their own stations (predatory pricing) to drive the dealers out and monopolize the market. If this were true, each company operated station would have been losing \$140,000 per year, using the numbers from the above example, for the last 10 years. If the refiners had not engaged in predation, they could have put that money to work earning interest in a money market account. If the interest rate was 12% the refiners could have had today \$2,460,000 per station. If this predation had been successful as of today, the refiners would have

to earn an extra \$295,200 per station per year for the next 50 years just to make up for the cost of their price war. The profitability of each station would have to go from the current \$70,000 per year to \$365,200. This is an increase of over 400% !

If these numbers seem large, keep in mind that I used current gas prices in Pennsylvania, current interest rates on government bonds (which are typically lower than other interest rates) and realistic volume estimates per station. In fact, these numbers are probably far too low! In my example I assumed that each refiner operated station only had to drive out one dealer. In reality, in Pennsylvania only about 10% of the stations are refiner operated. This means that each refiner operated station has to drive out of the market nine dealers. This can only be accomplished by taking their customers and selling them gas at a loss. In other words the actual annual cost of a predatory price war would be nine times larger than my estimates!

Of course, everyone knows that oil companies are rich. Maybe they are rich enough that these losses do not bother them. The anticipation of eventual monopoly drives them to continue this costly price war. But, how long can we expect it to last? Between 1972 and 1980 the number of company operated stations in the United States remained virtually unchanged. However, as a percent of the total volume of gasoline sold, their share increased about 4.3% over this eight year period. If they continue to monopolize the market at this alarming rate it will take them just under 200 years to complete the job. Legislators are confronted with the following choice; should they enact divorce laws now to protect the consumers from eventual monopoly

prices, or should they wait and let consumers have 200 years of low priced gasoline?

The numbers which I have calculated have convinced me that the costs of a predatory war are too large to make it a profitable venture. Oil companies would have to be stupid or masochistic to attempt to monopolize the retail market in this way. To my knowledge, no one has ever accused them of either. Furthermore, all of the evidence supports my conclusion. Not only did the D.O.E. study find no evidence of predation in the retail market, twenty years of intensive economic research has not turned up any evidence that predatory pricing has ever occurred, even in the famous Standard Oil case.

#### THE EFFECTS OF DIVORCEMENT

For now let us set aside the issue of whether or not predation exists and examine another question. What would be the effects of divorcement legislation if it should be enacted in Pennsylvania? If we are to believe the dealers, this law would increase competition among gasoline retailers, lower retail prices and benefit all of us consumers. What is difficult to understand is why anyone would believe them. Why would a group of independent gasoline retailers spend thousands of dollars and as many hours of their time trying to pass legislation which would increase their own competition and lower their own prices?

To lend credibility to their claims, Mr. Arthur Price, from the Maryland Comptroller's Office, testified on behalf of the independent retailers in Indiana. On September 23, 1981 Mr. Price discussed the effects of a similar divorcement bill which had been passed in Maryland to eliminate refiner-operated retail gas stations allegedly engaging in

predatory pricing. He claimed that this bill, by eliminating these low priced companies, did in fact increase competition and lower retail prices for the gas consuming public.

In testimony given the following day, I was able to point out the logical error in Mr. Price's argument. If we assume that some retail stations were selling gasoline at a price below their competitors and if we assume that the divorcement bill eliminated these lower prices, then it follows that retail prices, on average, must have increased. There is no logical way divorcement could have led to lower prices. However, it is unfortunate that logic alone can not refute the claim that Maryland in fact had lower gas prices following the legislation. In order to understand what actually occurred, an empirical study of the Maryland retail market was necessary.

In October 1981 Professor Jack Barron and I began an exhaustive investigation of Maryland service stations before and after divorcement. While the details of this study are discussed in the next section, our results can be summarized briefly. We have found that divorcement legislation in Maryland caused a significant increase in the retail price of gasoline averaging 1.9¢ per gallon at the divorced station. Total gallons sold at these stations fell an average of 91,160 per year (about 15 1/2%) and the stations remained open about 1/2 hour less per week. Approximately 11% of the divorced stations closed completely. In each case, the independent dealers located near a divorced station raised their prices an average of 1¢ per gallon. The effects of the Maryland divorcement bill are quite clear and perfectly consistent with economic logic. The divorced station,

forced to operate under a more costly contractual arrangement, raised their prices, sold less gas and provided less convenience and service to their customers. Their competitors, capitalizing on the reduced competition caused by the law, increased their own prices. Despite all of the claims to the contrary, Maryland consumers were not benefited by the bill. What they actually received was less competition, less convenience, less gasoline and higher prices!

#### METHODOLOGY

In order to isolate the effects of divorcement on retail gasoline prices it was necessary to have detailed information on the Maryland market before and after the legislation became effective. There were three sources available. The first was price information collected and reported in the Lunberg Letter. The second was data collected and reported through the Department of Energy. The third was to collect our own price data from each of the divorced stations. We rejected the first source because the data did not allow us to identify the divorced stations. Only average prices were available. The second source was also rejected because these price figures were provided by the oil companies to the DOE for purposes of regulation. Serious questions of possible biases could be raised. We ended up collecting our own data from the divorced stations themselves.

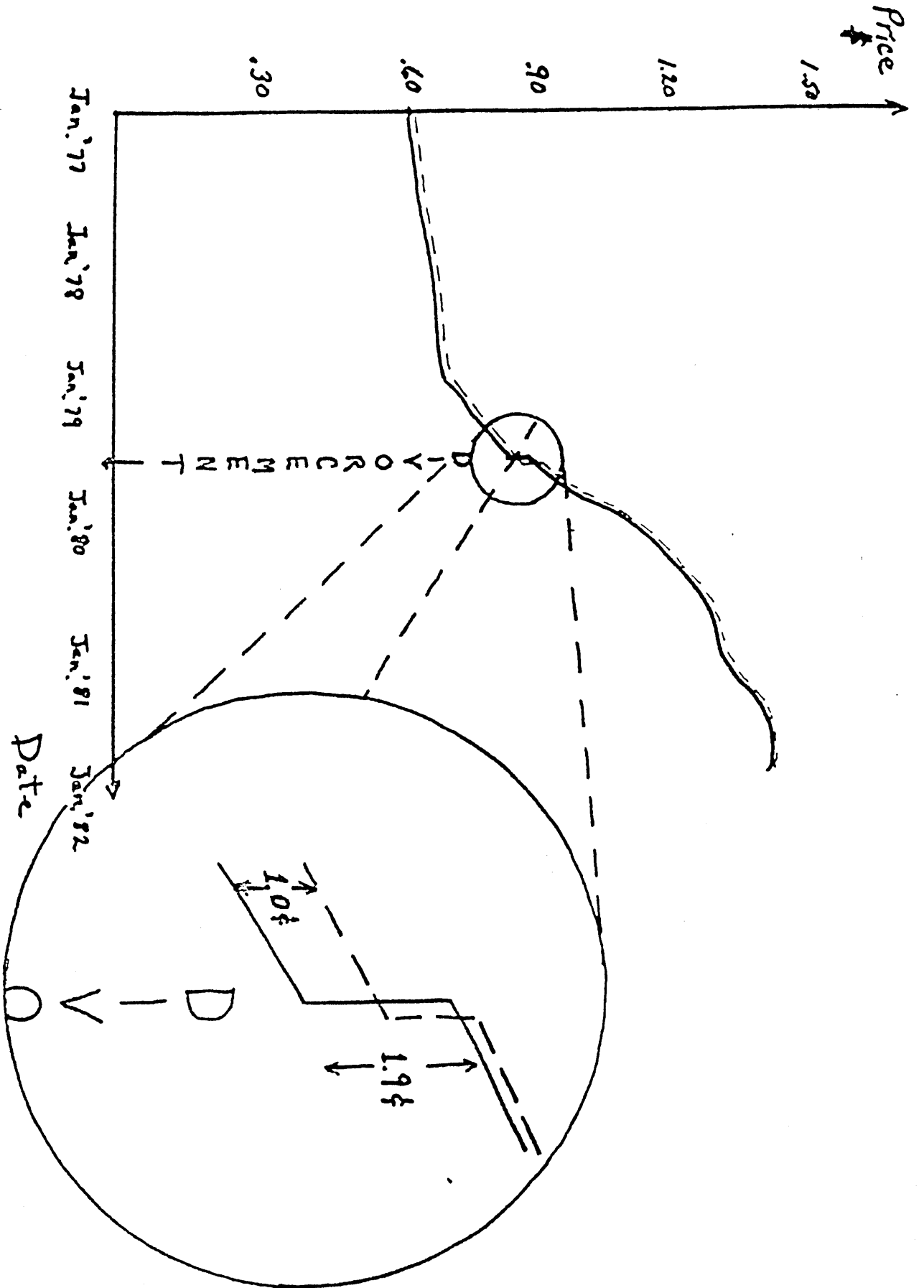
We sent a 14 page questionnaire to each company affected by divorcement in Maryland. Included on this form were questions about the types of service provided, the types of gasoline sold, volumes of gasoline sold, hours of operation, and the prices charged at the pump over a five year period. We also obtained similar data on each gas station

which competed with the divorced station. At this point in time we have complete information on 130 divorced stations and 600 non-divorced competitors. This is about 57% of the affected market.

With this data we created a picture of 130 local gasoline retail markets within the state of Maryland. At the center of each of these markets is one divorced station surrounded by its particular competitors. In addition to the information listed above, we know the prices each station charged for each type of gasoline at both the full and self-serve pumps over a period of time before and after legislation forced a change in the operation of the divorced station. Given this information it was possible for us to isolate, identify and measure precisely the effects of divorce on not only the affected stations but each of their competitors.

The chart on the next page will help visualize how this information was utilized. The horizontal axis measures time, beginning with 1977 (before divorce) and extending to the end of 1981 (after divorce). On the vertical axis we are measuring average retail prices within a local market. The solid line traces out the path of prices for a typical divorced station over time, while the dashed line traces out the path of prices for the local competitors.

In examining this chart, notice the large increase in retail prices for all stations in early 1979. This is caused by the rise in the price of crude oil. By mid 1980 these price increases had settled down to be roughly equal to our own rate of inflation, until middle 1981 when gas retail prices fell in response to an oversupply. However, for our purposes, the most important event to note is divorce. For



Retail Gasoline Prices: Maryland 1977-1982

purposes of illustration, we have chosen to represent a station which was divorced in July of 1979. If you look carefully at the solid line you will detect a slight upward kink on this data. While this price increase is small compared to the huge increases from rising crude prices, it is statistically significant, amounting on average to 1.9¢ per gallon.

To further illustrate the effects of divorcement this kink has been magnified to the right of the graph. Before July 1979 the company operated station charged a price about 1¢ below that of his competitors. After July the now divorced station, operated by someone else, was charging a price 1.9¢ higher than before. However, notice that the competitors have responded to the decreased price competition by increasing their own prices by about 1¢.

One obvious question which we have to ask is could this kink have been caused by something other than divorcement? If this one local market with its one divorced station was the only piece of information at our disposal we would have to conclude that this increase in price could have been caused by anything and our results would not be very conclusive. Fortunately, this is not the case. We have information on 130 local markets with 130 divorced stations. Equally fortunate is the fact that these refiner-operated stations were not all divorced on the same date. Some stations divorced in June 1978. May and June of 1980 were also popular dates for divorcement and some stations were not divorced until November 1981. While the details differ from station to station as well as the magnitude of the price change, the kink consistently occurs on the date of divorcement within the local market.

## CONCLUSIONS

Having presented a brief discussion of the research design, we can now give a more detailed report of our findings. As we noted, at the divorced station the average price per gallon increased approximately 1.9¢ per gallon for all types of gasoline. Breaking this average down into some of its components, we see that self serve prices increased about 1.0¢ while full serve prices increased 4.70¢. At the self serve divorced station the price of regular grade gasoline went up an insignificant amount and almost all of the noted price increases were accounted for by regular unleaded gasoline. On the other hand, if the station was full serve, both regular and regular unleaded increased by the same amounts, 4.7¢ per gallon. Competitors to the divorced stations responded in a variety of ways. If the divorced station was self serve, the competitors raised their prices about .78¢ in response to the divorced station's price increase of 1.0¢. If the divorced station had been a self serve station and it now shut down completely, as several stations did, the competitors responded to the reduced competition by raising their prices a full 1.0¢ per gallon. However, if it was a full serve station which was divorced, the competitors responded by raising their prices 3.16¢ per gallon.

Each of these figures is statistically significant at what we call the .01 confidence level. What this means is that these divorcement results are large enough that we can state with a probability of 99% that they in fact occurred and are not the result of some random market forces.

How does the Maryland experience relate to Pennsylvania? Because the bills are very similar with respect to their divorce features we can expect that the results will be very much the same. Some divorced stations will close completely while others will raise their prices. In 1981 there were 4,349,574,000 gallons of gasoline sold in Pennsylvania. Approximately 18.1% of this was sold by refiner operated stations according to the DOE study. If, as in Maryland, there is a 1.9¢ increase in prices at refiner operated stations, their customers can expect to pay an extra \$14,058,184 per year for their gasoline. In addition, dealers who are located near a divorced station will now have less price competition and will be able to raise their prices. In Maryland this amounted to 1¢ per gallon at the five nearest stations. Based on DOE estimates of annual volumes sold at dealer stations, the five nearest dealers will sell approximately (in total, not each) 1,575,545,780 gallons per year. The extra 1¢ will cost their customers \$15,745,458 per year. Combined, these effects can be expected to cost Pennsylvania consumers an extra \$30,703,642 per year. Even at current rates of interest, that amount if left in the hands of consumers would allow them to finance the construction of new homes and the purchase of new cars totalling \$219,311,728

Clearly, this law will not benefit Pennsylvania consumers. They will pay higher prices and get less gasoline and less convenience. Why would dealers promote a bill which is obviously not in the public interest? Imagine a dealer who pumps a volume of one million gallons per year. If he is currently in competition with a refiner operated station the divorce law will allow him to raise his prices 1¢ per

gallon. Without doing any more work, this dealer's take home profits will increase by \$10,000 per year. Now we know why the dealers are trying so hard to convince us that divorcement is for our own good.

SECTION VI

POSITION OF CITIES SERVICE  
ON  
RETAIL MARKETING DIVORCEMENT

Overview

Like most Americans, Cities Service Company is convinced that the consumer is best served through free and open competition. Free competition is the foundation of this nation's private enterprise system. Competition provides consumers with a choice. It promotes creativity and innovation. It forces producers, distributors and retailers to be efficient. It allows consumers to obtain products and services they desire at the lowest possible price. In short, through competition we all benefit.

It is with this in mind that Cities Service opposes attempts to reduce competition in gasoline marketing through retail gasoline marketing divorcement legislation.

Purpose and Effects

The purpose of retail gasoline marketing divorcement legislation is to protect one class of marketer (independent dealers) from the effects of competition and the normal evolutionary changes in gasoline marketing. In recent years, although dealers have continued to serve the lion's share of the retail gasoline market, there has been a move away from conventional full-service stations towards more economical, self-service gasoline outlets.

The introduction of self-service and other new marketing techniques is a response to consumer demand for a wider choice in products, prices and services. The success of these new methods of marketing is an indication of public support.

The real motivation behind retail marketing divorcement legislation is protectionism--plain and simple. The legislation represents a political -- not economic -- decision favoring restraint of trade instead of fair competition. Like all special interest legislation, retail divorcement promises several disagreeable, though unpublicized, side effects:

- (1) Consumers will be denied the free choice of buying their gasoline and oil products where they choose and with whatever level of service they prefer.
- (2) The forced reduction in competition will put upward pressure on the prices consumers will have to pay for their gasoline.
- (3) According to the U.S. Department of Commerce 16 major categories of goods and services (besides petroleum products) are marketed through company-operated and franchised outlets and could be affected by broader retail divorcement legislation.

As Georgia Tech Professor Fred Allvine summarized the divorce issue: "The spread of marketing divorce legislation would inhibit badly needed adjustments from occurring in the marketplace; be anti-competitive; contribute to greater inflation; and be contrary to the public interest."

If the market is open to all competitors, then the consumer will be free to decide where he wants to spend his dollars. The consumer will, in effect, cast his vote as to who will succeed -- and who will fail -- in the marketplace. The consumer will be the ultimate beneficiary.

We are also confident of the converse: If any class of marketer enjoys special protection and does not have to compete for the approval of the consuming public, then there will be no incentive for greater efficiency within that class of marketer. The consumer will suffer -- in denial of free choice, diminished efficiency and higher prices.

These are the alternatives: Free competition or a regulated economy.

Passage of retail gasoline marketing divorcement legislation will put a check on competition. It will deny the basic right of all marketers to compete in the marketplace.

In our view, the public interest would be better served with free competition, the prerequisite to innovation and efficiency.

#### Problems of Branded Retail Marketers

Cities Service Company's opposition to retail gasoline marketing legislation should not be misunderstood as suggesting either that retail gasoline marketers do not face problems in the marketplace or that Cities is insensitive to those problems. Independent gasoline marketers do face the challenges of a changing marketplace as adjustments occur following elimination of federal price and allocation controls. But along with this challenge comes great opportunity as well.

We believe that retail gasoline marketing divorcement legislation is premised upon an incorrect view of refiners marketing on a direct basis. The final report on the Title III Study by the Department of Energy found, "There has been no massive movement by refiners into the direct retailing of gasoline." The report further states, "changing economic and

marketing conditions are primarily responsible for the movement to high volume, self-service stations and away from the low-volume, full-service network." The study concluded that "legislation such as targeted divorcement will not alleviate the perceived uncertainties of independent marketers -- and should not be enacted."

Moreover, we do not believe that divorcement legislation will address the underlying market conditions which branded retail gasoline marketers apparently fear. Such legislation will not only fail to insulate inefficient marketers from the real forces of change, those of the consumer and the market place, but will injure competition, reduce efficiency and increase consumer costs.

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SECTION VII

CITIES SERVICE MARKETING POLICY

Cities Service marketing policy meets the customary objectives of:

- 1) meeting consumer demand
- 2) marketing the refinery output and
- 3) generating adequate income

We believe that we are somewhat different in our approach for accomplishing these objectives. It has been our philosophy that the key to profitability is the development of a marketing program that is unique, progressive and fair to our distributors and dealers. Our comments will concentrate on our methods of doing business to accomplish our marketing objectives.

Our Lake Charles, Louisiana refinery has a current capacity of 291,000 barrels per day. When this refinery is operated at full capacity, it is necessary to purchase about 200,000 barrels of crude or about 70% of our requirements. While a large portion of this crude is purchased under contract, most contracts are for periods ranging from one month to one year and are subject to price fluctuations. Therefore, most of our raw material supply is subject to nearly the same vulnerability as any manufacturing firm that must purchase large quantities of raw material in the spot market.

On the marketing side, it is important that Cities Service has secure markets and channels of distribution. Between 55% to 60% of our refinery output is gasoline, or about 165,000 barrels per day. IT IS OBVIOUS THAT CITIES SERVICE WOULD BE IN A VERY VULNERABLE POSITION IF LEGISLATION WERE ENACTED THAT WOULD ELIMINATE A PORTION OF OUR MARKETING OPERATION AND FORCE US TO SELL ON A SPOT OR WHOLESALE CONTRACT BASIS. THIS WOULD MEAN THAT WE WOULD BE SUBJECT TO THE COMMODITY MARKET FOR OUR RAW MATERIAL AND ALSO OUR REFINED PRODUCT. THIS IS A SITUATION WE MUST AVOID AS THE FINANCIAL IMPLICATIONS WOULD BE SIGNIFICANT.

Approximately 75% to 80% of our gasoline is sold to branded and unbranded distributors who are independent marketers and who, in turn, sell to dealers, consumers or directly to the motorist through their company-operated stations. Cities Service sells all distributors on a terminal-rack basis which represents the market value of the product plus distribution costs including terminal expenses. We believe that this system is both fair and equitable. CITGO and bank credit cards are available to our distributors on a no charge basis.

The remaining 20% to 25% of our refinery gasoline production is sold through our Retail Division. Gasoline is transferred to the Retail Division on the same rack price basis as sales to distributors. Retail is responsible for

meeting all of their operating and expense obligations and to provide earnings to the company.

The Retail Division sells gasoline through salary-operated company stores, management fee operations and dealers.

At the present time, CITGO has approximately 350 Quik Marts stores. These facilities feature a very efficient layout that enables one attendant, a cashier, to handle large volumes of gasoline, convenience foods and other items. Consumers can generally enjoy competitively priced gasoline and other products at these stores because our low cost of operations, efficiency and high volume of sales.

These Quik Mart stores are located in 18 states and we employ approximately 2500 store managers and retail clerks.

Approximately 5,000 dealers market CITGO gasoline. Most of these dealers are served by our distributors. Some of these dealers were acquired by our distributors in recent years as a result of our sale or transfer of marketing areas to this class of trade.

Most of the dealers served by our retail operation are located in the northeastern part of the United States. CITGO has given a very wide option of choices to our dealers.

A dealer may choose to enter into a Dealer Franchise Agreement. Under the terms of our agreement, the dealer's price of gasoline is the same terminal rack price that applies to distributors and to our Retail Division. This is

the dealers base price. CITGO then adds charges to this price based on the value of other services or functions that we perform. These include rent, taxes, delivery charges and a franchise fee. CITGO provides maintenance, painting, identification, credit card imprinters and other services. Additionally, dealers have the opportunity of leasing our property strictly on a real estate basis and arranging for their own source of product and other services.

The dealer has still another option. If he is currently leasing a fee property he may purchase the property and conduct whatever business or type of operation that he chooses.

These alternatives represent a very wide range of opportunities for the dealer.

Under the terms of our rental and franchise agreement, a dealer has the opportunity of developing a high volume gasoline operation and automotive service business. Nearly all of his costs are fixed. The dealer has everything to gain by promoting his gasoline sales.

CITGO strongly believes that our marketing operations are responsive to consumer needs and to our distributors and dealers. If legislation were enacted that would adversely affect one segment of retail marketing, it would affect the competitive capabilities and viability of our entire marketing operation.

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SECTION VIII

THE CONSUMER AND RETAIL DIVORCEMENT

How does the welfare of the consumer figure into the decision to restrict certain refiners from marketing of gasoline? Retail Marketing Divorcement legislation is supposed to protect the small independent businessman from "unfair" competition, but what will this protection cost the consumer?

The following is a series of comments on Retail Divorcement by noted scholars, industry experts, newspaper editors, et al.

Before the American Bar Association, John H. Shenefield, Assistant Attorney General, U.S. Department of Justice, commented on the Maryland Divorcement Statute as follows:

Legislation has been passed at the state level (Maryland) which may well have the effect of limiting competition in the distribution of petroleum products. While it is understandable that a state might, out of a sense of equity, seek to protect independent distributors from the competition of larger integrated firms, it is also reasonably clear that over the long run consumers will pay higher prices as a result. (Emphasis added.)

The Florida Supreme Court, recognizing the economic evidence, struck down a retail gasoline marketing divorcement law noting that:

Taking all into account the evidence indicates that the public would not be benefited in any degree by the curtailment of company-operated stations.

Dr. Theodore Levitt, Professor of Business Administration at the Harvard Business School, said on the subject of divorcement in testimony before a Massachusetts State Legislative Committee:

The bills under consideration would specifically restrict that type of retail gasoline outlet offering consumers both price and non-price advantages over dealer-operated sites. The bills under consideration would, if enacted, have a significant negative impact on competition and the number of competitors in the

retail gasoline market in the Commonwealth of Massachusetts. As a result of this, gasoline prices could be expected to climb. (Emphasis added.)

Legislation which prohibits any marketer, large or small, from active participation in the marketplaces can only lead to a reduction in innovative activity and a lag in fulfillment of market demand. The consumer suffers.

In the November 13, 1978, issue of The Oil Daily an article entitled "The Maryland Decision: A Real Pandora's Box" stated:

Fred C. Allvine, a Georgia Institute of Technology Professor, recently told a group of jobbers in his state that the disappearance of the small independent gasoline dealer is inevitable.

"New legislation, such as that passed in Maryland, may slow down, but will not stop the inevitable decline," he said.

"Marketing divorcement legislation is clearly not in the public interest," he added.

On June 27, 1978, the Evening Bulletin in Philadelphia, Pennsylvania, ran an article, "Competition at the Gas Pumps" which made the following observations:

If Pennsylvania-New Jersey gas station dealers get a divorce from their oil companies--or to be more specific, a 'divorcement'--car drivers could wind up paying the settlement costs. (Emphasis added.)

Gas consumers may want to make it clear to their state lawmakers that these bans aren't welcome or needed. Because company-operated stations usually sell just gas, they can market it at a lower price. By banning these "gas-and-go" stations, individual states are whittling away at competition, resulting eventually in higher gas prices. (Emphasis added.)

But banning company-operated service stations will be on a par with the recent defeat of self-service gas pumps in New Jersey. Outlawing them can benefit a small number of businesses at the expense of the much larger driving public. (Emphasis added.)

Charles J. Irwin, consumer advocate and former Director of the New Jersey Division of Consumer Affairs stated:

"There is no question in my mind that divorcement legislation is not consumer protection legislation. To represent it to be protective of the consuming public would be an unjustifiable hoax."

An article in the Richmond Times Dispatch on February 17, 1978, entitled "Pull the Plug" addressed itself to divorcement legislation being considered by the Virginia General Assembly:

There is no way, no way at all, that a legislator who considers himself to be a friend of the free enterprise system or a friend of the consumer could justify voting for legislation in restraint of competition in the retail sale of gasoline. Both the system and the consumer would suffer as a result of its adoption. (Emphasis added.)

Robert Samuelson in The National Journal succinctly summed up the effects of government protection of business segments when he stated:

"Competition frustrates inflation...while the corollary is also often true: Absence of competition breeds inflation."

U.S. Oil Week on August 21, 1978, in an article titled, "Dealers Want to Push Jobbers Out of Retailing" quoted Bill Lyden, National Oil Jobbers President as saying:

Jobbers have no choice but to oppose retail divestiture on both a federal and state level.

Such legislation would perpetuate inefficiencies and raise consumer prices. (Emphasis added.)

Similar opinion on the divorcement issue was expressed by C. J. Collier, Chairman of the Federal Trade Commission at the annual conference of the Consumer Federation of America:

"The gas station operators figure that the way to get rid of their problem is to get rid of a little compe-

tition. Why not? It's just 3 to 7 cents (per gallon), they say, Well, I say I'm not for it."

A Washington Post editorial on June 19, 1978, declared:

The Maryland legislation restricts price competition, as the Court observed. While it may not be unconstitutional, that kind of regulation is bad in principle.

Dr. Philip E. Sorensen, Professor of Economics, Florida State University in testifying before the U. S. Senate Committee on the Judiciary on October 21, 1981, stated that:

"Retail margins rose progressively in Baltimore (relative to the U.S.) after the final date of divorcement, and on the average for 1980 retail margins for all eight categories of gasoline sales were higher in Baltimore than in the U.S. generally. The relative increase in margins in Baltimore after the final date of divorcement was between 1.75¢ and 3.90¢ per gallon.

Who will be affected by retail divorcement was addressed by Giffin B. Bell, former Attorney General of the U.S., in his testimony before the U.S. Senate Committee on the Judiciary on October 21, 1981 when he made this observation.

"In focusing upon the major oil companies, this bill therefore strikes out against the wrong target for the wrong reasons to the detriment not only of the petroleum industry as a whole, but also to the American consumers who benefits from the lower prices that free and open competition guarantees."

The Oil Daily of December 22, 1981, in an article titled "Maryland's Divorcement Law Not Working Well" came to this conclusion:

Thus, judging only the basic facts and the philosophical merits, it certainly appears that this type of divorcement law hasn't saved the drivers of Maryland a dime--quite the contrary.

Similarly the Tulsa World, on January 4, 1982, in an editorial titled "Mischief in Maryland" came to the realization that:

Maryland's experience of course grew out of legislators wishing to believe the myth rather than the reality.

Passage of retail gasoline marketing divorcement legislation will only hurt the consumer of this country and, as we have demonstrated, will not help the proponents of this legislation--the retail dealers. Consumers will pay more and will be denied the choice that a free market now affords them as to where and from whom they will make their gasoline purchases. The adverse consumer impact of retail gasoline marketing divorcement should preclude any further consideration of such special interest, anti-competitive legislation.

SECTION IX

EXISTING LAW PROVIDES PROTECTION FOR RETAILERS

Overview

Cities Service believes that the decline in the number of retail gasoline marketers has been due primarily to changing economic and marketing conditions. Retail gasoline marketing divorcement will not stem this decline.

Moreover, retail gasoline marketing divorcement cannot be justified on other grounds. In particular, such legislation cannot be justified by concern for protecting gasoline retailers from competition with their suppliers. Adequate protection of the interests of gasoline retailers already exists under federal law. These protections include: 1) The Petroleum Marketing Practices Act and, 2) State Franchise laws (11/25/75 [P.L. 454, No. 126]), 3) Federal Antitrust Laws which prohibit unfair competition and discriminatory pricing practices.

Petroleum Marketing Practices Act

Title I of the Petroleum Marketing Practices Act (PMPA), sometimes called "Dealer-Day in Court," establishes protection for gasoline retailers from arbitrary or discriminatory termination or non-renewal of their leases and supply agreements. The PMPA prohibits a supplier from terminating a supply relationship with a branded dealer during the term of the lease and/or supply agreement and from failing to renew the relationship at the expiration of the lease and/or supply agreement unless that termination or non-renewal is permitted under the Act.

Even where a permitted grounds for termination or non-renewal exists, generally a refiner must give the branded retail marketer 90 days notice. Where the basis for termination or non-renewal is the withdrawal of the refiner from marketing of motor fuels in a market area, six months advance notice of termination or non-renewal is required.

Under the PMPA, the legislative grounds for termination or non-renewal are narrowly prescribed. Thus, for example, while a branded retailer may be terminated for failure to comply with a provision of his lease and/or supply agreements with his supplier, termination or non-renewal is permitted only if the violated provision is both reasonable and of material significance to the relationship between the retailer and his supplier. That is to say not every violation of a provision of a contract between the retailer and his supplier gives rise to a right of termination under the PMPA. Under the PMPA, violation of contractual provisions which impose unreasonable limitations upon the actions of the retailer or which are not of material significance to the relationship between the retailer and the supplier cannot be enforced through termination of the retailer. Other narrowly defined grounds for termination and/or non-renewal are:

- o Fraud or criminal misconduct by the dealer but only if relevant to the operation of the retail outlet;

- o Bankruptcy or insolvency of the retailer, but only if judicially declared;
- o Continuing severe physical or mental disability of the retailer but only if of at least three months duration and only if the disability renders the retailer unable to provide for the continued proper operation of the retailer marketing facilities;
- o Condemnation of the retail marketing facilities through the power of eminent domain;
- o Destruction of all or a substantial part of the retail marketing facilities;
- o Adulteration, mislabeling or misbranding of motor fuels by the retailer but only if willful;
- o Failure of the retailer to comply with federal, state or local laws or regulations but only if the regulations pertain to the operation of the retail marketing facilities and only if the retailer's failure to comply was knowing;
- o Conviction of the retailer of a felony but only if the felony involves moral turpitude.

To protect retailers from retaliatory actions by a supplier, under the PMPA a supplier is not permitted to base termination or non-renewal upon old and long forgotten

events. If the supplier fails to exercise his termination or non-renewal rights based upon a specific event within the period of time permitted under the Act, the supplier may not thereafter base termination or non-renewal upon the same event. In addition, for certain termination or non-renewal grounds, termination or non-renewal is not permitted unless the retailer has been notified of the failures which would permit his supplier to terminate or fail to renew the retailer and afforded an opportunity to cure these failures.

Although the PMPA does permit termination and/or non-renewal based upon economic considerations, these grounds are narrowly circumscribed and prevent a refiner from terminating or failing to renew for the purpose of converting a retail outlet to company operation.

An important side effect of the PMPA has been the development of the practice of offering long-term leases and supply agreements by refiners to their retailers. This practice has been encouraged by the provisions of the PMPA which grant suppliers increased flexibility with respect to non-renewal of leases and/or supply agreements where the term of the lease and/or supply agreement is three years or longer.

The PMPA also gives to retailers significant protection where the supplier terminates or fails to renew on the basis of withdrawal from the market area. In such cases, the retailer must be granted either a right of first refusal of

any third party offer to purchase the service station facilities leased by the retailer or, if the supplier proposes to sell his interest in the outlet to a third person as part of a block sale, the acquiring party must offer the retailer a lease and/or supply agreement which does not discriminate against the retailer.

Suppliers who terminate or fail to renew a lease and/or supply agreement in violation of the requirements of the PMPA are subject to judicial enforcement action. In particular, Federal district courts are authorized to issue injunctions against the offending supplier mandating re-instatement of the retailer. Importantly, in any such judicial enforcement proceeding, the burden of proof is placed upon the supplier to document the validity of the claimed grounds for termination or non-renewal. In addition, a liberal standard for the grant of preliminary injunctive relief virtually assures that the retailer will be protected from termination and/or non-renewal until after the supplier has proved the validity of the claimed grounds for termination and/or non-renewal.

In addition to injunctive relief preventing a supplier from improperly terminating or failing to renew, the PMPA authorizes the retailer to collect actual damages and, if the supplier's actions were in willful disregard of the requirements of the PMPA, the retailer can collect exemplary or punitive damages. Also, where the retailer prevails, the

PMPA authorizes payment of reasonable attorney and expert witness fees by the supplier.

The foregoing summary illustrates the substantial protections afforded retail gasoline marketers under the PMPA from arbitrary or discriminatory termination and/or non-renewal by their supplier.

#### Federal Antitrust Laws

In addition to the substantial protections enjoyed by branded retail gasoline marketers under the Petroleum Marketing Practices Act, federal antitrust statutes provide protections against unfair competition and discriminatory pricing practices.

Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) provides:

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

The Federal Trade Commission is authorized to investigate complaints of unfair competition. If the Commission finds that any person has engaged in unfair methods of competition or unfair or deceptive acts or practices, the Commission is authorized to order the party to cease and desist from using the prohibited acts or practices.

The Robinson-Patman Act (section two of the Clayton Act of 1914, as amended by section two of the Robinson-Patman

Act of 1936, 15 U.S.C. §13) prohibits price discrimination in the sale of commodities in interstate commerce. The Act provides:

It shall be unlawful for any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition . . . . provided, that nothing . . . shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are . . . sold or delivered . . . .

Vigorous enforcement of federal antitrust laws should assure independent gasoline retailers of adequate protections against both unfair competition and discriminatory pricing practices. No further legislation is required particularly if that legislation would be anticompetitive and tip the balance from free competition, which benefits consumers, to protectionism which injures consumers.

D-6/C

SECTION X

HISTORY OF RETAILING  
AND THE EFFECT OF FEDERAL REGULATIONS

HISTORY OF RETAILING

Twenty years and perhaps one hundred and fifty million motor vehicles ago, the retailing of gasoline was a relatively uncomplicated enterprise. Unfortunately, however, for many who chose to enter the service station business, it was also unprofitable. It is a generally accepted estimate that the dealer turnover rate industry wide was 20% annually. This "failure rate" was an accepted risk since each retailer, when starting in business, knew in his own mind that he would be part of that larger group, the 80% who were successful.

The typical retail outlet of the 60's was usually a two or three-bay station with adequate facilities to perform routine service maintenance, tune-ups and light mechanical work on automobiles. It also had space available for maintaining an inventory of tires, batteries, cooling system hoses and other assorted accessories which were customarily most needed by customers. The outlet also had gasoline available for sale. In short, the "typical" retail outlet offered to the consuming public just what the public wanted--convenience: by and large the average driver purchased his gasoline from his neighborhood retailer.

In the 1960's the American automobile had a recommended oil change and lubrication interval of 1000 - 2000 miles, and most car owners elected to have this service

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work done at the local station where they bought their gasoline. In addition, when the time came to replace worn tires, have the brakes relined, tune the car or even replace the anti-freeze, the local service station with its friendly dealer was the choice of most consumers.

The competition to secure and retain the "loyal" customer was fierce. After all, there were two or three or even more retail outlets within a stone's throw of one another and if a customer became dissatisfied with the quality of the service he received in the lube and work bays of one retailer, he would transfer his allegiance to another retailer. Consequently, gasoline dealers put more and more emphasis on the automotive servicing aspect of their business and relied less and less on the volume of gasoline which was sold. It was a well known fact that "you make your expenses at the gas pump and your living in the service bays." (The validity of this "fact" may be questioned but its widespread acceptance is indisputable.)

While retailers were devoting their time and resources to maintaining or increasing the automotive service part of their businesses, a revolution was taking place. There were no shots fired in this revolution; however, the results were as dramatic, in terms of ultimate casualties, as if a full-fledged war had been waged.

Over a period of years, almost unnoticed, an attack was being launched on the retailers' bread and butter.

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American and foreign car manufacturers utilized the technological advances of extended-life motor oils and were recommending drain and change intervals of 6,000, 10,000 and even 15,000 miles. The widespread use of radial tires, with an expected lifespan of up to 40,000 miles, cut markedly into tire sales by retailers. These events, while significant by themselves, were merely a skirmish when compared to what was soon to follow. Mandated environmental and safety standards for new vehicles made the essentially basic internal combustion engine an enormously complex device which required expensive, sophisticated equipment to diagnose its ailments and affect a cure. Few retailers had the financial resources to purchase this space-age machinery and, as a result, the automobile agency service shops with their larger capital resources captured a great deal of tuneup and repair work which had previously belonged to the gasoline retailers. For many retailers the loss of this business destroyed their economic viability and they closed their doors forever.

In the final analysis, however, it was not technology alone which inflicted the many wounds on retailers. The significant factors in changing the face and manner of gasoline retailing were the competitive influences of franchise operations for mufflers, tires, brakes, "fast-in fast-out" lube and oil changes, the discount automotive supply store for the do-it-yourself "shade tree mechanic", tune up specialty shops and the automotive service centers operated

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by the large retail department stores. Each of these enterprises succeeded because they had one thing in common--they all satisfied a consumer need. The entrepreneurs who started the franchised operations, in effect, perceived a need and then proceeded to satisfy it.

One additional element which exemplified the vast changes in the retailing of gasoline is the self-serve phenomenon. In the last 10 years, the consumer has clearly indicated his desire to purchase his gasoline at the lowest possible price even though he is slightly inconvenienced by virtue of the fact that it is necessary for him to pump his own gasoline. Indeed, all indications are that today's motorist is concerned with saving both time and money, a result which is achieved by utilizing the self-service retail outlet of the 80's which is designed for maximum efficiency and maximum customer convenience.

#### PRICE AND ALLOCATION REGULATIONS

No recounting of the recent history of retail marketing can be considered remotely complete if it does not bring to the forefront the negative impact which resulted from the price and allocation regulations implemented in 1973 and 1974. These regulations, which were originally designed to cope with the dramatic price increases in crude oil shipments by the OPEC cartel, represented a classic example of bureaucratic hocus pocus. The regulatory scheme for the pricing of gasoline by retailers was so confusing that finally in mid-1979 the Department of Energy felt compelled

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to acknowledge that since most retailers did not understand the pricing rules, which had been in effect for almost six years, a new pricing rule should be adopted which would greatly simplify matters for the retailers. DOE's new pricing rule was the very essence of simplicity. The retailer determined his maximum selling price for gasoline by adding to his acquisition cost, the appropriate state and Federal Excise Taxes and 15.4 cents per gallon for a sales margin. Unfortunately, the margin amount was based upon DOE's estimate of a national average spread in May of 1973 plus a factor to compensate for the average increase in the cost of living between 1973 to 1979. Consequently, the use of averages flawed what should have been a simple amendment by inequitably benefitting retailers whose historical margins and increased costs were below the average and at the same time penalizing the retailers who had historical margins and increased costs above the average.

While the pricing regulations justifiably had a key role in the adversities suffered by the retailers, the main villain certainly was the allocation regulations. There is ample reason to believe that this particular segment of the regulations was the cause of more retail outlet closings since 1974 than all other reasons combined.

In January 1974, in the midst of what is generally referred to as the Arab embargo, the Federal Energy Administration (one of several predecessors to the Department of

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Energy) activated an allocation program for motor gasoline. This program, which was designed to organize the scarcity and equalize the misery, was successful during and for a short time after the embargo. However, when its primary purpose was achieved and a period of supply normalcy returned to the marketplace, these regulations, instead of being consigned to standby status, were permitted to govern the distribution of petroleum products. Retail marketers, who were confronted with the loss of revenues in their lube and service bays, found that their economic survival now depended on increased gasoline sales and innovative marketing techniques. Unfortunately, the regulations permitted an allocation of gasoline based on their purchases during the calendar year 1972. These volumes were generally inadequate to permit the increased gasoline sales requirements which were necessary for the retailers to remain economically viable. Certainly there were administrative remedies available. The regulations provided for application to Regional FEA offices for increases to base period allocation volumes, and many retailers made use of these applications. This resulted in an enormous increase in paperwork loads at the FEA regional offices and inordinate delays in the processing of applications. In spite of the bureaucratic red tape and extended delays, a large number of retailers could have survived, but what they did not know was that the administrative relief provided for in the regulations was more illusory than real

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where existing retailers were concerned. There existed within the FEA what can best be described as an institutional bias with regard to the applications received from retailers. Applications from retailers, when acted upon at all, were routinely denied in all regional offices. At the same time, the allocation regulations (Section 211.105) provided that jobbers could make applications to FEA for new retail outlets, and other new customers which they intended to supply, and by notification to their prime suppliers would be furnished this additional product on an interim basis pending Region Office approval of the application. Since there existed, in published agency guidelines, a presumption for making favorable determinations for assignments for new retail outlets, it followed that the jobber applications were almost always approved.

In July of 1980, Cities Service, in testifying before the Economic Regulatory Administration of the DOE regarding a revision to the motor gasoline allocation regulations, noted:

"Existing retail outlets have for too long been excluded from the opportunity of sharing in the growth in the marketplace as a result of changes in demand patterns or other similar growth situations. Cities Service believes that equity demands that existing retail outlets be evaluated for adjustments to their base period entitlements

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under the same standards as applied to applications for new retail outlets."

Retailers who tried to address the dynamics of changing consumer buying habits by changing their marketing methods now found that the final blow had fallen. Without the additional gasoline needed, there was no future in the business. The only choice which remained is evidenced by the number of closed and vacant service stations across the United States today.

CITIES SERVICE COMPANY  
THE QUIK MART CONCEPT

THE UNIQUE DESIGN OF THE FACILITY STIMULATES CUSTOMER INTEREST. THE FUELING STATIONS ARE NEAR THE BUILDING, WHICH PROVIDES CUSTOMER CONVENIENCE FOR PAYING FOR THE PURCHASE. ALSO, AS THE CUSTOMER FUELS HIS VEHICLE HE CAN SEE INTO THE STORE AND VIEW THE MERCHANDISE ON DISPLAY. THE TYPICAL BUILDING 14' X 28', OR APPROXIMATELY 400 SQUARE FEET.

THERE ARE DISPENSERS ON THE FOUR CORNERS OF THE BUILDING, EACH WITH TWO HOSES FOR A TOTAL OF EIGHT HOSES ON THE BASE UNIT. AN ADDITIONAL PUMP ISLAND CAN BE LOCATED TO THE REAR OF THE BUILDING TO PROVIDE FOUR MORE HOSES, SHOULD THE DEMAND WARRANT.

BECAUSE THE STORES AND DISPENSERS ARE JOINED IT ALLOWS THE TOTAL FACILITY TO SIT NEAR THE STREET IN CLEAR VIEW OF THE PASSING TRAFFIC.

THE OPTIMUM PROPERTY SIZE FOR THE FACILITY IS 175' X 175' OR APPROXIMATELY 30,000 SQUARE FEET. THIS ALLOWS FOR TRAFFIC TO FLOW EASILY AROUND THE BUILDING.

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151x

THE UNIQUENESS OF THE BUILDING DESIGN, COMPLIMENTED BY THE LANDSCAPING, PROVIDES AN AESTHETIC APPEAL THAT MUNICIPAL GOVERNMENTS EMBRACE.

A TYPICAL FACILITY IS OPERATED BY ONE EMPLOYEE AND THE DESIGN ALLOWS MAXIMUM CONTROL WITH ONE PERSON. INTERIOR DESIGN HAS THE CASHIER ELEVATED EIGHT INCHES OFF THE FLOOR FOR OPTIMUM VISIBILITY AND CONTROL. ALSO, THIS ALLOWS THE CASHIER BETTER SECURITY. ALL STORES ARE OPERATED ON A SELF SERVE BASIS EXCEPT WHERE PROHIBITED BY LAW.

THE MERCHANDISE INVENTORY CONSISTS OF LIMITED CONVENIENCE ITEMS, SUCH AS MILK, BREAD, SODA, CIGARETTES, SNACKS, AND A FEW OTHER RELATED SUNDRY ITEMS. THESE ITEMS ARE SELECTED BASED ON CUSTOMER DEMAND AND THE ABILITY TO TURN THE INVENTORY QUICKLY. THE COMBINATION OF GASOLINE AND FAST MOVING CONVENIENCE ITEMS ALLOWS MAXIMUM CASH FLOW.

D-6/D-2

# THE LEVERAGE OF LOWER OIL PRICES

On world economies | On OPEC countries | On the oil industry

For almost a decade the rising price of OPEC oil has gripped the world economy in a vise. Reeling from the twelvefold price increase from 1973 to 1981, the industrial nations—nurtured on more than a century of cheap energy—not only went plummeting into two recessions but also suffered further as inflation rates soared to record levels. Now, with oil prices falling faster than anyone expected and with the cartel's grip loosening, that process of economic stagnation is being reversed. No one knows for sure how far oil prices will drop, but forces are already in motion that will speed economic growth and reduce inflation throughout the industrial world.

The spot price of oil has plunged with breathtaking speed. On Mar. 1 the spot market price for Saudi Arabian light crude was \$29 per bbl., a drop of more than 25% from a year earlier. On the New York Mercantile Exchange, the May, 1982, heating oil contract closed on Mar. 8 at 67¢ per gal., down from a high of \$1.15. And in some parts of the U.S., the price of gasoline has fallen below \$1 for the first time since late 1978.

This rapid reversal of oil prices is partly the result of recession in the industrialized countries. Perhaps more important, it also stems from the more efficient use of energy by industry and consumers. The dampening effect of these factors on oil prices will benefit the world's economies by:

**BOOSTING CONSUMER INCOMES.** Rapidly rising oil prices during much of the 1970s transferred hundreds of billions of dollars a year from consuming countries to the producers, mainly OPEC (chart). This drained consumer purchasing power in the industrial nations and helped depress economic growth. Now the decline in oil prices will put money back in the hands of consumers—directly, by cutting their energy bills, and indirectly, by lowering overall inflation. In the U.S. alone, each \$1 drop in oil prices adds some \$5.5 billion to consumer incomes, according to Gary M. Wenglowksi, chief economist for Goldman, Sachs & Co. So once the fall of more than \$8 in spot prices over the past year is fully trans-

lated into contract prices, consumer incomes will be raised by about \$45 billion, more than the total amount of the July 1 personal income tax cut. "The boost to consumer incomes will be somewhat offset by the reduction in the earnings of those who own oil assets," says Wenglowski. "But on balance it is a big plus."

**REDUCING INFLATION.** In the U.S., energy costs account for about 11% of the consumer price index. "For every \$2 reduction in the price of oil, you can knock one-half of a percentage point off the consumer price index," says economist Donald Ratajczak of Georgia State University. Thus, a good part of the unexpectedly rapid slowing of inflation in the U.S. can already be traced to the oil price drop. Slowing inflation is keeping down wage demands, as well as cost-of-living escalators in wage contracts and government entitlement programs.

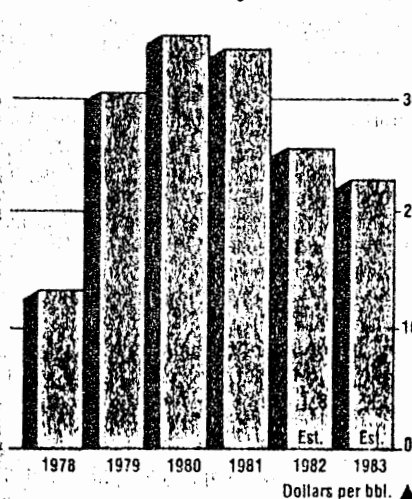
**DRIVING DOWN INTEREST RATES.** The sharp slowing in inflation should put downward pressure on rates. As lenders come

to expect lower prices, they will reduce the inflation premiums they demand from borrowers. And as inflation abates the amount of money needed to finance the growth of the economy will also diminish. Monetary authorities will be able to stick with the monetary targets they have already set and still supply ample credit to the financial markets.

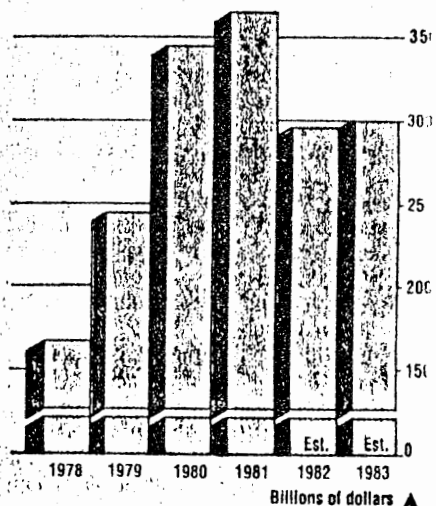
**INCREASING CAPITAL INVESTMENT.** Most of the increase will come after consumer spending has picked up. With production still slowing and capacity utilization at deep recession levels, business executives are cautious about spending on new plant and equipment. "The fall in oil prices will not help capital investment directly but will do so indirectly by boosting consumer spending," explains Harvard economist Richard N. Cooper. Moreover, the slump in oil prices has dampened spending in the energy industry, which has been the fastest-growing source of capital investment. Offsetting this, the decline in oil prices will lower

## The decline in oil prices...

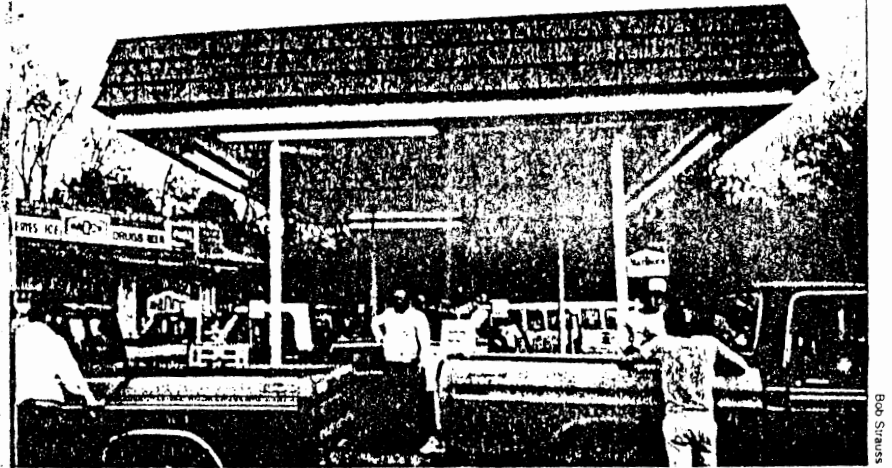
Annual average spot price, Saudi Arabian light crude



## ...will cut the oil import bills of industrial nations...



Date: Wharton Econometric Forecasting Associates Inc., Middle East Petroleum & Economic Publications, Platt's Oilgram Price Report, BW estimates



Gasoline prices in some parts of the U. S. are less than \$1 per gal. for the first time since 1978, good news for auto makers.

production costs and boost profits for most other companies. This will give them a solid foundation for investing when markets pick up.

**IMPROVING THE BALANCE OF PAYMENTS.** When prices were rising, the oil-producing countries ran huge surpluses in their current accounts, reaching a peak of \$110 billion for OPEC alone in 1980. By the fourth quarter of 1981, OPEC was running a deficit. It is expected, at best, just to balance its current account this year. At the same time that the oil import bills of consumer nations shrink,

their payments balances are expected to improve significantly. This means that countries with huge debts, such as Brazil, can meet payments more easily. And as balance-of-payments concerns are reduced, many governments will be freer to follow less restrictive monetary and fiscal policies.

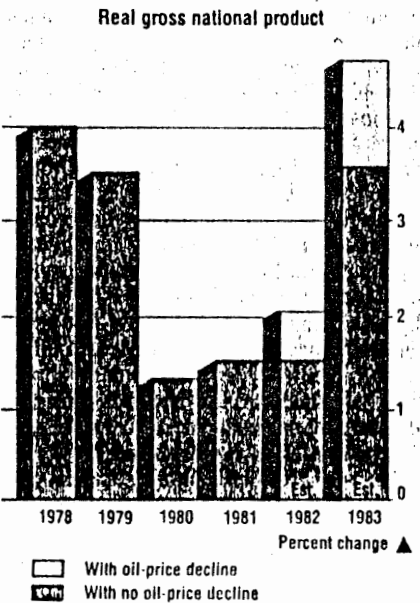
The drop in oil prices, says David Sternlight, chief economist for Atlantic Richfield Co., is "a positive development for jobs, productivity, and inflation. We have a shot at wringing out some of the systemic inflation once and for all." But

whether such gains will prove lasting and self-reinforcing obviously depends on how far oil prices fall and whether they stay down.

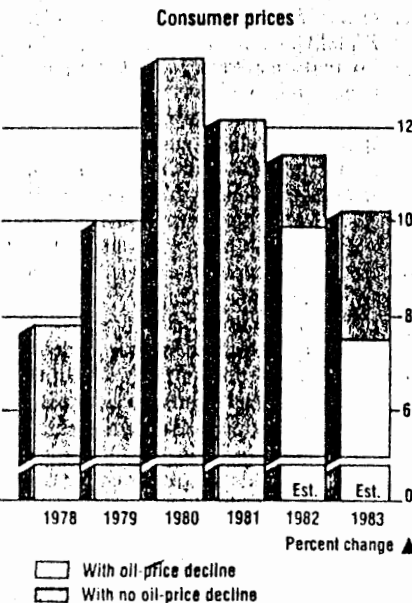
Most experts believe that contract oil prices will continue to fall in months ahead in line with the break in spot prices and will settle in a range of \$25 to \$28 per bbl. at least for 1982 before starting to firm up again sometime in 1983, as expected world economic recovery gains momentum. Others argue that the decline could continue through 1983, with the price hovering in a band of \$15 to \$20. The optimists maintain that there have been major structural changes in the consumption habits of users as well as a significant weakening of OPEC. Everyone agrees that big gains have been made in using energy more efficiently since the first oil shock of 1974. The question is whether the improvement in conservation has gone far enough to prevent oil prices from rebounding sharply as demand picks up. "A substantial part of the decline in oil use does not reflect the decline in economic activity," says Alan Greenspan, president of Townsend-Greenspan & Co. He argues that the move to fuel-efficient cars and more energy-efficient homes and factories means that when recovery comes oil prices "will not kick up as much as some forecasters expect."

A study by the Organization for Economic Cooperation & Development (OECD) in Paris shows just how far conservation in the industrialized world has advanced. The ratio of oil consumption to gross domestic product dropped from 1973 to 1981 by almost 28%. Most of that occurred from 1978 to 1981, in the wake of the second oil-price shock. "Business

...boost economic growth...



...and reduce inflation



people were shocked by the first oil-price hike but did not make major adjustments," notes Sylvia Ostry, chief economist for the OECD. "After 1978, having lived through it once, the response was much more rational."

If Greenspan and Ostry are right, the pressures on OPEC to cut production in order to prop up prices will become even greater. Saudi Arabia has been under enormous pressure from other OPEC members to cut production. The Saudis have trimmed output to 7.5 million bbl. per day. But many observers believe they would have to slash output an added 2 million bbl. just to stabilize prices.

The decline in oil prices will have a different impact on different countries. At least initially, the U. S. and Japan are expected to be the biggest winners among industrialized countries. Because U. S. industry is more energy-intensive, the cut in prices will have a marked impact on operating costs. Moreover, because oil prices are denominated in dollars, the U. S. will enjoy the full impact of the price declines. To the extent that the dollar continues to strengthen as it has over the past year, countries that must import oil priced in dollars will not see the full impact of lower oil prices on inflation and growth.

The drop in oil prices is already leading some economists to raise their forecasts for the U. S. William H. Brown, director of the energy section of Chase Econometrics, just released a forecast based on \$25 oil by the first quarter of 1983. At that level, real GNP would rise 0.5% faster, disposable income would be 1.3% higher, and the consumer price index would fall by 1.9%.

"All of the basic industries that are energy-intensive—the airlines, paper, glass, rubber, aluminum, steel, motor vehicles—all those that got hit hard when oil prices jumped, will benefit," says Jerry Jordan, a member of the Council of Economic Advisers. Adds Jacques R. Moroni, director of environmental research and energy planning at Ford Motor Co., which is predicting that oil prices will drop to \$23 or \$24 in the next three years: "It's good news for those of us building cars and trucks."

The decline in energy prices is also welcome news to the hard-hit industrial heartland, where most of America's basic industries are located, as well as to the energy-poor Northeast. "The decline in employment in the industrial backbone of the U. S., while total employment was rising, happened in large measure because of the energy price shift," explains Jordan. "Now I can see that pendulum swinging back."

The pendulum might also be swinging back for Japan's basic industries—petrochemicals, electric utilities, heavy transportation equipment, and aluminum—which were dealt a severe setback by the huge runup in oil prices. "If cheap crude prices materialize, the outlook for these industries should brighten," says Masaru Yoshitomi, chief economist for the government's Economic Planning Agency. In general, since Japan depends more heavily than any other major industrial country on imported oil, the price decline is regarded as a "counter oil shock," which should strengthen further its already successful high-technology industries.

Most Europeans are taking a much more cautious view of how much they will gain. In addition to being locked into buying dollar-denominated oil, the Europeans believe that the recent decline in prices is mainly a recession-induced phenomenon. "I have a very European view of the situation, which is that the U. S. is once again overreacting," says Nicolas Krul, general manager of Gulf & Occidental Investment Co.

Nonetheless, the Europeans do expect

depends on how much interest rates come down. If inflation continues to abate more rapidly than market interest rates, as it has over the past year, then the real rate of interest—market rates adjusted for inflation—will remain too high and may even rise. That would delay the much-needed and long-awaited capital spending revival in the industrialized countries.

In the U. S., there is widespread concern that the fall in oil prices will reduce revenues from the windfall-profits tax and other oil industry taxes, offsetting the revenue gain from an economic pick-up, at least in the short run. If that happens, the huge budget deficit will widen even more, keeping upward pressure on interest rates. In world financial markets, the decline in OPEC revenues means that the supply of funds to the Euromarkets will shrink drastically at a time when borrowing by corporations and developing countries is expected to remain very strong.

Another worry is that the sharp drop in oil prices will encourage consumers and industry to slow or even reverse efforts to conserve and to invest in alternative sources of energy. The increasing demand for large U. S. cars in recent weeks is cited as evidence that once price pressures ease, consumers will go back to their old habits.

Detroit auto makers, however, argue that they are in the middle of an \$80 billion investment to shift to production of small fuel-efficient cars that is impossible to reverse. It is not just the amount of money already invested; federal law requires that Detroit meet increasingly stiff fuel performance standards in coming years. Other executives also insist that they have no plans to stop investing in energy-saving plants and equipment. "It doesn't take \$35-a-bbl. oil to get us interested in energy conservation," says Robert F. Loughridge, director of economic and strategic planning for Goodyear Tire & Rubber Co. "Twenty dollars a bbl. is enough."

Yet it would turn out to be only a temporary respite from the clutches of the oil cartel if the efforts to conserve and find alternative sources of energy do not continue. "The lower oil prices, at least in the short run, can be an important element in revitalizing the economy," says Charles K. Ebinger, director of energy and national security for the Georgetown Center for Strategic & International Studies. "But in the longer run, if they tend to retard investments in high-cost energy projects, plant modernization, and conservation, they will only make us more susceptible to the next oil shock."

## Industry and consumers have learned a big lesson: Efficient use of energy

some gains in growth and in combating inflation. Inflation is already starting to slow in some countries, such as Germany. But the pickup in domestic economic growth is expected to be offset in part by the loss of orders to OPEC markets as oil revenues fall. In 1981, for example, about 9% of Germany's exports went to OPEC, its fastest-growing market in recent years.

Any oil-induced recovery in the industrialized countries, however, will bolster world trade, and that will be healthy for the developing nations, which have been severely hurt by a combination of slumping demand, rising oil prices, and high interest rates. "Improved growth for the industrial world means higher demand for LDCs' exports, and that, along with the fall in oil prices and interest rates, should ease their balance-of-payments problems," says Sara Johnson, an economist at Data Resources Inc. In Brazil, for example, which imports 75% of its oil, each \$1 decline in oil prices cuts \$250 million a year from the import bill. So Brazil now expects to show a 1982 trade surplus of at least \$3 billion.

Just how much the slump in oil prices will raise world economic growth still

SPECIAL REPORT

# THIS TIME THE OIL SHOCK BATTERS THE CARTEL



OPEC's Ali Khalifa, Calderon Bertl, Shagari, and Qadafi: Cutthroat price competition and internal political bickering threaten to curb the organization's power in the 1980s as the current oil glut puts a severe cash squeeze on members.

The OPEC cartel is facing strains that it has never experienced before. Its 13 members were barely united when oil demand was surging, but now OPEC has to struggle with plummeting prices. So soft are these prices that the current official level of \$34 per bbl. is almost certain to drop to \$28, and there is a good chance that it may slide even further, down to the \$20 to \$25 range. Some U. S. oil company officials believe that unless the cartel acts quickly and with unprecedented unity to cut production and prices, spot prices could even plummet to \$15 a bbl.

That is precisely what the members will try to prevent when they meet in Vienna on Mar. 19. But OPEC is so divided by cutthroat competition and internal political bickering that the organization is unlikely to find a way to agree anytime soon. Indeed, for the first time since the first oil shock of 1973, OPEC is really hurting. Demand for OPEC oil in the recession-ridden West has collapsed under the combined impact of lower economic growth, surprisingly high conservation, expanded use of alternate energy sources such as coal and gas, and rising non-OPEC production of oil from Mexico, the North Sea, and the North Slope of Alaska. As a result, OPEC is now producing less than 19 million bbl. a day, the least since 1969 and a precipitous drop from the 30.9 million bbl. per day the cartel pumped in 1979.

And yet even at the current low level, a glut of 2 million to 3 million bbl. per day persists—and Saudi Arabia's Mar. 6 decision to cut back its own production from 8.5 million to 7.5 million bbl. per

day will not change a thing. The Saudis have not been able to sell more than 7.5 million bbl. per day in recent weeks, and Riyadh's action is merely a political sop to the more radical Arab states; it has no significant market impact. "Unless they're willing to cut their price to something like \$25 a bbl., the production cut doesn't mean a thing," says Philip K. Verleger Jr., a former Treasury energy aide and a principal at Booz, Allen & Hamilton Inc.

### Scrambling for customers

The glut already has transformed the most radical price hawks among the oil producers into vicious price cutters. The heavily populated countries with big, expensive development projects are rushing to cut prices to maintain cash flow just five months after they pressured Saudi Arabia to push oil prices up to \$34 per bbl. Mexico and Venezuela are battling over the U. S. East Coast market, each cutting prices to try to hold on to shrinking sales. Britain rattled the bones of OPEC on Mar. 2 when it chopped a solid \$4 a bbl. from its North Sea crude price to compete with North African producers. And Nigeria, which lowered its crude price in late August to bolster sales, is now expected to follow Britain with further cuts.

Under-the-table discounts already are common. Libya, Iraq, and Algeria are quietly getting their crude processed in Europe and dumping the refined product on an overloaded spot market, pushing prices even lower. "There is a scramble among OPEC producers for customers,

just like we had a scramble for oil suppliers in 1979," according to Jochen Mohnfeld, an oil expert at the Paris-based International Energy Agency.

While OPEC countries are still making big money on what oil they are selling, the drop in price could not come at a worse time for them. The decline in oil revenues hits them just as expenditures for costly industrial and resource projects are scheduled to rise. Any attempt to cut back sharply on these projects would be politically embarrassing and, in many cases, dangerous as rising expectations among the people put heavy pressure on local leaders. While the revenue pinch may not be squeezing fabulously wealthy and sparsely populated Saudi Arabia, it is affecting virtually all other OPEC producers, which are struggling to find the cash to keep their costly development ventures going.

Many of these oil producers are now turning to the Euromarkets to borrow billions to keep their massive projects afloat. And they are putting new pressures on the international capital markets just when the banking system's huge flows of new petrodollars are beginning to dry up. As oil prices decline, so do OPEC's enormous cash surpluses (chart, page 70). These funds, recycled through Western banks, provided credit to industrial countries, developing countries, and the East bloc for most of the 1970s. Now the oil producers themselves are emerging as one of the largest groups of borrowers in the world markets; in the third quarter of 1981 they were net debtors.

The rapid rundown in the OPEC sur-

plus, in turn, is creating sharp spasms in the Euromarkets, raising fears of a large-scale credit crunch. "The supply of funds to the Euromarket will be less, but demand will continue high," notes Nicolas Krul, general manager of Gulf & Occidental Investment Co. in Geneva. "I think there will be fierce competition for funds."

Some bankers are afraid of a repeat of the 1974-75 banking panic when savings fell during a global recession and Euromarket spreads on loans widened enormously when the Herstatt Bank failed. "It's the same script all over again," says a Bank for International Settlements official in Basel. Other international bankers predict that oil-producing countries such as Algeria, suddenly short of revenues to fund their ambitious development schemes, will crowd out less developed countries without oil reserves.

But even many oil-producing countries are now getting a cold shoulder in the Euromarkets. After lengthy haggling, Mexico recently raised a \$2 billion Euro-dollar loan at a spread of 7/8% over the London interbank offered rate (LIBOR) for four years. A year ago, Mexico was able to get a spread of only 1/2% over LIBOR for six years.

If anything, international banks are getting more conservative in their lending habits. They have been badly burned by near-defaults by Poland and Romania, and they hold billions of dollars in debt from other East bloc nations. If oil prices continue to decline sharply, their billions in energy project loans made in the past two years may also begin to sour.

### A 'flight to quality'

If there is any new favorite among these bankers, it is U.S. corporations, not the oil-producing countries. In 1981, U.S. corporations took down 33% of all Euromarket syndicated loans and Eurobonds combined. Many bankers see the new popularity of U.S. corporations among lenders as a "flight to quality." Others see it more as a return to Euromarket lending patterns that existed before OPEC. "More and more," says one investment banker, "you are seeing the Eurobond market go back to what it was before the oil price explosion."

To halt the slide in the demand for oil, most experts believe that OPEC will have to cut production by an additional 2 million bbl. per day and also take the price down by at least \$4, to \$30 a bbl., and perhaps even more. Both production and price moves will have to be made together to dispel any doubts among consumers that OPEC is serious. One action with-

out the other will not be sufficient to stop the slide.

But OPEC has never in its history been able to agree on production sharing. Most of any new cut will have to come from a reluctant Saudi Arabia, which will insist that other OPEC members not secretly increase production to grab sales. Yet other oil producers in and out of OPEC do need more sales. Warring Iran and Iraq once produced a combined total of 8 million bbl. per day before the overthrow of the Shah, and both are desperately short of cash to pay for their drawn-out struggle. Their combined production is now down to only 2 million bbl. per day, and if they try to elbow back into the market, they could easily upset any OPEC production plan.

With Iran in particular now selling

with the big splurges coming after the Arab oil embargo in 1973 and the fall of the Shah in 1979. The explosion severely disrupted a world industrial base built on cheap energy, and, in effect, a new wealth tax was imposed on the world. A decade of severe economic dislocation followed, with inflation and slow growth cutting into the real wealth of Europe, the U.S., and Japan in a manner unprecedented in modern history.

### Dramatic energy savings

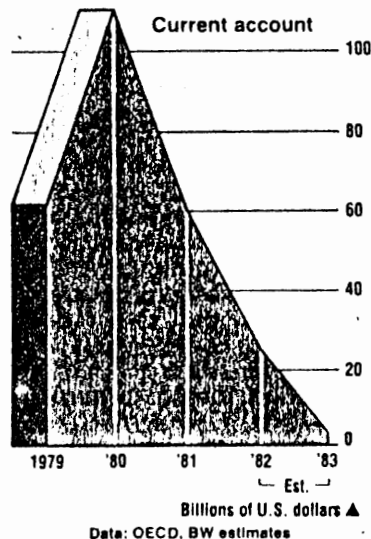
But while the industrial world appeared to be helplessly standing by as oil prices ratcheted ever higher, a slow but inexorable economic adjustment was taking place beneath the surface. The industrialized world has learned how to make impressive energy savings. From 1978 to 1981 overall per-capita energy use in the U.S. dropped by 20%, according to the Energy Dept. Japan managed to cut the amount of oil used to make a ton of steel by 68% from 1973 to 1980 and the U.S. was not too far behind with a decline of 40%. To satisfy its overall energy needs, France embarked on a massive nuclear power program that will supply 70% of its electricity needs by 1985. In the U.S., the switch to domestic natural gas and coal now saves more than 700,000 bbl. of oil a day.

High prices also spurred renewed exploration for oil in non-OPEC countries. New fields were brought on in Alaska, Mexico, the North Sea, Oman, and a number of other countries. In the U.S. alone, a record was set last year when 78,000 wells were drilled. So severe has been the drop in demand for OPEC oil that even this past extremely cold winter has not curbed the dramatic decline in production. U.S. oil imports are down to a four-week average of 5.2 million bbl. per day, a drop of 41% since 1977, when the U.S. relied on OPEC for 70% of its imported oil. By the end of 1981 that had fallen to just 55%. It might even be below half today.

The huge shift toward energy conservation will not be turned around by a \$5 or even a \$10 drop in the price of oil. That means that the world is probably out of OPEC's clutches, at least through the middle of this decade, but what happens beyond that will depend on decisions on investments coming on stream after 1990. David Sternlight, chief economist for Atlantic Richfield Co., says: "I am not worried that this [oil] price fall is going to abort conservation. Even with a long rise in the price of oil followed by a small proportional fall, the real price of oil is going to be very high for the existing infrastructure of the U.S."

Of course, all bets are off if a political

### OPEC's shrinking petrodollar surplus



large amounts of gold to raise money for arms, it seems likely that at least Tehran will be trying to take a bigger slice of a shrinking oil market in the months ahead. "Iran is the wild card," says Everett M. Erlich, deputy assistant director and top energy official at the Congressional Budget Office. "It is easily the largest single problem to any such agreement" (page 54). Adds a Paris-based oil industry executive: "If OPEC was a homogeneous operation, like an executive board, it could do a lot. But it is not, and the weaknesses will show. It's a real test."

OPEC has no one but itself to blame for its current problems. In the past 11 years, the cartel has raised the official posted price of oil from \$2.10 per bbl. in 1971 to its present level of \$34 a bbl.,

## SPECIAL REPORT

blowup in the volatile Middle East knocks out major oil fields, especially those in Saudi Arabia. While the world has cut its dependence on OPEC oil, it is still hooked enough that a war would cause an economic disaster. Yet, barring this extreme case, OPEC will no longer be able to raise the price of oil at will in the 1980s as it did in the 1970s.

Paradoxically, some OPEC members have long predicted the cartel's present predicament. Saudi Arabia, in particular, has been preaching the need for a long-term pricing strategy that would gradually raise the price of oil instead of allowing sharp increases that disrupt the world's economies. Oil Minister Ahmed Zaki Yamani has also worried out loud about coal replacing oil as the West's major source of energy and what that would do to oil prices and the political

stability of the Middle East. He has been trying to moderate or even force down oil prices in recent months to stop the West from weaning itself from oil.

Indeed, if there is any single country that could pull OPEC out of its current mess, it is Saudi Arabia. A production cut to 5 million bbl. per day would probably turn the market around and raise prices, but it would also run counter to Yamani's desire to see oil become more competitive with coal. And the Saudi royal family does not want to antagonize the population it rules by cutting spending. The trickle-down effect of wealth to the Saudi in the street has always been considered the main factor in the stability of the country and the continued acceptance of the ruling house of Saud.

OPEC producers are worried about their future. Now the tide is running in favor

of the consumer, although no one can tell when or even if it will be reversed. Throughout the past decade, OPEC members have been haunted by the history of other countries that have received huge transfers of wealth in short periods, only to see it pass like sand through their fingers. In a recent article, Juan Lezama, the pen name for the editor of Mexico's left-wing daily newspaper *Uno más uno* wrote: "I dreamt that in Mexico it happened like it did to the Spanish empire after the gold. One day it was the same old Spain, the same as before the gold."

The oil producers will not have to retreat back to the desert if oil sales remain low. But a major change has taken place in the world, and OPEC will find that before the end of the decade its own survival will be challenged.

## PRESSURES THAT WILL FORCE THE INDUSTRY TO SHRINK

Radical and rapid change has become almost a way of life in the oil industry, but the remarkable falloff in the price of oil over the last few weeks has startled even the most seasoned executives. In the near term, the decline in prices will reduce oil company profits, forcing a slash in spending. Capital budgets will be revised and exploration programs will be slowed in 1982. Longer term, the changes could be even more dramatic. Far from being an industry of ever-growing power and profits, Big Oil now appears to be headed for a prolonged period of no growth—even of significant contraction.

The outlook has been reversed because of the surprising deterioration in demand for petroleum products. For most of the last decade, industry executives and economists have believed that demand for oil was almost inelastic—that people would need and want heating oil, gasoline, petrochemicals, and all types of energy with very little regard for price. Thus, they believed, the price of oil would keep going up. The increases might come in fits and starts, but in general, prices would keep rising at least to the cost of substitutes such as shale oil or liquefied coal. In the last few months it has become increasingly clear, however, that oil prices can fall and that consumers can, over time, sharply curtail their use of energy. The recent tumbling of crude oil prices brought home

that point undeniably. "Gone are the days when oil prices and profits seemed to be on a never-ending rise," laments James E. Lee, chairman of Gulf Oil Corp. "The full brunt of the changes in the economics of petroleum is now being felt throughout the petroleum markets," says John K. McKinley, chairman of Texaco Inc.

While almost no one in the industry had expected a market collapse, signs of serious weakness began showing up as early as September, 1980, when the out-

### As the oil industry cuts back exploration, it in effect begins to liquidate itself

break of the Iran-Iraq war cut OPEC oil output by 14%, yet only briefly halted a decline in spot-market oil prices that had begun several months before. By 1981 the 55 major U.S. energy companies were watching profits slip 2% from those of 1980, encouraging the oil industry to start tightening its belt. Mobil Corp., for example, last June forecast a 1982 capital budget of \$5.9 billion; eight months later it slashed the amount to \$4.1 billion, down nearly \$1 billion from the comparable 1981 figure. Likewise, Atlantic Richfield Co. and Phillips Petroleum Co. last fall instituted new pro-

grams to control costs. And by late February, Phillips President William C. Douce was making a "great effort" to cut expenses. "We may not add people. We may not replace people we lose by attrition. We can sell assets that are unproductive, which will improve our cash flow and earnings," he says. "What we have now is a panic situation," observes Ragaei El Mallakh, director of the International Research Center for Energy & Economic Development at the University of Colorado.

Until now, draconian cutbacks had been directed almost entirely to the "downstream" ends of the business. Refining and marketing operations have been strained by surplus capacity in both the U.S. and Europe for several years, and cutbacks there began in earnest last summer. In 1981 some 500,000 bbl. per day of refining capacity was shut down or mothballed in the U.S. The Commerce Dept. estimates that the nation had only 151,250 service stations by the end of last year, off from 220,000 in 1972, and will be down 4,250 more in 1982. In Europe, a similar retreat is under way. Last year, U.S. refineries were used at rates well below 70% of capacity, while European refinery utilization rates averaged just over 50%. Yet as long as surplus capacity remains, margins on products will be under extreme pressure. As if to emphasize that point, Standard Oil

Co. (Indiana) announced in early March that it would close its 104,000-bbl.-per-day Sugar Creek (Mo.) refinery, a move that might presage a new round of industrywide shutdowns.

The broad retreat from refining and marketing is no surprise. But now it appears increasingly likely that the industry will also have to pull back sharply from "upstream" efforts—finding and producing oil. "There must be a lot of nervousness in oil company exploration and production departments that have oil projects based on \$50-a-bbl. oil by year X and \$100-a-bbl. oil by year Y," says an executive of one international petroleum company. Indeed, the lowering of longer-term price expectations throughout 1981 had already encouraged companies to drop plans for exotic energy projects. Tenneco Inc. and Occidental Petroleum Corp. announced last December they would table a plan to extract kerogen from Colorado shale deposits; Exxon Corp. announced in February it would not, for now at least, proceed with plans to turn East Texas lignite into natural gas; and few believe the Alaskan gas pipeline project is still economically viable.

The \$33-per-bbl. average world crude price that prevailed through February was still high enough to spur tremendous new investments in conventional oil and gas. As recently as Feb. 23, Exxon was still laying out details of a \$13.5 billion capital budget for 1982, a 22% increase over 1981 expenditures. Two-thirds of that total was targeted for "upstream" projects, and about \$400 million of that was to be spent on synthetic fuels. And Petroleum Information Corp. was still asserting late in February that drilling activity would increase about 10% in 1982 and continue rising steadily until at least 1985. Now, it seems certain exploration and production spending will be cut back drastically. With crude at \$28 per bbl., the estimated \$4 billion investment required to develop the Hibernia oil field off Newfoundland or Atlantic Richfield Corp.'s Kuparuk field near the North Slope of Alaska becomes far less attractive. If oil prices fall to \$15, as some experts predict, even new North Sea production could become uneconomic. Because exploration projects have long lead times, from the time the first hole is drilled until the first oil can be brought

to market, numerous drilling programs will be delayed until companies can reassess long-term price assumptions. But even if companies decide their planned projects are economic at lower prices, cutbacks in spending may still be mandated by a lack of funds.

The drop in oil prices will have a devastating effect on oil company profits this year. Just for a start, some 950 million bbl. of oil and products in oil company inventories in the U.S. alone might have to be revalued downward. And with demand extremely weak—and prices declining—refining and marketing margins will be under pressure most of the year. Exxon, Texaco, Mobil, and Standard Oil Co. of California—the Arabian American Oil Co. partners—for ex-

ample, were losing as much as \$4.85 on every barrel of oil they took from Saudi Arabia at \$34, refined, and sold in spot markets in February, according to estimates by Texaco's chief economist, Tor Meloe.

success rate." For this reason, most oil companies will not be in a cash squeeze in the next few years, except for a few companies, such as Tenneco, that are very highly leveraged. Standard Oil Co. (Ohio), owner of 53% of the oil reserves in the Alaskan North Slope, already has seen Standard & Poor's Corp. reduce its ratings on Sohio senior debt and preferred stock from AA to AA-. After spending \$1.8 billion to buy Kennecott Corp. and \$600 million more to buy coal reserves from U.S. Steel, Sohio's "liquidity has substantially declined," and the company faces "reduced financial flexibility," S&P said.

But when an oil company continues producing oil without at the same time investing enough in exploration to find as much new oil as it produces, it in effect liquidates itself. Although one executive at a U.S. independent oil company muses that "perhaps Du Pont will have to sell Conoco" outright, the giant chemical manufacturer already has launched plans to divest pieces of Conoco Inc., and probably will be forced to use much of the cash flow from its oil to pay for the debt incurred to acquire its new subsidiary. Likewise, U.S. Steel Corp. might have to divert large portions of Marathon Oil Co.'s cash flow from exploration programs to pay off Steel's merger debt. Indeed, the ability of Du Pont and U.S. Steel to reinvest enough in their acquired oil companies to

make them grow was doubtful even if oil prices had stayed flat at about \$34 per bbl. Now, falling prices make those acquisitions questionable even as cash cows. Clearly, says Goldman, Sachs & Co. oil analyst Todd L. Bergman, any such investments made on an assumption of continued increases in oil prices are seriously threatened. "Rising prices are not going to bail them out," he says.

For a while, at least, falling oil prices should put a damper on oil company merger and acquisition activity, since it is unclear at the moment just how much oil in the ground may really be worth. But in the next few years, the industry could undergo a significant restructuring as smaller, weaker companies sell out to the larger ones and as big companies contract and realign their operations to focus on the niches where they can be profitable. Indeed, even with stable prices, "smaller companies would be



Texaco's McKinley: "The full brunt of the changes in the economics of petroleum is now being felt throughout the petroleum markets."

LAWRENCE BURNS

**SPECIAL REPORT**

tempted to sell out rather than attempt to muster the upstream investments necessary to maintain their production," predicts the influential trade journal *Petroleum Economist*.

Of the "Seven Sisters," notes Paul H. Frankel, president of London's Petroleum Economics Ltd., only Exxon and the Royal Dutch/Shell Group of Companies are still big enough and powerful enough to be "genuine international energy companies." Mobil, he says, is a "borderline case," while Gulf, Texaco, British Petroleum, and Standard of California are already "reduced in scope" and will have to pull back even further. The contraction has been under way for years, but rising oil prices, growing revenues and profits, and increased capital spending have masked the fact that the physical size of their operations was being reduced.

**Trimming sail**

Gulf has been most frank about its need to be smaller. Gulf has put its European petrochemical operations on the market, and would like to cut back its refining capacity in that part of the world by nearly half. In the U.S., the company has shut down two refineries already and has tried to concentrate its marketing on its most profitable areas. Gulf's oil production in the U.S. is declining at an annual rate of more than 4%, and, while it is slowing that decline, it has so far been unable to find enough new oil in the U.S. to halt the slide. Chairman Lee says Gulf is looking for opportunities to buy reserves by acquiring other oil companies; in the meantime, the company is buying back its own stock to bolster earnings per share in an era when earnings are harder to come by. "We don't believe there's anything sacred about bigness," says Gulf President Edward B. Walker III.

Of the major oil companies, Texaco is most severely affected by the softening in oil prices because its ability to produce oil and gas is declining by about 7% per year. Even if prices had stayed flat at \$34 per bbl., concedes Texaco Senior Vice-President Robert C. McCay, Texaco would have "faced declining revenues" and "a challenge on profitability." Like Gulf, Texaco is still streamlining its refining and marketing operations, buying back its own stock, and shopping for an acquisition. At Mobil, top executives say the company is still interested in acquiring domestic oil reserves, but note that the company may not be as generous in future bidding as it was in its unsuccessful bids for Conoco and Marathon. And Exxon President Howard C. Kaufmann admits to an unusually high degree of

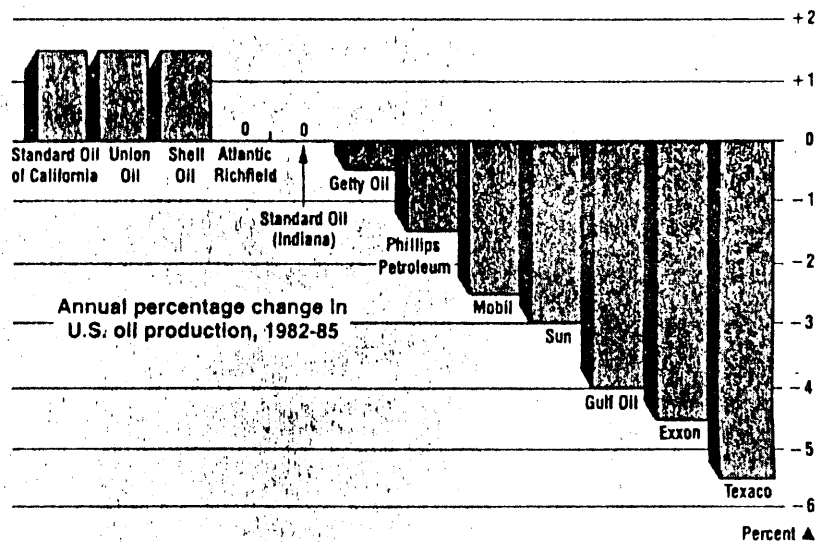
uncertainty about the future of oil prices. But Exxon is persisting in its investments on the assumption that oil prices will eventually have to reflect the rising cost of new supplies. Still, it is shifting its spending away from synthetic fuels, a key component of its long-range plans of just a year ago, and into conventional domestic oil and gas. "We'd rather gamble on the price of oil with an exploration program than on a synfuels program," Exxon Chairman Clifton C. Garvin Jr. admits.

The companies that will survive the coming shakeout in the best shape are the few that have the reserves already in place to increase production in the next few years, thus supporting revenues even if prices fall (chart). Standard of California, ARCO, and Shell (the U.S.

in the U.S. as the next largest land holder. But a cash squeeze is making it difficult to drill on those properties fast enough to replace the reserves it is producing. Even before the drop in prices, the company had pared spending plans, and had stepped up efforts to attract outside investors willing to pay drilling costs in exchange for a share of any oil found. "We've got to trim our sails," says Chairman John Swearingen. "If you find yourselves committed too heavily and things go against you, you can find yourself in a very bad situation."

In the end, slower growth could be beneficial. The rapid pace of oil spending in the last few years brought with it small players out to make a fast buck, soaring costs of operations, and high turnover rates among executives and

**Winners and losers in the U.S. oil shakeout**



Date: Industry and BW estimates; Goldman, Sachs & Co.

affiliate of Royal Dutch/Shell) may be the only large companies that can do this. Socal has been a leader in each of the important exploration plays of the last decade in the U.S., including the Alaskan North Slope, the Western Overthrust Belt, the Tuscaloosa Trend of Louisiana, and most recently, the Santa Barbara Channel off the coast of California. At Union Oil Co., large reserves of natural gas could keep revenues and profits rising as gas prices rise, even if oil prices fall.

In some respects, Standard of Indiana's position illustrates the dilemma of the whole industry. The company's production is still declining, but in the last decade it has furiously acquired properties for exploration and now has almost three times as much unexplored acreage

professionals. Suddenly, events of the last few weeks have forced industry experts to throw out much of what they thought they understood about oil's future. "It was great going up," says C. Halsey Peckworth, editorial director of *Platt's Oilgram Price Report*, a McGraw-Hill publication. But now, says Boston energy consultant James T. Jensen, "we are inevitably entering new territory in the world petroleum markets. The changes which have taken place since 1978 may be the most profound in 30 years."

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SUN REFINING AND MARKETING COMPANY  
STATEMENT ON SENATE BILL 455  
RETAIL DIVORCEMENT

FOR THE SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE  
CHAIRMAN FRANK GRAVES

AUGUST 12, 1982

POSITION STATEMENT  
SUN REFINING AND MARKETING COMPANY  
NEW JERSEY  
RETAIL DIVORCEMENT

Sun Refining and Marketing Company would like to state our opposition to Senate Bill 455 which is under consideration today.

We are opposed to this legislation because we believe it to be unnecessary, ill-advised, as well as anti-competitive and anti-consumer in its effect.

Sunoco is strongly committed to dealer operation. In New Jersey, we market through 600 branded outlets. Ninety-eight percent of these are operated by independent service station dealers. We make this point to illustrate that Sunoco wants to maintain a strong, competitive dealer organization.

We recognize that Senate Bill 455 is viewed by its proponents as a way to help dealers. However, after analysis of this bill, we conclude that what it really does is shield dealers from competition at the expense of the New Jersey consumer. We feel that competition - not competitors - should be protected.

With reference to a number of investigations on this subject, we wish to call to your attention the most comprehensive analysis ever done of the subject of alleged predatory behavior in gasoline marketing, the charge most frequently made against company operation. This study was mandated at the federal level by Title III of the Petroleum Marketing Practices Act of 1978, and was conducted by the Secretary of Energy, the FTC, and the Attorney General. In brief, the Final Report found

"no evidence that refiners are subsidizing sales of gasoline (through company-operated stations), (and) no evidence of predatory pricing, predatory costing, or predatory actions . . ."

Additionally, at the federal level, recent testimony by a former Attorney General of the U.S., as well as DOE officials and Department of Justice antitrust experts, concur in the opinion that company operation of service stations by refiners has not been detrimental to gasoline marketing. Rather, their (and others') testimony strongly advised against any legislative action that interferes with a free and open marketplace.

Decisions by companies on whether or not to become heavily involved in company operation were generally made some time ago, and have set the mode for the individual firm's direction. Due to the investment in money, personnel, infrastructure, and time, company operation is not something that you decide to do tomorrow and then change your mind next month or next year. It represents a strategic commitment to the future direction of the company.

Sun, as an example, decided many years ago that it would operate almost exclusively through independent dealers and jobbers. What few company operations Sunoco maintains is for the purpose of: Assuring lengthy hours-of-operation in critical locations; keeping a location open on a continuing basis after a dealer has left, and until a suitable dealer can be installed; having a location where new marketing concepts can be tried and studied without risking a dealer's livelihood; having access to

...that can be used for the purpose of training new dealers; and a variety of other reasons.

Some firms, - usually, though not necessarily, smaller independent refiners - have chosen to company-operate locations. Some reasons for this are they believe they have found a way to move refined product to the consumer in a more efficient manner, with lower costs and complete control over hours and station appearance, attitude and appearance of employees serving the consuming public, and can be instantly reactive to price changes in their local market situations. An example of how this can serve the consumer was found in Ohio during the late-'70s gasoline shortage: Most independent dealers shut their stations in the late afternoon or early evening, while Sohio set their company-operation locations' hours for evening and nighttime so that the public could find gasoline while most other stations were shut.

Also during the '70s, many of the locations open on Sundays were those being company-operated by various firms.

When looking at the two methods-of-operation, we find that there are positive and negative aspects of both, and the decision is usually based on the individual company's perspective and perception of the marketplace and its role in it. As the DOE Title III Study put it: There is no such thing as an "ideal" method of marketing because consumers prefer diversity in gasoline retailing.

There is in effect today more-than-sufficient legislation governing marketing practices and giving avenues of legal redress for

abuses. Numerous laws, state and federal, cover business relationships and franchise arrangements. Unfair competition can be rectified through various laws and regulations including sections of the Federal Trade Commission Act, the Robinson-Patman Act, the Clayton Act, the Sherman Act, and New Jersey Franchise Act . . . to name a few.

In addition to these, in 1978, the federal Petroleum Marketing Practices Act (PMPA) became effective. This Act addresses specific relationships between oil companies and their dealer/customers. It addresses the conditions under which a franchise agreement can be terminated, outlining specific procedures that must be followed; trial and interim franchises; notification procedures; and provides for enforcement. In addition to the testing and disclosure requirements of motor fuel octane, the Act also mandates the Title III Study mentioned above, that analysis of subsidization and alleged predatory practices.

It is our opinion that this plethora of laws sufficiently regulates the supplier-dealer relationship, as well as providing remedies in cases of non-compliance.

# # #

AGWAY INC.

looks at

RETAIL GASOLINE STATION DIVORCEMENT

in

NEW JERSEY

For Hearing Record  
Senate Committee on  
Law, Public Safety, and Defense

August 12, 1982

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RETAIL DIVORCEMENT

On June 14, 1978, the U.S. Supreme Court upheld a Maryland statute (originally enacted in the wake of the Arab oil boycott) barring oil producers and refiners from operating retail service stations in that state. This is referred to as "Retail Divorcement". In the opinion for the Court, Justice Stevens noted that the Court was not ruling on the economic wisdom of the Maryland law, but on the specific federal constitutional questions raised by major oil companies (Exxon Corp. et al. versus the Governor of Maryland et. al.).

As a result of the Supreme Court decision, there has been renewed pressure led by independent retail dealers for "retail divorcement" legislation providing that oil refiners and/or suppliers must discontinue operation of retail service stations.

INTRODUCTION -- GENERAL STATEMENT

Agway Inc., a farmer-owned business which operates on cooperative principles and specializes in agricultural supplies and services, opposes retail divorcement proposals to prohibit refiners and/or distributors from operating retail gasoline stations.

Agway provides petroleum products through a wholly owned subsidiary, Agway Petroleum Corporation, which, in turn, owns two-thirds of Texas City Refining. Since 95 percent of the crude oil processed at Texas City must be purchased from other companies, this is not a fully integrated oil company.

Agway's petroleum bulk plant system is unique. It stems from the commitment to farmer service that requires handling a full line of petroleum products and generating income from a number of sources (including retail service) that can be used to make farm and rural delivery a viable operation. These facilities have always been directly operated by Agway. Franchising or leasing bulk plant retail islands would be difficult, if not impossible, because these pumps are structurally and operationally part of a bulk plant.

Retail divorcement legislation would decrease our ability to serve farmer-members as well as other customers with product and services at reasonable prices. If retail divorcement legislation is enacted, it could also have a negative impact on farmer-members' financial investment in their cooperative.

Agway, like other businesses, needs freedom and incentive to grow through innovation in products and services as well as distribution methods if its job creation and other economic and social missions are to continue to be achieved. Past governmental attempts at assigning special interest groups "rights" to serve certain markets have been found to be contrary to the public interest.

From a precedential viewpoint, retail divorcement proposals specifically threaten distribution methods developed by hundreds of large and small businesses in at least 17 industries.

Retail divorcement proposals are anti-consumer and anti-farmer in that they would inhibit competition and potentially lead to higher retail prices. They are inflationary at a time when inflation is deemed by the general public to be America's #1 economic problem. They are anti-business at a time when the Northeast is trying to hold and, in some cases, attract new industry to replace lost jobs.

This paper briefly describes Agway, Agway Petroleum Corporation, potential impact of retail divorcement on Agway's ability to meet farmer needs and reasons to reject such legislation.

AGWAY PETROLEUM CORPORATION -- GENERAL BACKGROUND

Agway Inc. and Historical Perspective

Agway Inc., a business specializing in farm supplies and services, is owned and controlled by farmer-members and operated on cooperative principles.<sup>1</sup> Examples of cooperative principles applied in operations are: (1) Board is made up of farmer-members elected by members on a one member, one vote basis; (2) Common (voting) stock may be owned only by farmers. While certain types of Agway securities are available to the public, most of Agway's capital is provided by members; (3) A portion of net margins is paid to farmer-members in the form of patronage refunds based on purchase volume.

Agway provides animal feeds and health products; a complete inventory of crop needs; farm equipment; home and garden supplies and hardware items through retail outlets.

Net margins (profit) after Federal corporate income taxes of Agway Inc. (which includes Agway Petroleum Corporation) for the year ending June 30, 1981 were less than 1 percent of total sales, a very low figure when compared to business in general.

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<sup>1</sup>Agway Inc. is a cooperative association as defined in the Federal Agricultural Marketing Act, approved June 15, 1929.

Agway was formed in 1964 through the merger of Eastern States Farmers' Exchange and Cooperative Grange League Federation Exchange (known as GLF).

Farmer petroleum needs have been a major concern of Agway and its founding cooperatives since the 1930's. Over the years, what started as strictly a farm petroleum service expanded to other customers for two major reasons:

- (1) Expansion of nonfarm development into what were formerly agricultural areas where Agway service was focused.
- (2) Economic requirement of controlling unit costs by maintaining or increasing volume.

Following a severe shortage of petroleum in World War II, Agway's predecessor cooperatives, concerned about the insecurity of obtaining refined products for farmers from other refiners, purchased an interest in what is now known as Texas City Refining, Inc.

#### Agway Petroleum Corporation

Agway Petroleum Corporation is a wholly owned subsidiary of Agway Inc. Petroleum products are distributed through a network of storage terminals, local bulk plants, community retail stations and limited access private pumps. These facilities are found primarily in rural and suburban areas.

The bulk plants serve as local storage facilities and as the base for delivery to farm bulk tanks, home heating oil

delivery, equipment sales and service and, in most cases, retail gasoline service. A committee of Agway farmer-members residing in the area served provides guidance on the operations of each bulk plant.

A significant portion of the gasoline distributed by Agway is delivered to farm tanks. The balance goes to jobbers, government agencies, commercial accounts and Agway retail pumps.

Like Agway's non-farm business, retail service at bulk plants was initiated in response to economic conditions as well as farmer-member requests for convenience. One of Agway Petroleum's basic purposes is to provide farmer service at the lowest possible cost. Farm tank capacities are small (ranging from 175 gallons up), demand is seasonal, farms tend to be located away from normal delivery routes, and generally cannot be served by transports, which are more economical to operate than smaller tank wagons. Bulk plant retail sales volume helps make the operation of these plants and farm service economically viable.

Texas City Refining, Inc.

Agway Petroleum Corporation owns two-thirds of the outstanding capital stock of Texas City Refining, Inc. The remaining interest is owned by Southern States Cooperative, Inc., headquartered in Richmond, Virginia.

Texas City owns and operates a refinery in Texas City, Texas, which is classified by the U.S. Department of Energy as an "independent refiner"<sup>1</sup> in that it is 95 percent crude deficient. It has a certified capacity of 126,700 barrels a day. As a result of the need to purchase most of the crude oil from other companies, this is not a fully integrated petroleum company. Texas City does not have access to sufficient quantities of domestic crude oil so it must import crude from foreign countries.

Agway's interest in Texas City is not sufficient to allow the inclusion of Texas City in Agway's federal consolidated tax return. The Internal Revenue Code criterion for tax consolidation is 80 percent ownership.

Under normal operating conditions, Texas City will provide Agway Petroleum with about 80 percent of product requirement. The balance is purchased on the open market.

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<sup>1</sup>The Emergency Petroleum Allocation Act of 1973 classifies refineries which purchase more than 70% of their crude oil from others as "independent".

AGWAY PETROLEUM IN NEW JERSEY

Agway has approximately 7,250 members and 616 employees in New Jersey.

Agway has 10 bulk plants (5 of which offer retail gasoline service) in the State of New Jersey. Locations are as follows:

Hammonton  
Clinton \*  
Hightstown \*  
Chester  
Freehold  
Flemington  
Mount Holly \*  
Newton \*  
Washington \*  
Vineland

\* Indicates retail gasoline service

IMPACT OF RETAIL DIVORCEMENT ON AGWAY, FARMER-MEMBERS,  
AND CUSTOMERS

Analysis of prohibiting Agway from operating retail service stations indicates the following:

1. Retail facilities at Agway bulk plants are operated in conjunction with storage, delivery, equipment sales and service functions. Retail islands are physically part of bulk plant facilities. Employees assigned to assist retail gasoline customers also have other duties. The possibility of leasing or franchising the retail component of a bulk plant does not appear to be feasible. The only other option will be to terminate this service.
2. Certain types of Agway retail service facilities (free standing stations) could be leased or franchised; however, given available information, this would appear to be financially unprofitable for operating by independent dealers. Experience and observation of the market place suggest that retail prices would increase due to the introduction of a "middle-man", resulting in the need for an additional profit margin.
3. If Agway was forced to franchise either type of operation, the leasee would most likely have little incentive to carry out Agway's commitment to agriculture.



WHY RETAIL DIVORCEMENT IS NOT IN THE PUBLIC INTEREST

1. Evidence is strong that the retail price of gasoline would increase. Retail divorcement would be inflationary. (More "middle-men" added in the case of franchising with additional profit margins).
2. Gasoline station retail divorcement would set a precedent for similar action against other industries. The U.S. Chamber of Commerce has identified at least 17 major industries which market through company-operated and franchised retail outlets.
3. Potential decline in ready and convenient gasoline station services, particularly in non-metropolitan areas where large volume (and therefore cost-justified) potential does not exist.
4. Retail divorcement is an economic experiment and the full impact is not precisely known. There are few, if any, learned studies on the subject.
5. The actions that companies would be forced to take under divorcement would be irreversible, at least from a short and mid-range viewpoint in terms of company involvement and investment in this marketing area.
6. Innovation in gasoline marketing and service would be reduced due to decrease in competition and loss of company operated stations.

7. Retail divorcement legislation represents increased government regulation of business at a time when there is growing evidence indicating that over-regulation has hampered business's job creation and production/service ability while increasing prices to consumers.
8. There are existing laws which protect gasoline marketers. Another level of regulation is not needed. (Sherman Act, Robinson-Patman Act, Federal Trade Commission Act, state laws)
9. The survival over the next decade of traditional service stations operated by independent dealers, even with divorcement legislation, is open to question. Major changes are and will continue to occur in the marketplace: the total number of stations has decreased; new sources of repair services are emerging; future vehicles will be even more fuel efficient and less dependent on repair services; prices will be strongly affected by non-local factors, including actions of U.S. and foreign governments; consumer preferences will inevitably change. All companies will need flexibility to respond appropriately.

STATEMENT

ON BEHALF OF

MARATHON OIL COMPANY

ON

S. B. 455

BEFORE THE

COMMITTEE OF LAW, PUBLIC SAFETY, AND DEFENSE

NEW JERSEY SENATE

August 12, 1982

This statement is being submitted for the record on behalf of Marathon Oil Company and a number of non-major refiner-marketers who are strongly opposed to retail marketing divorcement and its variations.

Marathon is an Ohio based refiner-producer which sells petroleum products in 21 states.

Marathon, along with other numerous non-major refiner-marketers who market gasoline through salary operated stations, does not currently operate in New Jersey. If S.B. 455 were passed, they would be precluded from entering competition in the state.

Marathon's situation and reaction to divorcement demonstrate just one of the anti-competitive aspects of RMD. There are scores of refiners who do not market in New Jersey now who would be effectively prevented from ever entering. Conversely, any large marketing-only company which operates its stations with salaried personnel, would be discouraged from investing in any future refining venture, thus reducing potential competition at the refinery level. Many companies have never had a dealer and never competed in the high-margin, low-volume end of the business.

On the question of who is hurt most by S.B. 455 -- it is not "Big Oil." A quote from recent testimony of one of the largest eight oil companies serves as an example!

- 2 -

"This legislation [RMD] would have virtually no economic impact on our company's operation. In fact, in some instances, [we] could stand to benefit because of the disruption caused to our competitors."

John Shenefield, former Assistant U.S. Attorney General, Antitrust Division, further substantiates that view. He stated: "In fact, ultimately such legislation could benefit large integrated petroleum companies by disrupting the activities of one of their most efficient ... rivals." Those rivals are the medium and smaller-sized refiners.

A number of non-industry studies and positions oppose RMD. Following are two significant observations.

1. The U.S. Supreme Court in its 1978 opinion upholding the Maryland RMD law does not empower the judiciary to sit as a superlegislature ... Regardless of the ultimate economic efficacy of the statute, there can be no hesitancy in concluding that it bears a reasonable relation to the state's legitimate purpose.

"It may be true that the consuming public will be injured by the loss of the high-volume, low-priced stations ... but again that argument relates to the wisdom of the statute. -- (Not to a state's legitimate right to pass it.)"

- 3 -

2. RMD legislation was considered in approximately 20 state legislatures in 1981. It was rejected in all of them. So far in 1982, no state legislature has adopted RMD.

In conclusion, Marathon believes the proponents of RMD should be required to prove -- with hard and credible evidence -- the following points:

1. That S.B. 455 would not cause adverse price impacts on motorists.
2. That every refiner or marketer who would be restricted from selling gasoline has actually been guilty of unfair marketing practices so onerous as to deserve such severe punishment.
3. That existing laws are inadequate to provide redress.

Thank you.

James A. Wilkins, Manager  
State Relations  
Marathon Oil Company  
Findlay, Ohio 45840

August 12, 1982



The Virginian-Pilot  
1/10/79

## State Retail Gasoline Station Divestiture Divorcement Laws: What America's Newspapers Are Saying . . .

State retail gasoline station divestiture divorcement laws have been proposed in many state legislatures and continue to be considered during 1980. The Committee of Independent Refiner/Marketers is composed of a number of small and medium-sized refiners who have historically marketed gasoline through company-owned and operated retail outlets. Contrary to the arguments advanced by the proponents of state retail gasoline station divestiture divorcement laws, it would not be the largest vertically integrated major oil companies who would be most damaged by enactment of such legislation. For the most part, the large "majors" are committed to retail marketing utilizing lessee branded dealers. The in-

dependent refiner marketer, on the other hand, has traditionally and historically provided fierce competition to the "majors" through the ownership and operation of stations utilizing a marketing strategy based on high volume and low margin. The Committee of Independent Refiner/Marketers has caused this material to be published which demonstrates the reasoned, thoughtful and overwhelming opposition to such laws by editorial writers and opinion page editors of the nation's newspapers - large and small. To the best of our knowledge, not a single daily newspaper has advocated passage of such legislation. Not one!

The Committee of Independent Refiner/Marketers is composed of the following companies:

Asamera Oil (U.S.), Inc.  
Denver, Colorado  
Ashland Petroleum Company  
Ashland, Kentucky  
Caribou Four Corners, Inc.  
Afton, Wyoming  
Champlin Petroleum Co.  
Ft. Worth, Texas  
Charter Oil Co.  
Jacksonville, Florida  
Clark Oil and Refining Company  
Milwaukee, Wisconsin  
Delta Refining Co.  
Memphis, Tennessee  
Derby Refining Company  
Wichita, Kansas  
Giant Refining Company  
Phoenix, Arizona  
Hudson Oil Company, Inc.  
Kansas City, Kansas

Koch Refinery\* Company  
Wichita, Kansas  
Marathon Oil Company  
Findlay, Ohio  
Pester Refining Company  
Des Moines, Iowa  
Plateau, Inc.  
Albuquerque, New Mexico  
Rock Island Refining Corp.  
Indianapolis, Indiana  
Sinclair Oil Corp.  
Englewood, Colorado  
Tenneco Oil Company  
Houston, Texas  
Total Petroleum  
Romulus, Michigan  
Vickers Petroleum Corporation  
Wichita, Kansas



**Committee of Independent  
Refiner/Marketers  
P.O. Box 10006  
Des Moines, Iowa 50306**

"There is no way, no way at all, that a legislator who considers himself to be a friend of the free enterprise system or a friend of the consumer could justify voting for legislation in restraint of competition in the retail sale of gasoline. Both the system and the consumer would suffer as a result of its adoption. The General Assembly should pull the plug on this proposal and allow it to go down the drain."

February 17, 1978  
*Richmond Times-Dispatch*  
Richmond, Virginia

"If Pennsylvania-New Jersey gas station dealers get a divorce from their oil companies—or to be more specific, a 'divorcement'—car drivers could wind up paying the settlement costs . . .

". . . banning company-operated service stations will be on a par with the recent defeat of self-service gas pumps in New Jersey. Out-lawing them can benefit a small number of businesses at the expense of the much larger driving public."

June 27, 1978  
*The Evening Bulletin*  
Philadelphia, Pennsylvania

". . . if Maryland can outlaw an oil firm's ownership of retail outlets, can it likewise prohibit ownership of trucking fleets or acquisition of non-oil enterprises? . . .

"The high court's decision embodies hidden and dangerous possibilities, the meaning of which will only become clear if legislators embark on economic crusades."

June 18, 1978  
*The Arizona Republic*  
Phoenix, Arizona

"Obviously a national policy forcing oil companies to divest themselves of a portion of their operations—whether exploration, production, refining, wholesaling, or retailing—would drastically alter the nature of the petroleum business and have an impact on the nation's economy and on the energy situation . . .

". . . it seems to us that states go too far into the realm of regulating interstate commerce when they enact laws forbidding oil companies from operating retail outlets."

July 2, 1978  
*Miami Herald*  
Miami, Florida

"The fact is that, with state laws such as the Maryland statute upheld by the Supreme Court, the independents are doing NOW exactly what they would have us believe the oil companies WOULD do—that is, killing off the competition by having a legislative ban imposed on company-owned stations.

"And it's a basic law of economics that when competition is lessened prices go up."

June 18, 1978  
*The Herald-Dispatch*  
Huntington, West Virginia

"Thus, one result of H.B. 458 would be to force Virginia consumers to pay higher gasoline prices.

"The bill restricts competition—the competition which is keeping prices from zooming out of sight. It eliminates it by eliminating one class of competitors—the refiners—whose prices are lower than lessee dealers."

January 9, 1979  
*The News*  
Lynchburg, Virginia

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"However enthusiastically independent dealers might cheer legislation limiting self-service stations, consumers, who benefit from cost-cutting, would lose.

"Given the trends in gasoline retailing and auto repair that work against independent service station dealers, the General Assembly would do a disservice to Virginians at large if it blocked the spread of stations offering lower-cost gasoline to motorists amenable to serving themselves."

January 10, 1979  
*The Virginian-Pilot*  
Richmond, Virginia

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"Presumably, the intent of the proposal is to protect the consumer through expected lower prices and to thwart a 'takeover' by the majors.

"However, there is no assurance that either the majors or the distributors desire such a take-over or that lower prices would result.

"On the contrary, a lessening of competition, we think, could contribute to higher prices. . .

"The Virginia Committee of Independent Refiner/Marketers makes an important point in claiming that its members, who have few, if any dealers, cannot 'both convert their stations to dealers and maintain their marketing strategies.'

"The bill ought to be killed."

January 16, 1979  
*The Daily Advance*  
Lynchburg, Virginia

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"Freedom, in fact, is what the proposed legislation is all about. Are businessmen to be free to compete under prevailing economic realities for the patronage of gasoline users?

"Are consumers to be free to choose between different kinds of service stations? The correct answer to both questions is 'yes,' and that is the answer the General Assembly should give by rejecting the proposed legislation."

January 17, 1979  
*Richmond Times-Dispatch*  
Richmond, Virginia

"... passage of this bill might invite similar legislative assaults in other retailing areas, such as against food and drug chains.

"Precisely nothing about this bill is commendable. The Assembly has utterly no business adopting it—none. We urge the Assembly to tow it swiftly to the nearest bone yard and to deposit it there, for good."

January 18, 1979  
*The Richmond News Leader*  
Richmond, Virginia

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"As we've said before, the situation strikes us as being no different from one in which the state's small, independent grocers . . . would go to the Legislature and seek a ban on the operation of supermarkets in the state by large food chains on the grounds that the supermarkets' generally cheaper prices represent unfair competition.

"No one would give a minute's thought to such a nonsensical request. So why should the same sort of thinking get a stamp of approval where service stations are concerned?"

January 23, 1979  
*The Herald-Dispatch*  
Huntington, West Virginia

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"The other side of this coin is the argument that dealer-operators deserve no special protections not already provided by anti-trust laws, and that this kind of favoritism also can drive up prices . . .

"The issue in Virginia could be to what extent the major oil companies have made inroads so far with their own stations. Indications are: not much. The bill may affect Big Oil much less than it does smaller refiners who operate the great majority of pump-your-own stations that give the motorist a choice among prices. Before making its own choice, the General Assembly should ponder the figures."

January 25, 1979  
*Roanoke Times & World News*  
Roanoke, Virginia

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“The bill, as passed by the House, seems to place small refiners at a possibly fatal disadvantage. The large refiners can survive. As it stands, the bill is essentially an anti-competitive piece of legislation, seeking to protect independent dealer stations against the competition of the refiner-operated outlets . . .

“We cannot see where there is any compelling need for this legislation. We can see where it could result in higher gasoline prices at the pump—at a time when gas is predicted to jump to \$1 a gallon within the next year to 18 months.”

*February 9, 1979*  
*The News*  
*Lynchburg, Virginia*

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“The Virginia Gasoline Retailers Association says that House Bill 458 would stick it to Big Oil. But it would hurt independent refiners much more. And most of all, it would be a disservice to Virginians at large.”

*February 11, 1979*  
*The Virginian Pilot and*  
*The Ledger Star*  
*Norfolk, Virginia*

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“SB 191 would certainly diminish competition, which means that consumers would pay more for gasoline in Arkansas. There aren't but 40 filling stations in the state operated by 'Big Oil,' but by knocking them out, here and elsewhere, the independents can pull down those signs advertising gasoline for less—then sell at the prices they please.”

*February 26, 1979*  
*Arkansas Democrat*  
*Little Rock, Arkansas*

“It has been in the legislature before. Time has not endowed it with any fresh merit. This legislation is inimicable to the consumer's interests. It should be rejected.”

*February 26, 1979*  
*Arkansas Gazette*  
*Little Rock, Arkansas*

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“What it boils down to is the argument that the consumer should be the one to choose where he or she wants to shop, not the state government . . .

“If the state of Wisconsin passes this legislation, what is to stop it from prohibiting these other industries from having a direct hand in their marketing?

“From our vantage point, this is the heart of the issue. The bill should be rejected.”

*March 16, 1979*  
*Marshfield News-Herald*  
*Marshfield, Wisconsin*

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“The proposal to bar major oil companies from owning gas stations, like the artificial price ceilings already imposed on the industry by Washington, merely will lessen competition and increase prices. Passage of the proposal will in no way benefit the consumer, as its proponents would like the public to believe. Regulation never has and never will.”

*March 16, 1979*  
*The New Haven Register*  
*New Haven, Connecticut*

"Similar legislation is being pushed in many other states and we suspect it is a response to the widespread resentment directed at major oil producers and refiners. But it is the wrong response . . .

"The General Law Committee should put this piece of anti-consumer legislation where it belongs—in the dustbin."

*March 27, 1979  
The Hartford Courant  
Hartford, Connecticut*

"The charge that franchised dealers are being victimized by their suppliers simply is not true. A survey of Florida Petroleum Council members found that more than 71 percent of the state's brand name stations are being operated not by the major oil companies, but by their franchised dealers who are protected by federal law against marketing harrassment, capricious lease cancellations and unfair curtailment of refined products during a severe shortage. Additional legislation is unnecessary.

"The bill of divorcement would close most of Florida's 4,295 cut-rate stations, increase unemployment, reduce competition and further escalate the soaring price of gasoline."

*April 20, 1979  
Sentinel Star  
Orlando, Florida*

"Calling additional legislation at the state level 'an unnecessary and ineffective remedy,' John H. Shenefield, assistant attorney general for antitrust, has said that a 'far better approach would be to inform' station operators of their rights under the federal law— a task for which state officials, who are more accessible to dealers, are particularly well suited.'

"As for the notion that, unless outlawed, the trend toward self-service stations will bring on an auto-repair shortage, Mr. Shenefield points out that full service stations already compete with other full service-operations run by new car dealers, tire and accessory companies, independent auto repair shops, and department stores such as Sears and Ward's.

"So there is no reason,' he says, 'to believe that (the automobile service) market will be unable to provide consumers with the services they demand.'

"The irony of the Illinois bills can be seen this way: They would prohibit selling gasoline through stations owned and operated not only by big oil companies but also by independent refiners. As the U.S. Justice Department points out, independent refiners and jobbers rely more on self-service outlets than do the big oil companies.

"So the legislation, according to Mr. Shenefield, would insulate from competition the fellow who leases his station from a big oil company. He wouldn't have to face competition from refinery-operated gas stations. It would also protect the big oil companies from such competition, since they hustle most of their gas and motor oil through leased stations.

"Consumers, however, would be forced to pay for this protection in the form of higher gas prices,' Mr. Shenefield says. 'We think his reasoning makes sense. In the interest of consumers, all three bills should be dropped.'"

*April 27, 1979  
Chicago Tribune  
Chicago, Illinois*

"The proposal is now in the House economic development and energy committee chaired by Rep. Jack Gingrass, Iron Mountain Democrat. Gingrass is dead set against the bill. 'It is a gross violation of the free enterprise principles,' Gingrass says.

"It's that and more. It is also a threat to the interests of consumers themselves. Refinery operated stations offer customers savings of up to four cents a gallon on gas and many of them offer longer hours of service than independent dealers."

November 13, 1979  
*The Daily News*  
Iron Mountain, Michigan

"This special interest legislation has now been considered and rejected by five previous legislative sessions in West Virginia. Moreover, it was considered and either rejected, tabled or postponed in 30 other state legislatures last year.

"To us, it appears to be an idea whose time has come—and gone.

"And thus we're totally at a loss to explain the continuing fascination with the idea on the part of some state lawmakers."

February 24, 1980  
*The Herald-Dispatch*  
Huntington, West Virginia

"Now being considered in the Ohio Senate is a measure (Senate Bill 345) that we believe would be a distinct disservice to one of the biggest consumer groups in the state—the motoring public . . .

"It is more likely that 'divorcement' of company stations would boost the price of gasoline and reduce customer services. It would also take away the jobs of thousands of employees at company outlets . . .

"We believe the present setup—with a mixture of company and independent stations—is the best one to keep fuel pricing competitive for the ultimate benefit of the consumer."

March 2, 1980  
*The Dispatch*  
Columbus, Ohio

"To eliminate company-owned service stations from the landscape because they may be in a position to sell fuel at more competitive prices than independent dealers is unwarranted. It is at bottom a disservice to the consumer."

March 10, 1980  
*The Enquirer*  
Cincinnati, Ohio

"We sympathize with the independent dealer who has to charge more for his gasoline and has lost some customers because of it. It is indeed a difficult situation. But there are thousands and thousands more consumers than there are independent dealers, and common sense dictates that the lowest priced gasoline on the streets today will be lost to the Ohio consumer if the proposed legislation is passed in Ohio."

March 26, 1980  
*Springfield Daily News*  
Springfield, Ohio

"The weirdest distortions in gasoline marketing have resulted directly from government regulations.

"If states get into the act with restrictions still further distorting the market, the results can hardly fail to be harmful. Fifty varying new sets of rules, atop all the old ones, would send an already neurotic market into complete madness."

April 5, 1980  
*Akron Beacon Journal*  
Akron, Ohio

## ***Self-serve gas***

While gasoline prices were soaring to undreamed of heights, frustrated New Jersey motorists were anxiously waiting for the Legislature to legalize self-service at the pumps — as 48 other states had already done.

After five years of stalling, the Senate Law, Public Safety and Defense Committee has finally released — without recommendation — a bill to achieve this purpose.

Eliminated from the measure are amendments that had been tacked on earlier in a deliberate maneuver to sabotage the legislation. These provisions would have required stations to maintain at least one island of full-service and would have barred refiners and wholesalers from operating retail stations. The first provision would have limited the potential savings of a self-service station; the second would have seriously restricted competition among retailers, to the detriment of consumers.

Motorists who have traveled in other states are aware of the savings they pocketed by pumping their own gas, savings of three to five cents or more a gallon. But some key legislators have been against legalizing do-it-yourself savings, citing a concern for the elderly and handicapped and ignoring the obvious fact that there are elderly and handicapped in the 48 states that enjoy self-service.

Opposition to the bill has not been coming from older or disabled residents; it is coming from station owners who want to keep things the way they are for their own self-interest.

Motorists who are willing to pump their own gasoline are entitled to the savings which result from their effort. They have been denied these fruits of their labor for too long. The Legislature should recognize this and make up for lost time by moving speedily to legalize self-service stations.

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## **The Star-Ledger**

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Section Three: Page 2

August 8, 1982

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Patriot  
Harrisburg, Pa.  
April 20, 1982

# Gas Pump Warfare

## Oil Company Ban Goes Too Far

**THE INDEPENDENT** service station dealer — the "little guy" — may have the public's sympathy in his ongoing battle for survival, but the self-service gas station operated by the big oil company is getting his business. The public, someone once said, is fickle. The soft spot Americans have in their hearts for their friendly neighborhood entrepreneur-mechanic-gas jockey is eternal, but more often than not the wallet overrules the heart when it is time to fill up the gas tank.

One of the few things clear about the so-called "Battle of the Gas Pumps" is that if the independent service station dealers are, as they claim, about to become as rare as 60-cent gas, we will miss them. The customer has been persuaded to pump his own gas, wash his own windshield and fill his own tires with air, but who is going to remind him to check his oil, fill his battery, adjust his carburetor and generally treat his car as if it were an old friend? Certainly not the oil-company operated, self-service station.

But what isn't clear is whether the shrinking ranks of independent dealers in Pennsylvania is the result of competition in a changing market, as the oil companies insist, or the product of an oil company strategy to force the independents out of business by a variety of questionable, if not illegal, tactics, as the dealers contend.

**NEITHER** instance, however, would appear to warrant the extraordinary action of banning oil companies from operating gas stations in the state, which the Pennsylvania-Delaware Service Station Dealers Association proposes and what a bill introduced by State Sen. Jo-

seph Loeper, R-Delaware, would accomplish. For one thing, it has not been demonstrated that all oil companies — let alone one of them — are guilty of the tactics alleged by the service station dealers. And if they are guilty, the appropriate remedy would not be to put them out of the retail gasoline business in the state, but to prosecute them if they are acting illegally or make them conform to an ethical standard of behavior if they are using "unfair" tactics to drive independents out of business.

"Fair competition," which the dealers say they want, offers everyone a chance to compete fairly. Size is no grounds for excluding a segment of the industry from competing, and we remain to be convinced that the public automatically is ill-served when some oil companies choose to market their product directly.

In any industry as large and as volatile as the retail gasoline business, there is bound to be a high attrition rate. So long as the attrition is not the result of high-handed tactics by the oil companies, it has to be accepted as part of the nature and risk of the free enterprise system.

Independent dealers offer a personalized, comprehensive form of service, which may be taking its lumps at the moment, but hardly has gone out of style. They provide a service the big oil companies are incapable of providing. There is room for both styles and given a free, fair and open market there is every reason to believe both will survive.

STATEMENT  
OF  
EDWIN P. MAMPE  
DIRECTOR, GOVERNMENT AFFAIRS  
CROWN CENTRAL PETROLEUM CORPORATION  
HEARING ON SENATE BILL 455  
BEFORE THE  
NEW JERSEY SENATE LAW, PUBLIC SAFETY,  
AND DEFENSE COMMITTEE  
AUGUST 12, 1982

Good Morning.

We appreciate the opportunity to testify this morning on New Jersey Senate Bill 455. Crown Central Petroleum Corporation is an independent refiner/marketer headquartered in Baltimore, Maryland with a single refinery located in Houston, Texas. Unlike the major oil companies, we have very little crude oil production that we own, which means that we must rely on our refining and marketing as the cornerstone of our business activity. Because we have so little crude oil, we are classified as an independent refiner.

Retailing is an extremely competitive business. The independent does not have the benefit of national brand recognition, or the millions of credit card holders that the major oil companies enjoy. Generally, this means that independents must compete on the basis of price, charging a penny or two less than the well known major oil brands. In Crown's case, we have attempted to target our marketing to "neighborhoods" rather than along the interstates, in an attempt to develop the name recognition that the majors achieve through national advertising. Another concept is staying open 24-hours a day, 7 days-a-week to provide community service to people who must travel at odd hours. We provide both full-service and self-service at our stations, and incidentally we provide full-service at our self-service islands for those handicapped persons who request this.

Although we have both retail lessee dealers and company operations, we prefer to operate the station ourselves for

- 2 -

the basic reason that our dealers tend to want to charge a higher mark-up than we would charge at the same station under company operation. Without the benefit of national brand recognition and credit cards, dealer level pricing reduces the station's gallonage to the point where construction of a new Crown station can become a marginal proposition. Thus, it is fair to say that if divorcement is enacted in New Jersey, Crown Central will not aggressively seek to build additional stations -- which is no doubt one of the objectives of the bill's proponents. But the losers will be all of the state's consumers.

Perhaps in recognition of the difficult competitive position independent refiners face, both the proposed United States Senate and House of Representatives federal divorcement bills, known as the Small Business Motor Fuel Marketer Preservation Act of 1981 (H.R. 1362, S.326) exempted small or independent refiners, defined as having less than 175,000 barrels/day refining capacity or less than 30 per cent of their own crude oil, from that divorcement bill. Crown is both small and independent under these definitions.

Notwithstanding our exemption, we have been active at the federal level in opposing divorcement, because we oppose the conscious attempt by national dealer groups to legislate competitors out of existence. Make no mistake about the

- 3 -

motives. Our testimony, included in the hearings on these bills, demonstrates that by virtue of divorcement in Maryland, dealers were able to increase their mark-ups by from two-thirds of 1 cent to 4 cents per gallon in 1981, based on a comparison of Maryland margins to those in Northern Virginia areas characterized by similar economic and demographic conditions.

The observed higher consumer prices paid as a result of divorcement support intuitive economic logic: restricting the number of sellers of any product -- be it soap, airlines, beer or gasoline -- tends to increase the price to consumers.

By being anti-competitive, divorcement is anti-consumer. It protects a select group of marketers. By restricting the number of competitors it tends to raise the prices of the products sold by those privileged sellers who are legislatively allowed to remain. The pressure for divorcement comes from the knowledge by the dealers that increased profits from higher prices will be the result.

We urge you to reject this legislation.

Again, thank you for the opportunity to present this statement.

Metuchen, New Jersey  
August 12, 1982

Mrs. Geraldine VanHorne  
Room 347  
State House Annex  
Trenton, NJ 08625

Re: Senate Bill No. 455

Dear Mrs. Van Horne:

As per our discussion of last week I have enclosed a copy of my statement concerning the divorcement aspects of Senate Bill No. 455 for the record.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert S. McLean".

Robert S. McLean

Statement of Robert S. Mc Lean, Ph. D

Submitted to

The Senate Law, Public Safety and  
Defense Committee

August 12, 1982

EXECUTIVE SUMMARY

The retailing industry is one of the most competitive in the American economy. The degree of competitiveness is attributable to the large numbers of retail outlets among which consumers may shop and to the relative ease of entry into the industry.

Competition benefits the consumer through lower prices than would otherwise prevail and through innovations in the product or service offered. Each competitor in an attempt to fill an apparent need intensifies the competitive process by offering a different package of services.

The elimination of an effective and important segment of the market will lead to an adverse long-term effect on the consumer interest. The market place encourages differing participants to emphasize those aspects at which they have a relative advantage. Only in a dynamic, openly competitive market can we be assured of maximum benefits from innovations and competitive price reductions. Prohibiting company-operated service stations as Section 2 proposes is inconsistent with meaningful competition. If enacted, substantial market power will be conferred on a segment of gasoline retailing at heavy costs to the public.

STATEMENT

I, Robert S. McLean, am an Assistant Professor of Economics at Manhattan College, Riverdale, New York. I have been on the faculty at Manhattan College since September 1981. Prior to 1981 I taught at Rutgers University, New Brunswick, New Jersey while a graduate student. I have a continuing interest in the structure of the gasoline industry and its relationship to competition, performance, and consumer well-being. My interest developed while I was engaged in research for my doctoral thesis in the area of gasoline retailing. Since graduate school I have been engaged in research in a number of areas of the gasoline industry.

The purpose of my statement is to comment on Section 2 of Senate Bill No. 455 with particular emphasis on the divorcement aspects of the legislation. This bill deals with a number of important issues including the "equal" extension of TVA's and the "uniform" application of all equipment and service station rentals. Each topic is of interest to me both as a practicing economist and as a member of the motoring public. Each topic deserves special and separate consideration since the impact of legislation in these areas can have a far reaching impact on New Jersey motorists and the state of competition in the retail gasoline industry,

The statement offered is brief and is intended to highlight my view that the divorcement legislation is not in the best interest of the New Jersey motoring public. More detailed support of my position regarding divorcement legislation, and if desired, on other aspects of the bill, can be furnished to the committee at a later date upon request.

Initially I would like to point to the very broad coverage of the legislation. According to Section 2, it will be unlawful after January 1, 1983 for a "...distributor, refiner, wholesaler or supplier..." to operate retail dealerships in New Jersey "...under any trademark...or other identifying symbol or name with company personnel, a subsidiary company, or commission agent...." Categorically excluded from market participation are not only major refiners of gasoline but a variety of independent refiners who are vertically integrated into retailing. Excluded from market participation also are wholesalers of gasoline as well as jobbers and other suppliers to the retail level. These exclusions affect not only current participants but potential entrants in the industry.

The retailing industry is one of the most competitive in the American economy. This is true whether it be fast foods, apparel, various auto repair services or gasoline retailing. The high degree of competitiveness is attributable to the large number of retail outlets among which consumers may compare and choose and the relative ease of entry into the industry. Unrestricted ease of entry into retailing, not only by existing modes of retail distribution, but also by new retailing modes has played an important role in the evolution of the retailing industry as we know it today. Examples are plentiful of the new types of entry, for example, in fast foods, grocery retailing, franchised tire, muffler, front-end wheel alignment and other automotive services, self-service and one stop gasoline and convenience stores, to mention just a few.

In accessing the viability of competition and its beneficial aspects accruing to the consumer in retailing at a point in time it is important to not only consider the number of competitors in the industry but also the diversity of

retailing modes as a source of competition. This variety is provided through chain operations as opposed to individually owned and operated outlets, through national vs. local distribution, through specialized vs. diversified outlets, etc. Each mode of retail distribution brings to the market the operating philosophy and character of its owner/operator. Each is attempting to meet the demands of the various classes of customers, to fill gaps created by existing modes. And as such, acts to intensify the competitive process by offering a different package of services. Any attempt to restrict the form of retailing operations, as Section 2 proposes to do, will affect the long-run character of the industry and the effectiveness of competition and thereby will diminish the benefits received by the public from the diversity offered.

Competition works in a number of ways to benefit the consumer. At any point in time competition tends to result in lower prices than would otherwise prevail. In addition, and equally important, competition forces market participants to innovate in the package of services offered and to improve productivity. The consumer benefits from reduced costs which are passed along.

Innovation and productivity advances depend in large part upon the willingness to invest available resources in research and development. Where any retailing mode is barred from operations there will be an adverse impact upon the consuming public. If an industry structure is frozen, if entry is restricted to one group of operators, then, the perspectives, and abilities, the variety of resources of the excluded segment will not be available for innovative experimentation and potential productivity gains. The long-run costs of such exclusions are incalculable.

To be sure, dealer-operated service stations are free to innovate, but when competition has been weakened by a serious and unnecessary barrier to entry will they be likely to do so if the traditional method of operations remains profitable? Will dealer-operated outlets have the resources and abilities to experiment and develop innovative techniques? Will dealer-operators adopt service and product improvements when competitive pressures have been reduced? Economists agree that free entry is necessary for viable and effective competition. Without free entry - and coupled with reduced numbers - this is unlikely to result.

The structure of the retailing industry is quite varied including both owner-operated and franchised outlets. The reason behind the presence of both types is quite clear. Diverse markets call for diverse marketing modes. There are markets where dealer-operators will be unwilling to assume the risk. There are markets where dealer-operated outlets would not be economical. There are markets where dealer-operators may be unable to obtain the financing necessary for entry.

Economic laws apply equally to all industries. If unrestricted entry and multi-modal operations are necessary for fast foods, apparel, hardware stores, appliance sales, etc., they are equally applicable in gasoline retailing. The singling out of one industry will lead to reduced consumer benefits. There is incontrovertible evidence that the freedom to entry and operate by all modes of operation have benefited the consuming public and have contributed to increasing our standard of living.

In summary, the elimination of an effective and important segment of the market, I am convinced, will lead to an adverse effect on the consumer who is best served by low prices, high quality and courteous service, wide

availability of services, and development and rapid introduction of service and product innovations.

The market place encourages differing participants to emphasize those aspects at which they have a relative advantage. Only in a dynamic , openly competitive market can we be assured of maximum benefits from innovations and competitive price reductions. Prohibiting company-operated service stations as Section 2 proposes is inconsistent with meaningful competition. If enacted, substantial market power will be conferred on a segment of gasoline retailing at heavy long-run costs to the public.

Director of State Government Relations  
for  
Cities Service Company

Cities Service Company is opposed to retail divorcement legislation. Indeed, as much as self service legislation is in the interest of consumers, divorcement is not.

Retail gasoline marketing divorcement legislation is a political response by the New Jersey Dealer Association to self service legislation and, as in the past, is tied to the decline in the number and marketshare of independent retail gasoline dealers during the mid and late 1970's. It is based upon the mistaken belief that this decline was attributable to some kind of mythical predatory growth of direct retail marketing operations by the major refiners and that the introduction of self service marketing will somehow enhance this growth in New Jersey.

Nothing could be further from the truth. The large refiners are dedicated to marketing through their dealers. Most majors have chosen the lessee dealer program as their primary method of marketing. They have and continue to successfully achieve brand recognition with dealer service, through large advertising budgets, huge dealer networks and even greater customer brand loyalty. In turn, the loss of the ability to company operate stations would have little affect on a major's total operation.

In reality, retail divorcement legislation would adversely affect the smaller oil companies, the gas and go marketers, independent refiners, and chain marketers. It is precisely this group which has provided the intricate balance in the marketplace for years, acting as the single price stabilizing force in gasoline marketing by keeping a check on the price of major oil companies' and their marketing arm.

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-2-

Under current market conditions, on one side we find the lower price gas and go company operated outlets of independent refiners, midsize domestic refiners, jobbers and chain marketers; on the other side, the service oriented, usually higher priced dealers of the major oil companies. This truly offers the consumers a choice.

The solution, as presented by the New Jersey Dealer Association, is to pass retail divorcement legislation and eliminate the competition. This reduction in competition will put upward pressure on prices and New Jersey consumers will have to pay more for their gasoline. We have experienced this situation in Maryland where there is no question that the consumer pays the price for protecting dealers from competition.

The issue with retail divorcement is protectionism, plain and simple. It is a political--not economic--preference for restraint of trade instead of fair competition. Our position is that if the market is open to all competitors, then the consumer will be free to decide where he wants to spend his dollars. The consumer will, in effect, cast his vote as to who will succeed--and who will fail--in the marketplace. And the consumer will be the ultimate beneficiary.

Mr. Chairman, Committee Members; on behalf of the consumers of New Jersey, your constituents, we ask you to oppose Senate Bill 455 Retail Divorcement.

# # #

My name is Thomas Anderson. I've been a dealer for seventeen years, Executive Director of the Pennsylvania Service Station Dealers Association for 11 years and since 1981, I've been the Associate Director of the New Jersey Gasoline Retailers Association. I thank you for allowing me this time to present useful information, pertinent to the discussion here today.

Because legislation is perennial doesn't make it bad legislation. Congressional bills such as this normally take 7 years getting through to their final form in our laws. This particular legislation has never been rejected by the U. S. Senate nor the Congress. The opposite is true. The U. S. Senate Judiciary Committee voted in the affirmative to send the legislation to the floor of the Senate for passage by the full Body of the Senate. On the House side, the budget debates, tax debates, etc., have put this type legislation on the sidelines much to our regrets but never has this legislation been defeated in either body of the U. S. Congress and this legislation had never been introduced in Congress prior to 1980.

Competition does not come from lessening the number of competitors. By increasing the number of competitors, more people benefit and that is the thrust of this legislation. Certainly by adding over two hundred additional competitors while removing only 8 or 9 predators will insure exactly that happening.

Maryland, Delaware, Connecticut have had success, tremendous success without negative impact upon the consumers in those States. The hard fact evidence is overwhelming that the prophets of doom were disproven and repudiated in their prophecies of higher prices to consumers, the destruction of competition and the other charges they made.

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You've heard some of these dealers' laments. You've heard their problems. Can anyone, after listening to these horror stories classify predatory pricing as a buzz word? I think not.

When the only game in town is run by a known crooked gambler who alone makes the rules, allows you to play only in his establishment and only with his deck of cards you know you're in trouble.

Some people put a lot of faith in market studies. However, market studies can be developed from any position or any angle, depending upon who is paying for the study and how much you're willing to pay.

Certainly prices can increase if this legislation passes. If the opponents of this legislation increase the wholesale price, it would probably be reflected in the retail price everyone understands that or should understand it. But the hue and cry would pour forth that it was the fault of the legislation. It's nonsense and we all know it.

This is not new or novel legislation. Meat packers cannot retail meats. Distillers cannot retail their products, nor can Brewers. This was done to "protect the free enterprise system" and that's all we, who are proponents of divorcement, are doing here today, trying to protect the free enterprise system. The Oil Industry may not recognize the need for this legislation, but then again they have never recognized the need for lower prices, more jobs, and fairness except when it referred to their business interest.

The Oil Industry claims to be worried about legislation "that removes from the scene any class of marketing operation that offers good service at lower prices" while they support self serve which offers no service whatsoever and without any guarantee of lower prices. A contradiction? Yes, but only in their best interest.

- 3 -

The F.T.C. Act, Robinson Patman Act, the Sherman Act, Petroleum Marketing Practices Act and the New Jersey Franchise law can<sup>not</sup> correct the predatory pricing actions described here today. The dealers and most of the jobbers cannot afford the cost of litigation under the Sherman or Robinson Patman and the F.T.C. cannot afford to proceed with actions it started (witness they dropped an 8 year old case against a number of oil companies for a lack of funds). You, however, can help by voting "yes" on this important and urgently needed bill.

To sustain the proper business climate in New Jersey and to protect the citizens of this great State, we urge you to approve this act today and to support it in the Senate Chambers.

Thank you for the time and courtesy you have extended me and I would gladly answer any inquiries you may have.

*M. D. Ramsey, Jr.  
Shell Oil Co.*

### GASOLINE PRICES HIGHER UNDER MARYLAND DIVORCEMENT

In July of 1979, a state law went into effect in Maryland that prohibits oil companies from operating gasoline stations with their own employees. A number of comparisons indicate that Maryland consumers now pay a premium for gasoline compared with consumers in other states where divorcement laws have not been enacted.

For example, the average prices of eight categories of gasoline sales for Baltimore and the United States during June 1979, the last full month before the divorcement statute was enacted, can be compared with the average prices during 1980. This comparison <sup>1/</sup> shows that the average price (not including state and local taxes) increased significantly more in Baltimore than in the United States. Similarly, the retailer's margin (the difference between what the dealer pays for gasoline and the price he sells it for) also increased -- from 1.75 cents per gallons to 3.90 cents per gallon. These increases for Baltimore, compared with the U.S. averages, appeared in all eight categories for gasoline sales.

In another comparison, <sup>2/</sup> Baltimore gasoline prices (again, without taxes) were higher than those in the comparable cities of Atlanta, Norfolk and Philadelphia for both regular leaded and regular unleaded gasolines.

Another survey <sup>3/</sup> of gasoline sales, before and after divorcement, in East Coast cities shows that Baltimore prices were 0.68 cents per gallon more than prices in other cities surveyed which were not operating under divorcement laws.

And a comparison <sup>4/</sup> by one company, Crown Central, which has its headquarters in Maryland, shows that their dealer-operated stations in Maryland were charging from 4.25 to 5.66 cents more in July and August 1981 than were the company's company-operated stations in the neighboring state of Virginia.

All of these comparisons have excluded gasoline taxes so that the competitive price of gasoline could be compared. In contrast, Maryland's State Comptroller has used figures that include gasoline taxes.

1/ Testimony of Dr. Phillip E. Sorensen, Florida State University, before the Senate Judiciary Committee, October 21, 1981.

2/ Testimony of W. J. Bittles, Jr., Shell Oil Company, before the Senate Judiciary Committee, October 21, 1981.

3/ Testimony of Jesse D. Wizenreid, Crown Central Petroleum, before the Senate Judiciary Committee, October 21, 1981.

4/ Ibid.

-2-

Thus, he has testified <sup>5/</sup> that Baltimore prices are lower than those in Atlanta, Norfolk, Washington and Philadelphia. However, he did not point out that the taxes on gasoline in Baltimore were significantly lower -- by as much as 9 cents -- than in the other cities. In Atlanta, for example, the total tax on gasoline amounted to 16.6 cents per gallon in September 1981; the tax in Baltimore was 13 cents per gallon -- 3.6¢ per gallon less. When the tax differential is removed, Baltimore prices are higher than prices in Atlanta, Norfolk and Philadelphia.<sup>6/</sup>

#### The Rationale for the Law

With these effects on prices, one might ask why the divorcement law was first enacted. The rationale for the Maryland divorcement law prohibiting company-operated stations was the belief that companies were diverting gasoline supplies away from dealer-operated stations to company-operated stations. However, during a judicial proceeding on the Maryland divorcement law, the chief of the Gasoline Tax Division for the State of Maryland testified that his office conducted a survey in the state to determine if companies were mis-allocating gasoline supplies during 1973, and found no evidence that they were. Further, there was no evidence of misallocation in other years either.

Thus, Maryland's divorcement law was passed to deal with discriminatory allocations by companies that were not occurring in Maryland. What did exist was a competitive gasoline market.

#### Conclusion

As a result of the Maryland divorcement law prohibiting companies from operating stations, the gasoline market there is now less competitive. Two companies have withdrawn completely from the Maryland markets. Significant competition has been removed from the market, and, according to testimony previously cited, prices are higher than they would otherwise be. The state's divorcement law affected about 248 gasoline stations in Maryland; 36 were closed by April 1981, with several others awaiting legal appeals. The high volume, low price company-operated stations have either closed or been converted to dealer-operated stations. The dealer margins have increased, compared with margins in other locations. And the retail price of gasoline has increased compared with other locations.

<sup>5/</sup> Testimony of Louis L. Goldstein, Maryland State Comptroller, before the House Subcommittee on Energy, Environment and Safety affecting Small Business, March 31, 1981.

<sup>6/</sup> Testimony of Winzenreid and Bittles, October 21, 1981.

## Kayo buys Rogers Oil

Kayo division of Conoco has bought Macon-based Rogers Oil and Georgia marketers are reportedly wilting under the fierce new competition.

Rogers operated about a dozen pumpers in Macon, and other Georgia cities under the Diamond name. One competitor puts the number of units at 15; Kayo puts it at 11.

Kayo "had everybody on their ear" last March when it took over the attractive, well-managed pumpers, says one Macon marketer. Although the units continued under the Diamond sign, "the whole image of the stations changed," he says, adding that Kayo has "blown the street" with its "predatory pricing."

"I can't see any change in the pricing strategy in the Diamond stores since Kayo took over," says Kayo president Franz Ehrhardt. "We know a few things our competitors don't know," and those operational improvements could explain the so-called predatory pricing, he notes.

A broker approached Kayo to buy the properties and it was a "one out of fifty situation" where the stations were in an area where Kayo would have expanded anyway, Ehrhardt says. He would not disclose purchase price.

The deal did not add to the station population and did not take volume from existing stations, he notes. Kayo has not decided whether to drop the Diamond flag, he adds. "Diamond is a good name."

\* \* \*

## Divorcement boosted Md. prices 1.9cts, study says

Divorcement caused pump prices to jump an average 1.9cts/gal at divorced stations in Maryland, say two economists who surveyed the market late last year.

And independent dealers located near divorced stations raised prices an average 1ct/gal, the study by Purdue University economists found. Their study has been used in opposing divorcement legislation in Indiana and Rhode Island.

The study of 122 divorced and 600 non-divorced Maryland stations also found:

- Total volume sold at divorced stations fell an average of 91,160 gals/yr, or about 15.5%.
- Approximately 11% of the divorced stations closed.
- On average, remaining divorced stations operate about one-half hour/week less.

The divorced stations, the economists say, were forced to "operate under a more costly contractual arrangement, raise their prices, sell less gas and provide less convenience and services to their customers."

The study was initiated by the economists but received support from major oil companies, says Jack Barron, one of the authors. Support did not include funding, he says.

\* \* \*

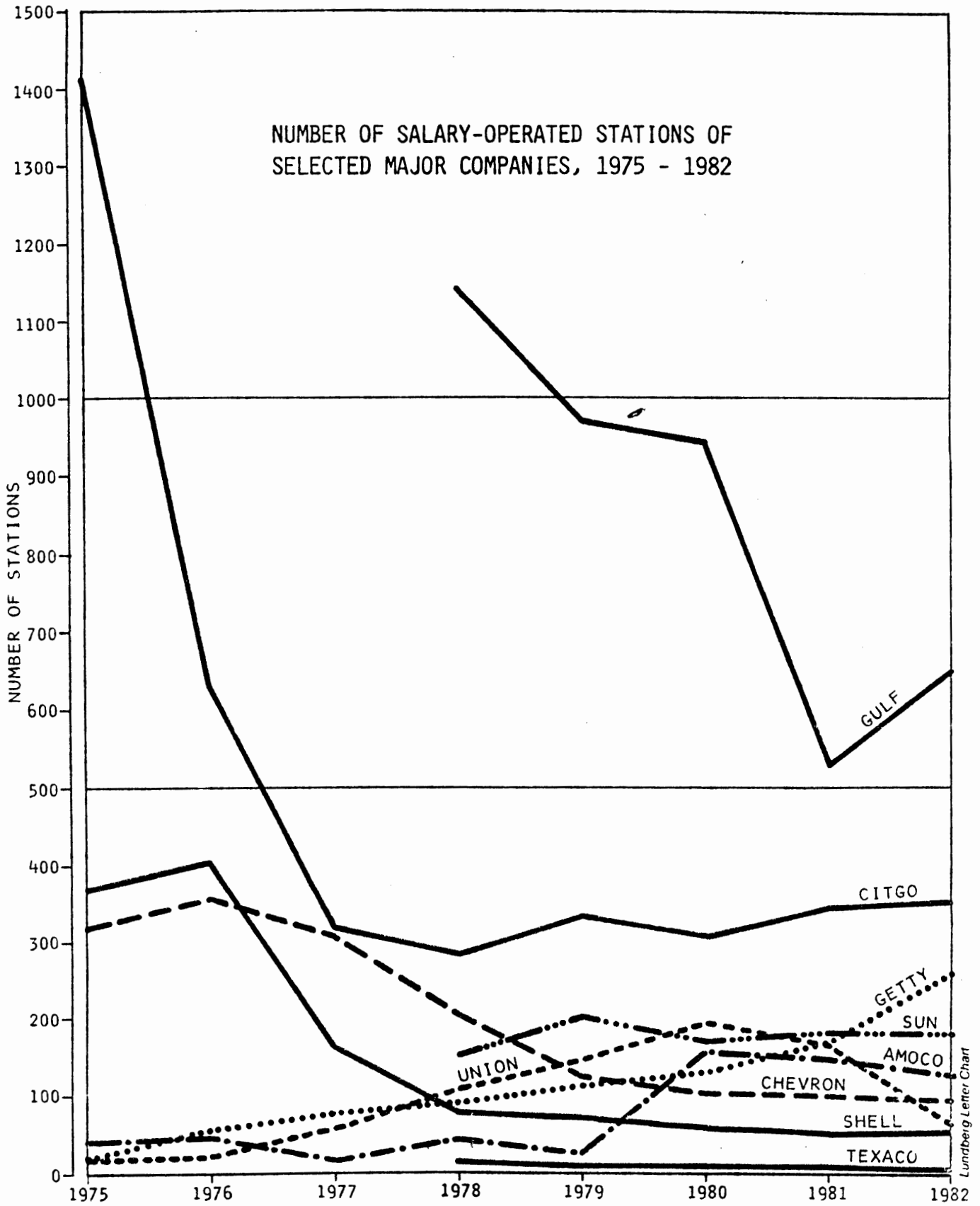
## Hess buys Elm City stations

Amerada Hess has purchased Elm City Filling Stations (ELMCO), a gasoline distributorship with 40 retail outlets in Connecticut.

As part of the deal, Hess buys ELMCO's bulk plants and inventory. Hess already has storage in Wethersfield, Ct., where it concentrates its efforts on No. 2 oil and residual fuel sales.

Hess may form a new marketing arm under the Nutmeg brand, we're told.

W.D. Ramsey Jr  
Shell Oil Co.



Source: NPN Factbook. Numbers are as of the beginning of each year.

Lundberg Letter Chart

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August 9, 1982

Senator Wayne Dumont  
104 S. Main Street  
Phillipsburg, NJ 08865

Re: S-455

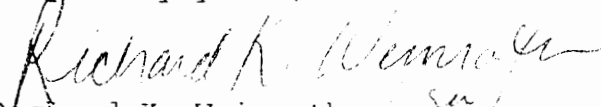
Dear Senator Dumont:

This office represents Merit Oil Corporation. As I indicated to you in our conversation of last week, my clients are greatly concerned that S-455 in its present form, would have a very negative effect on Merit. While we oppose the basic concepts embodied in the bill, because we believe that any withdrawal from a given marketplace can only result in reduced competitive pricing pressures, we believe that your basic goals could be accomplished with a lessened impact on the small, independent marketers by the inclusion of an amendment providing a definition of a subsidiary which excludes those entities in which a producer or refiner has less than a 50 per cent beneficial interest. Similar definitions of subsidiaries are embodied in statute and regulation in Virginia, Delaware and Maryland, and also contained in divorce legislation pending in New York.

Merit is an independent marketer, a minority of whose shares are owned by a producer and refiner. The producer and refiner exercises no control over the operations of the company.

We would greatly appreciate an opportunity to discuss this matter with you at your convenience.

Very truly yours,

  
Richard K. Weinroth

RKW:su

cc: Morton Craine, Esq.  
Donald Bean, Esq.



NEW JERSEY SENATE

RAYMOND J. ZANE  
SENATOR 3<sup>RD</sup> DISTRICT  
44 COOPER STREET  
ROOM 209  
WOODBURY, NEW JERSEY 08096  
609-848-1102

August 10, 1982

Honorable Wayne Dumont, Jr.  
104 South Main Street  
Phillipsburg, New Jersey 08865

Dear <sup>Wayne</sup> ~~Senator Dumont~~:


Enclosed please find correspondence I received from a constituent of mine, Mr. Fred Harz, Jr., who has suggested an amendment to S-455, your bill which prohibits the distributors, refiners, wholesalers or suppliers of motor fuel to open and to operate retail dealerships for the sale of motor fuel with company personnel.

Mr. Harz has suggested restricting the scope of the measure to refiners and producers, such as the major oil companies, and exempting jobbers as they do not pose a threat to control the market. Would you please be so kind as to examine my constituent's suggestion, and advise me on your opinion of such?

If you have any further questions or if I may offer assistance, please don't hesitate to contact my office.

I remain

Respectfully,

  
RAYMOND J. ZANE  
Senator, District 3

RJZ/kb

# Fred Harz and Son



U.S. ROUTE 40 • ELMER, NEW JERSEY 08318 • (609) 358-8128



*We Specialize in Tires from the Smallest to the Largest - We Have the Odd Size*

Honorable Raymond J. Lane  
44 Cooper St  
Carter Building, Room 209  
Woodbury, N. J. 08096

Re: S-455

Dear Senator Lane,

May I suggest an amendment to take jobbers out and restrict the bill to only refiners and producers (major oil companies) as was done in the State of Maryland?

Many small jobbers like our company started with a service station and then expanded to selling to other service stations. Others started as fuel oil dealers and have diversified their businesses to include service station operations for diesel and gasoline. I do not feel that these jobbers are a threat to control the market the way the major oil companies can.

Thank you for your consideration.

Sincerely,

Fred Harz, Jr.  
Fred Harz and Son

