Barbara S.

PUBLIC HEARING

before the

Assembly Transportation and Communications Committee

on

Assembly No. 1208
(An Act providing for the regulation of petroleum refinery operations and the sale and distribution of petroleum products refined and distributed within the State of New Jersey by the Board of Public Utility Commissioners, and making an appropriation therefor.)

and

Assembly No. 1256
(An Act extending the jurisdiction of the Board of Public Utility Commissioners to hydrocarbon fuels, and amending R.S. 48:2-13.)

Held:
May 30, 1974
Assembly Chamber
State House
Trenton, New Jersey

Committee Members Present:

Michael P. Esposito, Chairman
Morton Salkind, Vice Chairman
Herbert Gladstone
Rocco Neri
C. Gus Rys

I N D E X

ASSEMBLY, No. 1208

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1974

By Assemblymen GEWERTZ, SWEENEY, JACKMAN, SINSIMER, Assemblywoman TOTARO, Assemblymen BARBOUR, RYS, FORAN, HICKS, BATE, KOZLOSKI, Assemblywoman CURRAN, Assemblymen SALKIND, VAN WAGNER, WORTHINGTON, SNEDEKER, SHELTON, GALLO, ESPOSITO, VISOTCKY, HOLLENBECK, D'AMBROSA, GREGORIO, DOYLE, NEWMAN, RUANE, BORNHEIMER, STEWART, OTLOWSKI, PELLECCHIA, KARCHER, FROUDE, MARINO, PATERO, MARTIN, Assemblywoman WILSON, Assemblymen McMANIMON, GALLAGHER, KLEIN, LeFANTE, McCARTHY, HAWKINS, GLADSTONE, FLORIO, CONTILLO, PERKINS, HERMAN, GORMAN, OWENS, KEEGAN, GARRUBBO, SPIZZIRI, CHINNICI, PERSKIE, KEAN, EWING, YATES, WOODSON, FLYNN, CODEY, CALI, BROWN, NERI, FITZPATRICK, MacINNES, Assemblywoman CROCE, Assemblyman SCHUCK, Assemblywoman BERMAN, Assemblymen BAER, BURSTEIN and HYNES

Referred to Committee on Transportation and Public Utilities

An Act providing for the regulation of petroleum refinery operations and the sale and distribution of petroleum products refined and distributed within the State of New Jersey by the Board of Public Utility Commissioners, and making an appropriation therefor.

Be it enacted *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Petroleum Refinery Regulation Act."

2. The Legislature finds and declares that the public health, safety and welfare require that refined petroleum products be produced, sold and distributed throughout this State efficiently, adequately and economically; that the present severe disruption in the availability of refined petroleum products necessitates that the State act to insure that the refining, sale and distribution of

petroleum products will adequately service the public need therefor at just and reasonable prices, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices; that such purposes will be more likely achieved if the Board of Public Utility Commissioners is charged with the duty of regulating the production, sale and distribution of petroleum products refined within this State; and that the exercise of any power herein provided for shall be deemed to be in the public interest and for a public purpose.

3. The words and phrases used herein shall have the following meaning:

a. The term "person" means any individual, copartnership, association, company, or corporation, and includes any trustee, receiver, assignee, leasee, or personal representative of any person herein defined.

b. The term "board" means the Board of Public Utility Commissioners of the Department of Public Utilities of this State.

c. The term "petroleum refinery" or "petroleum refinery operation" means any facility which refines petroleum.

d. The term "petroleum refinery operator" means any person who owns or operates a petroleum refinery.

e. The term "supplier" means any wholesale marketer, jobber, distributor, terminal operator, or person who supplies refined petroleum products in bulk at the wholesale level.

f. The term "wholesale customer" means any person or governmental unit that purchases refined petroleum products in bulk at the wholesale level, including distributors, independent, branded and unbranded jobbers or dealers, public utilities, or large volume users.

4. It shall be the duty of the board:

a. To order petroleum refinery operators to refine specified volumes of particular petroleum products whenever the board shall determine that inadequate supplies of such product threaten the public's health, safety or welfare.

b. To order petroleum refinery operators to sell and distribute, at the current marketplace price for such transactions, any specified petroleum product to any specified supplier or wholesale customer whenever the board shall determine that lack of such product by such supplier or wholesale customer theatens the public's health, safety or welfare.

c. To fix and enforce just and reasonable rates for the petroleum products refined and offered for sale in this State by a petroleum refinery operator to any supplier or wholesale customer;

d. To collect and publish at regular intervals all information from every petroleum refinery in this State which the board shall deem necessary to provide sufficient knowledge to carry out the purposes of this act. Such information shall include, but need not be limited to, the refinery capacity by category of product at such refinery; the storage capacity for crude petroleum and for refined petroleum product by category of product at such refinery; the volume and origin of crude petroleum received by such refinery; the volume of crude petroleum in storage at such refinery; the volume of petroleum refined at such refinery by category of product; the volume of refined petroleum in storage at such refinery by category of product; the volume and destination of refined petroleum sold or distributed from such refinery by category of product; the cost of crude petroleum received at such refinery and the cost of refined petroleum sold or distributed from such refinery by category of product;

e. To require all petroleum refinery operators to submit such information as described in section 4 d. on forms provided by the board;

f. To prescribe a uniform system of accounts, rates, records and reports and the preservation of records by petroleum refinery operators for the information described in section 4 d.;

g. To administer, execute and enforce all other provisions of this act; to make all necessary orders in connection therewith, and to make the rules, regulations and procedure for such administration, provided, however, that such rules, regulations and procedures shall be adopted upon notice to the public and an opportunity for interested parties to set forth their views thereon;

h. To employ and fix the compensation of such experts, assistants, inspectors, examiners, and other employees as in its judgment the board deems necessary or advisable for the convenience for the public and for the effective administration of this act, subject to the provisions of Title 11 (Civil Service) of the Revised Statutes;

i. The board may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all the documents necessary to enable the board to administer its duties as prescribed by this act. On all hearings before the board, a petroleum refinery operator may appear in his own behalf or if a corporation may be represented by an officer thereof.

5. a. Any person who shall knowingly violate any of the provisions of this act or any rule, regulation or administrative order promulgated hereunder, or who does any act comprising a part of

such violation, shall be punished by imprisonment for not more than 3 years or by a fine of not more than $50,000.00, or both; and if a corporation by a fine of not more than $100,000.00. The penalties herein provided shall be enforced by summary proceedings instituted by the board in the name of the State in accordance with "The Penalty Enforcement Law" (N. J. S. 2A:58-1 et seq.). The Superior Court, County Court, county district court and the municipal courts shall all have jurisdiction to enforce said Penalty Enforcement Law in connection with this act.

b. Whenever it shall appear to the board that any person has violated, intends to violate, or will violate any provision of this act or any rule, regulation or administrative order duly promulgated hereunder, the board may institute a civil action in the Superior Court for injunctive relief and for such other relief as may be appropriate in the circumstances, and the said court may proceed in any such action in a summary manner.

6. If the provisions of any section or clause of this act or the application thereof to any person shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or clause of this act or the application of any part thereof to any other person or circumstance and to this end, the provisions of each section and clause of this act are hereby declared to be severable.

7. There is hereby appropriated to the Department of Public Utilities from the General Treasury for the purposes of this act the sum of $250,000.00.

8. This act shall take effect immediately.

STATEMENT

The need for governmental regulation over the refining and distribution of essential petroleum products has never been more clearly evident than during the present severe disruption in the availability of such products. As essential supplies of gasoline, diesel fuel, heating oil, residual oil, petrochemical feedstocks, and other petroleum products become more scarce and the prices of such products increase at alarming rates, it is imperative that the public safety, health and welfare be protected by empowering the Board of Public Utility Commissioners to oversee the activity of petroleum refineries in this State.

In order to insure that the refining, sale and distribution of petroleum products will adequately service the public need therefore at just and reasonable prices, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, the act empowers the board to require, during periods of shortage, that the refineries produce specified volumes of particular petroleum products and sell and distribute specified volumes of particular petroleum products to specified suppliers or wholesale customers, and to fix reasonable charges for the sale thereof. The board is further empowered to collect and publish information concerning, among other things, the supplies, production runs, storage facilities and distribution procedures of refineries operating within this State.

ASSEMBLY, No. 1256

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1974

By Assemblyman SALKIND

Referred to Committee on Transportation and Public Utilities

AN ACT extending the jurisdiction of the Board of Public Utility Commissioners to hydrocarbon fuels, and amending R. S. 48:2-13.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R. S. 48:2-13 is amended to read as follows:

48:2-13. The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as hereinafter in this section defined and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

The board shall also have general supervision and regulation of jurisdiction and control over the manufacture, sale, distribution, allocation, possession and use of all hydrocarbon fuels used for energy generation within the State.

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electric light, heat, power, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

Nothing contained in this Title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over any vehicles engaged in the transportation of passengers for hire in the manner and form commonly called taxicab service unless such service becomes or is held out to be regular service between stated termini; hotel buses used exclusively for the transportation of hotel patrons to or from local railroad or other common carrier stations, including local airports, or bus employed solely for transporting school children and teachers, to and from school, or any autobus with a carrying capacity of not more than 10 passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities within any county of the fifth or sixth class, which route in either case does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route.

2. This act shall take effect immediately.

STATEMENT

This bill extends the jurisdiction of the Board of Public Utility Commissioners to the manufacture, sale, etc., of hydrocarbon fuels.

FISCAL NOTE TO

ASSEMBLY, No. 1256

STATE OF NEW JERSEY

DATED: APRIL 22, 1974

Assembly Bill No. 1256 extends the jurisdiction of the Board of Public Utility Commissioners to the manufacture, sale and distribution of all hydrocarbon fuels.

The Public Utilities Commission estimates that enactment of this legislation would require State expenditures of $1,001,845.00 in fiscal 1974-75 and $1,047,879.00 in fiscal 1975-76. In making this estimate, the commission considered the wording of the legislation and feels the above amounts are what would be required to discharge all the responsibilities as they see them.

The fiscal note is based on an estimate of costs rather than actual cost information.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

ASSEMBLYMAN MICHAEL P. ESPOSITO (Chairman): Ladies and gentlemen, we will call the public hearing to order now. My name is Michael P. Esposito. I am Chairman of the Assembly Transporation and Communications Committee. I represent District 32, which is in Hudson County.

On my left is Gus Rys who represents part of Bergen County, and Herb Gladstone who represents part of Bergen County; Morton Salkind, who is Vice Chairman of the Committee; and on my extreme right, Rocco Neri who represents part of Essex County.

This is a public hearing on Assembly bills 1208 and 1256.

I have a list of those who have asked to testify this morning. If there is anyone else who has not signed the list or has not indicated that he wants to testify, please come forward; put your full name and the organization that you represent on the roster. I will read that list before we commence the proceedings.

I will ask that as each witness testifies he take the seat in front here, speak up and speak directly in the microphone, give his name, address, position and the organization which he represents.

We will follow the usual procedure for legislative hearings. If a witness has a prepared statement, please make copies available for the members of the Committee. Prepared statements need not be read in full; witnesses may request that they be made part of the record for consideration by this Committee. After each witness has concluded his statement, the Committee members may ask questions. We trust that these questions will be answered in full to the best ability of the witness. No questions from the audience will be permitted.

The parties interested in testifying this morning are:

Morton Salkind, who is the Sponsor of A-1256;

Miles Lerman, representing Miles Petroleum, Inc., Vineland;

New Jersey State Chamber of Commerce, Lewis R. Applegate, Director of Governmental Relations;

New Jersey Manufacturers Association;

Martin Lobell, Attorney, Washington, D. C.;

Fuel Merchants Association of New Jersey, Ted Renner and Lee Laskin; and

Kenneth A. Gewertz, who is the Sponsor of A-1208;

The New Jersey Public Interest Research Group, Christopher Burke, Executive Director;

Shell Oil Company, Charles T. St. Laurent, Manager - Planning and Economics;

Mobil Oil Corporation, J. E. Penick, Vice President;

Ashland Oil Company;

Sun Oil Company;

Atlantic Richfield Company, Edward Wagner, Coordinator;

Gulf Oil Corporation; and

Texaco, Inc.

Also, the Exxon Company, U. S. A. and Chevron Oil Company have submitted statements.

The first witness will be Morton Salkind, Sponsor of Assembly 1256.

M O R T O N   S A L K I N D: Mr. Chairman and members of the Committee, my remarks will be quite short and to the point.

Assembly bill No. 1256 was prepared initially at the beginning of the so-called oil or energy crisis in New Jersey and in the United States. It is a very,

very direct and simple bill in its scope. What it does is propose that the Board of Public Utility Commissioners shall have the power of supervision and regulation over the manufacture, sale, distribution, allocation, possession and use of all hydrocarbons used for energy in our State.

At the time of its initial preparation, it was hell to see the effect of self-regulation by the oil companies of our nation on our State and, subsequently, the effect of both federal and state administrative action as authorized under the various statutes.

Subsequently, I was advised that Assemblyman Gewertz was going to prepare what might be called an omnibus and complete bill on the subject. That, of course, is the resulting A-1208, on which I am a co-sponsor.

It is not my intention to move A-1256 should A-1208 be moved and enacted by this House. However, it is my intention to move A-1256 should A-1208 be caught up in detail and lengthy consideration.

Mr. Chairman, the basic question that this bill addresses is this: Should we continue to have the kind of unregulated industry in our State that we have had? Now, I do not wish to cast any accusing fingers at any of our great businesses of the United States that represent the petroleum industry. However, I am aware of the fact that during the period of January and February and March, in particular, there were great shortages in several geographic areas of our State and, ultimately, in our entire State. These patterns had great and unusual composition to them.

For example, when there was pressure exerted to have an oil port off the shores of our great Monmouth and Ocean Counties--and I represent Monmouth County--suddenly there was no gasoline to be had in Monmouth County. I remember being appalled and stating on the floor of this House that it bothered me that I could not get gas in Monmouth County; but the minute I entered Mercer County, it was there and totally available. This was in the days before the flags of various colors. Subsequently, once the red flags appeared in Monmouth County, there were green flags in Mercer County and in our adjoining States.

Once this view became known, it was horrifying to find that, quickly, the situation changed and, ultimately, we had a total State shortage--not just in our northern Counties and shore Counties but throughout the State.

Now, today the problem seems to have been, at least temporarily, alleviated. But, we have the situation of very, very high prices--prices that if one takes off the tax category of the retail price, have more than doubled during the period. We have home heating oil which has more than doubled in our State during this six-month interval.

At the same time, we, as representatives duly elected by the people, must face the fact that oil company profits have soared. Oil company profits have gone up between 30 percent and 125 percent in the recent quarter company by company. There is a question in my mind as to whether this type of high-profit generation should be allowed at the same time that consumer prices in this field, as I indicated earlier, have doubled and more.

Mr. Chairman and members of the Committee: People have said that the State should not regulate this; but rather, it should be regulated by the federal government. As elected representatives, we have a choice. We can wait for action from Washington, or we can take steps to insure that the public interest is protected. I feel it is our duty, as elected representatives, to maintain the public trust and to see to it that this vital and necessary industry is regulated properly so that it may survive and grow and increase its domestic production and refining and, at the same time, so that we in New Jersey may find that we have an available supply without paying excessive costs.

I am further reminded of the fact, Mr. Chairman, that during the height of this crisis, I spoke on the floor and indicated that we were an exporting State and that New Jersey refined more petroleum and hydrocarbon products and related materials, by far, and shipped them outside of our State than we used. It appalled me, at the time, back in January, that when we in New Jersey could not find refined products to meet our needs, we were shipping to our sister States as far away as California. I think that a proper function of government would be to maintain proper regulatory controls over that type of activity.

Therefore, Mr. Chairman, I urge that during consideration of these two bills, with specific reference to A-1256, this Committee consider the idea and concept of putting the entire field of hydrocarbon energy production under the regulatory agency set up for this purpose by our state government; namely, the Board of Public Utility Commissioners.

Thank you, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Are there any questions from the Committee? Assemblyman Gus Rys is first.

ASSEMBLYMAN RYS: Assemblyman Salkind, under PUC control, would they have the expertise and the personnel to manage this? I see that the expenditures would be approximately one million dollars; would that be sufficient to manage it properly?

ASSEMBLYMAN SALKIND: In my opinion, Mr. Rys, the Board of Public Utility Commissioners already has the expertise to be able to manage this field but would need additional personnel to properly staff it. The requested fiscal note indicates that it would be necessary to appropriate approximately one million dollars in each of the coming fiscal years to do this. I will say that I will yield to the appropriate fiscal authorities within our Legislature on that figure.

ASSEMBLYMAN ESPOSITO: Are there any other questions?

(No questions)

ASSEMBLYMAN ESPOSITO: I would like to ask you a question, Mort.

Doesn't the State Energy Office have most of the powers contained in your proposed bill?

ASSEMBLYMAN SALKIND: Mr. Chairman, the State Energy Office has many of these powers under the emergency legislation that we passed earlier this year. I consider those powers passed back in January, and subsequently amended, to be emergency powers given for a particular crisis time; and I respectfully submit that we should treat this as regular legislative authorization for permanent staffing; and that is the intent of this bill.

ASSEMBLYMAN ESPOSITO: I also notice that your bill places fuel under PUC regulation. Wouldn't it be more desirable to classify fuel industries as public utilities and subject them to the regulations of the PUC as public utilities? It would seem more consistent with the existing PUC practices to regulate the industry rather than the product.

ASSEMBLYMAN SALKIND: Mr. Chairman, I think that is a very valid point; and in my opinion, to classify the industries appropriately would be a proper means of enacting this type of regulation.

The reason A-1256 has been worded this way is, if you will, it is meant to be a last resort piece of legislation. If we follow the philosophy that you have expressed, which is similar to the philosophy expressed in A-1208, we can accomplish the means satisfactorily.

What A-1256 does is give us a final point and, in effect, says to the Board of Public Utility Commissioners, you are authorized to regulate this; we are going to give you money separately under an appropriation; you regulate it as you think you should.

However, the method that you have outlined would be perfectly acceptable to me.

ASSEMBLYMAN ESPOSITO: Assembly bill 1256 concerns the use of fuels for energy generation. Does this extend to products like charcoal, which we use in our barbecues, and gasoline in our cars and plastics, which are dependent upon the oil industry?

ASSEMBLYMAN SALKIND: Mr. Chairman, as I understand the meaning of the words, it refers to all hydrocarbon fuels used for energy generation. I would say that petrochemical production by use of the various petroleum based monomers would not be considered in the generation of energy. However, I would say that if one of the great utilities of our State, instead of using fuel oil #2, or whatever the grade is that they use at the appropriate time, or some other source, decided to use charcoal briquettes, no matter how inefficient that would be, that would be an energy generation. Obviously, I do not expect that to occur; so I think our barbecues are perfectly safe from any kind of regulation.

ASSEMBLYMAN ESPOSITO: Thank you Assemblyman Salkind. Do you have a question, Assemblyman Rys?

ASSEMBLYMAN RYS: Yes, just a short question.

n your verbal statement, you stated that
this bill is to regulate the manufacturers
ıd oil. However, the bill says "control"
facture of fuels. Those are two different
.te and control.

3LYMAN SALKIND: Well, Mr. Rys, I cannot
legal language of the meaning of the
ı1." My understanding is that regulation is the key. Jurisdiction" is a key word; the lawyers seem to feel that the correct words should be "jurisdiction and control."

It is not my intent to, in any way, interfere with the abilities of our great petroleum companies to manufacture their product. What I do intend to do, through this bill, is protect the consumers of New Jersey from paying either too much money or not having sufficient supplies of gasoline and fuel oil available to them.

I feel that if we are going to have a balanced economy in a properly growing climate in our State, it is necessary to see that not only do the oil companies have a fair rate of return but that the consumers do not pay through the nose. This is the purpose of the bill.

ASSEMBLYMAN RYS: Mr. Salkind, that is a broad statement; but you still have not given me the answer I want to hear as to control.

Would you be willing to have the word "regulation" put into the bill rather than "control" on line 8?

ASSEMBLYMAN SALKIND: The drafting of this bill by our own Committee of the Legislature was intended to provide for regulation and the ability to establish prices. The wording that is used on lines 7 and 8 is their wording. I have no objection to whether the word "control" is in there or not.

ASSEMBLYMAN ESPOSITO: Are there any further questions from the Committee?

(No questions)

ASSEMBLYMAN ESPOSITO: I will now recognize the next witness, Miles Lerman, representing Miles Petroleum Corporation, Vineland, New Jersey.

Mr. Lerman, do you have a prepared statement?

MILES LERMAN: No; I have some remarks; and I will be glad to answer questions.

My name is Miles Lerman, and I am a jobber representing chemical oil companies. Basically, I am an independent businessman in Vineland, New Jersey. I also serve as Chairman of the South Jersey Gasoline Jobbers Association. In our area, we have approximately 150 to 175 independent jobbers.

I came up here to testify because the bill proposed concerns us very much; and I would like to explain to you, Mr. Chairman, and to the members of your Committee the degree of regulation and the degree of laws that we are burdened with right now. I also want to tell you how much freedom we have at the present moment and to ask whether it is proper for us to be burdened with additional regulations.

At the present moment, we are being regulated by two federal agencies. One of those is the Federal Energy Agency; the other is the Cost of Living Council.

The Federal Energy Agency regulates and controls the amount of product that is being allotted to us. It also regulates and controls the degree to which we can or cannot accept customers or refuse to serve customers. To be specific with you, we are compelled by federal law, at the present moment, to serve all of our customers of the base period of 1972. We are compelled to serve them at the historic price at which we served them.

In addition to that, our prices are controlled by the federal Cost of Living Council. In other words, we are not permitted to raise our prices without federal permission; and we are being constantly regulated and controlled by the IRS.

Assemblyman Salkind was talking about additional regulations to be placed; and I am sure that his intentions are well meant; and I am sure that he is not aiming at us. However, indirectly, I think that the final victim of this law--and I am using this term fully conscious of its meaning--as it would be instituted would be the small, independent businessman. Our problem right now is that we are simply drowned in the maze of papers, forms and reports that we have to submit today. An additional law will put an undue burden on us, and it will serve no purpose whatsoever. We are small, independent businessmen; we cannot afford additional burdens.

At the present moment, I can tell you that the individual jobber has at least one member of his staff permanently occupied with nothing else but filling out forms and filing reports and sending additional information to state or federal agencies. We are, at the present moment, engulfed in undue hardship.

We faced a very difficult period last year; I think we came through with flying colors. I think we can state proudly that due to the effort of our State Association and the fact that we pooled our resources, we have managed to come through the biggest crisis of this winter without leaving a single home in the State of New Jersey without fuel oil for one single day. There was not one home in the State of New Jersey that did not have fuel oil for one single day.

As far as the shortage of gasoline, I think that we have fared better than anyone else in spite of the long lines that we have experienced. To the best of my knowledge, the responsible jobbers presented themselves and conducted themselves in an honorable manner; there was no blackmail; everything was allotted properly; and we have done our very best.

We feel that we should not, at the present moment, be brought under the PUC, which was designed for an entirely different purpose. I beg to differ with you, sir; they are not cut out to supervise jobbers; they are not cut out to oversee us; they do not know our individual problems. I think it will only place undue hardship on small, individual people. This bill, if instituted, will become a monster for the small people in the business.

ASSEMBLYMAN ESPOSITO: Mr. Salkind.

ASSEMBLYMAN SALKIND: Mr. Lerman, is the thrust of your remarks directed to A-1256 or A-1208 or to the concept totally?

MR. LERMAN: I am predominantly concerned with A-1256; but since you are asking me the question, I would like to point out that as far as A-1208 is concerned, it affects us to an extent. I am not a lawyer; I am just a fuel man. Laws are written in a very technical manner, and I have read it several times. If I interpret it properly, inasmuch as it is aimed at the major oil companies, it is also aimed at the jobber in an indirect manner. The jobber, whether or not it is intended at the present moment, will, to an extent, fall under the jurisdiction of the PUC. I do not think that there is a single jobber in the State of New Jersey prepared to assume and to bear more controls and more regulations than we have. We are overregulated and we are overcontrolled for the present moment.

ASSEMBLYMAN SALKIND: Mr. Chairman, I feel that the gentleman makes one valid point when he mentions the degree of paperwork that the jobbers are facing today. I would suggest that in A-1256, the intent and thrust of the confining regulation would be on the major producers, refiners and storers prior to its getting to the jobbing set-up.

I would suggest, however, that it is the intent of A-1256 to regulate the amount of profits which can be obtained at the various levels; because, after all, it is the consumer who ultimately pays.

I would also suggest to the very able witness that part of the reason we did not have the kinds of troubles we could have had in New Jersey and in the Northeast in regard to home heating oil this year is that God was good to us, and we did not have a severe winter.

MR. LERMAN: This is true. We had a warm winter and we were very fortunate in that. I think the fact that we have a very well organized State Association had an awful lot to do with it. In our area, we not only shared product amongst ourselves but we even invited the Civil Defense to our meeting; and we told them that in case of any emergency including welfare cases where people were unable to obtain product, we were prepared on an around-the-clock basis--we rotated--to serve the public; and we came through with flying colors.

ASSEMBLYMAN SALKIND: One more question, if I may.

We know the way the oil company profits have soared. May I ask you, on the record, in terms of your industry, how have your profits fared in the first calendar quarter of 1974 compared to 1973's first quarter?

MR. LERMAN: Are you talking about us, the jobbers, or the major oil companies.

ASSEMBLYMAN SALKIND: I am talking about the jobbers; I know about the major oil companies.

MR. LERMAN: The jobbers' profits only increased to the extent that the Cost of Living Council allowed. I do not mind going on record on this. The Cost of Living Council has granted us an extra cent on fuel oil. For your information, my company was unable to take this additional cent. The reason for it is that my source of supply, at the present moment, happens to be the highest in price. If I were to take that additional cent that the

Cost of Living Council has granted us, I would price myself out of the market. We have a very competitive situation, believe it or not. I did not take that cent because I was afraid of losing my customers.

ASSEMBLYMAN SALKIND: I thank you very much for that remark; I think, Mr. Chairman, that covers the point adequately. I would feel much more secure with the consumers of New Jersey being in the hands of the duly appointed Board of Public Utility Commissioners--appointed by our Governor and confirmed by our Senate--than I am in the Cost of Living Council and its pricing policies for the nation and for our State.

ASSEMBLYMAN ESPOSITO: Mr. Lerman, your designation in the industry is as a wholesaler. Is that correct?

MR. LERMAN: I am a jobber; I am a retailer; I am supplying individual homes.

ASSEMBLYMAN ESPOSITO: Do you sell directly to consumers?

MR. LERMAN: I sell directly to consumers and I also have service stations.

ASSEMBLYMAN ESPOSITO: Do you know what has been bothering me? The price of my fuel oil has risen during the crisis from 17¢ all the way up to 37¢.

MR. LERMAN: That is correct.

ASSEMBLYMAN ESPOSITO: You have not absorbed any of that profit?

MR. LERMAN: As I told you, Mr. Chairman, we are only allowed to increase as much as the Cost of Living Council grants us. We are bound by the price of May 15. We can pass on to the customer any increase charged to us. As far as our margin of profit is concerned, we are only permitted to increase it if the federal Cost of Living Council grants us this increase. I know of many cases where jobbers have been granted, by the Cost of Living Council, the right to increase; and they chose not to do it because they found, due to the discrepancy in prices, that they would have been priced out of the market. We have a very competitive situation amongst ourselves; we have close to 800 people, and everyone likes to keep his customers.

ASSEMBLYMAN ESPOSITO: Another thing that bothers me is that the statements of the refineries have shown exorbitant profits.

MR. LERMAN: This is true. I am not here to appear as an advocate for the major oil companies.

Mr. Chairman, if I may, I would like to point out something to you. This is not an American crisis; this is a global crisis. I can only tell you this: The main sources of our imports--the Persian Gulf, whether it is Iran or the Arabian countries, or even Venezuela--were selling crude oil at $2.80 to $3 a barrel a year and a half ago. At the present moment, they are selling it at $12 to $14 a barrel; a barrel is 42 gallons. If you take a pencil and compute, you will see where the increases are. We are very frustrated with these prices, and we hope that some sort of modus operandi will be developed so we can go back to normal prices.

With all due respect to you, gentlemen, I think this is a federal problem. It is very much a federal problem; it is even a global problem. Unless there is correlation between all industrial nations of the world--a meeting of this nature took place a few months ago in Washington--we are simply going to be raped by the rich oil countries. This is taking place right now. A barrel of crude oil which was $3 is being sold for $14; you have an increase of four times the price; it's terrible.

ASSEMBLYMAN ESPOSITO: Mr. Gladstone, do you have any questions?

ASSEMBLYMAN GLADSTONE: Mr. Lerman, you said that you sell home fuel and gasoline.

MR. LERMAN: Right.

ASSEMBLYMAN GLADSTONE: Are you on allocations presently.

MR. LERMAN: Very much so--80 percent.

ASSEMBLYMAN GLADSTONE: Eighty percent of what?

MR. LERMAN: Last month we were on 80 percent of 1972.

ASSEMBLYMAN GLADSTONE: 1972?

MR. LERMAN: Right.

ASSEMBLYMAN GLADSTONE: So, that is considerably less than 80 percent of what you need.

MR. LERMAN: By all means. As far as gasoline is concerned, the figure fluctuates. I understand that this month we will most likely go on 90 percent. This is a decision that we do not make; this is a decision that a company has to make. With all honesty, I will say this: The Federal Energy Agency is doing an outstanding job of protecting the right of the individual jobber. If it had not been for the Federal Energy Agency, we would have had a lot of trouble.

ASSEMBLYMAN GLADSTONE: You used the word "blackmail," Mr. Lerman.

MR. LERMAN: That is right.

ASSEMBLYMAN GLADSTONE: It has been suggested that the major oil companies are forcing tie-in sales on tires, batteries and accessories with their gasoline. Have you been pressured in any way on this?

MR. LERMAN: Not by my company.

ASSEMBLYMAN GLADSTONE: What company is that?

MR. LERMAN: Amoco. I also would like to tell you, sir, that I am Chairman of the Gasoline Jobbers Association of South Jersey. Our Association has sent out a letter to all members advising them that a report should be filtered in to me and, through me, to the Association at any time they are subjected to any undue pressure, at any time they feel their arms are being twisted or any time they feel they are being unjustly dealt with. There are cases where there may be, let us say, differences of opinion and discrepancies between jobbers and major oil companies. This is natural. There may be some people who feel they are being unjustly dealt with; but as far as pressure on tie-ins, I can speak for myself; and I can tell you that there was not a single report given to me that major oil companies are forcing it. I hope that if this is in the making, it will be prevented on the federal level.

ASSEMBLYMAN GLADSTONE: I would not say that it is in the making, but I will say that it has happened in the past. It happened at the height of the shortage. There were enough reports given to us to indicate that it has happened.

MR. LERMAN: I wish I had known that you were going to pose this question to me. There was a letter mailed out--at least by our company, and I am sure that others did it for self-protection--containing a formal statement of policy stating that every individual service station is entitled to buy its TBA wherever it wishes. You may have cases of an overzealous salesman who will try, with an emotional pitch, to take advantage of the situation because he wants to show a good record for himself. I hardly believe it would be a policy of the major oil companies; they are too smart for that.

ASSEMBLYMAN RYS: I wish that were true.

ASSEMBLYMAN ESPOSITO: Mr. Neri, do you have any questions?

ASSEMBLYMAN NERI: Yes. Mr. Lerman, are you expected to sell fuel strictly in the South Jersey area?

MR. LERMAN: Basically, as far as fuel oil is concerned, there are no territories. You can sell fuel oil anywhere. It is impractical for a jobber in South

Jersey to sell fuel oil outside of South Jersey. However, if he chooses, he can do so without any problem. As far as gasoline is concerned, there are specific territories assigned to a jobber.

ASSEMBLYMAN NERI: Thank you.

ASSEMBLYMAN ESPOSITO: Mr. Rys, do you have any questions?

ASSEMBLYMAN RYS: Yes. Mr. Lerman, do you have any storage capacity?

MR. LERMAN: Yes.

ASSEMBLYMAN RYS: How many gallons?

MR. LERMAN: Are you asking what my storage capacity is?

ASSEMBLYMAN RYS: Yes.

MR. LERMAN: I have about 120,000 gallons of fuel oil...

ASSEMBLYMAN RYS: Is that #2?

MR. LERMAN: Yes, #2 fuel oil.

ASSEMBLYMAN RYS: How much kerosene?

MR. LERMAN: I have an 8,000 gallon tank.

ASSEMBLYMAN RYS: You do not carry a bunker of #6 or #4?

MR. LERMAN: I do not carry it directly; but I have some customers whom I am supplying; and this is, basically, supplied by transport directly.

ASSEMBLYMAN RYS: Do you receive your oil by boat or by tankage?

MR. LERMAN: By tankage; we haul it ourselves.

ASSEMBLYMAN RYS: Do you have a posted price outside the gates pertaining to your products?

MR. LERMAN: Our prices are posted. As a matter of fact, I am sure you are aware that there is a law in the State of New Jersey...

ASSEMBLYMAN RYS: I used to be with the oil companies; that's why I asked you the question.

MR. LERMAN: Yes, we have posted prices.

ASSEMBLYMAN RYS: The biggest complaint I have had in the summertime was regarding the price of fuel oil. There is a certain decrease in oil in the summer months; it starts in April and May. The increase came in sometime in June; and the customer, at that time, should have had his tank filled at summer prices. I also use fuel oil, and I found myself in the same predicament. I was paying 18¢; and automatically, the summer fuel oil prices jumped to 35¢. In other words, the distributors were holding onto the oil until the oil companies gave that price. Can you explain that?

MR. LERMAN: This is a rather complicated situation. Normally, in the summertime, we used to have somewhat of a decrease in prices. Inasmuch as the Arab countries have lifted the embargo, the Arab oil is going to start coming into the United States; and it will be based on the prices they are paying right now. As a result of this, the fuel oil prices at the present moment are not low at all. If anything, my fuel price that I am paying right now is the highest I have paid throughout the winter.

ASSEMBLYMAN RYS: I realize that.

MR. LERMAN: Also, you will find that there may be a tremendous discrepancy between one company and another. This is caused by how much foreign crude a given company happens to buy. If it is domestic crude, it is regulated by the United States government; and it is controlled. If it is foreign crude and they have to buy it on the open market, they cost average it.

ASSEMBLYMAN RYS: Thank you; you have answered my question.

ASSEMBLYMAN ESPOSITO: Are there any further questions?

(No questions)

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Lerman, for your testimony.

MR. LERMAN: Thank you very much.

ASSEMBLYMAN ESPOSITO: The next speaker will be Lewis R. Applegate, Director of Governmental Relations, New Jersey State Chamber of Commerce.

L E W I S   R.   A P P L E G A T E:

Mr. Chairman and members of the Committee: I appreciate the opportunity to appear here today. My name is Lewis Applegate. I am a resident of Princeton, and I am Director of Governmental Affairs for the New Jersey State Chamber of Commerce. My offices are in Trenton although the Chamber's Headquarters office is located in Newark. As you know, the Chamber is a membership organization of industrial and business concerns--a broad spectrum of enterprises large and small and located in every protion of the State.

Members of the Chamber's Energy Committee have examined both bills which are the subject of today's hearing and the following comments reflect their views: I must explain that this committee, while it does include representatives from the various energy-providing industries--oil, gas and electricity--has a majority of its members from business and industry--major consumers of energy. These committeemen, and the companies they represent, have a great concern over the continuing availability of energy in New Jersey. The livelihood of their companies' employees is dependent upon this availability; the products and services which they provide to the public are dependent upon it; and much of the socio-economy of New Jersey--including government--is dependent upon it.

The Chamber is quite cognizant of the climate of thinking which prevailed in New Jersey and the nation last fall and winter as the Arab nations' oil embargo first drove home to the average citizen, the facts of life with respect to future energy availability. It was an extremely sobering experience for everyone as we came to realize that the nation's energy resources are finite and that, embargo or no, we will have to change directions in much of our thinking and practices with respect to the usage of energy -- especially that derived from petroleum.

The two measures under consideration today, plus several others of similar character, are reflective of thinking during the peak of the recent energy crunch.

However, we do not feel that additional regulation of the oil-refining industry within and by the State of New Jersey, as these bills propose, is an appropriate response to the circumstances all of us have come through (and which we can well expect to have happen again some time in the future).

Our Chamber's concern is that the energy-providing industries in New Jersey -- and in the nation -- be as free as the public's best interests will permit, to provide the economy with the energy we require. This painful period of shortages which we have just experienced has provided the public with some insight regarding the imposition of governmental controls -- they do little or nothing to ease the actual shortages and, in fact, (and I am speaking now of Federal, not State controls) they sometimes work to create the shortages, as in the case of the long-established federal controls over the price of natural gas at the well-head.

The pertoleum refineries in New Jersey serve regional markets, not New Jersey alone. It makes little sense, therefore, for this state to seek to control them in the manner of a public utility. Our system of governmental controls over utilities is based upon the public's interest in controlling industries which, within their field, are given a monopoly in their particular area. These circumstances simply do not apply to all refining in New Jersey (or anywhere else in the nation). The oil industry is a highly competitive one. No enactment of the

New Jersey's legislature can transform this industry into a utility. And in the final analysis, it is to society's best interest to allow the natural controls of the marketplace, rather than the edicts of a governmental agency, to prevail wherever possible. Given the circumstances of the market in petroleum fuels and other products, we feel that decisions on the open market are more conducive to continuing availability of fuels than would be those of any governmental regulatory agency.

As a practical matter, we do not see how A-1256's proposal could be meaningfully handled by any state regulatory body. With refineries operating in a number of states and given the complex nature of the industry's distribution system to say nothing of the product lines, such a piecemeal, parochial approach to controlling the oil industry holds no promise at all for the interests and needs of the public. If the nation's energy circumstances do ultimately make regulation of this industry desirable -- beyond present allocation controls -- the only practical place to impose such controls is at the Federal level. In our view we are nowhere near such a situation at the present time.

In short, neither A-1208 nor A-1256 are workable bills. They advocate an impractical solution to a problem that presently does not appear to justify such action even at the Federal level.

These bills also raise other questions.

They totally ignore, for example, the existence and responsibilities of both the State Energy Office and the State Emergency Fuel and Energy Agency. They would lead to much duplication of governmental effort.

We fail to see how regulation of the oil industry in New Jersey will have any meaningful effect upon the availability of petroleum crude, a steadily increasing portion of which must be imported from other nations.

A far more constructive approach to New Jersey's energy problems would be for the legislature to require quicker action on approvals for construction of alternate energy facilities. This would serve to reduce our presently excessive dependence upon oil for generating electricity and thus spare this increasingly precious substance for use in transportation systems, as the basis for petrochemical products, and other uses for which it has no equal.

As to imposing what amounts to local utility controls upon a highly competitive national and international business, neither A-1208 nor A-1256 could accomplish much except to create more governmental jobs.

We certainly hope that neither bill is reported favorably by your committee. I say that with tongue in cheek because I see you have 70 sponsors and all but one member of your Committee sponsoring or co-sponsoring the bill.

Because we feel your committee might find it helpful to have more background on the basic issue posed by both of these bills -- the imposition of public utility-type controls upon a competitive industry -- the State Chamber is pleased to offer further testimony from an independent consultant who is especially knowledgeable on this subject. He is Sherman H. Clark who heads his own firm of economic consultants which is headquartered in Menlo Park, California. He has been associated with the Stanford Research Institute in special studies of energy economics and it is in connection with those studies that we have asked him to testify here today. If it is alright, as part of our presentation, I would like now to have Mr. Clark take over; and I will give you a copy of the basic material he has. Is that alright, Mr. Chairman?

ASSEMBLYMAN ESPOSITO: That will be fine.

S H E R M A N H. C L A R K:

Mr. Chairman and gentlemen: It is a privilege to appear before you today. My name is Sherman H. Clark, and I am President of the

Sherman H. Clark Associates in Menlo Park, California. I started my own firm just one year ago; it is composed of seven of us at the present time. Prior to a year ago, I was Director of Energy and Resources Economics at Stanford Research Institute in Menlo Park, California. I had been at SRI for 21 years and was Director of the energy program most of that time. I have worked on all manner of energy studies of all forms of energy for all sectors of the energy industry, for foreign governments, the United States government, energy equipment suppliers and users of energy.

It is a privilege to have a chance to present to you some conclusions that I have drawn based upon a study which I did early this year entitled, Oil Industry Earnings in Perspective, to be published by the Clairmont College Press. This analysis covered the historical period from 1950 to 1973; and it includes estimates of the changes in relative availability of petroleum over this time period, price trends and rate of return on an absolute basis and in relation to those of other industries, other financial characteristics of the industry and indicators of performance.

The future outlook for the petroleum industry is focused on the drastic changes ahead in sources of supply and their related unit cost. Conclusions are then drawn as to the implications of this basic change on the capital requirements of the industry and its significance in terms of the needed rate of return.

We conclude that the industry has a demonstrable record of competitiveness, that prices and rate of return have followed the basic changes in the supply and demand characteristics of the industry and that any attempt to regulate the industry or to give it public utility status would tend to dry up the supply and would, in fact, raise costs and, probably, prices. This would definitely not insure adequate supply and would thereby damage not only the oil companies but the people of the State, and the primary beneficiaries would be the Arab oil-producing nations.

We can start with the past record of the industry. The industry has experienced a prolonged period of surplus commencing in the late 1950's, 1958, and continuing through 1972--some 15 years. The periods of surplus or tight supply are a composite of a number of factors. I won't read them all, but they go into various characteristics of oil and gas supply and deal primarily with the number of sources of readily expandable supply and the characteristics of some of the nations that may furnish that supply.

All of these factors, when taken into consideration, contributed to a substantial surplus. By that I do not mean there were drums of oil to the sky scattered about the world. I mean, rather, that there was a large number of sources of oil and gas which were readily expandable, generally with each increment of additional supply at lower costs and prices.

The degree of surplus contributed to by some of these factors gradually diminished after the mid-1960's, and most of them were eliminated by the end of that decade. The 1970-72 period was actually a period of transition in which the only remaining factor contributing to a surplus was the readily expandable productive capacity in a few countries in the Middle East. This created sufficient concentration of power to enable the producing countries to increase their unit take; and by 1973, their production volume and oil revenues were sufficiently high in relation to their internal financial requirements that the last vestige of surplus was eliminated and a new era of tight supply emerged.

During that period from 1958 to 1972, prices, in actual dollars, remained relatively stable. Prices, in constant dollars, declined throughout that period; and the rate of return of the industry dropped from about 14.8 percent on average for 1950 to 1957 to about 11.5 percent for the period of 1958 to 1972--a substantial drop in rate of return and a substantial drop in real prices.

Many industries, when subjected to periods of surplus, experience a more drastic reduction in earnings, from the "cost of money" level down to actual losses. Such conditions are generally found during surpluses created by declining demand. In the case of the oil industry, however, demand continued strong throughout this period. On a free world basis, demand increased at about 7 to 8 percent a year; and this was a steady year to year increase. Meeting this growth required an array of new facilities at an enormous outlay of capital expenditures. Financing these investments was a critical factor in establishing the floor on the industry's rate of return.

Another view of earnings is obtained by comparing one industry with another or by comparing one industry with all industries. On that basis, the oil industry's rate of return for 1950 to 1957 was generally higher than all manufacturing. However, from 1958 to 1972, the rate of return was generally lower; on average, it was about 0.5 percent lower than the rate of return for all manufacturing.

Two other financial characteristics are important in the determination of the reasonableness of earnings. One factor is the industry's debt as a percentage of total invested capital, which jumped from 11 percent to 22 percent over this period of surplus. The other factor is corporate dividends as a percent of total earnings. This factor shows that the industry operated on a conservative basis in issuing dividends and was below the average for the corporate composite. Therefore, the earnings remaining, even after distribution of corporate dividends, were not sufficient to finance capital expenditures without resorting to increased borrowing that doubled the debt burden as a percentage of total capital employed.

Another characteristic of the industry that is very important is its dynamics. I have read, I hope, just about all the literature in this field; and I found virtually no complaint about the industry in terms of its dynamism--its advances in productivity, its increasing economy of scale, its support of energy R & D. In fact, its gains in productivity have been one of the highest of all industries.

We have had various controls on the U.S. oil industry during most of this period. There was an Oil Import Control Program which protected domestic production and permitted a higher price for domestically reproduced oil than foreign oil. It was a government program, and there have been claims that this cost the nation's consumers of energy some $5 billion to $7 billion a year. But, in fact, when oil is taken into account with the other hydrocarbons that are produced in the search for oil--natural gas and natural gas liquids--the weighted average price of all domestically produced hydrocarbons was well below, throughout this whole period, the average of oil imported into the United States. So, there has been no cost to this program; and yet, there have been benefits from it in maintaining domestic supply at a far higher level than would otherwise have been the case.

As for the present situation, with the Arab oil embargo, the loss to the nation in the first quarter in terms of reduced gross national product was some

$25 billion. The price of foreign crude is now about $3 a barrel higher than the price of domestic crude oil alone, ignoring other domestically produced hydrocarbons. The cost of those imports will be some $8 billion higher based upon just the higher price; and the total cost of these imports will amount to about $25 billion, which is a serious balance of payments consideration. Failure of U.S. policy since 1969 to support the original objectives of the Oil Import Control Program will cost the nation $30 billion to $50 billion this year, and there will be additional costs in future years.

Because oil production has peaked in most countries of the world--not just the United States but a large number of others--there has been a great concentration of supply primarily in the Middle East. This has created the power to exert monopoly control of production and pricing by these countries.

The recent shortage of petroleum is solely attributable to the decision by the Arab nations to use oil as a political weapon. A direct economic consequence of this policy has been a sharp increase in the price of petroleum, with some 90 percent of the increase in the price of crude since 1970 on some 80 percent of the free world production going to the coffers of the producing countries. It is not the companies that have gotten this money; it is the producing countries.

As for what happened in 1973, there was a sharp increase in earnings; the rate of return of the oil industry increased to 15.8 percent in comparison with about 14.8 percent for all manufacturing. In other words, the relationship between oil industry earnings and other industry earnings is back to the same relationship that existed in the mid-1950's. The increase took off from one of the low points in the 15 year period of surplus because, in fact, the rate of return in 1970 to 1972 was below even the average for the 1958 to 1972 period.

The rate of return simply reflects tight supply conditions; there has been no change in the structure of the oil industry to account for recent price increases. Under essentially the same structure, price wars were commonplace during the period of surplus; and the rate of return was below the average for all industry.

If you view the rate of return from the standpoint of inflation, which takes its toll on everything including profits, the rate of return in 1973 was actually below the rate of return in the mid-1950's. If inflation is eliminated, the rate of return is only about 10 percent.

As to the future, based upon the recent action of the producing countries together with their apparent intentions, we should anticipate that their future expansion in oil production will be significantly lower than in the past. This means that the free world and, particularly, the United States must turn to other sources of oil to meet a large portion of the expanding requirements. The significance of this is that the unit costs of production in the Middle East are far lower than the unit costs of conventional U.S. oil, tar sands, shale oil, oil from coal and conventional oil production in most other parts of the world. In fact, the costs for these domestic sources are some 10 to 50 times more costly than they are for expansion in the Middle East. To finance the expansion of these higher cost sources of supply requires a higher rate of return than that which was experienced during this long period of surplus; something in excess of 15 percent rate of return is going to be needed if future requirements and "Project Independence" are going to be achieved--or anything approaching it is going to be achieved.

As to rationale of regulation and making the industry a public utility, I think there are a number of factors involved.

Most utilities are similar in nature to gas and electric utility companies in which a duplication of facilities would not make economic sense. Each company generally has an exclusive territory, and utility companies in the energy field are largely localized; they do not operate on a nationwide basis and they are not international. These companies are granted a monopoly or near-monopoly position and are therefore regulated by a state agency.

By means of one definition or another, every sector of the economy could be construed to qualify as a public utility. The logic must be evaluated very carefully. It is not enough to claim "public interest," or to claim a lack of competition because the industry does not conform to the economist's theoretical model of perfect competition. The oil industry is actually less concentrated than most other large industries. Moreover, there are a large number of tests that are generally applied to determine competitiveness. I will not read them all, but there is a large range of them; and in every one of them, the oil industry demonstrates that it is, in fact, competitive.

If the industry were to be regulated, the consequences, I think, would be severe to the national interest or to the interest of any one State.

Both gas and electric utilities, for example, have been unable to provide adequate supply, primarily because of regulation. There has been a shortage of natural gas since 1971; for four years now, we have experienced a shortage; yet, the industry is regulated. There have been spot shortages of electric power for the last three or four years; yet, the electric utility is regulated. Regulation is no guarantee of adequate supply; it will almost insure that there will be shortages.

Regulation would not result in lower prices. Regulation would probably result in higher unit costs that would more than offset a lower rate of return.

Regulation of this industry would be complex and cumbersome. The industry is multinational; over one-third of the oil supply is foreign. Some 70 to 80 percent of the costs and profits in this industry are incurred outside the State, over which the State would have no control. You are, therefore, only talking about a top margin here on the total costs and rate of return.

Finally, imposing public utility status on the refining-marketing sector in one State would freeze the industry structure and interfere with the dynamics of the industry. While more facilities are needed, the necessary investments would not be made.

Thank you very much.

ASSEMBLYMAN ESPOSITO: Do you have any questions, Assemblyman Salkind?

ASSEMBLYMAN SALKIND: Mr. Chairman, I will address my first questions to Mr. Clark. I don't want to go into debate; I recognize that Mr. Clark has come here from the great State of California to advocate a position; and I will save my debate remarks for later.

Some technical questions, first, Mr. Clark.

You were talking about the rate of return; I think you characterized last year's as 15.8 percent.

MR. CLARK: Yes, sir; 1973.

ASSEMBLYMAN SALKIND: What, based upon the now published first quarter 1974 earnings, would you estimate, in your professional capacity, the rate of return to be in 1974?

MR. CLARK: Well, I'm not sure; I do not have the data to give you a precise answer. I would guess that the average for the industry in the first quarter will be something around 17 or 18 percent.

ASSEMBLYMAN SALKIND: 17 or 18 percent?

MR. CLARK: 17 or 18 percent on equity or net worth in comparison with 15.8 percent for the year of 1973. The earnings were up over the first quarter of 1973 by, perhaps, 50 percent; but in the first quarter, they were probably only around 12 percent. Let me point out one other thing about this because the implication is that, with regulation, you are going to have some great impact on the rate of return. Most of this increase in earnings has taken place on foreign activities--not U.S. activities. The U.S. rate of return has not increased that much for the industry; I cannot tell you exactly; the data are not available.

ASSEMBLYMAN SALKIND: I was going to get to that, Mr. Clark.

MR. CLARK: I cannot tell you what it is; but I am sure that the rate of return on domestic earnings is well below the 15.8 percent.

ASSEMBLYMAN SALKIND: Mr. Clark, you are an economist well recognized out of the SRI group. What would you say the all-manufacturing figure will be for 1974?

MR. CLARK: Some are down; a number are up; I guess it would be very close to last year--very close to 15 percent.

ASSEMBLYMAN SALKIND: Do you think it will be as high as 15 percent? Many people are estimating substantially below that.

MR. CLARK: I have not seen any estimates--maybe 14.5. I know that the automotive industry is down, but a number of others are up.

ASSEMBLYMAN SALKIND: As you recognize very quickly, that means that on a relative basis, the petroleum industry in 1974 might anticipate, on a ratio basis, almost one-third--about 30 percent--higher than all manufacturing. That, of course, is a substantial amount.

MR. CLARK: That is true; but the question is how long will it be enjoyed. As I said, most of this increase is foreign earnings. There is ample supply of oil in the world today. The refineries in Europe are operating at only 60 to 80 percent of capacity. There is plenty of crude available, but the market has dried up in Europe and much of the world. With ample supply, the oil companies are very likely to be squeezed on their earnings between a pressure from higher crude oil prices by the oil producing countries and a resistance to paying the prices by the consuming countries in Europe, Japan and elsewhere. That rate of return may well drop...

ASSEMBLYMAN SALKIND: Mr. Clark, I think you recognize as well as I do the experience we have had in recent months where the producing countries have charged tremendous increases. I won't even talk in terms of excessivity; they are tremendous, as we all know, on a ratio basis. The public, unfortunately, on the world-wide consuming basis, has accepted the increases that have resulted. We have not had nationwide strikes; we have not had all of the adverse things that one might have expected in a different era. Continuing with the subject of earnings for just a moment, maybe Mr. Kissinger should devote his attention to solving this problem.

MR. CLARK: I agree; it's very important.

ASSEMBLYMAN SALKIND: Lord knows, maybe he could do it.

In the statement of earnings, I would like to get into that for just a second. Concerning the industry in the United States, would you estimate for me, on the basis of the first quarter of the current year, how much of corporate earnings overall, by the various big companies, was dedicated to dividends and how much to capital investments in 1974?

MR. CLARK: I have seen no numbers on 1974; I'm sorry; I don't know.

ASSEMBLYMAN SALKIND: Can you estimate it based upon your analysis of the fiscal year 1973?

MR. CLARK: I do not have any idea what the dividends were; I do not have the data on 1973, even, on dividends paid as a percent of total profits. I imagine the percentage is up; I cannot tell you what it is.

ASSEMBLYMAN SALKIND: I am interested in knowing what the percentage is; and, perhaps, later on in the testimony of major companies, they may address themselves to the question of 1974 earnings broken down to dividends to stockholders and capital investments.

Continuing with this subject, how much, in terms of taxes on 1974 first quarter earnings, did the oil companies pay to the United States government? What percentage?

MR. CLARK: I do not have any idea.

ASSEMBLYMAN SALKIND: Mr. Clark, you are one of our renowned economists. Can't you estimate for me?

MR. CLARK: I go on the basis of facts, and those facts are just not available. The First National City Bank, the Chase Manhatten Bank and the Federal Trade Commission publish these data; I have not seen any reports from any of these sources.

ASSEMBLYMAN SALKIND: One last question for Mr. Clark on the subject to which he addressed himself. I will save the industry questions for later.

In your presentation, you gave a justification for the higher domestic prices of the past, before this recent increase; and you used the weighted average of petroleum, natural gas and natural gas liquids. Then you compared it to oil overseas.

MR. CLARK: Yes, sir.

ASSEMBLYMAN SALKIND: Isn't that an invalid comparison, technically, to take three subjects that go at entirely different kinds of numbers and then weigh average it and compare it to one that is at a different number altogether?

MR. CLARK: No, sir; not at all. If you want to compare it with imported oil and imported gas, you would have the same result.

ASSEMBLYMAN SALKIND: Wouldn't that be analogous to comparing the price of a Cadillac and locomotive train with a foreign car as justification on a weighted average basis?

MR. CLARK. No, sir; they are all hydrocarbons; they are used primarily in the same applications; and they are found together. That is the point--that with the oil and gas produced in the United States, there is associated gas production; there is also dry gas production that is found in connection with the search for oil. There is a directed search for oil, but a large part of the gas supply is a result of oil exploration.

ASSEMBLYMAN SALKIND: Thank you, Mr. Clark.

Mr. Applegate, one question to you, if I may, on your testimony. You advocated alternative sources of energy, speaking of New Jersey only. Should I take that to mean that you, speaking as our good friend and as the representative of the Chamber, would advocate increased, for example, nuclear energy for our power generation, and so on?

MR. APPLEGATE: Absolutely. We have testified here; we have lobbied here; we have testified at federal hearings for increased nuclear energy facilities and also--I know this is going to hurt you--an off-shore drilling program.

ASSEMBLYMAN SALKIND: Mr. Applegate, you cannot be right all the time; you are right on the first part and wrong on the second.

Thank you gentlemen; thank you, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Assemblyman Rys, do you have any questions?

ASSEMBLYMAN RYS: I have only one question.

Mr. Clark, on page 9 of your study, Oil Industry Earnings in Perspective, pertaining to profits, are you considering only oil and gas or all by-products like chemicals and cometics and all other by-products of a barrel of oil that is produced down to kerosene, motor oil, etc.?

MR. CLARK: Total corporate enterprise.

ASSEMBLYMAN RYS: To my estimation, I cannot digest 14.5 percent and take all the by-lines that we have in the country. This is inappropriate with the statements that have been coming in. I have been reading about the statements and earning power. There is something wrong here because I do not think the oil companies are making it only on gasoline and fuel oil, having increased their line products all the way down. The percentages must be high to receive that amount of money in their earnings of this year.

MR. CLARK: It includes all products and all corporate activities of the oil companies.

ASSEMBLYMAN RYS: I have one more question. Would you, by any chance, know the standing capacity of all the storage capacity we have in the United States?

MR. CLARK: No, sir; not off-hand.

ASSEMBLYMAN RYS: I have been trying to get that figure for a long time; I hope I can get it sooner or later from somebody.

MR. CLARK: There is a report, I think, from the National Petroleum Company just coming out on this subject.

ASSEMBLYMAN RYS: When you do get it, will you send it to me?

MR. CLARK: Surely.

ASSEMBLYMAN RYS: Thank you.

ASSEMBLYMAN ESPOSITO: Assemblyman Gladstone, do you have any questions?

(No questions)

Assemblyman Neri, any questions?

(No questions)

Thank you, gentlemen.

MR. CLARK: Thank you.

ASSEMBLYMAN ESPOSITO: Before I call on the next witness, I want to make it known that we are pressed for time. We have a long agenda, and I wish the witnesses would submit prepared statements and condense their remarks. We have almost 15 witnesses; and we have, maybe, four hours to do the job.

The next witness will be Martin Lobell, an attorney from Washington, D.C.

M A R T I N   L O B E L L:

Thank you, Mr. Chairman; I will try to be brief.

I listened with some interest to the prior speaker's analysis and was somewhat amazed. If you take a look at the profits of the major oil companies, there isn't one of them that has not increased their profit substantially--far in excess of any capital requirements they can justify.

What has happened is this: we have had two cartels dealing with each other with the overt or covert cooperation of the federal government, whether it was purchased by campaign contributions or manipulation of data or what. We have seen prices skyrocket in the world and in the United States without any justification at all. The consumers are paying about twice what they paid for fuel oil. They are paying much more for electricity. They are paying much more for gasoline, and many of the poor people cannot afford to keep their homes or run their cars to get to their jobs. They are going to have to go on welfare. The reason, quite simply, is the monopoly profits enjoyed by the oil industry.

Assemblyman Gewertz's bill will give the State of New Jersey the information it needs to make rational decisions.

Every spokesman for the oil companies talks about the benefits of free enterprise and competition. And yet, every single time free enterprise intruded upon their protected lair, they have screamed and gotten government protection. Every single oil crisis has been solved by higher prices and increased cartelization since 1928.

Senator Church, who heads the Senate Foreign Relations Multinational Corporation study, has revealed documents showing how the companies have manipulated these figures and these statistics.

Let me give you just two examples of the power of the major oil companies.

During the alleged Arab embargo, the United States absorbed over three-quarters of the purported world short-fall in oil; and yet, tanker liftings from Saudi Arabia were up from the year before. When the Saudis cut off oil to our armed forces in Europe and in the Far East, they did it even though the American taxpayers, to the foreign tax credit, have subsidized them to the tune of about $3 billion a year.

The federal government seems to be powerless to deal with the cartel of the major oil companies. Let me give you some idea of why they are powerless.

The first, and the obvious, reason that everybody quotes--and it is partially true--is campaign contributions. The oil industry gave over $5 million to President Nixon's reelection campaign that we know of; God knows how much we don't know.

The sad fact is that the federal government does not have the capability of getting any information about the oil industry that the oil industry does not want to provide to it. Do you know that all our figures on reserves and production come from the American Petroleum Institute? The one time that we did examine the reserve figures on natural gas was when we had an independent team go in; the Federal Trade Commission went in and discovered that in some instances, they under-reported by as much as 1000 percent. You might ask why a company would under-report its own assets. Well, if you figure the assets are going to be worth two, three or four times as much next year if you can keep them off the market, what are you going to do as a rational businessman?

When you consider that Exxon has more attorneys on retainer than are employed by the entire Justice Department, you can get an idea of whether big business is bigger than big government.

Let us take a look and put the profits of the major oil companies in perspective. The prior speaker mentioned the First National City Bank's analysis. I took that analysis and ran through some figures. These are based on the First National City's March 1974 newsletter.

The eight defendents in the Federal Trade Commission case-- among whom were Exxon, Texaco, Gulf, Standard Oil of California, Arco, Standard Oil of Indiana and Mobil Oil--had had 1973 profits of $7.33 billion. It represented 25 percent of the profits earned by the 1430 leading manufacturing companies in the country. So, eight companies had 25 percent of the total profit.

They more than doubled the increase in profits of all manufacturing companies. All-manufacturing profits increased 27 percent in 1973; the oil companies increased 53 percent.

It is a sad commentary when companies as big and powerful as this can cry poverty, and nobody takes a look at the facts to rebut them.

The Joint Economic Committee of Congress took a look at them. The Federal Energy Office has taken a look at them, and it concluded that the oil companies cannot spend the increased profits they have in exploration and development. There is no way, physically, they can spend those profits in exploration and development. There is a physical lack of technological skills available in terms of employees; there is a physical lack of drilling rigs, sites for drilling, steel needed for construction of refineries; there is just that physical limitation. Yet, the profits are at least twice what they are required to be to increase exploration and development and refinery construction to the maximum available capacity.

Now, let us take a look at some of the other aspects of the oil industry. The price in the United States, for old oil, has gone up to $5.25 from about $3.75. Uncontrolled, or new oil, is about $10 a barrel.

The price of foreign crude is now about $9 to $10 a barrel. What does this mean in terms of profits?

The National Petroleum Council, which is the official advisory body to the Secretary of the Interior from the oil industry--it consists of a Who's Who of people in the oil industry--estimated in 1973 that the maximum amount of capital they would need, under the worst possible condition, between 1970 and 1985, would be $11.8 billion. And yet, Chase Manhatten came out with a study saying they need $1.3 trillion, while the industry itself, before the ability to rip off the public became so apparent, came out with a much lower figure.

If you take a look at the price of oil, the National Petroleum Council again, in a major three-year study, concluded that the most they would have to get by 1980, in order to meet all our nation's needs, would be on the average of $3.87 a barrel. Now they are getting $5.25 a barrel for old oil and $10 a barrel for new oil.

Take a look at foreign prices. What has the impact been on the oil companies of the increase in foreign prices? It's been pretty good. Before the prices went up, the average major earned about 28 1/2¢ a barrel profit, after taxes, on Saudi Arabian crude. Assuming they can only use 67 percent of their foreign tax credit, the profit now is a minimum of $1.20 a barrel. We have evidence in the Senate Foreign Relations Committee that the major oil companies deliberately encouraged the Saudis to raise their prices to reap the higher profits.

Assume you have two cartels--the OPEC cartel, the Organization of Petroleum Exporting Countries, the Arabs, so to speak, and the major oil companies cartel--dealing hand-in-hand--and we know they are dealing hand-in-hand because the Justice Department allowed them to deal hand-in-hand. In September 1971 Jim Akins, now our Ambassador to Saudi Arabia, and Dudley Chapman, now working in the White House, came up to New York to pick up an agreement which the major oil companies asked their friend, John Mitchell, to sign--and he did sign--allowing the companies to deal jointly with the Arabs. The end result has been apparent; you can see what has happened; prices have skyrocketed; profits have skyrocketed; and consumers are getting nailed to the wall.

What can New Jersey do as an individual State? I think Assemblyman Gewertz's bill is a step in the right direction. The oil companies say that it is going to impose public utility regulation and it is against the free enterprise system. Well, we don't have a free enterprise system in the oil industry; we never have since 1928. Let us take a look at groups that have studied the oil industry. The Federal Trade Commission has filed suit because of monopolization in the oil industry; Japan just filed suit; Germany has filed suit; and Italy has filed suit. England has already made a formal complaint to its Monopolies Commission. They have been able to get hard data that the States have not.

This bill does not impose utility regulation unless the Public Utilities Commission finds that they are acting like a monopoly. There is no requirement that they have to impose public utility regulations right now. They have to make a finding that there is a monopoly and that it would be unfair.

It also coalesces nicely with the Federal Energy Act--the Emergency Petroleum Allocation Act of 1973, better known as S-1570. It does not conflict with it at all. As a matter of fact, the Federal Energy Office has gone out of its way to bring the

States into the regulatory pattern; and this bill would allow the State to work very closely and much more advantageously with the Federal Energy Office because it would give the State the power, indeed, the duty, to collect facts and figures that are unavailable any place else in the world, except the Board Rooms of the major oil companies.

I don't know how many of you have been up in the Exxon Towers over in New York, but there is a little group that meets there and in the Arco Towers there and in the BP Towers in London. It is called the London Policy Group, and here, it is called the Emergency Petroleum Supply Committee. Those are the only people in the entire world, with maybe the exception of the Arabs, who know where the supplies are, where the shortages are and what the actual costs of production are.

The State has got to find out this; the State has got to find out what has really been going on if it is going to protect its consumers.

If I can go through the bill starting at 4a and make one quick comment on each paragraph, I will tell you how I think it fits into the pattern the State ought to be following.

4a requires them to refine specific products in quantities. The home heating oil shortage of last year would not have occurred if the State had that power. The major oil companies deliberately cut back on their inventories of home heating oil; they deliberately cut back on the production of home heating oil; and they deliberately cut back on their imports of home heating oil to create that shortage. We have evidence; we have a report from the Senate Permanent Investigation Subcommittee containing the blatant statement that with no question and no equivocation, they created the shortage. The State could have prevented it if it had this power.

4b will protect a lot of the independents who are getting driven out of business by the monopoly power--the majors. Again, it does not require the Public Utilities Commission to do this until it makes certain findings.

As to 4c, again, unless you have data required under 4c and 4d, you are going to be operating in the blind. You won't have any idea what is going on, and you will be thrashing around like the blind man with the elephant.

I would strengthen 4d to require a monthly public report of the data that are listed there. If the companies claim, as I am sure they will, that it is confidential, the information, at the least, should be made available to state officials and, in particular, the Attorney General's office.

4f, 4g, 4h, and 4i are, I think, standard boiler plate clauses which are required if the Act is to have any real force and effect.

This Act, in summary, would allow you to cooperate with the federal government, would provide you with the information that you need to enforce your laws; and in fact, if you wanted to follow the hint of the Supreme Court in Standard Oil Company of California vs. Hawaii, it would encourage the Attorney General to file suit to prevent and to collect damages the State has suffered from the monopolization of the oil industry in New Jersey by the major oil companies. The Attorney General has the authority, under the law, to bring a suit; and indeed, I would urge him--like New York has done, like Connecticut, like Florida, like California, like Colorado and Minnesota are contemplating--to bring suit to remedy the damages that are occurring. Indeed, the Federal Trade Commission, which has a suit pending, has encouraged States to take such action.

If you have any questions, I would be delighted to answer them.

ASSEMBLYMAN ESPOSITO: Assemblyman Salkind, do you have questions?

ASSEMBLYMAN SALKIND: Counselor, I thank you for a very fine presentation on this very good bill. I have lots of questions. I will get into some of them.

You referred to evidence that the Senate Committee had. Do you have anything of a formal nature to submit to our Committee on this?

MR. LOBELL: I, unfortunately, did not bring with me copies of the hearings; but you can get them by writing to the Multinational Subcommittee of the Senate Foreign Relations Committee and ask for a copy of their hearings on the oil industry. I am sure they would be delighted to send them, with the attached documents.

ASSEMBLYMAN SALKIND: I was concerned about two things you referred to pertaining to the evidence. One was a statement, unless I misunderstood it, that the major oil companies encouraged the Saudis to, in effect, either embargo or raise prices.

MR. LOBELL: That is right.

ASSEMBLYMAN SALKIND: That is an astounding situation.

MR. LOBELL: The Senate Committee has documents, for example, from Standard Oil Company of California, in which they predicted, within one percent, what the impact of the shortage would be on any particular country or company. In fact, we have evidence that the Aramco group, which is Exxon, Mobil, Standard Oil Company of California and Texaco, actively encouraged the Saudis to raise their prices because they would thereby realize much greater profits from the increased prices. Even though it injured consumers in Europe and in the United States, it did benefit their "bottom line"; and we have evidence they did encourage the Saudis to raise their prices.

ASSEMBLYMAN SALKIND: Is this Senator Jackson's committee that you are talking about?

MR. LOBELL: No, this is in the Church committee hearings.

ASSEMBLYMAN SALKIND: You referred to New Jersey--again, on the subject of evidence--and you mentioned the home heating oil artificial, if you will, shortage situation. I would like to review that for a moment because we have all heard stories about tankers off-shore, thousands of barrels hidden away, and so forth.

MR. LOBELL: The Senate Permanent Investigation Subcommittee issued a report in which they accused the major oil companies of deliberately creating the home heating oil shortage by cutting down their production of home heating oil, by cutting back their inventory of home heating oil and refusing to import the home heating oil that they could have despite the fact that the majors had estimated an increase in demand for home heating oil of 7 percent; so naturally, they had a shortage.

ASSEMBLYMAN SALKIND: New Jersey was one of the States that, potentially, could have been really hard hit by this. You alluded, at the beginning of your remarks, to the inability of the federal government to properly handle this. Now, I am going to ask you the obvious question: Why hasn't and why cannot the federal government do this; and why, indeed, aren't they doing it?

MR. LOBELL: The federal government could do it if it had the will. There are a couple reasons why they have not. First of all, most of the dealings the major oil companies indulge in are done behind closed doors; and very few people know about what is going on. Those who do are subject to the so-called deferred bribe--don't make waves and we'll take care of you; rock the boat and you'll drown. John Richter, who is Acting Director of the Office of Oil and Gas, once testified before Senator Proxmire that his responsibility, as far as oil prices, was only to see that the oil industry made a healthy profit. He could not care less about the consumers. I have the actual quote if you want it.

I would guess that on the national level, the problem is: a) we do not have information, b) they are very politically powerful, c) campaign contributions which everybody knows about, and d) the fact is that big oil is, in fact, bigger than big government.

Let me tell you a funny story. I have a partner who spent 30 years in the Justice Department heading its oil anti-trust section for the last six years. He recommended, on at least 22 separate occasions, that the Justice Department go after the Colonial Pipeline, which feeds terminals in Linden, New Jersey, on the grounds that it is a joint-venture pipeline and that the companies were using it to manipulate the markets, drive up prices and drive out competition. On 22 separate occasions--every time it was examined--the experts all said, yes, he is right; we ought to pursue it. That started in 1962; it is 1974 now, and the Justice Department is still reviewing the issue.

One time, I do know, he suggested they go after the Trans-Alaskan Pipeline because it is just like the Colonial Pipeline. He got a nice note back from John Mitchell saying, not now, John; it is inappropriate. I don't know what "inappropriate" means.

ASSEMBLYMAN SALKIND: One last question in that regard. The federal government and various state agencies regulate many areas of activities of this industry now. For example, you referred to the transmission facilities which are thoroughly regulated on the federal level.

MR. LOBELL: Wrong.

ASSEMBLYMAN SALKIND: Wrong?

MR. LOBELL: The ICC, before Senator Metcalf, just last week, as a matter of fact, said, oh yes, we do get the "P" forms from the oil companies but we never look at them. Metcalf asked them, don't you have any anti-trust responsibility? The general counsel of the ICC said, oh no, Senator. So, he picked up the ICC Act and he said, would you mind reading section 7 of the Act? It gives them primary anti-trust responsibility, and they did not even know they have that power. The ICC is a sham; it's a joke--a crime.

ASSEMBLYMAN SALKIND: Your testimony is incredible, and I am very pleased that you have given us something to think about. Thank you very much.

ASSEMBLYMAN ESPOSITO: Mr. Lobell, there are a couple of questions I would like to ask.

If there is to be regulation of the petroleum industry, shouldn't it be on a national basis?

MR. LOBELL: Regulation is really a term with a lot of color to it.

ASSEMBLYMAN ESPOSITO: I'm talking about regulation of prices.

MR. LOBELL: In terms of regulation of prices, it would have to be done on a national scale. You have national prices, but each locality, each State, has a different price structure. The State has an obligation, I think, to gather information about it; and if it finds that the prices are out of line, as they are in many areas, it has an obligation to require the companies to justify those prices. The PUC could, if it found some discrepancies, say to the major oil companies, alright, look, we know from published data that your costs cannot be this, this and this; it should be this, this and this; you come in and justify them or we are going to cut you back. They could do that, and that would force the companies to come in with relevant, accurate data--something that they have been unwilling to provide to the States and, indeed, the federal government.

When you say "regulate," I think the State has an obligation to regulate the oil industry to insure that competition can prevail. Right now, you have a situation where the major oil companies are driving out all the remaining competititon in the industry--the independent marketers, the jobbers, the independent fuel dealers. They are all being driven out of business because the oil companies are manipulating prices and supply.

In Washington, for example, there is an Exxon station at one corner of South Capitol Street. Right across the street is an Alert station, which is owned by Exxon, selling at 6¢ a gallon below the Exxon station. Throughout the entire crisis, it never ran out of oil or gasoline.

ASSEMBLYMAN ESPOSITO: The thing that bothers me is the regulation of the petroleum industry only in New Jersey. What would happen would be this: it would be self-defeating. You know how the oil companies are. They will sell their product to the highest market; and the flow of oil and products in New Jersey would be lacking; and it would aggravate the shortage.

MR. LOBELL: That is a danger; but if you have the hard data to know what is going on and they start doing that, the Attorney General can step in and slap a suit on them so fast they won't be able to turn around.

The oil company executives are, on the whole, honest businessmen. They will buy the best government money can buy; and if they can make more money by doing one thing instead of another, then they will. I do not think they are venal, corrupt individuals, although there are those who make those allegations. I think they are businessmen who figured that they could get more profit by manipulating the markets and by manipulating governments, through manipulation of data; and they have done it. I think that if the law required them to provide the data and to act honorably, they would. Up until now, no State Legislature and no federal Congress has had the guts to take on the major oil companies. Everybody throws up their hands and says, oh my God, they are so big that we'll never be able to do anything. You have to make a start somewhere; and by gathering the data and with the threat of regulation and price controls hanging over them, I suspect they will behave in a far more honorable fashion than if there is no threat at all.

The federal government, now, is controlling prices; and we have not had any problems, have we? We have had some; I take that back. We have had some; but I suspect the problems, on a local level, will be far less than the problems on the national level.

They cannot move those refineries out of New Jersey; and they are not about to let their capital investments sit there and do nothing for any length of time, particularly, if they know there is a criminal law suit and they may go to jail. That is the greatest part about this whole bill; it provides criminal penalties.

The greatest asset in the anti-trust field was when those GE executives went to jail. You wouldn't believe what the economists said happened to prices after that in the electrical industry. They all went down. Monopoly pricing and monopoly power seemed to dissolve almost overnight. That is what people fear--

not the fact that they may be hit with a fine, which the corporation will pay. They fear the fact that they may go to jail with all those common criminals--that used to work in the White House.

ASSEMBLYMAN ESPOSITO: I see a lot of merit in Assemblyman Gewertz's bill. It is a step in the right direction, but I firmly believe that it should start at a national level. It should be controlled by the ICC instead of the PUC.

MR. LOBELL: We are really facing a choice in the oil industry today as to whether we nationalize the oil companies as being beyond redemption or encourage competition. I think this bill, by creating the threat of government regulation and by requiring the companies to provide the States with information, is a step toward preserving what little competition remains in the oil industry. I also think that unless the State gathers this information, the State is going to be continually abused and taken advantage of by the major oil companies.

ASSEMBLYMAN ESPOSITO: Assemblyman Rys, do you have any questions?

ASSEMBLYMAN RYS: Mr. Lobell, you have been talking about Standard Oil of California. I am interested in the State of New Jersey. Do you feel that they could be brought under this Act?

MR. LOBELL: They do business in the State of New Jersey. There is no question that the State has jurisdiction over them. The Supreme Court has ruled on many occasions that if a company does business within a State, it is within the jurisdiction of that State.

ASSEMBLYMAN RYS: What about the Colonial Pipeline; does that come under this Act?

MR. LOBELL: Clearly, the Colonial Pipeline, insofar as its terminal facilities at Linden are concerned, would certainly come under this Act.

ASSEMBLYMAN RYS: Wouldn't Standard Oil of California and the Colonial Pipeline and any other company that is coming into the State of New Jersey come under the jurisdiction of the federal Act rather than the State Act?

MR. LOBELL: You can have joint jurisdiction. The mere fact that you have federal ICC jurisdiction over the Pipeline does not mean that you cannot take the jurisdiction over the terminal facilities in the State.

ASSEMBLYMAN RYS: I agree with you there, but don't you feel there would some sort of a conflict between two agencies? How would there be cooperation between the two agencies? What would be the cost problem we would be confronting with these two agencies?

MR. LOBELL: The cost problem should not be too much because the ICC has not done anything. I would suggest the PUC might want to send someone down to...

ASSEMBLYMAN RYS: Will you clarify that? You keep saying that the ICC has not done anything in the United States, and I would like to have that clarified because I have also had a lot of people tell me that the ICC is doing a wonderful job.

MR. LOBELL: Insofar as pipelines are concerned?

ASSEMBLYMAN RYS: No; I am talking about the ICC.

MR. LOBELL: I am only referring to them in terms of pipelines. As a matter of fact, they have a total staff of one and a half people supervising all the pipelines in the United States. They get these form "Ps" which are, supposedly, the pipeline reports, and they do publish the tariffs; but that is all. They did not even know, as I mentioned before, that they had anti-trust jurisdiction--a primary anti-trust responsibility under their own Act. They did not know that. My guess is that if you took action, the ICC would probably come along on your coattails. This is part of the new federalism. If the States will act, the federal government will follow.

The common complaint I hear among many State Legislatures--this is about the fifth I've spoken with--is the federal government this, the federal government that. Yet, in the States that wanted to, they have been able to do an enormous amount of good. Let me give you just one quick example.

California has a Joint Committee on Public Domain under Assemblyman Kenneth Cory. They said, we want to find out what the cost of production is in California and what the cost of refining is. The oil company said, you cannot have it. Ken said, alright, you are not going to give it to me; and he slapped a contempt citation on them. When they got to the courtroom and they saw the jail cell across the courtroom, they decided that maybe they could give the data to the State after all. The evidence they have developed from the company's own records indicates that the State of California, on royalty oil, is being cheated by over $150,000 a day. How many schools will that operate?

ASSEMBLYMAN RYS: That is a different situation in the State of California. They have off-shore oil drilling; we do not have it at the present time. You are making a comparison between the two States, and that comparison cannot be made with the State of New Jersey. If we had off-shore drilling and deep sea ports, I think we would be in the same category. Judging by their experience, I think we will be in a better situation when that time arrives. Thank you for that.

MR. LOBELL: I agree; but I think, at the same time, you have got to realize that the State of New Jersey has a valid interest in finding out what the profits earned by the companies are in New Jersey to see if they are paying an adequate tax.

ASSEMBLYMAN RYS: I don't want to go into the tax. You are talking about all the State income taxes that companies like Standard Oil of California, for example, would be paying to various States. I think they come under the jurisdiction of the federal government--paying one tax from the point of origin to the point of delivery.

MR. LOBELL: But the State does impose its own taxes.

ASSEMBLYMAN RYS: Thank you.

ASSEMBLYMAN ESPOSITO: Assemblyman Gladstone, do you have questions?

ASSEMBLYMAN GLADSTONE: Mr. Lobell, you seem to have some knowledge and expertise. Can you tell me how you developed it and in what interest you have been applying it?

MR. LOBELL: I used to be a law professor. I spent a year in Oklahoma and came to Washington on a Congressional Fellowship. I worked for Gerry Ford for four months and then for Senator Proxmire. He asked me to stay on; and one day, when Machiasport, which is the refinery in Maine that the major oil companies killed, came up as an issue, he said, hey, didn't you use to teach in Oklahoma? I said, yes. He said, O.K., you are my oil expert. So, I spent four years scrambling around trying to find stuff about the oil industry. I found out that there was very little information--public information--about the oil industry. Fortunately, I followed very closely all the Congressional hearings--and had a hand in many of them--which because of their subpoena power and expertise, have been able to get out a lot of information that, otherwise, was not available. I guess I have been called the Ralph Nader of the oil industry. Ralph's not nearly as nasty as I am.

ASSEMBLYMAN GLADSTONE: You have been operating in the area of consumer interest?

MR. LOBELL: Yes. I left Senator Proxmire about a year and a half ago, and we set up a law firm in Washington, whose motto is "pro bono et lucro." We are trying to prove that you can practice public interest law and earn a profit.

ASSEMBLYMAN GLADSTONE: Good luck.

MR. LOBELL: So far, we are doing well.

ASSEMBLYMAN ESPOSITO: Assemblyman Neri, do you have any questions?

ASSEMBLYMAN NERI: No questions, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Assemblyman Salkind.

ASSEMBLYMAN SALKIND: Just so there is no misunderstanding, the great Standard Oil Company of California, one of our fine corporations in the United States, has extensive operations in our State. Generally, they use the Chevron Oil Company label. They do refining and all kinds of other activities in our State.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Lobell.

MR. LOBELL: Thank you, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: The next witnesses will be Ted Renner, representing the Fuel Merchants Association of New Jersey, and Lee Laskin, who is counsel to the Fuel Merchants Association of New Jersey. Incidentally, Lee is a former Assemblyman-- a very, very able Assemblyman.

E D M U N D W. R E N N E R:

Mr. Chairman and members of the Committee: Following your wishes that I have a prepared statement, I would like to just comment on the statement and highlight some areas of it.

My name is Edmund Renner, and I am Executive Director of the Fuel Merchants Association of New Jersey with offices located in Springfield, New Jersey.

The Association represents 750 small, independent marketers of Heating Oil, principally #2 Fuel Oil, and commonly referred to as Home Heating Oil. We are small businessmen and women, but doing a big, vital job. We deliver approximately 87% of the nearly 2 billion gallons of oil for heating to some 1,167,760 households in New Jersey. In addition, we supply oil for heating to schools, hospitals, offices, industries, and both public and private institutional facilities.

Our members are at the very end of a complex but efficient system of fuel oil distribution. This efficient method of distribution was clearly evidenced during the recent energy crisis. We represent a long established traditional system of home and industrial delivery, which provided the easy transition to a mandatory allocation program. This is in contrast to the absence of such an established system in other retail industries. We hereby go on record opposing A-1208 and A-1256 for many reasons. However, the most significant reason is that we represent small individual retailers in a highly competitive industry representing a prototype of the "small businessman".

There is no historical record indicating the need for PUC jurisdiction as proposed in this Program.

At the outset we feel it is important for this Committee to consider the original purpose of the establishment of the PUC. The general public interest purpose of these programs must reflect the original legislated purpose of the PUC. Our position is that this purpose does not legitimately include the oil industry (coal or other raw material industries) or even more emphatically does not include the retail end of the fuel oil distribution network.

You should note that throughout the Statute 48:2-13 the power of the PUC is to control and regulate Public Utilities. You will note that nowhere does the jurisdictional Statute allow the control of ordinary business, such as the sale of paper, hardware, lumber, coal, groceries, etc.

It is felt that to place a small fuel oil distributor with one or two trucks in the same position as the telephone company, or the Public Service Electric & Gas Company, is oppressive, ridiculous and arbitrary.

There is a whole section of the Public Utility Law devoted to the rights, privileges, and responsibilities of a Public Utility. None of these things, by the wildest stretch of the imagination, could possibly apply to the retail fuel oil dealer.

With regard to the assumed purpose of the proposed legislation, which is to control petroleum products, refined, sold and distributed within the State of New Jersey, one has a difficult time trying to rationalize why the state would want to spend so much of the taxpayers' money in the unnecessary, incomprehensible expansion of the PUC to duplicate what the citizens are already paying for at the national level. The Federal Energy Agency which directs and enforces the Mandatory Petroleum Allocation and Price Regulations are spending millions of dollars nationally, regionally, and on an individual state basis to accomplish the same goals intended in this proposed New Jersey legislation. There is nothing the PUC could do to control the refining, distributing or selling of petroleum products in New Jersey that the 37-page Federal regulation is not already doing; except create an additional hardship on the small businessmen and women who are marketing fuel oil in the state.

Passage of such a law as we are faced with today, placing additional reporting requirements and additional hardships on small businessmen, is nothing more than circumventing the Federal Energy Agency.

Gentlemen, I would like to comment on Mr. Lerman's testimony and a couple of the questions asked him earlier today.

It is very true: The small businessmen today, serving and delivering fuel oil, are faced with horrendous paperwork as a result of the Federal Energy Agency. It has taken literally months for them to come up with this program. Some of the forms and reporting procedures that they have are almost incomprehensible. They are devoting an awful lot of their time and their monies just for completion of forms. Once they complete their forms, the data is sent to Washington or to the regional office; and there is, again, the horrendous waiting period for results.

Frankly, the feeling of the independent marketers is: What real purpose is going to be served by coming under the Public Utilities Commission requiring additional reports, additional forms and additional pricing regulations when they are already under the Federal Energy Agency.

We, therefore, feel that we definitely, at the very least--if the bills A-1208 and A-1256 are not completely eliminated--should be granted an exemption from PUC regulations.

Mr. Chairman, thank you.

L E E L A S K I N:

Mr. Chairman and distinguished members of the Committee: I don't envy you being there. I remember, a few years ago, occupying the same seat.

I would like to make some very brief comments regarding the bill because, unfortunately, at these public hearings--not only this one, but many of them--many times a lot of speeches are made about extraneous matters that really do not have anything to do with the business at hand.

This Committee is holding a hearing on specifics; that is, the two bills before you.

I do not want to engage in a debate as to what caused the oil crisis or why oil companies are no good or why they are not doing the right thing for the public because I don't know that that has anything to do with the bills.

What I am concerned about is that the objectives are laudable. Even Mr. Renner does not take that position from the fuel merchants. The objectives and philosophy are laudable; that is, to make sure the oil companies do what is right. But, unfortunately, I do not see how either of these bills is going to do it.

What makes any member of the Legislature feel so sure that the Public Utilities Commission is the agency that is going to look for equity and justice? As far as I am concerned, it is probably the least consumer-oriented agency in the State of New Jersey. It has always been that way. If you are looking for regulation of an industry that purports to protect the consumers, the PUC would be the last one I would look for.

The Public Utilities Commission has affirmatively and consistently, throughout all the years that they have been in existence, perpetuated what I call legally-sanctioned fraud on the public.

You have all heard of fuel adjustment. I doubt whether too many members of the press or the Legislature know what fuel adjustment really is. No matter how it is disguised and coded, fuel adjustment is a monthly rate increase given by the Public Utilities

Commission without a hearing and without the public's right to even question it. This is the fraud I am talking about.

Every single month, there is a little description at the bottome of your gas and electric bill. I've had my last month's Public Service Electric and Gas bill blown up. You will notice, on the bottom, where I have a circle, there is a figure listed for fuel adjustment per kilowatt hour.

When a public utility comes in for a rate increase, they make their presentation before the PUC, which is, generally, automatically granted. In fact, I am sure that you have never heard of the Public Utilities Commission requiring a decrease in rates. They have increased rates every time there has been a hearing, for whatever reason.

The point I am making here is not that a public utility is not entitled to increased rates--if they come before the Public Utilities Commission and present their case properly and the consumer advocates or the public attorney, or whoever is appointed, has an opportunity to oppose it. What I am talking about is the surreptitious method of getting a monthly rate increase, and that is through the fuel adjustment.

The Public Utilities Commission, which is the agency that you are considering be given the authority over these independent oil dealers who deliver oil to your homes, is the worst.

The fuel adjustment factor is not subject to a public hearing. When these public utilities come before the Board for a rate increase, they say, our costs are up, fuel costs are up, overhead is up; and that is why we need an increase; and they get it. But thereafter, each and every month, on the theory that the fuel costs the public utility more money--on that theory alone--they are entitled to a fuel adjustment without a hearing. In effect, your rate goes up every single month. The Public Utilities Commission says it is not a rate increase; it is an adjustment because the cost to the utility for their fuel has increased. But, each and every person in the State of New Jersey that has Public Service or another utility electric and gas pays more money every month--without a public hearing and without a rate increase.

I am trying to talk about the specifics of the bill.

The Public Utilities Commission, with regard to fuel adjustment, by the way--and they will admit this--has merely a filing procedure. Whenever the public utility says that their fuel to turn their generators to produce whatever it is that they are supplying to the consumer costs them more money, they file a paper with the PUC; and that is all. It's a filing requirement; there is no review procedure; there is no hearing; and they do this every month.

To make it even worse, yesterday or the day before yesterday, the Public Utilities Commission again perpetuated this, even in spite of the adverse publicity. Your newspapers in this State, and my newspaper back in Camden County, have editorialized against this practice of fuel adjustment--the automatic non-public hearing rate increase. Even in spite of that, two days ago, the Public Utilities Commission granted a temporary increase, which they are entitled to do because there were documents and evidence; but in addition to that, they said, we are going to limit the fuel adjustment provision. However, they are going to perpetuate the fuel adjustment provision; they are just going to put on a limit of 1.35.

As far as we are concerned in the Fuel Merchants Association, our first point is that if you are going to regulate the oil industry, please don't put the small home heating oil delivery guy under this bill. I don't think it is in the bill, but the language in the preamble looks like we could be included in the bill. I would call on Assemblyman Gewertz, the sponsor, who--even though he and I are in opposite political parties--I know is definitely a consumer advocate from his County; and I would ask him to make sure that there is no reference in this bill--even in the preamble--that could possibly cover the dealer--the fellow who delivers that oil. He is being besieged enough by the federal government and everybody else.

Secondly, if you are going to regulate the oil industry, by all means don't let the Public Utilities Commission do it. I would ask Assemblyman Gewertz, if he is here, to not only make a change in regard to the Public Utilities Commission in this bill and the other bill, Assemblyman Salkind's bill, but to go after this practice and eliminate it. If we are going to have public hearings on rate increases, let's have them properly. I would think that it would be a nice task for this present Legislature, even though it doesn't have too many members from my party here any more--it was a little different a few years ago--to really go into this whole question of the Public Utilities Commission because it's an old club; and when you have an old club about which people don't know too much, a lot of things happen that shouldn't.

I think that in conjunction with your hearing, even though it is not directly related--it is certainly indirectly related--steps ought to be taken to go forward with real inquiries into how the Public Utilities Commission of this State operates.

ASSEMBLY ESPOSITO: Mr. Laskin, it has been my impression that it is the intent of the sponsor to regulate the oil refineries. I don't think he wants to regulate the fuel oil dealers; I don't think it is the intent of the bill.

Are there any questions from the Committee?

ASSEMBLYMAN SALKIND: On that, Mr. Gewertz asked me specifically to assure you that his bill does not intend to do that. It will be, if necessary, modified and amended to so indicate. Although he feels the current language is clear, any steps necessary will be taken.

Mr. Chairman, there are two points, I think, that are pertinent.

I am appalled by counsel's remarks as far as the PUC goes. I think that if there is any agency that needs to be consumer oriented, it certainly is the Public Utilities Commission. I would suggest respectfully, Mr. Chairman, that it might very well be an area that this Committee should discuss further; and I would respectfully ask the Chairman to consider an appropriate avenue for that.

I look at the fuel adjustment bill to which Mr. Laskin was referring, and I agree with him totally. I have always been appalled in my own area, which is served by nuclear power, at how we get fuel adjustment bills; but obviously, there is no increase in nuclear power costs at all; and all they are doing is pulling it in as a rate increase. I do think the PUC should have much stronger activity in total regulation on this subject. I look at Mr. Laskin's bill; and with the exception of the hold-over 10¢ balance, I wonder how he got such a nice, low bill. What happened with that 10¢?

MR. LASKIN: I do not have any gas service. I have a well and a septic system, and we have our own generator at the house; so we use a lot of electricity but no gas.

ASSEMBLYMAN SALKIND: Thank you.

ASSEMBLYMAN ESPOSITO: Do you have any questions, Assemblyman Rys?

ASSEMBLYMAN RYS: I have no questions.

ASSEMBLYMAN ESPOSITO: Assemblyman Gladstone?

ASSEMBLYMAN GLADSTONE: Mr. Laskin, apparently you are not a booster of the Public Utilities Commission. You should know that we have a new Commission now, and we are expecting great things from it. I would suggest, though, that if you are really serious in your complaint about the Commission, you put it in the form of a memo and direct it to this Committee; I think this Committee would be very happy to do something about it.

MR. LASKIN: I noticed that Assemblyman Gewertz was here, and I thought that maybe my remarks would be heard by him, and he might be able to take some quicker action.

ASSEMBLYMAN GLADSTONE: Our problem is always in the area of preparing the bills. Since you are an attorney and a former Assemblyman, you would be very knowledgeable as to how to best respond to our problems. Perhaps you could put something in writing.

MR. LASKIN: I will certainly do that.

ASSEMBLYMAN RYS: Mr. Laskin, don't give anything to the majority. There is only one of the minority here.

MR. LASKIN: There is only one problem: The majority passes the bills, you know--not the minority.

ASSEMBLYMAN ESPOSITO: Assemblyman Neri, do you have any questions?

ASSEMBLYMAN NERI: No, sir.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Laskin.

Assemblyman Kenneth A. Gewertz will be the next witness.

KENNETH A. GEWERTZ:

Mr. Chairman and members of the Committee: I would start out by commending the Committee for allowing the bill to come to a public hearing so that you might get the proper input for legislation that is as important to the State of New Jersey as this bill is.

To reassure Mr. Laskin and Mr. Renner, whatever language changes are necessary in the wisdom of the Committee, I am sure can be implemented based on the fact that it is not the intent of the bill in any manner, shape or form to impose regulations at the retail level--to either fuel oil dealers, service station dealers, etc. It is directed primarily at the refineries.

You might construe this bill, in some ways, as an anti-rape bill. The Legislature has expressed sincere concern over the interests of those that have suffered the crime of rape. People in the State of New Jersey are presently suffering under an economic rape by the major oil companies.

There is no shortage of gasoline at the present time; there is only a shortage of money to pay for it. I think that it is incumbent upon the State Legislature not to relegate its authority to another agency but to do the job that we were elected to do, and that is to protect the interests of the public.

As we sit here today, to save time and not go into the profits of the oil companies, which certainly have been adequately covered, maybe the proper regulatory agency would not be the PUC. Maybe it should be the Energy Office, which is newly created and funded; and at this present point in time, has very little to do. Maybe the bill should be amended to provide the regulations to the State Energy Office.

As far as classifying refineries under the same terminology as other utilities, it is certainly incumbent upon us to realize the fact that landfills are a public utility; sewer and water companies are public utilities; gas and electric companies, telephone companies, bus lines and taxi cabs are also public utilities. All of these present public utilities cannot operate without oil. I don't care what the public utility is; it must have oil to operate.

Where does an individual who buys home heating oil to heat his home differ under our equal protection under the law from someone who has gas or electric heat and has the opportunity to attend a public hearing--for whatever good it may do--to express displeasure over the increase of the gas or electric rate? Why does not the homeowner with a business that uses oil have that opportunity?

Again, this is not directed at the retailer, who basically has no control over the prices, because he is only passing on what the oil companies are putting on him.

As far as the bill itself is concerned, I think it is worthy to note that I have notified the Attorney General's office that immediately an investigation should be undertaken in the State of New Jersey under anti-trust against the several utilities, the oil companies and many of our lending institutions because of an interlocking of directors, which would appear to be a direct violation of New Jersey's anti-trust laws besides being a violation of both the Clayton Act and the Sherman Act.

It is interesting to note, members of the Committee, that the largest utility in the State of New Jersey, Public Service Electric and Gas, has interlocking directorships with Hess Oil Corporation, Atlantic Richfield, City Service, Standard Oil of California and Standard Oil of New Jersey--just as a matter of fact--all interlocking directorships.

As to the point raised by Mr. Laskin regarding fuel adjustments, where does Public Service receive its fuel oil? Hopefully, not from one of the companies with which it has an interlocking directorship. That certainly would be a revelation to the public. I think that there is a need for legislation to do away with the fuel adjustment in its entirety. Until such legislation can be passed, for Mr. Laskin's edification, I have sponsored a bill to require public bidding for fuel for utility companies. I have sponsored another bill just in case the first one has some problems to require, at the very least, a sworn certification to the Public Utilities Commission prior to any fuel adjustments that they have endeavored to obtain the lowest possible price for their fuel.

Certainly, the cry is going to be and has been, let the federal government do it. What the hell has the federal government done? They have been in bed with the oil companies; that is a true fact. What have the federal regulations done for the public in the State of New Jersey?

1) They have told you, don't drive over 50 miles an hour so you don't burn so much gasoline, and

2) Turn down your thermostats so you don't use as much fuel oil.

What kind of relief and what kind of regulation is that? Who has it affected? Not the oil companies.

I am very much surprised to see that the New Jersey Chamber of Commerce comes in opposition to this bill because, hopefully, that is not another group that only represents the oil companies.

What about all the business and industry in the State of New Jersey that is paying additional fuel costs, additional motor fuel costs? Where is this passed on to? When a trucking company has to raise its freight rates because the cost of fuel goes up, who pays this increase? The public. The trucking company cannot raise its rates unless it has a hearing nor can the taxi cabs nor can the bus companies; but that does not apply to utility companies because they have the fuel adjustment.

I think that the confusion that the federal government has gotten itself into is to the delight of the oil companies, and I think that is the way it was planned.

Now, there is an expenditure, undoubtedly, to police this industry. You can say, well, it will cost a million dollars to police it. Incidentally, the PUC does not even want these regulations; they don't want to have anything to do with enforcing this. Fine, if it costs a million dollars, and the State of New Jersey, in the first three months, lost $6 million because of fuel tax because of the shortage of gasoline, we would end up, still, with a net loss of $5 million even if we expended the million dollars, if that is what it costs to keep proper supervision over this. How much revenue has the State lost in sales tax, and how much revenue has the tourist industry lost because people either cannot afford or cannot get gasoline?

The argument that it is against interstate commerce is a lot of hogwash because you are presently regulating industries in the State of New Jersey that do operate interstate.

It is interesting to note how the oil companies have diversed themselves and gone into other forms of energy--other forms of petroleum products and by-products--and how much money this is continuing to cost the American public.

If New Jersey is going to be first in anything, let's not say that we are first in campaign disclosures and campaign financing; let's not be the first in postcard registration; let's be the first to say that as elected representatives of the public, we are not afraid of the oil companies; we are not afraid of their influence; they cannot buy or sell us like pieces of cheese sitting on a shelf, and we are going to see that the public's interests are adequately protected, if only to the point of seeing that the proper reporting is made so that a determination can justifiably be done in the public's interests as to how much the public shall pay for a given commodity.

I think the regulation of price is not a necessity in the bill, but the reporting procedures and the implementation for criminal offenses for failing to give the proper information may very well start the precedent that is needed in this country--to say that there is nobody bigger than the government because, supposedly, the government is the people. Any time any group of people becomes more powerful than the people themselves, we are in deep, deep, deep trouble. How can one group of people say at what temperature you should heat your house or how much gasoline you will have so you can go back and forth to earn your living?

Where are the values; where are the priorities? Nothing moves in this State; nothing moves in this country without energy. What is the prime source of energy? Oil.

The interlocking between banks, insurance companies, utilities and bus companies is unbelievable--absolutely unbelievable.

I think it behooves this Committee to make whatever amendments it deems to be proper and release this bill in its amended form so that it can be passed in both Houses of this Legislature and signed into law by Governor Byrne, making New Jersey the first State to stand up for the public's rights.

Thank you.

ASSEMBLYMAN ESPOSITO: Assemblyman Gewertz, in section 7, page 4, line 1, I have a problem with the appropriation of $250,000. Assemblyman Salkind has a similar bill, and we have received a fiscal bill on it of over a million dollars. Would $250,000 be enough?

ASSEMBLYMAN GEWERTZ: Mr. Chairman, I am concerned with that figure. As I say, it may be, in the wisdom of the Committee, to keep the Energy Office as an ongoing office because at this present point in time, with the additional available supply of fuels, I do not really know how adequately they are functioning. It may very well be that it will require more money; but the point is that if an investment has to be made, it is going to benefit the State of New Jersey rather than cost us considerable amounts of money in loss of revenue. If, in essence, the $250,000 has to be $550,000 or $650,000, certainly, in priorities, if the Legislature can pass $400,000 for the ballet or $400,000 for the New Jersey Symphony, an expenditure of $400,000 to protect the rights and interests of every business and every citizen of New Jersey would not appear to me to be an unreasonable expenditure.

I will leave that to the discretion of the Committee in your deliberations and in your wisdom. Whatever you wish to do along that line would certainly be acceptable to me.

ASSEMBLYMAN ESPOSITO: As Chairman of the Committee, I have another question.

Does this mean that you want this bill amended to say that the Energy Office should regulate it instead of the PUC?

ASSEMBLYMAN GEWERTZ: Well, Mr. Chairman, here, again, the Committee is taking testimony based on what input you have from members of the public and members of various industries. Certainly, if you deem it to be more enforceable along that vein, I would have no objection. The question as to who would regulate is, again, a point for further discussion. Hopefully, I am sure that you feel the same as I as to there being a need for regulations by someone on a statewide level.

Let me point out to you something regarding: Let the federal government do it. For the past three years, the federal government has been attempting to pass a bill to protect people's pension rights. It has not been enacted; it has not even cleared one House; to my knowledge, it has not even gotten out of Committee yet. This is our own Senator Williams' bill, which is a good bill.

As I say, I have been here several years. There is no question in my mind as to the integrity of our Legislature. I cannot attest to what goes on elsewhere, but I think it is our obligation to protect our people. What the government does and what other States have done, let it be on them--not on us.

ASSEMBLYMAN ESPOSITO: Assemblyman Salkind, do you have any questions?

ASSEMBLYMAN SALKIND: Assemblyman Gewertz, listening to your testimony and considering the bill of which I am a co-sponsor, don't you feel really that despite Mr. Laskin's testimony, this really belongs in the PUC if it is to be done? If there is a problem with the PUC, unless, as Assemblyman Gladstone has said, it has been straightened out by the fact that there is a change in the Commissioners themselves--hopefully, that will seep all the way down through the Board and its employees--don't you feel the problem should be corrected rather than changing who should be regulating what, in effect, is a utility-oriented situation, by your own testimony?

ASSEMBLYMAN GEWERTZ: Here, again, any enforcement is only as good as the integrity of the individuals that are enforcing it. Hopefully, taking note of your comments, the change of several of the Commissioners or the complexion of the Commission in its entirety, might very well change the problem that Mr. Laskin legitimately has as do the fuel oil dealers in the State of New Jersey. Here, again, that is a decision that after the Committee gathers its data, I would be amenable to whatever you feel is a reasonable course of action.

ASSEMBLYMAN SALKIND: Without violating any confidences, Assemblyman, have you had any discussions on the subject of this legislation with the Governor?

ASSEMBLYMAN GEWERTZ: No, I have not.

ASSEMBLYMAN SALKIND: Thank you, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Assemblyman Rys?

ASSEMBLYMAN RYS: Assemblyman Gewertz, would you feel more comfortable if we had a Commission in the State of New Jersey rather than the PUC--something like the Energy and Price Control Commission?

ASSEMBLYMAN GEWERTZ: Here, again, we have a situation that goes back, I guess, over a period of time. It is conceivable that as regulations have been passed delegating authority to various agencies, we may have missed the boat in making sure that they had the proper staff to do the job properly. A perfect example can be found in the Department of Environmental Protection, Division of Solid Waste. There are exactly seven inspectors to supervise 391 landfills in the State of New Jersey. We presently have a problem in South Jersey with polluting public water supplies with phenols that are in excess of 11 times what the standard should be. The total budget for the Division of Solid Waste, which is very important, is $290,000 for the whole State.

What we have attempted to do in this bill, partially through the wisdom of your Chairman, Assemblyman Esposito, is put the regulations into the bill--not just merely say, there shall be a jurisdiction of the PUC to oversee the refineries, and let them make their own rules and regulations, which oftentimes is what causes the problem. We have written into the law what they shall be responsible to do.

ASSEMBLYMAN ESPOSITO: Assemblyman Gladstone?

ASSEMBLYMAN GLADSTONE: Assemblyman Gewertz, ain't you got no culture? What have you got against the cultural activities that you previously referred to?

ASSEMBLYMAN GEWERTZ: I have nothing against cultural activities, but I am a great believer in priorities. It is nice to have silk stockings as long as you first have cotton stockings. Taking it as a case of priorities, when you have one agency that is only funded for $290,000 to take care of something as important as supervision of public landfills and public water supplies, it would appear to me to be somewhat ludicrous to then spend almost a million dollars in additional appropriations--in addition to what the budget contained--in the promotion of the arts as opposed to whether or not people can drink water that is not polluted. I have nothing against culture.

ASSEMBLYMAN GLADSTONE: You know, you do date yourself when you say, silk stockings. They are way in the past.

You made a reference before--I think you lost me somewhere in the numbers--to one million and six million.

ASSEMBLYMAN GEWERTZ: The PUC, although I don't know whether they have submitted anything to the Committee, and they have not submitted anything to me formally either, contends that one of the reasons they do not want this regulatory power is the fact that the bill contains an appropriation of $250,000; and they concede that it might cost a million. What it actually will cost seems to be somewhat in doubt, but my reference was this: If the State of New Jersey had to invest a million dollars in appropriations to see that its interests were protected, that would be a much wiser investment than have somebody finagle you out of your proper gasoline allottment and end up losing six million dollars in gasoline tax revenues. Each time you lose a revenue somebody else has to make that up.

ASSEMBLYMAN GLADSTONE: Thank you.

ASSEMBLYMAN RYS: Mr. Chairman, if I may. Just for the record, pertaining to that one million dollars that the PUC has suggested as a price tag, is for bill A-1256.

ASSEMBLYMAN GEWERTZ: Oh, I am sorry, then.

ASSEMBLYMAN ESPOSITO: Assemblyman Neri?

ASSEMBLYMAN NERI: Assemblyman Gewertz, would you have any objections to amending this bill to a restriction to the small dealer?

ASSEMBLYMAN GEWERTZ: No; it is not the intent of the legislation to affect anything but the regulation of refinery operations within the State of New Jersey.

ASSEMBLYMAN ESPOSITO: Assemblyman Gewertz, the intent of your bill is very laudable, and it will get our intense consideration.

ASSEMBLYMAN GEWERTZ: I am sure of that, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: The hearing will recess now and will convene again at 1:30 p.m.

(Recess)

(After Recess)

ASSEMBLYMAN ESPOSITO: The hearing will now come to order. Is there a representative from New Jersey Manufacturers Association here?

(No response)

Is Mr. Christopher Burke, representing the New Jersey Public Interest Research Group, here?

(No response)

Mr. Charles P. St. Laurent, Manager, Planning and Economics, of the Shell Oil Company.

(No response)

Mr. J. E. Penick, Mobil Oil Corporation.

J. E. P E N I C K:

Mr. Chairman and Committee members: I am pleased to have the opportunity to comment on this proposed legislation. I would like to do three things if I may. You are now receiving copies of our printed statement; and in a moment, I would like simply to briefly summarize that; I will not go through it in detail. Before doing that, however, I would like to take the opportunity of referring back to some of the things that have transpired earlier in the morning, again, briefly.

I am sorry that Mr. Salkind is not here, but one of the points he made, as I understood it, was that in the atmosphere where oil prices have doubled and oil company profits have soared--I would be the last to deny that there is not substance to both of those--he went on to question whether higher profits should be allowed while prices are high. I would like to further put that in context a bit, if I may.

On the size of the profits, I would like to bring the analogy to you that a big company, which Mobil certainly is, is naturally going to earn big profits.

If one applies the total profits of Mobil Corporation to our entire production worldwide, the profits will work out to be just slightly more than 2¢ per gallon on everything we sell. In the U.S. it is not quite that good. Other people have brought forth that European operations recently have been more profitable than domestic operations. In the U.S. our total profit on U.S. operations per gallon of product averages about 1.8¢.

Certainly, this is a contributor to the cost that the consumer pays; but in the context of a pump price of 60¢ per gallon, for example, which is not unusual these days, I think most people would concede that this is not a major factor.

The major factor in the increase has been the remarkable increase in the price of our raw material; namely, crude oil.

The other thing that I would like to say in the context of profits and the implications about profits is that there has been a great deal said in recent weeks and months about this and in a way that tends to create an evil context in the eyes of the public. I submit that profits, as such, are not evil; they are a necessary part of the economic features of our society. Mobil, for example--and I think this is true of many companies--spends all the money it has from whatever source it comes. We are not accumulating money in the attic some place; we are not building up an evil hoard somewhere for unknown purposes. The money we have we spend in the business. I think that, perhaps, this idea is often lost sight of.

People propose changes in tax regulations which would take away benefits that are available to our companies. All well and good; this is the privilege of the governing bodies. But, it should be recognized that if they take money away from one place, it is going to have to come back from some place else. In due course, the cost of these changes in the way of things is going to come back to the doorstep of the consumer.

One other point Mr. Salkind made had to do with the fact that New Jersey is an exporting State with respect to refined petroleum products, and this is certainly true. You may not be aware--and it is touched on briefly in the paper--that more than half of the products that Mobil sells in the State of New Jersey are imported from elsewhere; namely, Texas.

Our business is not structured--at least, it hasn't been--on a state-by-state basis. It has been structured on a regional basis so that our supply and distribution patterns have been organized on an economic concept without regard to state boundaries. This was one of the problems that arose recently. I think this was touched on: the information problems that arose when the crisis first became apparent. One of the things that we were criticized for was that we were unable to quickly produce data on a state-by-state basis as to our sales, our supplies, our customers--the meriad pieces of information about our business. We could not produce that quickly. The reason we couldn't was that our business records were organized not on state lines but on a regional basis.

When the FEO came into the picture, they brought with them the concept of allocation by States and the concept of the set-aside for the States. When they did that, they, and certainly we, had a great deal of difficulty. There was a mad scramble for a period of about two months while we regathered and reassembled our data and got it organized in a way that we could display our situation on a state-by-state basis, which we now do.

We provide this information to the FEO; we have taken the stand throughout this thing that Mobil, at least, is going to do everything we can to provide the Federal Energy Office with the information they want and need. We have gone to considerable effort and expense to do that; and we see their function as a necessary and reasonable one; and we are doing what we can to help with it.

I would like to briefly come back to some of things that Mr. Lobell said. Mr. Lobell is a well-known critic of the oil business, and he is a worthy adversary. He said many things that I do not agree with and made many assertions that would be difficult to support.

One of the things that Mr. Lobell said was that profits increased far in excess of any justification that could be made based on capital requirements. At least insofar as Mobil's situation is concerned, this simply is not true. Mobil's profits in 1973 were about $850 million, and our capital budget appropriations in 1973 were over $1.3 billion. In Mobil's case, we easily more than spent our profits, and it has been that way for a number of years. The outlook is that it will continue that way. I just cannot conceive how Mr. Lobell came to the conclusion that the companies are unable or unwilling to spend their profits because we traditionally spend more than our profit on capital and exploration expenditures.

Another point that he made also was relating high profits to high prices. There is a relationship; but as I pointed out, there is a 2¢ a gallon relationship rather than the 50¢ or 60¢ that is the current retail price level.

He also said that the oil business is a monopoly. I believe he implied something to the effect that there was a collusion between cartels, which in some way or other that was not immediately clear to me, contributed to a monopoly situation. I just have to tell you, based on my 32 years of experience in the business, that it is not a monopoly. It is a highly competitive--at times, a viciously competitive--business; and I have seen nothing, from the insider's point of view, that would lead me to believe that there is any substance to the monopoly charge at all.

He commented, I believe, that there is no way to spend the available profits in exploration and production. I think I covered the point that, in fact, we have done that and are continuing to do it.

He commented on the availability of information implying, as my notes indicate, that there was some evil purpose on the part of the oil companies to withhold information. That certainly is not the intent of Mobil; we intend to give the information that is legitimately needed and wanted by the authorities, and we will do everything we can to comply with their wishes with respect to information.

He said, again, according to my notes, that the oil companies contributed to a deliberate shortage of petroleum products and that we deliberately cut back on the production of fuel oil--heating oil. This allegation, in Mobil's instance, is simply not true. In 1973 we refined more crude oil than we ever had in any year in our history. Our refinery runs within the U.S. were up 13 percent as compared with the previous year. We produced more barrels of heating oil and more barrels of gasoline in 1973 than ever before in our history.

He also said--and I was startled by this remark; but according to my notes, he said it--that all the independents are being driven out of business by the tactics of the majors. This is a sweeping generalization, which, on the face of it, could not possibly be true. In fact, we have no desire to drive the independents out of business. By the way that both the FEO and the Cost of Living Council regulations are structured, they really are constructed with the intent of supporting and sustaining the independent element of the business. We, in Mobil, have no objection to that; we think that this is a legitimate and proper role for them to play.

It is interesting, in that regard, that you had two representatives of retail associations here, neither one of whom saw fit to comment on the assertion that all the independents are being driven out of business.

If I may, I will briefly refer to the prepared statement.

Perhaps you are familiar with the nature of Mobil's business in New Jersey. Briefly, we have a large refinery in the southern part of the State. We have several research laboratories; we employ about 3900 people in the State, and we pay these people wages and benefits which approximate $75 million annually.

Our refinery in Paulsboro uses crude oil from remote locations; predominately, it comes from the Middle East in Asia, Nigeria on the West Coast of Africa, and Venezuela in South America.

The thing about refineries that may not be well appreciated--this is laid out on page 2 of the statement--are the things that determine the output of a refinery. These really have little to do with regulation or laws or things of that kind. The things that really determine what you are going to get are the amount of crude oil you have to work with, the type of crude oil that can be obtained, the kind of refinery equipment which has been provided and, finally, the lesser point, the method of operation that the owner chooses.

It is obvious that the amount of crude oil is critical to the amount of product you are going to be making. That was the root of the problem, really, in recent months when we had a very sudden and unexpected stoppage of our supply of crude oil from the Arab countries.

On the type of crude oil, this, perhaps, is not as well understood as the need for quantity. Some crude oils easily produce high-quality products. The so-called sweet crudes make fuel oils that are marketable in New Jersey, which, incidentally, has the most restrictive specifications of any State on sulphur content of the products that can be sold here. We just cannot make that kind of a product out of other crude oils. We found that one of the best ways to cope with this situation was that we would go ahead and make some things in New Jersey that we could not sell here--we know that--and we export them to other parts of the country; and we bring in from other parts of the country, Texas, in particular, things that are suitable for the New Jersey market. This is characteristic of the kind of trade that oil companies such as Mobil regularly engage in.

The refinery equipment that is provided is a matter of great importance to people in the refining business. Refineries are, by no means, all alike. A simple refinery can be built for less than 1/4 per barrel of the cost of a very complex refinery. If someone has built a complex refinery with the expectation that he is going to make gasoline out of it and spent hundreds of millions of dollars on it, he is going to be pretty tense about the prospect of some regulatory agency telling him, you just should not make gasoline; you ought to make something else. On the other hand, if a fellow has built an inexpensive refinery, which, mostly, will produce heavy fuel oil, he is going to be more than apprehensive about the possibility that a regulatory agency may come to him and say, well, you have to put hundreds of millions of dollars into this plant so you can make something different. These are the kinds of prospects that frighten us about this proposed type of regulation.

The method of operation of refineries has an effect on their output. We regularly switch from making maximum heating oil in the winter to making maximum gasoline in the busy driving season. This is traditional in the petroleum industry. This past year, when the crisis--shortage--was upon us, the Federal Energy Office undertook to regulate this aspect of the refining business. They specified that people should make maximum heating oil; they later said that we should switch back to gasoline. We did this; but I will report to you that we were able to determine, within Mobil, sooner than the FEO could when this needed to be done. We switched to heating oil before they recognized it as a problem--at least, before they told us to do something about it. We had already recognized that the heating oil problem was solved partly because of better than normal weather; but nonetheless, it was solved; and we switched back to gasoline in the hope that we would not have a gasoline crisis this summer. I guess the point I am making in this respect is that those of us who are deeply involved in the business have a better chance of anticipating the need to shift product yield structures than a regulatory agency is likely to have.

One other point that should be made is this: As I understand the proposed legislation, it would provide for the control of prices. We believe firmly that the best price control mechanism is the free market. Many experimentations have been made with price controls. We have federal price controls on all petroleum products at the present time. It has been difficult; we are complying; I think everyone involved is trying to comply, but it is an administrative problem to all of us. The economy is such, in size and complexity, that we do not believe any single agency or business, for that matter, can really understand fully this economy to an extent necessary to make moves at the right time.

Another thing about the proposed legislation that I will mention is this: Ordinarily utilities are granted a monopoly franchise to provide some kind of service. A rate of return goes with that; they usually can get the rate of return because they do have the franchised monopoly. We, in the oil business, do not have a service monopoly; and I judge that it is unlikely that it is the intent of the Legislature to grant such a thing. You would have a thing that would be a difficult mix of a regulated situation from the point of view of what you could do without granting you the protection of being able to be assured of a share of the market.

To summarize, it is our belief that the proposed type of regulation would put the industry in New Jersey at a competitive disadvantage vs. the situation in other States and other countries. We think it would seriously lessen the appeal of New Jersey as a location for petroleum investments. We think that New Jersey citizens would be disadvantaged because the vitality of the in-state industry would be impaired and because the attractiveness of the New Jersey market for out-of-state refiners would be lessened. We think, in the long haul, this would reduce supplies in the State and, finally, increase the prices rather than decrease the prices the consumers would have to pay.

We respectfully suggest that the proposed legislation is not in the public interest and urge that this Committee recommend against enactment.

I would be glad to answer questions at this time.

ASSEMBLYMAN ESPOSITO: There is one question I would like to ask you, Mr. Penick.

You made a statement that this year Mobil Oil has produced more gallonage of fuel oil and gasoline than ever in their history.

MR. PENICK: Yes; that is true.

ASSEMBLYMAN ESPOSITO: I know that the dealers and the wholesalers and the suppliers are on a quota system. Who got the excess of this gasoline and fuel oil that you produced? Where did it go?

MR. PENICK: The reference period in the allocation system is 1972. We have been operating in recent months on an allocation fraction of 100 percent. We have made about 113 percent, and the additional has gone into state set-asides, which is something that is not in our control. The FEO allocates the disposal of the state set-asides. It has gone to assigned customers that had been somebody else's customers in the past, perhaps, and had lost their supplier. It has gone to agriculture, which is entitled to 100 percent of their needs; their needs have grown, so you have a growth there. Those are the principal places it has gone. What we are doing, really, is this: We are supplying 100 percent to our own customers of what they had in 1972. The other 13 percent has gone to other places such as the state set-asides, the assigned customers, agriculture and priority consumers of one kind or another. The way the system works is this: The service station is the lowest rung on the ladder of priorities; everything else gets a degree of higher-priority attention than the retail service station.

ASSEMBLYMAN ESPOSITO: I know we had a relatively mild winter. They probably used less fuel oil this winter than they did last year. Who got this excess? This is what is in my mind.

MR. PENICK: There has been a big upsurge in demand for non-residential purposes. One of the things that happened, of course, was that some of the utilities had been using coal and, for environmental reasons, are not using coal anymore. States such as New York and New Jersey have fuel sulphur regulations which make it difficult to find residual fuel of a type that they can use; so, they are burning home heating oil to a considerable extent. This has expanded at a tremendous rate.

ASSEMBLYMAN ESPOSITO: I also believe that the free market is the best means of control provided that there is an abundance of the commodity, but I do not believe we should have a free market when we have a critical shortage of a commodity. You know what that encourages.

MR. PENICK: Well, I'll say this: Back at the height of the crisis, we, at Mobil, advocated rationing as the proper thing to do for the short term because this thing came upon us quite suddenly; and we were not prepared for it; and I don't think anyone was, really, in any depth of understanding of what was forthcoming. When something like that occurs suddenly, our view is that rationing would have been the thing to have done. It would have been fairer and less of a hassle among the people that were vying for the available supply. We see that only as a temporary help; and in the longer term, a free market system would be more effective in our judgment.

ASSEMBLYMAN ESPOSITO: Do you have any questions, Mr. Gladstone?

ASSEMBLYMAN GLADSTONE: Mr. Penick, can you tell me how many stations Mobil runs--their own stations and independents that they may have contracts with?

MR. PENICK: Yes, I can tell you that. We have, in this country, about 23,000 retail service stations. If I can find my data book, I will tell you how many of them we run. Our associate, Mr. Christianson, is also looking for the answer to this.

MR. CHRISTIANSON: 23,553 in 1973. I don't have the breakdown.

ASSEMBLYMAN GLADSTONE: Is that the end of 1973?

MR. PENICK: Yes.

ASSEMBLYMAN GLADSTONE: Do you have such figures for the end of 1972?

MR. PENICK: Yes, I do. At the end of 1972, it was 25,019; so, there has been a modest decrease.

ASSEMBLYMAN GLADSTONE: There is no indication there as to which of these are independents and which of these are company owned?

MR. PENICK: I can tell you approximately. We operate ourselves about 800 service stations out of the 23,000.

ASSEMBLYMAN GLADSTONE: You probably heard before the comment--I believe it was mentioned by Mr. Lerman--that there was no indication of blackmail in the industry to get the dealers to buy TBA. We have heard, some of us, that some of the refineries have been pressing their retail establishments to take on extra TBA. Could you tell me what could be done to insure that the stations would be protected against reprisals if they refuse this?

MR. PENICK: Well, it is against the law, Assemblyman. We cannot, under the law as I understand it, require any service station to handle any particular kind or amount of TBA.

ASSEMBLYMAN GLADSTONE: But an overzealous salesman could, perhaps, commit you to something that would be illegal.

MR. PENICK: It is certainly our policy and our intent that they not do that. I know there are a lot of salesmen, and I cannot speak personally for what each and every one of them has done; but it is not our intent and not our practice to do that. We are quite exposed if we do that, and we've got a legal problem. We try very much to avoid that.

ASSEMBLYMAN GLADSTONE: Could you, perhaps, tell me how many people you have employed at your refinery in Paulsboro this year?

MR. PENICK: Yes; give or take a few, it is about 1200 at the refinery.

ASSEMBLYMAN GLADSTONE: What was the number last year? Could you tell me that?

MR. PENICK: It was about the same.

ASSEMBLYMAN GLADSTONE: There has been no attrition?

MR. PENICK: Well, there has been attrition; but we have hired people to replace them. Actually, we are trying to increase our work force at the present time. We have a crash training program underway, and we are hiring new people. You may or may not know that we have announced, and have going through the administrative change, an application for permits to more than double the size of that refinery, in which case we will be hiring more people.

ASSEMBLYMAN GLADSTONE: You mentioned before that the profit the company made was in the neighborhood of 2¢ a gallon on everything they sell worldwide. That is a nice small figure. Your figures, in larger sums, indicate that the 1973 earnings were $842 million.

MR. PENICK: That is correct.

ASSEMBLYMAN GLADSTONE: That would be $8.20 a share. That is almost 50 percent better than the year before. That sounds a lot stronger than 2¢ a gallon.

MR. PENICK: That is why I brought the 2¢ a gallon up. Certainly, we have had a substantial increase in profits; we don't deny that; we don't think we have any reason to be ashamed of that. We did have a period of a number of years, as Mr. Clark brought out earlier, where our profits were depressed; and now, they are better. We have an urgent need for the money to...

ASSEMBLYMAN GLADSTONE: Going back to the free market that you were referring to before, isn't it generally the rule that profits are depressed if companies are warring against each other; and in so doing--trying to take the business away from each other--they reduce their own profits voluntarily? Wouldn't that be the major reason for profits being depressed in times of high sales?

MR. PENICK: Profits were depressed back in a period of time when there was a world surplus of oil and petroleum of various kinds. We have gone from a period of world surplus in energy, generally, to a period of world shortage. The rules of supply and demand apply in this business just like they do in others.

ASSEMBLYMAN GLADSTONE: Doesn't it strike you as incongruous that we should go from a surplus to a shortage in such a short period of time without anybody having any warning?

MR. PENICK: I will comment on that this way: We all knew, and Mobil said publicly and, I think, many other people did too, that fossil fuels are a non-replenishing resource. We all knew that in due course, we were going to run short on those because we only have what nature put there in the first place; and when it is used up, it is going to be gone. We were surprised on a number of points in the suddeness and intensity of the shortage and the way that it developed. Some of the things that surprised us were these: The Arab embargo was the immediate event that appeared to precipitate the whole crisis; but a lot of other things affected it: The delay in the Alaska Pipeline, delays in the awarding of leases and developing of leases for off-shore drilling to find more oil, delays in construction of refineries because of environmental concerns; production and discoveries of natural gas have been depressed because of what we believe to be the price regulation policies of the Federal Power Commission; gasoline consumption of the new cars was surprisingly high; I don't think anyone would have anticipated four or five years ago that you would get so few miles a gallon from your pollution-free 1974 automobile; there is a host of factors that contributed to the increasing demand; there are similar factors that decreased the supply. These things all converged last fall and were capped off by the Arab embargo.

ASSEMBLYMAN GLADSTONE: So, it looks like, now, we are going to have bring back the glasses and the trading stamps you gave us last year in order to get our gas this year.

MR. PENICK: I don't think we anticipate that.

ASSEMBLYMAN GLADSTONE: That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Assemblyman Neri, do you have any questions?

ASSEMBLYMAN NERI: Do you have any experimental stations in New Jersey?

MR. PENICK: No; we had a few experimental stations, but they were all in Texas with another name.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Penick, for your testimony.

Is the representative from New Jersey Manufacturers here?

(No response)

Is Mr. Christopher Burke of the New Jersey Public Interest Research Group here?

(No response)

A representative from Ashland Oil will be the next witness. Please state your name.

S E Y M O U R   U R B A N:

My name is Seymour Urban; I am manager of Ashland Oil's Eastcoast Division, which includes the State of New Jersey. In the interest of brevity and to save you all time, I have passed out a statement which pretty much repeats what has already been said. I would like to summarize it, if I may.

While we do not own or operate any refineries within the State, we are extremely opposed to any attempt to transform a fully viable competitive private industry into a public utility type business.

In our opinion, the oil business does not lend itself to a public utility concept, which generally implies a guaranteed operating area, full recovery of costs and a guaranteed rate of return.

There are issues involved here greater than just dealing with petroleum shortage. This drastic restructuring of a basic industry should not be done without thought and careful consideration of the consequences to the industry and the consuming public.

Thank you very much.

ASSEMBLYMAN ESPOSITO: Are there questions?

(No questions)

Thank you, Mr. Urban.

MR. URBAN: Thank you.

ASSEMBLYMAN ESPOSITO: Mr. Charles St. Laurent, Shell Oil Company, will be the next speaker.

C H A R L E S   P.   S T.   L A U R E N T:

My name is C. P. St. Laurent, and I am with Shell Oil's Planning and Economics Organization, and I am manager of the Plans and Analysis Department. I have distributed a prepared statement from which I will read as quickly as I can, in the interest of brevity. I feel compelled to make some comments on what I feel were irresponsible statements made earlier by Mr. Lobell, which were unsupported by any submitted, factual evidence and which, I feel, are totally inaccurate. I will speak for Shell Oil on a number of these points.

First, as to the character and intent of business leaders: Shell management is and must be concerned with the long-term interests of the consumer if it is to survive, as with any business; and it cannot be concerned with short-term opportunity. The decisions are not conspiratorial either within the company or with other companies and, certainly, are not designed--nor have there been any designed--to create shortages in New Jersey or any other State.

Secondly, Mr. Lobell referred to the inability of legislative bodies to get data. Significant financial and volumetric information is submitted to the Internal Revenue Service and Securities Exchange Commission, which is available to them.

Third, I believe Assemblyman Salkind and Mr. Lobell addressed the subject of capital spending, the profitability, the dividends and the federal taxes and their relationship to one another. I would like to speak for Shell Oil Company with respect to the first quarter of 1974 vs. the first quarter of 1973 on these issues.

First of all, our net income of $122 million, rounded, first quarter, 1974, was up 52 percent over first quarter, 1973. Federal income taxes of $46 million was up 39 percent over first quarter, 1973. Capital expenditures of $307 million in the first quarter of 1974 was up 196 percent over first quarter, 1973. Dividends of $40 million were paid out of that net income. This addresses what I feel, certainly, is an indication that Shell is capable of spending significantly more than the net income figure of $122 million as compared to the $307 million expenditure in the first quarter.

The fourth point regarded capital required by industry during the next 10 to 15 years. I would like to refer to Mr. Lobell's number, which I believe he indicated was on the order of $15.8 or $16 billion, which he felt would be required in the next decade.

First of all, let me point out that in the ten-year period ending in 1972, just the exploration and production expenditures only for the industry amounted to $68 billion. This is not counting the expenditures for manufacturing, marketing, transportation, and so on.

More importantly, I have some numbers here that address domestic capital requirements for the next 15 years. These are references to projections which have been made by others.

National Petroleum Council, quoting from J. C. Sawhill's speech of May 6, 1974--these were figures developed prior to the Arab oil embargo--indicate $450 to $500 billion--1970 dollars--for capital requirements in the next 15 years. These are in 1970 dollars--not yet adjusted for what inflation might do.

Robert Holland, with the Federal Reserve Board of Governors, also quoting from Sawhill, mentioned $600 to $700 billion for total capital needs in the future.

The total capital, I am sure, includes debt repayment, and increases in working capital that will be required in addition to regular capital expenditures.

Finally, let me give you one more quick one. The Treasury Department has made a projection that for 1971 to 1985--a 14-year period--$26 billion per year in 1974 dollars would be required for capital facilities. Fourteen years **x** $26 billion is $364 billion. All of these figures are significantly larger than Mr. Lobell's $16 billion.

I think that those are all the points I wanted to bring up with respect to the previous testimony.

Let me quickly go through the prepared statement for you, which is our testimony on Assembly bills 1256 and 1208.

The oil industry should not be put under public utility regulation because utility regulation is suited only for those businesses which best serve the public as franchised monopolies. The oil industry is a highly competitive business which, under free market regulation, has served the country extremely well for nearly a century and which can best continue to serve it by remaining freely competitive.

Public utility regulation substitutes government action for those regulating forces which are automatic in a free maret place system. It is applied in those instances, where, because of the type of service provided, monopolistic operation is desirable.

Companies providing water, electric power and telephone service are good examples of businesses where monopolistic operation is desirable. In other words, we don't want our streets full of competing water lines, gas lines, telephone lines, and so on.

Oil industry operations certainly are not monopolistic. As I said before, it is a highly competitive business. Competititon has kept prices and profits low, even though petroleum is a very high-risk business.

Nationwide, the oil industry is made up of 40,000 oil and gas companies involved in various aspects of the business: exploration, production, transportation, manufacturing and marketing.

The largest share of the national gasoline market held by any one company is only 8.3 percent.

In marketing, the major companies have always competed against each other vigorously. In addition, the independent marketer typically operates on a low overhead and serves to provide added price competition in the marketplace by offering unbranded product purchased from diverse refiners.

In New Jersey, the oil industry has similar diversity. There are approximately 6000 service stations of which more than 90 percent are independently operated. There are more than 60 different companies. The largest seller of gasoline in the State had 20 percent of the market last year. Although there is no crude oil production in New Jersey, there are five companies with refineries in the State and 23 companies with 53 distribution plants that serve the northeast United States.

Another indicator of competition within the oil industry can be found in the industry's profit record.

IN THE PAST TEN YEARS, INCLUDING 1973, THE OIL INDUSTRY'S AVERAGE RATE OF RETURN ON INVESTMENT WAS 12.3 PERCENT COMPARED TO AN AVERAGE OF 12.6 PERCENT FOR ALL MANUFACTURING INDUSTRIES. THIS HARDLY REPRESENTS MONOPOLISTIC PROFITS. INCIDENTALLY, THESE NUMBERS COMPARE VERY WELL WITH FEDERAL TRADE COMMISSION NUMBERS WHICH INDICATE THAT FOR THE PAST 1964-73 PERIOD-ALSO TEN YEARS-THE PETROLEUM INDUSTRY RATE OF EQUITY WAS 11.8 PERCENT VS. ALL MANUFACTURING AT 12.1 PERCENT; SO, THEY WERE ON THE SAME ORDER OF MAGNITUDE.

PUBLIC UTILITY TYPE REGULATION OF THE OIL INDUSTRY IS NOT A NEW CONCEPT. IT HAS BEEN TRIED WITHOUT SUCCESS IN THE UNITED STATES AND IN TWO SEPARATE EFFORTS IN CANADA.

FOR THE PAST 20 YEARS IN THE UNITED STATES, THE FEDERAL POWER COMMISSION HAS REGULATED THE PRICE OF DOMESTIC INTERSTATE NATURAL GAS. (THE FPC SET THE PRICE OF NATURAL GAS BELOW THE GOING PRICES OF COAL AND OIL ON A COMPETITIVE ENERGY BASIS.) THE RESULT WAS OVER-STIMULATION OF DEMAND FOR NATURAL GAS, PARTICULARLY BY COMMERCIAL USERS, ELECTRIC UTILITIES AND OTHER INDUSTRIAL CUSTOMERS. THE LOW PRICE OF NATURAL GAS ALSO CONTRIBUTED TO UNDER-INVESTMENT IN EXPLORATION AND CONSEQUENTLY HASTENED IN INTENSIFYING THE DOMESTIC ENERGY SHORTFALL.

SEPARATE ATTEMPTS TO REGULATE THE PRICE OF GASOLINE IN DIFFERENT WAYS WERE MADE IN TWO CANADIAN PROVINCES; BRITISH COLUMBIA IN 1939 AND NOVA SCOTIA IN 1934. BOTH EFFORTS LED TO YEARS OF DETERIORATING MARKETING SYSTEMS AND SERVICE, REDUCED EXPLORATION FOR NEW RESERVES, AND STAGNANT REFINING CAPACITY. AFTER RESTRICTING LEGISLATION WAS REPEALED IN THE EARLY 1950'S, THE SITUATION QUICKLY IMPROVED AND BOTH PROVINCES EXPERIENCED RAPID OIL INDUSTRY GROWTH. I HAVE COPIES OF THESE TWO CASE HISTORIES, AND I WILL LEAVE THEM WITH YOU FOR REFERENCE BY YOUR STAFF.

AN ARGUMENT OFTEN GIVEN FOR CLASSIFYING THE OIL INDUSTRY A PUBLIC UTILITY IS THAT IT IS "TOO VITAL" TO THE WELFARE OF THE NATION TO BE WITHOUT INTENSE PUBLIC SCRUTINY.

BUT THE OIL INDUSTRY HAS ALWAYS BEEN SUBJECT TO INTENSIVE REGULATION AND SCRUTINY AT BOTH STATE AND FEDERAL LEVELS.

REGULATION IS NOT AN ISSUE. CONTROL THAT DOES NOT ALLOW THE INDUSTRY THE FLEXIBILITY TO RESPOND TO THE NEEDS OF THE CONSUMER AND THE NATION IS THE ISSUE.

UNDER PUBLIC UTILITY REGULATION, SOME FORM OF PRICE CONTROL WOULD HAVE TO BE SUBSTITUTED FOR THE COMPETITIVE PRICING SYSTEM. THERE ARE, HOWEVER, INHERENT DANGERS TO ARTIFICIALLY CONTROLLING PRICES.

IF PRICES ARE SET BELOW THE TRUE MARKET VALUE (AND IN PUBLIC UTILITY REGULATION, THERE WOULD BE PRESSURE TO KEEP PRICES LOW);

A) DEMAND WOULD BE EXCESSIVELY STIUMLATED AGGRAVATING AN ALREADY TIGHT SUPPLY SITUATION;

B) INVESTMENT WOULD BE DISCOURAGED, SLOWLY WORSENING THE SITUATION;

C) SHORTAGES AND POOR QUALITY SERVICE WOULD DEVELOP.

ON THE OTHER HAND, IF PRICES ARE SET TOO HIGH, REGULATION HAS A NEGATIVE EFFECT AND THE CONSUMER ACTUALLY PAYS A HIGHER PRICE THAN NECESSARY.

IN EXAMINING PROPOSED PUBLIC UTILITY REGULATION OF THE OIL INDUSTRY, SOME PROBLEMS OF THE VARIOUS METHODS OF CONTROL SHOULD BE CONSIDERED.

FOR INSTANCE, LET'S LOOK AT CONTROLS PATTERNED AFTER THOSE OF THE FEDERAL ENERGY OFFICE. CRUDE PRICES ARE REGULATED AT THE WELLHEAD AND PRODUCT PRICES ARE DETERMINED BY LIMITING THEM TO RAW MATERIAL COSTS PLUS

A PROFIT MARGIN FOR THE REFINER AND MARKETER. DUE TO UNREGULATED IMPORT COSTS AND DIFFERING CRUDE MIXES, THE RESULT HAS BEEN SIGNIFICANT PRICE DISCREPANCIES BETWEEN RETAILERS WHICH HAS LED TO A CHAOTIC SITUATION AT SERVICE STATIONS, AND ACCOMPANYING POOR SERVICE.

PRICE DISCREPANCIES COULD BE AVOIDED BY DICTATING A SET PRICE FOR PETROLEUM PRODUCTS WITHIN A GIVEN AREA. HOWEVER, IF THE "ASSIGNED" PRICES WERE TOO LOW, HIGHER PRICED CRUDE WOULD NOT BE ECONOMICALLY AVAILABLE, PRODUCT SHORTAGES WOULD RESULT, AND RATIONING WOULD BE REQUIRED.

ASSIGNED PRICES WOULD ALSO DESTROY COMPETITION AND WITH IT THE EFFICIENCY AND INGENUITY FOR WHICH THE U. S. OIL INDUSTRY IS NOTED. COMPETITION HAS BEEN THE KEY FACTOR WHICH HAS PROVIDED CONSUMERS WITH LOWER PRICES AND VASTLY IMPROVED PETROLEUM PRODUCTS.

PUBLIC UTILITY REGULATION OF THE OIL INDUSTRY AT THE STATE LEVEL WOULD BE EXTREMELY DIFFICULT. CONSIDER NEW JERSEY: MANY OF THE DIFFERENT OIL AND GAS COMPANIES DOING BUSINESS IN NEW JERSEY OPERATE IN OTHER STATES AND COUNTRIES AS WELL. THEY SHIP CRUDE AND NATURAL GAS INTO NEW JERSEY AND SHIP PRODUCTS OUT OF THE STATE TO SERVE CONSUMERS IN OTHER PARTS OF THE UNITED STATES.

THE STATE'S POWER TO REGULATE THE PRICE AND FLOW OF IMPORTS OR EXPORTS IS LIMITED BY FEDERAL CONSTITUTION AND LAW. ATTEMPTS TO IDENTIFY THOSE PRODUCTS MANUFACTURED FOR USE ONLY IN INTRASTATE COMMERCE WOULD BE A PRACTICALLY IMPOSSIBLE TASK.

CONTRASTING OR OVERLAPPING STATE/FEDERAL ATTEMPTS TO ESTABLISH SEPARATE PRICE AND SUPPLY CONTROLS WOULD MAKE AN ALREADY CONFUSED SITUATION RAPIDLY BECOME CHAOTIC.

RECENT PROFIT IMPROVEMENT BY OIL COMPANIES HAS ADDED SENTIMENT TOWARD PUBLIC UTILITY REGULATION OF THE INDUSTRY. IN ANY COMPETITIVE MARKET, PROFITS ARE NORMALLY HIGH DURING PERIODS OF TIGHT CAPACITY AND ERODE DURING PERIODS OF EXCESS CAPACITY. OTHER INDUSTRIES HAVE SHOWN EVIDENCE OF THIS SAME PATTERN IN RECENT MONTHS.

FOR YEARS, THE NATION HAS ENJOYED AN OVER-CAPACITY OF AVAILABLE PETROLEUM SUPPLIES, AND OIL COMPANY PROFITS HAVE NOT BEEN PARTICULARLY GOOD. NOW, THE FACT THAT CAPACITY IS TIGHT IS BEING REFLECTED IN IMPROVED INDUSTRY PROFITS.

THE IMPORTANT FACTOR IS THAT THESE HIGHER PROFITS WILL PROVIDE INCENTIVE VITALLY NEEDED FOR INCREASED INVESTMENT. THE FUTURE ENERGY NEEDS OF THE UNITED STATES WILL REQUIRE AN ENORMOUS INVESTMENT, AND THE OIL INDUSTRY'S PROFITABILITY OF PAST YEARS WOULD NOT BE SUFFICIENT TO MEET THESE NEEDS.

REMEMBER THAT A PUBLIC UTILITY IS A PRIVATELY OWNED BUSINESS WHICH MUST ALSO BE SUFFICIENTLY PROFITABLE TO ATTRACT CAPITAL. THE RATE OF RETURN GRANTED PUBLIC UTILITIES IN THE PAST HAS ACTUALLY EXCEEDED THE RATE OF RETURN EARNED BY THE OIL INDUSTRY.

FORBES MAGAZINE PRESENTED THE PAST 16-YEAR RATE OF RETURN ON SHAREHOLDER EQUITY FOR A GROUP OF UTILITIES AND A GROUP OF INTEGRATED OIL COMPANIES. THE MEDIAN RATE FOR THE ENTIRE PERIOD WAS 10.8% FOR THE UTILITIES AND 10.2% FOR THE OIL COMPANIES. IN ONLY FOUR YEARS DID THE OIL COMPANIES' RATE OF RETURN EXCEED THE UTILITIES.

TO SUMMARIZE, PUBLIC UTILITY REGULATION OF THE OIL INDUSTRY IS NOT IN THE PUBLIC INTEREST BECAUSE:

1. PUBLIC UTILITY REGULATION IS DESIGNED FOR COMPANIES DEALING IN SERVICES WHICH CAN BE MORE ECONOMICALLY PROVIDED TO THE PUBLIC BY A

FRANCHISED MONOPOLY. BECAUSE THESE COMPANIES ARE MONOPOLISTIC, GOVERNMENT REGULATION MUST BE SUBSTITUTED FOR THE REGULATING FORCES WHICH ARE AUTOMATIC TO COMPETITIVE BUSINESSES.

2. THE OIL INDUSTRY IS NOT MONOPOLISTIC -- BUT HIGHLY COMPETITIVE.

3. A PUBLIC UTILITY MUST HAVE PRIOR APPROVAL TO MAKE LARGE EXPENDITURES. THIS PROCEDURE MAY TAKE A YEAR OR LONGER, DELAYING THE DEVELOPMENT OF NEW RESERVES OR POSSIBLY PRECLUDING THE REGULATED OIL UTILITY FROM COMPETING WITH FOREIGN COMPETITORS OR OTHER NON-REGULATED COMPANIES. THIS REGULATORY LAG WOULD CAUSE RATIONING, MARKET DISRUPTIONS, A LESS EFFICIENT USE OF INVESTMENT CAPITAL BY THE OIL INDUSTRY, AND FURTHER DELAYS IN RELIEVING THE ENERGY SHORTAGE.

4. PUBLIC UTILITY TYPE REGULATION OF THE OIL INDUSTRY HAS PROVEN UNSUCCESSFUL IN PREVIOUS ATTEMPTS.

5. PRICE CONTROL IS MANDATORY IN REGULATING A UTILITY BUT WILL NOT WORK IN A COMPETITIVE MARKET. IF THE PRICE IS HELD TOO LOW, DEMAND IS EXCESSIVELY STIMULATED AND INVESTMENT FOR FUTURE NEEDS IS DISCOURAGED. IF IT IS HELD TOO HIGH, THE CONSUMER PAYS MORE THAN HE SHOULD.

6. THE INTERSTATE AND INTERNATIONAL PHASES OF THE OIL INDUSTRY, WHICH ARE REGULATED BY THE FEDERAL GOVERNMENT, ARE INSEPARABLE FROM THE INTRASTATE SEGMENTS OF THE BUSINESS; MAKING REGULATION AT THE STATE LEVEL PRACTICALLY IMPOSSIBLE.

7. SUFFICIENT LAWS AND REGULATIONS ALREADY EXIST TO PROTECT AGAINST ANY NON-COMPETITIVE ACTION BY THE OIL INDUSTRY.

Gentlemen, I respectfully submit that improved oil industry profits are necessary if oil companies are going to be able to provide for the future energy needs of the nation. Improved profits provide for increased investments which lead to increased energy supplies.

This concludes my remarks. I would be pleased to answer any questions that you may have.

ASSEMBLYMAN ESPOSITO: Do you have any questions, Assemblyman Gladstone?

ASSEMBLYMAN GLADSTONE: Mr. St. Laurent, considering the efficiency and ingenuity for which the oil industry is noted, as you state, how could we have gone from boon to bust in less than a year's time without any warning and without any indication?

MR. ST. LAURENT: Let me address why the shortage occurred so suddenly. I think the industry was hit, first, with a number of unanticipated regulatory controls--demands, if you want to call them that. The shortage was aggravated by federal regulations on natural gas. We had the Clean Air Act of 1970, which limited sulphur emissions; and this, then, put an unanticipated higher demand on oil and natural gas, which did not have the higher sulphur content. Refining capacity shortage occurred due to uncertainty of supply and poor earnings record. That is why the refineries were not being built in this period. These are reasons why the shortage occurred. We had environmental delays that were not anticipated. We did not anticipate reduced gasoline mileage that occurred because of what all of us required in the automobiles we drove--the air conditioning and the other conveniences--all of which served to reduce the mileage realized per gallon. Quite frankly, I think the industry made a poor forecast of demand growth, for all the reasons I have just listed. To make it analogous with a weather forecast, we might have predicted a 20 or 25 percent chance of rain; and we got a downpour instead. Finally, there was the Arab embargo, which really put the lid on everything and aggravated or excelerated the occurrence of this shortage.

Ordinarily, the industry tries to anticipate these shortages and design and plan so that capacity and production comes to a peak just when the demand is just ready to meet it so that we don't have to develop large storage capabilities that would otherwise add undue costs to the products we deliver.

ASSEMBLYMAN GLADSTONE: I have to say that this question is from Assemblyman Gewertz. During the entire time of the war in Vietnam and the millions of gallons of fuel that we used there, why wasn't there any indication or warning that there would be a shortage or that there would be the danger of a shortage, and why wasn't the fuel that was left over from there able to make the difference so that there wasn't any shortage?

MR. ST. LAURENT: The entire time of the war in Vietnam covered 1964 to 1972. That is eight years. I cannot answer the question that you have asked over that period of time without further research. I would hesitate to speculate on it.

ASSEMBLYMAN GLADSTONE: It is not a clear question, but it is one of the areas that, I think, is still left unanswered. There was unlimited fuel available until the end of the war; and even when our demands decreased, we were still suddenly faced with a shortage. There was no indication from anybody anywhere that this shortage was imminent.

MR. ST. LAURENT: I think all the reasons that I have just listed--the fact that we did not anticipate the demand growth being what it was--would explain why, but I cannot say definitely without knowing whether or not the military demands caused by the Vietnam war were not offset by other military requirements. I just don't know what changes in military requirements took place.

ASSEMBLYMAN GLADSTONE: That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Mr. St. Laurent, I would like to question you on the distribution of gasoline to your service station owners. How many are company owned stores?

MR. ST. LAURENT: In the United States, Shell has approximately...

ASSEMBLYMAN ESPOSITO: I am talking about New Jersey.

MR. ST. LAURENT: New Jersey?

ASSEMBLYMAN ESPOSITO: Yes.

MR. ST. LAURENT: I would have to defer to our Mr. Gerlock.

ASSEMBLYMAN ESPOSITO: I am talking about company owned stations in New Jersey.

MR. GERLOCK: There are two.

ASSEMBLYMAN ESPOSITO: The rest are privately owned?

MR. GERLOCK: I don't know what you mean by privately owned.

ASSEMBLYMAN ESPOSITO: How many company owned stations do you have in New Jersey?

MR. GERLOCK: Two.

ASSEMBLYMAN ESPOSITO: Two only?

MR. GERLOCK: Yes.

ASSEMBLYMAN ESPOSITO: How many stations do you have in the State of New Jersey?

MR. GERLOCK: There are approximately 380.

ASSEMBLYMAN ESPOSITO: The other 378 are privately owned--independently owned?

MR. GERLOCK: Not necessarily. We lease stations; and then, there are, what we call, open dealers or dealer-leasees who own their own property. There are approximately 50 of those who own their own. The rest are sub-leased from us.

ASSEMBLYMAN ESPOSITO: Do you sell to distributors and wholesalers?

MR. GERLOCK: We had one jobber located out of Philadelphia...

ASSEMBLYMAN ESPOSITO: One jobber in the State of New Jersey?

MR. GERLOCK: Yes, which locates in the southern half of New Jersey.

ASSEMBLYMAN ESPOSITO: Did you people police the industry when we had the shortage to see that the gasoline was priced right?

MR. GERLOCK: I'm not quite sure I understand the question.

ASSEMBLYMAN ESPOSITO: During the shortage, some personal friends of mine, who are service station dealers, had to buy from the wholesalers. They were paying maybe 2¢ or 3¢ above the price of a gallon of gasoline.

MR. GERLOCK: Let me answer that like this: I cannot speak for those people that you refer to or what they were buying their gasoline for. We have an established--as most of the major oil companies do--tank wagon price, which the dealers will purchase from the oil companies. The price they elect to retail their gasoline for is entirely up to them. Consequently, sometimes when you see prices that are higher or lower, it is up to the independent retailer to establish his price at the point he wishes. So, you will see dealers making margins anywhere from 11¢ to as high as 18¢--some of them, of course, outside the IRS.

ASSEMBLYMAN ESPOSITO: Someone reported to me that they were making 6¢ a gallon when it was 30¢ and they were still making 6¢ a gallon when it was 60¢.

MR. GERLOCK: I think you will find those reports 100 percent in error.

ASSEMBLYMAN ESPOSITO: In error?

MR. GERLOCK: Yes; unequivocally, in error.

ASSEMBLYMAN ESPOSITO: Thank you.

ASSEMBLYMAN GLADSTONE: Mr. Chairman, were you referring to the type of gasoline that Senator Dodd thought he would have available for us?

ASSEMBLYMAN ESPOSITO: No.

ASSEMBLYMAN GLADSTONE: Were you talking about buying it outside of the established lines of communication?

ASSEMBLYMAN ESPOSITO: They were buying gas from electric and gas companies.

ASSEMBLYMAN GLADSTONE: Well, on Long Island they were doing much the same thing. They were buying from jobbers who were connected with importers that were importing it from outside their regular sources.

ASSEMBLYMAN ESPOSITO: I have heard of prices as high as 75¢ per gallon. I firmly believe that the industry has to be controlled in times of shortages.

MR. GERLOCK: Simply because of the price of gasoline? I think that if you go right now and drive around to your local retail operations, you will find a percentage of the independent retailers posting prices above what they should be, which has nothing to do with the major oil companies. It goes back, again, to the independent businessman pricing his gasoline substantially above what it should be, which we have no control over.

ASSEMBLYMAN ESPOSITO: Don't you feel it is incumbent upon you people to preserve your reputation and see that they maintain the price?

MR. GERLOCK: Absolutely not. First of all, you are now into anti-trust violations; and there are certain categories that we cannot get into. The independent retailer establishes his retail price. We do not dictate that.

ASSEMBLYMAN ESPOSITO: I see. Are there any other questions?

MR. ST. LAURENT: May I please, sir, respond to Mr. Gewertz's earlier question from the floor? Vietnam was not supplied from the U.S. The fuel utilized there was supplied from the Far East. So, this would, I believe, answer your question.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. St. Laurent.

MR. ST. LAURENT: Thank you.

ASSEMBLYMAN ESPOSITO: The representative from Sun Oil will be the next witness.

Please state your name for the record.

W I L L I A M H. V A N S C O Y O C:

My name is William Van Scoyoc; I am Northeast Regional Manager for Sun Oil Company. This gentleman on my right is Harold Vaughn, who is our District Marketing Manager for Northern New Jersey. In the interests of time, I do not intend to read the statement that we have supplied to you; I would just like to make some general comments with reference to it and some previous comments that were made this morning.

First, I would like to say that as I sat here and watched the school children in the gallery and listened to some of the generalized statements attacking our federal government, the Interstate Commerce Commission, the Public Utilities Commission in New Jersey and the state government in New Jersey, claiming that the oil companies are crooked, that the banks are conspiring with the oil companies and that other industries are conspiring with the oil companies, I was very much concerned that there is probably a good reason why the generation that was represented by those school children is losing faith in our institutions. I think it is about time that we exert, as a country, the leadership which we intend to exert.

We have problems at the state level; we have problems at the federal level; and the world has a lot of problems. I think we should be hopeful that the United States is going to be instrumental in solving those things. I don't think we are going to accomplish it by attacking all our institutions. I think it is about time that we in government and industry attempt to work together rather than spend all our time assessing blame and criticizing.

I would like to speak to the generalization regarding profits as far as Sun Oil Company is concerned. In 1973 we made approximately--net income--$230 million. Of this, $70 million was paid out in cash dividends and $160 million was put back in the business. Our capital budget for 1974 is in the neighborhood of $600 to $650 million. How the gentleman drew the conclusion that the profits we were making were more than adequate to cover our requirements of capital costs I do not know because, as you know, $650 million is a great deal more than $160 million. This is typical of the pattern that we can foresee in the future.

I think one of the purposes of the bill is that it is to be sort of a club held over the head of the industry to elicit information which they feel they would like to have. It is entirely unnecessary. We are, today, maintaining a staff of around 60 people in our home office in Philadelphia, whose sole job is to provide information for public agencies. As the gentleman from Mobil pointed out, one of the real problems is that every agency that requires information requires it in specific ways and certain types of detail. As an example, as he pointed out, it has not been normal for us, either, to collect information by State. It took considerable time and effort to get the computers corrected, etc., so we could furnish this information on a statewide basis. This has now been done. It is our intent and, I am sure, the intent of the rest of the industry to furnish all reasonable requests for information we possibly can and to cooperate with all government authorities in any way we can because we realize the seriousness of the situation not only for the State and nation but for the world. We are interested in seeing that something gets done about it.

With reference to your question of public utility control, which the bill recommends, this is basically adaptable to monopoly type industries where the consumer has no choice; for instance, you think of the telephone company or the light company. This is not true of the oil industry in New Jersey. As the previous gentleman pointed out, there are approximately 60 different marketers in the State of New Jersey. Only one has more than 10 percent of the business. There are over 700 jobbers and there are approximately 6000 dealers. I think that this denies the fact that the oil industry in New Jersey is a monopoly.

The overall energy problem is one of supply. New Jersey does not have any oil; New Jersey has refineries, but it doesn't have oil. It is dependent, as a good many other States are going to be, upon what is accomplished in terms of supplying and solving the availability of raw materials.

Third, this is a high-risk, fast-moving business. It requires quick decisions and great flexibility. Historically, public utility control has not favored this type of action. Witness what happened to Con Ed in the past year.

I would humbly submit that the Committee should give very serious thought to the type of legislation it is proposing and consider the following three questions: Is the State of New Jersey willing to guarantee the marketers and distributors a market and a profit? Is the State of New Jersey willing to guarantee a specific return to thousands of retail dealers regardless of size, efficiency, etc.? Is the State of New Jersey willing to undertake the bureaucratic costs and expense and slow response to change that such regulations would entail?

I would be pleased to try to answer any questions you would like to ask.

ASSEMBLYMAN ESPOSITO: Assemblyman Gladstone?

ASSEMBLYMAN GLADSTONE: Sir, you chided us before on, perhaps, setting a bad example for the school children. I ask you if the example that was set by the Presidents of the major oil companies in their pay-offs to party politics was not a bad example?

MR. VAN SCOYOC: Why should we continue to press these things and go over and over these things? Let us do something to correct the situation. We are perfectly willing to accept the fact that we did some things wrong, and I am sure that government is willing to accept the fact that they did some things wrong; but let us get about solving the problem constructively--not continually weeping over who did what and who's the bad boy.

ASSEMBLYMAN GLADSTONE: The only difficulty there is that, apparently, what goes on, goes on and on and on. For example, we have a continuing shortage of gasoline here in the United States; but we are told that a lot of the supplies that might normally come here are going to Europe because in Europe, gasoline runs up to $2 a gallon. Therefore, it is a lot more profitable to send the gasoline to Europe than to bring it here to the United States for our own distributors.

MR. VAN SCOYOC: We have a raw material shortage worldwide, and we have to accept the fact that we have to compete in a world market. We cannot insulate ourselves; we cannot live that way today. We've got millions of people starving across the world; they are involved in the total energy shortage, and we cannot say we are not going to be involved with those people and not do anything about it. It is a total situation.

ASSEMBLYMAN GLADSTONE: But our prime concern is the State of New Jersey.

MR. VAN SCOYOC: Yes, sir. Your prime concern is the State of New Jersey; I agree. I do not think New Jersey can solve the energy problem for the world. I think New Jersey is caught up in the energy problem.

ASSEMBLYMAN GLADSTONE: That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Assemblyman Neri?

(No questions)

I would like to make a few remarks myself.

We are not responsible for any statement made by a witness before this Committee. Remember this.

MR. VAN SCOYOC: I understand. I thought it was almost an insult to you people as Legislators to have this type of thing said: that every branch of our government is incompetent.

ASSEMBLYMAN ESPOSITO: Let us decide whether it is the right testimony or not. Are there any other questions?

(No questions)

Thank you.

MR. VAN SCOYOC: Thank you.

ASSEMBLYMAN ESPOSITO: Mr. Edward Wagner of Atlantic Richfield Oil Company will be the next speaker.

E D W A R D F. W A G N E R:

I am Edward F. Wagner, Manager, Coordination and Supply/East, Atlantic Richfield Company. As a leading seller of petroleum products in the State of New Jersey for over 75 years, we welcome this opportunity to appear before this Committee.

To make our position clear at the outset, I will summarize in three words our considered reaction to any notion of turning the petroleum industry into a public utility in New Jersey: We oppose it. We oppose it because we sincerely believe it would be a mistake of historic proportions. Far from guaranteeing an adequate flow of low-priced energy to the people of New Jersey, public utility regulation would in fact be counter-productive, thus in the final analysis harmful to the citizens and economy of New Jersey. We believe it would result in a strong disincentive to search for, produce, and bring into the state the oil and gas and other forms of energy New Jersey needs in growing volume.

The Los Angeles Times put the matter into proper perspective in a March 13, 1974, editorial when similar type legislation was under consideration in California. The Times called that initiative "a prescription for shortages, for discouraging investment, for exacerbating a problem. What is needed now," the Times continued, "is a rapid massive expansion of all phases of the energy industry, which will require the kind of huge infusion of capital best provided by private-enterprise profits."

We at Atlantic Richfield subscribe to this view entirely.

We are not unconscious of the reasons why a proposal such as this could come about. New Jersey and the rest of the country have been deeply affected by the energy crisis. Shortages, lines at service stations, and rising prices incited public indignation and anger and created an atmosphere of suspicion and distrust toward the two institutions generally held responsible for the crisis -- government and the oil industry. It does not surprise us that this combination of events has produced calls to punish the oil companies for alleged profiteering. It is this background that spawned the precedent-breaking notion that everything can be cured by simply ordering the petroleum industry to be regulated in a utility-type fashion. Despite the crisis atmosphere, it is now more important than ever before, that any sweeping changes be carefully thought out to consider all their implications, both short-term and long-term. A hasty plunge at this point, adding regulation on top of regulation, is imprudent.

Atlantic Richfield Company does not oppose constructive legislation relating to the petroleum business. For example, as long ago as 1971, we advocated using part of the Federal Highway Trust Fund for public transportation rather than for highways. Last December our Chairman, Robert O. Anderson, and President, Thornton F. Bradshaw issued a statement calling for an end to the percentage oil depletion allowance, a position now adopted by the House Ways and Means Committee. And we also have been calling for better coordinated, more sensibly designed Federal energy policy because it is clear to us that the country cannot avoid repeated emergencies without a national policy. Differing and sometimes conflicting policies tailored in the heat of a crisis by 50 individual states will prevent development of a coherent overall policy. Only a unified national energy policy will truly benefit not only the consumers of New Jersey but all consumers throughout the nation.

It is impossible to develop any constructive, coherent policy on energy until one first understands why this crisis really arose. Contrary to the easy-to-make, crowd-appealing charge of conspiracy, the roots of the problem are really in the supply-demand situation in the country. The shortages are not the result of a petroleum industry conspiracy to limit supplies. That never happened. The reason we are short is simply because we are using more than we have been able to produce. A few statistics will illustrate the point. Total East Coast product demand, taken from Bureau of Mines statistics, increased 5.6 percent in 1970 compared to 1969. Demand then jumped 2.4 percent in 1971, a full 7.8 percent in 1972, and 2.6 percent in 1973.

Not only are these percentage increases significant in their own right, but the base to which they are applied is enormous. For instance, the 2.6 percent demand increase for 1973 on the East Coast amounts to more than 4,000,000 gallons daily of new demand -- and each year's increase is added cumulatively to that of the prior year.

This pattern of increasing use of petroleum and other hydrocarbons is national in scope. Growth in energy use over the last 10 years has averaged between 4 and 5 percent a year, and our national consumption is edging toward 20 million barrels a day. At that rate, an amount equal to the entire known reserves of the North Slope of Alaska -- 10 billion barrels -- will last less than two years. And the North Slope is the greatest strike in the history of North America.

Thus, with our profligate use of energy resources, and our naive assumption that cheap oil would continue to be available to us from foreign sources in any amount that we wanted, it is now clear that the country has been riding for a fall. The Arab oil embargo just speeded up the timetable. The Arab action has brought us face to face with the consequences of failure to design and implement a coherent, national energy policy.

Price controls are clearly not the answer. We have fought for years, for example, to have the Federal control of the price of natural gas at the well-head repealed. This control was imposed in 1954 for much the same reason that some now give to justify their efforts to convert the oil companies into utilities, the idea that a government-fixed price would guarantee the people a reasonably priced and plentiful supply of gas.

The result of the 1954 decision has been mischief in the total energy market. Pricing natural gas at 30 percent of its intrinsic value has encouraged wasteful use of gas, removed economic incentive to find more, and put coal, as a higher priced competitor, virtually out of business. We are paying the piper now particularly in the extraordinary efforts we must make to revive coal as our most plentiful source of energy.

Atlantic Richfield is recognized as a progressive company by those who are concerned for the preservation of the environment. However, some environmental actions have contributed to the surge in the use of petroleum (e.g., a major increase in gasoline consumption by new cars), while other environmental actions have frustrated attempts to expand supply. For example, environmental legal action delayed at least five years construction of the Trans-Alaska Pipeline and effectively denied the country Alaskan oil. In my opinion, had these delays not occurred, we would not be meeting here today.

The development of needed energy resources will only take place if the petroleum industry can act quickly and imaginatively to expand production. To do the necessary job, the domestic industry must expend truly staggering sums of money -- an estimated quarter of a trillion dollars over the next ten years. This is big even by government standards.

Simply stated, the cheap, easy oil discovered in years gone by must be replaced by new high cost sources. Drilling a single well can now cost several million dollars with no guarantee it will find any oil whatever. The Trans-Alaska Pipeline will cost some $4.5 billion, the largest private project in history. Recently, $210 million was paid to the U. S. government simply for the right to develop 5,000 acres of shale oil property. The Federal government has received some $2 billion for rights to certain acreage in the Gulf of Mexico. If oil production is actually developed, royalties and taxes must then be paid on an on-going basis. It is irrational to think these gigantic sums can be spent while the price of energy remains constant. Profits are the principal source of funds to do this job and they simply must rise or new supplies will not be forthcoming.

Oil industry profits have been given some unfavorable labels lately. The political mileage to be gotten from charges about oil profits is too obvious to need discussion. But are oil profits too high?

The barometer of profitability used by any investment analyst or financial institution, and incidentally by public utility commissions across the nation, is rate of return. The key question is the volume of profits compared to the investment required to generate those profits.

Those who consider the profit level by itself, without comparing the investment required, are like my charging that a bank favors my wife because they gave her more interest while ignoring the fact that she has more deposited with them. The level of profit relates to investment the same as the amount of interest received relates to the amount on deposit. The critical question is the percentage rate of interest or the percentage rate of profit to investment.

The oil industry rate of return fell to a ten year low in 1972 whereas 1973 was the best year since 1968. So all the comparisons of 1973 to 1972 compare a good year to a very bad year. The question really is whether 1973 is reasonable by an objective standard. The industry return in 1973 was 13.9% which is comparable to the return for the top third of all industries.

In 1973 Atlantic Richfield earned $270 million while we spent $480 million of capital expenditures. In 1974 we may well spend over a billion dollars of capital expenditures. Can this be continued at a level of $270 million of profit? We submit it can no more be done than the State can expand services but lower taxes.

Atlantic Richfield Company does not have a monopoly in any specific geographic area such as Pennsylvania or New Jersey. Nor do we want one. Indeed, we understand that any attempt to turn a national concern such as ours, operating in many states, into a monopoly enterprise in a single state could well impose an unconstitutional burden on interstate commerce. Connecticut has established the only state body empowered to regulate oil prices. But the agency is presently restrained from functioning and has now been absorbed, by legislative act, into an agency not pursuing price regulation. But I am not a lawyer and I have not come here to discuss legal objections to this proposal. My arguments center on the practical matter of providing energy to New Jerseyans. I know that a strong, competitive petroleum industry can accomplish that objective because the industry has done the job well for many decades. If, however, the petroleum industry is emasculated through a hasty reaction to the energy crisis, a great harm will be done to the welfare of the people of New Jersey and, ultimately, the nation itself.

We sincerely believe this proposal is unsound. It deals with a serious and highly complex matter. Once taken, a step of this nature is virtually irreversible even when it becomes apparent to all that it was an unwise move. Railroads are still regulated even though it is generally conceded such regulation has been a disaster.

Thank you.

ASSEMBLYMAN ESPOSITO: Mr. Gladstone, do you have any questions?

ASSEMBLYMAN GLADSTONE: One of your statements was that in 1972, the rate of return for the industry was at a ten-year low. According to this article I have from the Philadelphia Inquirer, the five largest oil companies in the United States made a total of $3.7 billion in profits--almost 8 percent--on their total income. That would be a rather substantial profit in any sense. I also note that...

MR. WAGNER: What year are you talking about?

ASSEMBLYMAN GLADSTONE: 1972--the same year you referred to.

I also note that in 1972, for every barrel of oil product sold in the United States by the same five companies--Exxon, Mobil, Texaco, Gulf and Standard Oil--two barrels were sold in all other countries. It would seem to me that there was a definite indication in 1972 that there were steps being taken, for business reasons, which would help to exacerbate the shortage which was definitely coming to the United States and New Jersey. What would you say to that, sir?

MR. WAGNER: I have heard this line of discussion, and I find it difficult to follow the logic that you are making, very frankly. The companies that you referred to are obviously worldwide companies; they do not only market in this country. If I remember correctly, of the total consumption of petroleum in the world--the free world--this country probably consumes about 30 percent of it; the rest of the free world consumes the other 70 percent. Now, it is quite obvious that the major international oil companies are going to be selling in other places in the world. It does not, at least, to my way of thinking, follow from that QED, then, that they shorted this country purposely to supply the rest of the world. Those figures don't say that to me, sir. It is an inference; but it is certainly not supported by the numbers anymore than IBM computers were short in this country, and they were selling them in Europe.

ASSEMBLYMAN GLADSTONE: There is another item here that I think may be of interest. The percentage of crude oil refined by the five companies has steadily declined in the United States and has steadily risen in foreign countries.

MR. WAGNER: Yes.

ASSEMBLYMAN GLADSTONE: In 1972, the companies refined 31 percent of their oil in the United States compared with 40 percent in 1963.

MR. WAGNER: Yes. Quite obviously, it was because the world consumption of oil outside the United States was rising about 9 percent a year; while in this country, it was rising about 5 percent a year. It follows that it has to happen.

ASSEMBLYMAN GLADSTONE: But if the consumption was rising in the United States, should not pains have been taken to take this into account too and to allow or to prepare for the need for greater consumption in the United States?

MR. WAGNER: Yes. If you go back and read the record of the past five to ten years in this country, you will find, on the record, much discussion of why refineries were not being built in this country. There were a meriad of factors, some of which have been referred to already today. In fact, I remember reading some discussion about attempts to build new refineries in New Jersey.

ASSEMBLYMAN GLADSTONE: That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Wagner.

ASSEMBLYMAN ESPOSITO: The next witness will be Mr. Dave Jones of Gulf Oil Corporation.

DAVE JONES:

Mr. Chairman and members of the Committee: My name is Dave Jones. I am marketing manager for Gulf Oil Company-U.S. in the State of New Jersey. I am here to testify today against adoption of Assembly 1256.

This bill, we understand, will extend jurisdiction of the Public Utilities Commission over gasoline, fuel oil and residual oil sales in this State. Gulf is opposed to complete governmental control of its marketing operation in New Jersey. Initially, we must object to the placing of our business within the area of those businesses which have historically been controlled by public utility or public service commissions. From a very pragmatic point of view, we feel that the staff of the New Jersey Public Utilities Commission has no expertise whatsoever in the marketing operations of the petroleum business. The expertise of the staff is limited to those general engineering problems normally found within gas, electric light, bus and railway operations. Of course, we feel that the staff has adequate knowledge concerning the economics of the above industries regarding various price structures that may be required for continued operation of those businesses. There is no way that we can imagine that the staff could have the ability to understand and control the economics of petroleum marketing.

Examining from recent history the condition of public utilities generally in this part of the country reveals a dismal picture. The celebrated Consolidated Edison case of a few weeks ago should clearly show this Committee that regulation of a complicated industry in this day of concentrated consumer and environmental interest is a tremendously difficult task. The bankrupt and difficult state of the Penn Central is another classic example of a public utility in operation. Your other railroads in this State--the Reading, Central New Jersey--are other examples of the inability to conduct a vibrant business operation within the constraints of a public utility. The consumer and taxpayer of New Jersey should not be made to assume the burden of a state-run oil business.

The most important objection to this bill by Gulf is that general supervision and regulation of our business as a public utility will create for our employees a state of mind of a public utility; and in that condition, an efficient supply of gasoline for the motoring public is no longer of prime importance as a competitive need; but rather, compliance with regulations, rules and complicated pricing justifications are seen our only duty. As a matter of fact, it may be better if an organization were completely a governmental operation rather than being a quasi-governmental operation--theoretically in the free enterprise system but really controlled in all phases by the government. We fear this public utility syndrome would affect our ability to operate not only in marketing but in all phases of the petroleum business and could spread to our employees beyond those involved in New Jersey and, generally, begin the ruination of the energy industry in the United States.

One final point I would like to leave with your Committee is that the very future of this nation, including the State of New Jersey, is dependent upon a vibrant, energentic, well-operated energy industry. Without this energy industry, our great future is sorely limited.

Thank you.

ASSEMBLYMAN ESPOSITO: Do you have any questions, Assemblyman Gladstone?

ASSEMBLYMAN GLADSTONE: You made reference to Con Edison. I think that all that has been established by Con Edison is that it was a poorly run company. Beyond that, I don't think the regulations and control by the State of New York put them into the condition they are in right now. I think our Public Service is ample proof of the fact that the State can control without damaging. There seems to be an indication right now that the principal reason for our difficulties is that we do not have the refining capacity in the United States. All of the big companies, yours included, have opened refineries in other areas and are aiming for the bigger Japanese and European markets. Do you think there is any possibility of this trend being changed so that the refining capacity here in the States would be increased or improved so that our needs would be serviced?

MR. JONES: Yes, sir; there is that very strong possibility. I am glad this came up; it is something that has not been discussed here today. It has been a confusing thing, even to us in the oil business, sir, when we speak about crude as such and where it came from. By that I mean the difference between what we term "sour crude" and "sweet crude." Unfortunately, or fortunately, whatever the case may be, the majority of the crude within the limits of the United States is what we call sweet crude, which means that it has less sulphur content than sour.

Now that we are in a position, for the many reasons described here today, to have to go to more and more imports, we, then, must take the next step of designing or redoing our refineries so that we can process our crude.

Incidentally, one of the reasons why we hear allegations from time to time that a given refinery--wherever it may be and whosever it is--does not have 100 percent production today in the face of shortages is simply that very item. That given refinery cannot handle the sour crude that we, apparently, could get, even at the very high prices.

To sum up my answer, sir, for the Gulf Oil Company, I speak to this because of a recent factor. That is that in our Port Arthur refinery alone, it is presently a fact and projection that $500 million is necessary--to handle that one refinery--to switch over from its present ratio of 2/3 sweet-1/3 sour to 2/3 sour-1/3 sweet, which is required for the needs of the consumer.

All of these numbers we have heard today are kind of extreme. They sound so doggone big that they make the major oil companies sound all the worse, I think, in the public eye. But, $500 million is an awful lot of money when you think of this. I will allude to our profitability, too, which is another one of those things that seems to be very badly misunderstood. In the year 1973, our profits were--a whopping number--somewhere in the neighborhood of $900 million. Let's refer now to the first quarter of 1974, which were $290 million. Now, $290 million is a great deal of money; but it is not a great deal when you think that to prepare one refinery, as I suggested a moment ago--and these are true facts and supportable--our whole profit for one quarter is barely more than one-half of converting one refinery to alleviate the situation, sir. So, this is a pretty big thing. I think it is also a fact that at least the Gulf Oil Company is in a position of not wanting--in their responsibility to their peers--to take steps to spend these monies unless they are doggone sure they are going to have a crude product to refine. We have many things; which comes first, again, the chicken or the egg. I hope that answers your question, sir.

J O H N R. G A L L O W A Y:

Mr. Gladstone, I am Jack Galloway; I'm an attorney for Gulf. One fact Mr. Jones might not have brought out to you is that Gulf did start a grassroots refinery in the United States. It was completed in 1972 in Louisiana, and it does assist to serve the New Jersey area through the Colonial Pipeline system. This grassroots refinery cost in excess of $200 million and is designed to refine crude oil from the Gulf of Mexico. This would certainly belie someone's suggestion that we have declined to build refining capacity in this country in the last several years. This refinery will run up to 200,000 barrels a day; and I am sure it is running close to its designed capacity. At this point, they have just completed a small change in the Philadelphia refinery to assist in increasing the output there; the Philadelphia refinery also serves New Jersey.

ASSEMBLYMAN GLADSTONE: I am reminded that Gulf has had a slightly tarnished reputation for investments in areas where the people were put-upon, to say the least. Can you tell me anything at all about that--Portugese Angola and such?

MR. JONES: Yes, sir; I think I can help a little bit. You will have to excuse me; I'm in marketing and, perhaps, not as well qualified to answer as I would like to be.

I think what you are speaking about, sir, is Gulf's investment to do with the country of Portugal and, in turn, their governed body in the smaller country called Angola. We have taken a great deal of strain on this issue, and our press release reply to that, as a matter of fact, is this: If we were to depart from Angola to satisfy certain peoples and leave our investment completely, this would not change the political structure of the problem over there one iota because we are not there to do in people. We built a facility; we have an investment; we feel we have a reason to have a return on same, as I think we all agree. If we leave, someone else is going to take it over and have exactly the same problem. In other words, what I am trying to say is that as I understand it, there is no percentage in Gulf leaving just to satisfy a political issue.

MR. GALLOWAY: I think, Mr. Gladstone, that what belies some of the critics of Gulf is the fact that we also have operations in Nigeria, which is another African country and an African country that does not have the same independent status--or lack of independent status--as does Angola. Our percentage of nationals employed in Nigeria is substantial. In fact, it is so substantial that it is much above the half way mark and closer on to the 90 to 100 percent mark--the nationals in Nigeria employed by Gulf.

Equally, in Kabinda, nationals are employed; and whatever their political persuasions might be, those people that are employed are all natives of that particular area.

ASSEMBLYMAN GLADSTONE: It doesn't usually work out that the good makes the not so good look a little bit worse. That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Thank you, gentlemen.

MR. JONES: Thank you, sir.

ASSEMBLYMAN ESPOSITO: Is the representative from New Jersey Manufacturers here yet?

(No response)

Is Christopher Burke here?

(No response)

The next witness will be Jerry Ferrara from the New Jersey Gasoline Retailer's Association.

J E R R Y M. F E R R A R A:

My name is Jerry Ferrara. I am Executive Director of the New Jersey Gasoline Retailer's Association, representing approximately 3000 retailers in New Jersey.

I orginally came down here, particularly, to listen to what was taking place because I had some mixed emotions as to the relative merits of this particular bill, particularly, since the problem it addresses itself to is a rather massive problem. Whether the State would be able to cope with it or not was a question in my mind.

One particular point I would like to make is that if you do intend to use the Public Utilities Commission, it be funded adequately to do the job. Otherwise, it would be tantamount to using a fly-swatter to kill an elephant.

There were some questions that came up that I could not let go by without appearing here and answering some of them.

The question of allocations in New Jersey arose as to whether they were equal in the past couple of months--even though we are backtracking as to who to blame--or whether they are more equal now with some kind of regulation. There is no doubt in anybody's mind, who lived in New Jersey during the months of December and January, in particular, that New Jersey was hardest hit of any area in the country.

Colleagues, like myself, could not believe what took place in New Jersey. I had to bring photographs and newspaper articles to point it out.

Now, it seems strange that with some type of regulatory agency, namely, the FEO, New Jersey did start to get what may be an adequate share. I still have some doubts in my mind as to whether all the gasoline that should be in New Jersey is here or is being sent out of the State under various guises. The point is that we did have an agency.

So, the difference between voluntary allocation and mandatory allocation, as far as the State of New Jersey is concerned, certainly made a difference.

If this Public Utilities Commission can function in the way of making sure that New Jersey gets a fair share of anything that takes place in the future, then I happen to be for it, particularly, since the Federal Energy Office, as was pointed out this morning, is doing the job. They are an agency that, technically, expires in February 1975. Whether that takes place or not, only time will tell.

Pricing in New Jersey has various functions. There was testimony here that the price of the retail dealer is set by him. Well, that is true; but under present standards today, the tank wagon is the same price from one end of the State to the other. Previous to this shortage--created or otherwise; I have my opinions on that one--the fact is that they did use price variations on a wholesale level. While we did have a firm tank wagon price, we circumvented it by allowing temporary allowances, as they called it, so that one person in one part of a County would be paying less for gasoline than a person in another part of the County, due to the fact that the dealer was subsidized to a degree.

I looked at the regulations of this particular bill--the Gewertz bill, as I call it. I would propose that bill over the other one simply because it does define the areas in which the Public Utilities Commission is to go.

There is another possibility that can happen in New Jersey. It is the fact that while approximately 35 percent of the refining capacity is in the New Jersey-Pennsylvania-Delaware area, up to the present time we have been using foreign crude in the New Jersey refineries because it is more convenient to the ports. There is a possibility in the very near future that as this becomes more prevalent, New Jersey may be paying a higher price for gasoline due to the refineries using the foreign crude and, probably, assessing the price here rather than other areas of the country. That is something I anticipate that the Attorney General's office will be keeping an eye on.

I don't want to belabor this fact; but I do feel that if the agency is properly constructed and can do the job, then, it should be implemented. However, if it is going to be hog-tied by lack of funds and is just going to be a facade, then, we could just as well do without it because, then, it would have to be a national problem.

In closing, any type agency that has the function to get figures for our State, whether it be the State Energy Office that we have now--if that is a permanent structure--or if you create another one by puttting it under the PUC, will be a step in the right direction.

ASSEMBLYMAN ESPOSITO: Mr. Gladstone, do you have any questions?

ASSEMBLYMAN GLADSTONE: Mr. Ferrara, have you any idea, in the last six months, how many stations have closed down in the State?

MR. FERRARA: Over 500 have closed down.

ASSEMBLYMAN GLADSTONE: This is, perhaps, a little bit after the fact, but because the shortage still exists, the possibility always exists that we might go back on the rationing again. To your knowledge, how badly were some of the stations hit on the tie-ins with TBA?

MR. FERRARA: Well, you know, that is something that at a public hearing, you will never get anyone to admit to. We are adversaries, necessarily, on that particular point. Right now, I think several companies are forgetting what the anti-trust rules are. Because of lack of product, the competition for gallonage has died down and the pressure is on now to sell TBA--even greater than it was in the past--by several companies. That is true; that does exist. There are dealers willing to testify to that any time, particularly, since in New Jersey, they are not quite as afraid anymore of being cancelled out, as they were in the past, due to the fact that the New Jersey Legislature took the bull by the horns and did pass the first franchise bill in the country.

ASSEMBLYMAN GLADSTONE: Do you have any knowledge as to whether it is possible that some of the stations may be getting discounts on their gasoline again? I know the discount retailers up my way are starting to sell for less than the brand name stores, so I figured that either they are working on a shorter margin or maybe they are getting a little edge.

MR. FERRARA: Well, you have to differentiate now between a discount to a major brand or to what you call an independent.

ASSEMBLYMAN GLADSTONE: An independent.

MR. FERRARA: I don't think there are any discounts or special allowances being given to major brand dealers or one major brand dealer vis-a-vis another dealer of the same brand. The fact that the independents are lowering the price may be due to the purchasing part of the market. They were caught in a bind; many of them bought on the open market previously and did not have contracts for any large amount through the major brands. They bought wherever the market was. Even though it would be major brand gasoline, it was on the open market. That was kind of shut down when the shortage came along. Now, I would say, some of them have been able to get their sources of supply domestically; and the foreign market may have gone down a little bit.

The quirk on pricing, Assemblyman Gladstone, is a quirk that went back to the first Cost of Living Council--something that we argue about. We talk about foreign crude and domestic crude. Under the pricing regulations expounded in June 1973, every barrel of crude refined or found over the like number of barrels in 1972, was not put under price control. That wasn't bad; but as a bonus, a like barrel was taken out of the mainstream and removed to non-price control. That is the new and old oil that we talk about that sells in the American market at, perhaps, $10 a barrel vis-a-vis $5.50 or $6 a barrel for the stuff that comes down to you and me.

That shortage was created by the federal government back in June. I don't find fault with the majors for taking advantage of it; but I do find fault when in January, February and March, my dealers were getting shot and run over in the stations.

ASSEMBLYMAN GLADSTONE: That is all, Mr. Chairman.

ASSEMBLYMAN ESPOSITO: Thank you, Mr. Ferrara. Assemblyman Gewertz?

ASSEMBLYMAN GEWERTZ: Mr. Chairman, with your kind indulgence, I think there were several points raised that should be responded to statistically.

I think Assemblyman Gladstone raised the point of the foreign demand, and I can only tell you factually that in the United States in the last 20 years, the increase for crude oil has increased 110 percent. In Japan, the demand increase is 2567 percent. In West Germany--1597 percent; and in Italy--1079 percent. I think what Assemblyman Gladstone was alluding to was that. Somewhat to my disbelief, the answer that was given to him was, well, gee, we have a market so we have to sell to it.

You want to take into consideration that the United States, supposedly, has the highest standard of living for the working class of people of anywhere in the world. How, in God's name, are people in Italy or in Greece, who have a much lower standard, going to pay $2.12 a gallon for gasoline? How much gasoline can they buy? How much gasoline can they buy in Italy? How much gasoline can they buy in Japan? In Germany? In the Scandanavian countries where their income is so much, much lower than this country's.

So, the validity of the increase in the foreign market is true but not the amount they are able to sell to people that in many countries, don't have enough money to eat--much less buy cars and, again, buy gasoline on top of it.

There are some other interesting points as far as the production.

It was also stated that, well, we now have larger cars that burn more gas. What they forgot to tell you was that the cars are now designed to run on regular gasoline--not high-test, and the production of gallons of regular per barrel of crude oil is considerably more than high-test; so, you should actually be increasing your amount of gasoline--not decreasing it.

What has happened over a period of years? This goes back a long, long time. The oil companies took ships that were under American flag and transferred them to the Panamanian, Liberian and various other countries because they did not want to pay the American crews the wages that were required, which reduced the cost of their transportation. Look at the ships today. How much more of a crew does a super-tanker that may carry 200,000 to 250,000 barrels of crude oil have over a T-2 tanker, which only carried 2000 barrels? Ten more men in the crew? Fifteen more men in the crew? This ship is capable of carrying 25 times the amount of crude oil, so the cost has to be less--not more.

There have been some representations made. I'm not trying to pick on any particular company; but since Atlantic-Richfield made some statements as to the free enterprise system, I would like to call to the attention of the Committee the interlocking of an involvement of oil companies. Now, Atlantic-Richfield is certainly not one of the giants; but yet, Atlantic-Richfield participates in 15 pipelines. Atlantic-Richfield's primary and secondary directors interlock with other companies. Atlantic-Richfield has, on its Board of Directors or affiliates, representatives of Standard Oil Company of Indiana, Standard Oil Company of New Jersey, City Service and Continental Oil Company along with some utilities and banks. Atlantic-Richfield interlocks go to City Service Oil Company, Continental Oil Company, Diamond Shamrock Corporation, Standard Oil of Indiana and Standard Oil of New Jersey. The question that is raised in the need for regulations has to be borne out by the fact that how can people sit on directorships of two separate oil companies and make a decision. If it is not a monopoly, what decision do you make in a free enterprise and competitive system? Who do you favor--the Board that you are sitting on at this moment or the Board that you may sit on next week? The answer is obvious--there is not much difference; it's all one and the same--the great combine.

There has been testimony that this will punish the oil companies. Punish them for what? They have punished the public; they have punished business and industry. We don't want to punish anybody. We really want to see that they do what they are supposed to do--nothing more, nothing less. I cannot conceive why there would be such a great resentment--forgetting the prices--to furnishing the proper reports so that government and governmental agencies in the State of New Jersey will have accurate and concise figures--not some nonsense that is put out as propaganda.

The dwindling oil supplies... The need for other sources of energy... How many oil companies and their associates do you think are involved in other sources of energy--uranium, coal? Atlantic-Richfield, for an example, out of their own report, "is a forward looking energy company that has always tried to explore any viable alternative to fast-dwindling petroleum and natural gas supplies. Recently developed technology in the field of coal gasification has made coal mining attractive both environmentally and commercially." So, how in God's name can the government, anywhere, allow the brotherhood of oil companies now to control the coal mines, which may be another source that will be necessary? How can you sell coal? What makes coal lucrative again? The price of oil. And, who sets the price of oil? The oil companies. Who owns most of the stock in the coal companies? The same oil companies. If this is free enterprise, my friends, then we would be better off somewhere else on the face of the earth.

You talk about the benefits to the people of this country. Maybe, sometimes, some business and industry have a habit of forgetting their homeland. Now they are all great multinational companies. Now it's based on dollars and cents, on profits and on dividends per share--not on what is good or bad for your country.

What would happen if all of the oil companies decided that they were going to withhold the oil, even in more drastic quantities? How are you going to defend this country? What are you going to fly the planes with? The ships? How are you going to manufacture munitions and other things that may be necessary for your defense? Should the decision be made by ten guys sitting in a back room? Not possible--not possible.

I could probably speak for several hours, but I don't think it would add anything to the Committee hearings other than what I might be able to furnish as far as research material.

Three of the last four speakers alluded to: Look what happened to the Penn Central. Yes, look what happened to the Penn Central. The Pennsylvania Railroad was a healthy company at one point in time until a group of people sat down in a back room and decided, let's merge the Pennsylvania Railroad and the New York Central. The public screamed; the people said, no, it's alright; the ICC said, this is a good thing; it will help the railroad. Sure, it helped them; it bankrupted them; and everybody pulled off all of the profit through the merger. The guy that was then managing the Penn Central--I think his name was Bevins--was off flying with bunny girls at the taxpayers' expense. What is the taxpayer doing now? Are we not subsidizing the railroads with taxpayers' money? Is the federal government now saying, oh my gosh, what are we going to do for the poor railroads? Now we are going to pay for them with taxpayers' money when they pirated off everything that wasn't nailed down, including the tracks. Now the good old American fishcake, the working man, is going to pay for all of these endeavors. What did happen to the Penn Central is right!

I can tell you this much: If we enact this legislation or a reasonable facsimile to place some controls, you can rest assured it is not going to happen to the oil companies.

ASSEMBLYMAN ESPOSITO: Any questions, Mr. Gladstone?

ASSEMBLYMAN GLADSTONE: No; I wouldn't dare.

ASSEMBLYMAN ESPOSITO: Are there any other witnesses?

(No response)

I would like to take this opportunity before I close to thank the various witnesses who participated in today's proceedings. Your testimony has been valuable and enlightening, and it will go a long way in our subsequent Committee meetings in helping us arrive at a decision. Thank you.

(Hearing Concluded)

APPENDIX

STATEMENT OF EDMUND W. RENNER
EXECUTIVE DIRECTOR
FUEL MERCHANTS ASSOCIATION OF N. J.
BEFORE COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES
THURSDAY, MAY 30, 1974

Good morning. My name is Edmund Renner, and I'm Executive Director of the Fuel Merchants Association of New Jersey with offices located in Springfield, New Jersey.

The Association represents 750 small, independent marketers of Heating Oil, principally #2 Fuel Oil, and commonly referred to as Home Heating Oil. We are small businessmen and women, but doing a big, vital job. We deliver approximately 87% of the nearly 2 billion gallons of oil for heating to some 1,167,760 households in New Jersey. In addition, we supply oil for heating to schools, hospitals, offices, industries, and both public and private institutional facilities.

Our members are at the very end of a complex but efficient system of fuel oil distribution. This efficient method of distribution was clearly evidenced during the recent energy crisis. We represent a long established traditional system of home and industrial delivery, which provided the easy transition to a mandatory allocation program. This is in contrast to the absence of such an established system in other retail industries. We hereby go on record opposing A-1208 and A-1256 for many reasons. However, the most significant reason is that we represent small individual retailers in a highly competitive industry representing a prototype of the "small businessman".

There is no historical record indicating the need for PUC jurisdiction as proposed in this Program.

At the outset we feel it is important for this Committee to consider the original purpose of the establishment of the PUC. The general public interest purpose of these programs must reflect the original legislated purpose of the PUC. Our position is that this purpose does not legitimately include the oil industry (coal or other raw material industries) or even more emphatically does not include the retail end of the fuel oil distribution network.

You should note that throughout the Statute 48:2-13 the power of the PUC is to control and regulate Public Utilities. You will note that nowhere does the jurisdictional Statute allow the control of ordinary business, such as the sale of paper, hardware, lumber, coal, groceries, etc.

It is submitted that the State could not confer upon an administrative agency, such as PUC, the power to regulate general business, as the New Jersey Constitution, in Article 1, Section 1 sets forth the unalienable rights of persons protected from government encroachment, and among these rights are the rights of acquiring, possessing and protecting property, and this protection is the same as the due process of law set forth in the Constitution of the United States. These constitutional provisions forbid the arbitrary acts of officials, and assures that when the government does regulate that the means selected shall have a substantial relation to the object sought to be obtained.

It is felt that to place a small fuel oil distributor with one or two trucks in the same position as the telephone company, or the Public Service Electric & Gas Company, is oppressive, ridiculous and arbitrary.

Again pointing out that only Public Utilities are the things that can be regulated, we must look at the very well known and often quoted case (in the New Jersey Court of Chancery) of Junction Water Company vs. Riddle, which points out that the right to regulate a business is not a government prerogative, but there are businesses in which any person may engage without legislative authority or control.

In that case the party involved was engaged in selling water, and water companies with exclusive privileges are utilities - but here there was no great public use, but the water seller sold his own water, from his own well, to his own houses. The court said: "A water company or an individual does not become a public utility unless it owns, operates, manages or controls a plant or system for public use, and does this under privileges granted by the State".

This certainly eliminates our fuel oil dealer whose only public use is the prayerful hope that some customer will buy from him, and in this respect he is no different from the seller of paper, hardware, lumber, groceries or coal, and he has no privileges from the State whatever. He sinks or swims on his own energy and initiative in the typical old fashioned American way, and the government does nothing for him, gives him nothing, and he can be ignored by customers to the point of extinction.

To further talk about Public Utilities, which is the only thing that the PUC under law and the constitution may regulate, we might quote from Black's Law Dictionary, which defines Public Utility as: "A private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit".

Our fuel oil dealers surely have no power of eminent domain - they are in the oil business to make a living.

There is a whole section of the Public Utility Law devoted to the rights, privileges, and responsibilities of a Public Utility. None of these things, by the wildest stretch of the imagination, could possibly apply to the retail fuel oil dealer.

Assuming for a moment that the fuel oil dealer did meet the requirement of a true utility -- which he certainly does not -- is the State of New Jersey prepared to accept the sole responsibility for the destruction of Free Enterprise in this State? If the fuel oil dealer is considered a utility, then so is the lumber dealer, grocery store owner, hardware dealer, etc. Also, is the PUC prepared to grant the fuel oil dealer the same rights and privileges given to a true utility, i.e., guarantee the fuel dealers fixed high profits; guarantee franchised geographical areas in which to market?

We are aware, of course, that certain things have been brought under the PUC recently, such as the solid waste collection business. There was a case where it was a historical procedure. Waste control businesses are licensed; they operate in a franchised system; they are under direct jurisdiction of the health officer of the municipalities whose authority derives from the State.

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As previously pointed out, a Public Utility must be required to serve the public and operate under franchises and rights of the State. It is obvious that the solid waste collection business is a life or death situation for the public and is not like the fuel oil business, where if people do not like the way you conduct your business, they can go to another dealer or another source of energy.

With regard to the assumed purpose of the proposed legislation, which is to control petroleum products, refined, sold and distributed within the State of New Jersey, one has a difficult time trying to rationalize why the state would want to spend so much of the taxpayers' money in the unnecessary, incomprehensible expansion of the PUC to duplicate what the citizens are already paying for at the national level. The Federal Energy Agency which directs and enforces the Mandatory Petroleum Allocation and Price Regulations are spending millions of dollars nationally, regionally, and on an individual state basis to accomplish the same goals intended in this proposed New Jersey legislation. There is nothing the PUC could do to control the refining, distributing or selling of petroleum products in New Jersey that the 37-page Federal regulation is not already doing; except create an additional hardship on the small businessmen and women who are marketing fuel oil in the state. They will force them to submit more time-consuming reports in a duplicated effort by the New Jersey PUC circumventing the Federal Energy Agency. This would also be a total waste of the taxpayers' money.

STATEMENT OF EDMUND W. RENNER
BEFORE COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES
THURSDAY, MAY 30, 1974

It seems a pity that we are all assembled here today giving and listening to testimony in a defensive position against legislation which will not benefit the public one iota; when in fact we should be channeling our time and energies in the direction of finding solutions to the All Fuel Shortage and plan for the future welfare of the citizens in the State of New Jersey. We should be looking ahead for answers to how we will secure additional energy to satisfy the ever-growing demend within our state; not looking back duplicating a system already in effect.

Finally, we feel that constitutionally and practically the fuel oil dealer should not be under the jurisdiction of the PUC.

MOBIL OIL CORPORATION STATEMENT

To be delivered at a hearing of the

Committee on Transportation and Public Utilities

New Jersey State Assembly

Trenton, New Jersey

May 30, 1974

Mobil Oil Corporation appreciates this opportunity to comment on Assembly Bills 1208 and 1256 which provide (in varying degrees) for the regulation of the petroleum industry in New Jersey.

Mobil believes that the concept of regulation contemplated by these bills would be counter-productive and in the long run would inhibit the continuance of a vigorous, competitive and efficient petroleum industry in the State with no compensating benefits for the citizens of the State.

First, I intend to describe the nature and scope of Mobil's activities in New Jersey, the interstate and international character of our business and the relationship of our New Jersey operations to other states and countries. I hope that this information will enable the Committee to see some of the practical difficulties that would be inherent in the imposition of public utility regulation on the oil industry.

Mobil has conducted refining operations in New Jersey for more than fifty years. We currently operate a 100,000 barrels per day refinery at Paulsboro. Plans are in the works for an expansion of this refinery to 250,000 barrels per day.

In addition to the refinery, Mobil has three research laboratories, a paint mill, a plastics film plant, and three petroleum product terminals in the State. All together, Mobil employs about 3,900 persons in New Jersey, and pays them wages and benefits of approximately $75,000,000 annually.

Our refinery in Paulsboro uses crude oil mostly from three remote locations -- The Middle East in Asia, Nigeria on the West Coast of Africa, and Venezuela in South America. The kind of products and the volume of products that a refinery can produce will depend mainly on the following four factors:

1. The amount of crude oil.
2. The type of crude oil.
3. The kind of refinery equipment which has been provided, and
4. The method of operation.

The quantity of crude oil is obviously critical to the amount of products that a refinery can make. This was the root of the problem late last year when we were confronted with the Arab embargo. More than half of our crude oil at Paulsboro was then coming from Kuwait and Saudi Arabia. When these supplies were suddenly stopped, we had to scramble for replacements as quickly as possible. By switching to more Iranian, Nigerian, and Venezuelan crude, we were able to keep the refinery going and meet most of our product commitments. But the point I would like to make is that there would be no way that I can see for the New Jersey PUC to have helped out or regulated this vital matter of getting the right amount of crude oil brought in. The quantity available was largely determined by events external to the U.S.

Passing on to the type of crude oil -- this has a great influence on the product mix and on the quality of the products which a refinery can make. Some crude oils are naturally low in sulfur and yield products which easily meet the legal requirements for fuel in New Jersey -- which, incidentally, are the most restrictive of any of the states. Other crude oils of the more prevalent Middle East type contain much more sulfur and do not yield New Jersey type fuels. Another example of the importance of crude oil type concerns the problems of refining lubricating oils. It is not possible to make lube oil out of just any crude oil. One of the best lube sources is Kuwait crude oil which was abruptly cut off. Mobil substituted Iranian crude for part of this and also began to bring partly refined lube stocks from Texas to Paulsboro. All in all, the most effective way we found to deal with unexpected crude type changes was to go ahead and produce some fuels at Paulsboro which did not meet the New Jersey standards and ship these to other parts of the country. At the same time we brought in finished products from other states which fit the local regulations. This type of interstate and, in some cases, international scrambling is one of the things that oil companies such as Mobil are particularly well equipped to accomplish. We do not see how a state regulatory agency would be helpful with these trading operations and, in fact, we believe it quite likely that regulation would limit our flexibility of operation to such an extent that we would be unable to make all of the needed trades.

The third important factor is the type of refinery equipment that is available. Refineries are not all alike. Complex refineries such as Mobil's plant at Paulsboro are designed to squeeze every drop of the most valuable products such as gasoline, heating oil and lubricants, out of every barrel of crude oil. Simple refineries, on the other hand, generally produce low yields of gasoline but make large amounts of heavy black fuel oil -- the Bunker C type -- which is widely used in ships and factories, but is not useful for home heating.

A complex refinery will cost more than four times as much as a simple refinery of the same rated crude running capacity. Thus, whether a refinery is able to produce 20% or 60% of gasoline is determined by how much capital the owner decided to spend on the refinery equipment. If an owner has spent hundreds of millions building a refinery to make gasoline, he will be more than a little tense with the possibility of a regulatory agency directing that he not make gasoline but something else. On the other hand, if an owner has built a simple refinery, the possibility that he might be required to make a high yield of gasoline could be tantamount to ordering that he invest huge sums to change his refinery. If sweeping regulations such as those that would apparently be permitted under the proposed legislation were to come to pass, it seems likely that it would have an adverse effect on future refining investments in New Jersey.

Finally, I would like to come to the fourth factor, namely, method of operation. As discussed previously, it does not seem feasible for a state commission to regulate the amount and type of crude oil nor do we think it appropriate or practical to regulate the design of refinery equipment. The method of operation of a refinery can be changed to attain varying product mixes but only within limited ranges. This is customarily done between the winter and summer seasons to get as much heating oil as possible in the winter months and to make more gasoline during the heavy driving season. During the past winter, the Federal Energy Office regulated the ratio of gasoline to distillate that refiners produced. While we had no problem with the purpose of their regulation, it was our experience that the FEO was less able than we were to determine the need for yield changes. As a consequence, Mobil had already shifted to heating oil production before the FEO announced its production targets. In addition, we had already determined that the heating oil supply was sufficient and had switched back to gasoline before the FEO publicly advocated producing more gasoline. Bearing in mind that the FEO has a large and highly qualified staff and has access to nationwide reports on production and consumption of petroleum products, it would seem to be difficult for the New Jersey PUC to make a useful contribution in the highly technical area of determining refinery product mix.

Another aspect of petroleum regulation contemplated by the proposed legislation is the control of market prices. We believe this would be counter-productive. Not only would state control conflict with the existing Federal price control system, but we believe it would be unworkable. Although many efforts have been made to regulate prices -- not only of petroleum but of other commodities -- we are firmly convinced that the free market is the only successful mechanism for controlling prices. The current elaborate program of the FEA to regulate petroleum prices and the recently concluded efforts of the CLC to regulate the entire economy clearly demonstrate the problems of price control. Our economy is simply too large and too complex for anyone to fully understand and consistently take the proper moves to establish fair and equitable controls.

Another facet that argues against state control of refineries is that in recent years the drive for economy of scale and operational efficiency has resulted in construction of larger refineries, which, in addition to greater efficiency, impose less burden upon the environment than a multitude of smaller refineries. Ultimately, this means lower cost energy for the consumer. Today, a modern refinery must distribute its products over a much broader geographic area than its smaller predecessor; this has resulted in a system of regional refineries closely related to a supplier's national distribution requirements.

The output of fuel products from Paulsboro is primarily distributed to customers in New Jersey, Pennsylvania and New York. Eighty-four per cent of Paulsboro's current fuels production is transported to Pennsylvania and central New York State by pipeline; sixteen per cent of the fuels production is distributed in southern New Jersey from a terminal located at the refinery. The larger part of Mobil's New Jersey product requirement is produced not at Paulsboro but at Beaumont, Texas, and transported by pipeline to terminals located in Trenton and Linden.

It would be inappropriate for a state agency to regulate the operations of our New Jersey refinery supplying principally out-of-state markets. At the same time there would be obvious problems if New Jersey were to attempt to regulate our Texas refinery where Mobil's sales requirements for the northern part of the State are produced. One possible consequence of such regulation would be refineries dedicated to serve only one state. This would lead to many small refineries, each less efficient and collectively more prone to adversely affect the environment.

One final point that should be made is that public utilities are normally granted a monopoly in their service area. Regulated utilities are normally allowed to earn a predetermined rate of return on their investment and they can be reasonably assured of achieving this rate of return because of the grant of a monopoly to provide vital services. Oil companies compete in the marketplace and their entrepreneurial skills determine their rate of return. Considering the complex nature of the oil industry and the large number of competing suppliers, a restructuring of the industry to grant area monopolies and set realistic rates of return would be extremely difficult and costly, and would constitute an administrative nightmare. Although the proposed legislation is silent on this point, we would presume that there is no intent to grant oil companies service monopolies such as prevail in the utility industry.

In Mobil's view, utility type regulation would place the petroleum industry in New Jersey at a competitive disadvantage vis-a-vis the industry in other states and countries. It would also seriously lessen the appeal of New Jersey as a location for petroleum investments. We believe that New Jersey citizens would be disadvantaged both because the vitality of the in-state petroleum industry would be impaired and because the attractiveness of the New Jersey market to out-of-state refiners would be lessened. This would tend to reduce supplies within the State, and in the long run increase the prices at which such reduced supplies could be purchased.

We respectfully suggest that the proposed legislation is not in the public interest and urge this Committee to recommend against enactment.

I would be happy to answer questions members of the Committee might have at this time.

Ashland

Ashland Petroleum Company

DIVISION OF ASHLAND OIL, INC.

P. O. BOX 391 • ASHLAND, KENTUCKY 41101 • (606) 329-3333

JOSEPH C. DAVIS
Vice President
Refinery Sales Department

(606) 329-4513

May 30, 1974

Committee on Transportation and
Public Utilities
Assembly Chamber
State House
Trenton, New Jersey

Gentlemen:

My name is Seymour Urban. I am here speaking on behalf of Ashland Oil, Inc. concerning Assembly Bill No. 1208 known as the Petroleum Refinery Regulation Act. I am Manager of Ashland's Baltimore Division which includes the State of New Jersey for the distribution of gasoline and other petroleum products. I have with me today Mr. William Hobokan, another Ashland representative duly registered to act in Ashland's behalf before the Assembly.

While we do not own or operate any refineries within the State of New Jersey, we are drastically opposed to any attempt to transform a fully viable competitive private industry into a public utility type business.

In our opinion the oil business does not lend itself to the public utility concept which generally implies a guaranteed operating area, full recovery of costs and a guaranteed rate of return.

Leaving that aside however, all marketers of petroleum products do not own or operate refineries in New Jersey. There is a very real question in our opinion as to whether this Act applies to any refineries other than those within the State of New Jersey. Disregarding the impracticalities of controlling refinery production, for instance, certainly there is no authority for a Board of Public Utility Commissioners to attempt to control production of petroleum products outside the state.

Again while the term petroleum refinery operator means anyone who operates a refinery, if the only refineries which can be controlled are within the state it follows that the only prices, distribution and production which are controlled would be that of New Jersey refiners.

Committee on Transportation and
Public Utilities
Page Two
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Even if the legislation should be construed so broadly as to apply to outside refiners who are really "suppliers" under the definitions of the Act these proposed provisions and Board powers conflict with present federal petroleum production, allocation and price controls which must take into account the entire operation of the refiner, not just the interests of New Jersey.

The apparent intent from the Statement appended to the Act is to empower "the Board of Public Utility Commissioners to oversee the activity of petroleum refineries in this State" and control the output and distribution of the products. By the same token and disregarding the effect on interstate commerce, what happens if every other state, including those from which crude oil and refined products pass to New Jersey attempt to build their own little barriers. New Jersey, I am sure gentlemen, would be the worse for this exercise of restraint on the free flow of commodities.

Gentlemen, there are issues involved here greater than just dealing with petroleum shortage. This drastic restructuring of a basic part of the petroleum industry should not be done without thoughtful and careful consideration of the consequences on the industry as well as the consuming public.

Thank you,

Seymour Urban

SUN OIL COMPANY OF PENNSYLVANIA

TESTIMONY

BEFORE

ASSEMBLY TRANSPORTATION AND COMMUNICATION COMMITTEE

TRENTON, NEW JERSEY

MAY 30, 1974

Mr. Chairman, I am William H. Van Scoyoc, Northeastern Regional Marketing Manager for Sun Oil Company of Pennsylvania, headquartered in Framingham, Massachusetts. New Jersey is one of the states included in my region.

We appreciate the opportunity to voice our concerns regarding the passage of Assembly Bill 1256.

Sun is one of many integrated oil companies operating in New Jersey. It is important to point out that there are many types of integrated oil companies. However, all of these companies are not balanced alike. For example, in New Jersey, some companies are strong not only in crude supply, but also in marketing and refining. Others are strong in crude supply and refining only. Sun, on the other hand, is strong primarily in the area of marketing and distribution.

The level of competition by each company in this state is reflected by the vast number of oil-related facilities in place or proposed in the state. As for Sun, we operate products terminals in Newark, in Paulsboro and in Piscataway, and a fuel oil terminal in Hackensack. We also lease a fuel oil terminal to an independent distributor in Atlantic City.

We sell gasoline and other petroleum products in New Jersey directly or through distributors to more than 780 Sunoco-brand service stations. All of these stations are operated by independent businessmen-dealers and distributors. Sun has <u>no</u> company operated service stations in this state.

You might be interested to know that a recent report issued by the New Jersey Petroleum Council states that there are more than 60 oil companies (all marketers) doing business in the state, 18 of which are classified as majors.

The point I want to make is the fact that the many companies and different types of oil-related businesses operating in the state should overwhelmingly disprove any allegations regarding lack of competition. Passage into law of Assembly Bill 1256 and eventual placement of the oil industry under utility-type control would reduce the ease of market entry and flexibility to meet rapidly changing consumer needs.

Presumably, the intent of this legislation is to control monopolistic practices, of which the oil industry is unjustly accused. However, by definition, utility-type control only applies to natural and artificial monopolies, neither of which applies to our company. A natural monopoly is one in which the consumer is offered no choice in the goods or services he might wish to obtain, such as telephone service or gas and electricity service. The consumer has no choice but to accept whatever services are available from the local telephone company or electric utility or do without. That situation <u>does not</u> exist in New Jersey so far as the oil industry is concerned. Customers in the state have an abundance of retail outlets from which to choose, except in those places where state or local restrictions prohibit competition, e.g. New Jersey Turnpike Authority permit required to operate service stations. An artificial monopoly is one in which existing conditions or structure preclude the possibility of additional growth, e.g. local communities refusing to grant permits for the construction of new service stations. In this case, an increase in competition is prevented by circumstances beyond the control of firms seeking to penetrate the existing marketplace.

An often overlooked chapter in the oil industry competition picture includes the growth of the independent segment of the business. According to figures released by Lundberg Survey, Inc. on gasoline market share in New Jersey, the independent segment, made up of about 34 companies, at the end of 1973 controlled almost 25 percent of the gasoline market. This independent-brand market share has been growing in recent years, not only in New Jersey but nationally. Sun's share of the market is less than ten percent in New Jersey and less than four percent nationally.

The data also points out that the companies with major refining facilities in New Jersey, except for one, control less than ten percent of the gasoline marketplace.

Why the steady rise of competition from the independents and from refiners in the state? Much of this can be attributed to the inflow of products by efficient transportation sources. Even though there is strong competition among companies, they sometimes pool financial strength for economic reasons. For example, multi-ownership of the Colonial Pipeline insures the efficient transportation of product at reduced savings to those companies (majors as well as independents) operating in the state which could not otherwise economically operate their own refineries. These savings are eventually passed on to the consumer. Incidentally, jointly owned pipelines are common carriers and are regulated by the Interstate Commerce Commission, thus precluding the validity of charges to the effect that non-owners do not have the same opportunities as co-owners to ship their products.

Sun supplies products to two independently owned Sunoco-branded distributors in New Jersey. In turn, we feel that our continuing supply relationships to our distributors, coupled with like arrangements on the part of others, has played a major role in the rise of independent distributors in the marketplace and in increasing competition.

The punitive nature of Assembly Bill 1256 seeks to affix blame and to cure alleged wrongs committed by the oil industry during the recent energy crisis. The supply situation today has temporarily improved, in part, because of conservation measures on the part of the consuming public and because of an end to the Middle East embargo. While there may still be isolated instances of temporary disruptions, the allocation program has helped to ease the situation immensely. A major effort is underway today on the part of the industry to balance the national supply and demand structure. Government, industry and consumers are in an adjustment period and more time will be needed to work out the kinks.

It is very important to recognize that petroleum products sold by Sun Oil Company and its dealers in New Jersey are not refined in New Jersey nor is there any crude oil produced in the state. Therefore, the products that are marketed under the Sunoco brand are in interstate commerce. We have serious reservations about the validity of this proposed public utility legislation. The petroleum industry, unlike a regular public utility, has no monopoly. Profits are not guaranteed by any public body, nor is there any guarantee of a market in which to sell petroleum products. After all, we are not the phone company, and we do not generate petroleum products in this state.

In the meantime, my company is planning to keep its allocation levels as high as possible and cooperating fully with FEA and state officials to see to it that New Jersey gets its fair share of petroleum products.

Contrary to the allegations of price gouging on the part of industry, I want to also proint out that Sun's profit on petroleum products was held to 1-2/3 cents per gallon in 1972, and to 2-1/3 cents per gallon in 1973. Again, the sources of recent price and supply problems are mirrored in these profit figures.

In addition, I would also like to point out that historically New Jersey has been nationally known for price competition. This has been caused in part by the infinite number of large and small oil companies competing for the motoring public's business.

Mr. Chairman, committee members, in your consideration of this legislation, I urge you to consider the following three questions so essential to public utility regulation: Is the state of New Jersey willing to guarantee to marketers and distributors a market and profit? Is the state of New Jersey willing to guarantee a specific return to thousands of retail dealers, regardless of size, efficiency, etc.? And, is the state of New Jersey willing to undertake the bureaucratic costs in expense and slow response to change that such regulation would entail?

I would be pleased to answer any questions you may have.

STATEMENT OF

D. J. BOWEN, PRESIDENT

on behalf of

CHEVRON OIL COMPANY - EASTERN DIVISION

Submitted to the

COMMITTEE ON TRANSPORTATION AND COMMUNICATIONS

of the

NEW JERSEY STATE ASSEMBLY

on

May 30, 1974, at Trenton, New Jersey

Both New Jersey Assembly Bills 1208 and 1256 would extend the authority of the Board of Public Utility Commissioners to all or certain segments of the oil industry within the State of New Jersey. The Commission would have the authority and responsibility to set prices, dictate product mixes, and otherwise share in the management of the oil industry.

Presumably, the objectives of this legislation are no different from those of many other similar bills, both Federal and state: That is, to meet the energy demands of the American consumer and, in this particular case, the demands of the New Jersey consumer, at the lowest possible price. The question is how that objective is most likely to be met. Do we allow market forces and the private enterprise system to do the job? Or, do we place the petroleum industry, or parts of the industry, under the straitjacket control of government? And, if these controls are now extended to the oil industry, what industries are next? How long until government control of business becomes pervasive?

To superimpose public utility regulation on top of the mass of existing regulation shows no promise of bettering the situation from either the industry or the consumer viewpoint. To the contrary, it shows every prospect of serious public detriment.

Regulation does not cure shortages. It causes them. While emotionalism over the recent petroleum shortage finds an easy scapegoat in the oil companies, the facts are that the prime causes were: (a) Regulatory restrictions which have held down prices on natural gas and crude oil production, shut off drilling on tidelands, denied drilling permits on Federal leases, and delayed construction of the Alaska pipeline; and (b) the Arabian embargo which was aimed at U.S. governmental attitudes and activities, not at the oil companies. Economists generally agree that the shortage was primarily caused by regulatory policies. Certainly, regulation has not alleviated it.

Generally, public utility regulation substitutes for competition to prevent profiteering in monopoly industries, typically water, power, telephone, and the like.

Neither the oil industry nor its prices are monopolistic. The industry has been scrutinized in over 300 Federal Trade Commission investigations alone. Again and again, charges of monopoly have been found groundless. And one has only to study the oil industry's rates of return over the last two decades to find that they were decidedly below the norm. Even with recently improved profitability, the industry does not have the capital it needs to make the enormous investments needed to meet this country's future energy needs.

Placing the industry under public utility regulation in the State of New Jersey is not the formula for meeting the State's energy needs at lowest possible price.

The oil industry in New Jersey is pluralistic, consisting of several refiners and many marketers; the activities which make up the industry structure are many and are inextricably interrelated and interdependent. The attached chart shows the flow of these activities. As can be seen, there is no real starting or ending point; the structure is like a wheel moving both clockwise and counterclockwise at the same time.

Just as no one of these activities has independent existence, so the New Jersey parts are bound with interstate and international parts. Exerting a force on any one part will affect the dynamics of the entire structute. The imposition of public utility status on the industry in New Jersey, or on a particular part of the industry within New Jersey, cannot help but interfere with the dynamics of the entire industry, generating both short- and long-term problems.

In the short term, considerable time and energy would be expended resolving the many legal issues involved and identifying for regulation the purely intrastate parts of the industry -- if any.

Longer term, more serious problems begin. Experience with government regulation of business shows that too often the following result:

1. Needed business decisions are delayed. While the governmental board holds hearings and "studies" a projected pipeline or refinery venture, the public goes without expanded petroleum supplies for that much longer. Again, while the oil

industry is hurting for the increased revenues needed to support new construction and is struggling through a two- or three-year rate proceeding to obtain the authority to raise prices even by pennies, the necessary expansion of activity is at a standstill.

2. <u>Prices fail to reflect industry capital needs resulting in either an under- or over-supply situation</u>. By inexorable laws of economics, competition establishes free market prices which balance all the effects of supply, demand, and necessary return on capital. Regulatory agencies which step into the midst of the competitive market and fix prices which the free market would not fix inevitably upset this balance. If the regulated price of fuel is above the free market price, demand tends to fall off; there is a temporary oversupply and a resulting tendency toward wasteful operations and investment, in addition to the unnecessary burden it places on the consumer and the dangerous boost it gives to inflation. On the other hand, if the regulated price is below the free market price, demand tends to shoot up; there is a shortage of supplies and facilities to meet it, and the wasteful use of energy is encouraged.

Whether prices are unrealistically high or low, the public suffers. The Board would be unable to embrace all of the variables which influence the price level; it would be unable to recognize and react soon enough to avoid serious supply and demand misallocations.

3. Economic considerations tend to give way to political influences. Political winds are fickle and change rapidly. Regulators, who owe their positions more to popular appeal than to economic success, are naturally more responsive to the vagaries of public opinion than are businessmen who must always focus determinedly upon the long pull. Regulation by politics is, practically by definition, detrimental to the services available from industry.

4. Regulation dilutes accountability. Under public utilities regulation, business decisions would be shared by businessmen and the regulator. The inclination to "pass the buck" would be sizable, making both business and the regulating agency less answerable or accountable to the public.

5. Regulation artificially influences demand and consumption patterns of consumers. The need to use energy more efficiently became very apparent during the Arab embargo; it ought to continue to receive high priority by the American public. But artificially low fuel prices operate as an incentive to inefficient energy use. For example, they tend to keep people on highways in larger cars, when many might otherwise opt for public transportation, smaller cars, and the like. Furthermore, artificially low fuel prices increase the marginal cost of public transportation over the automobile, which tends to reduce the attractiveness of major investments in mass transportation.

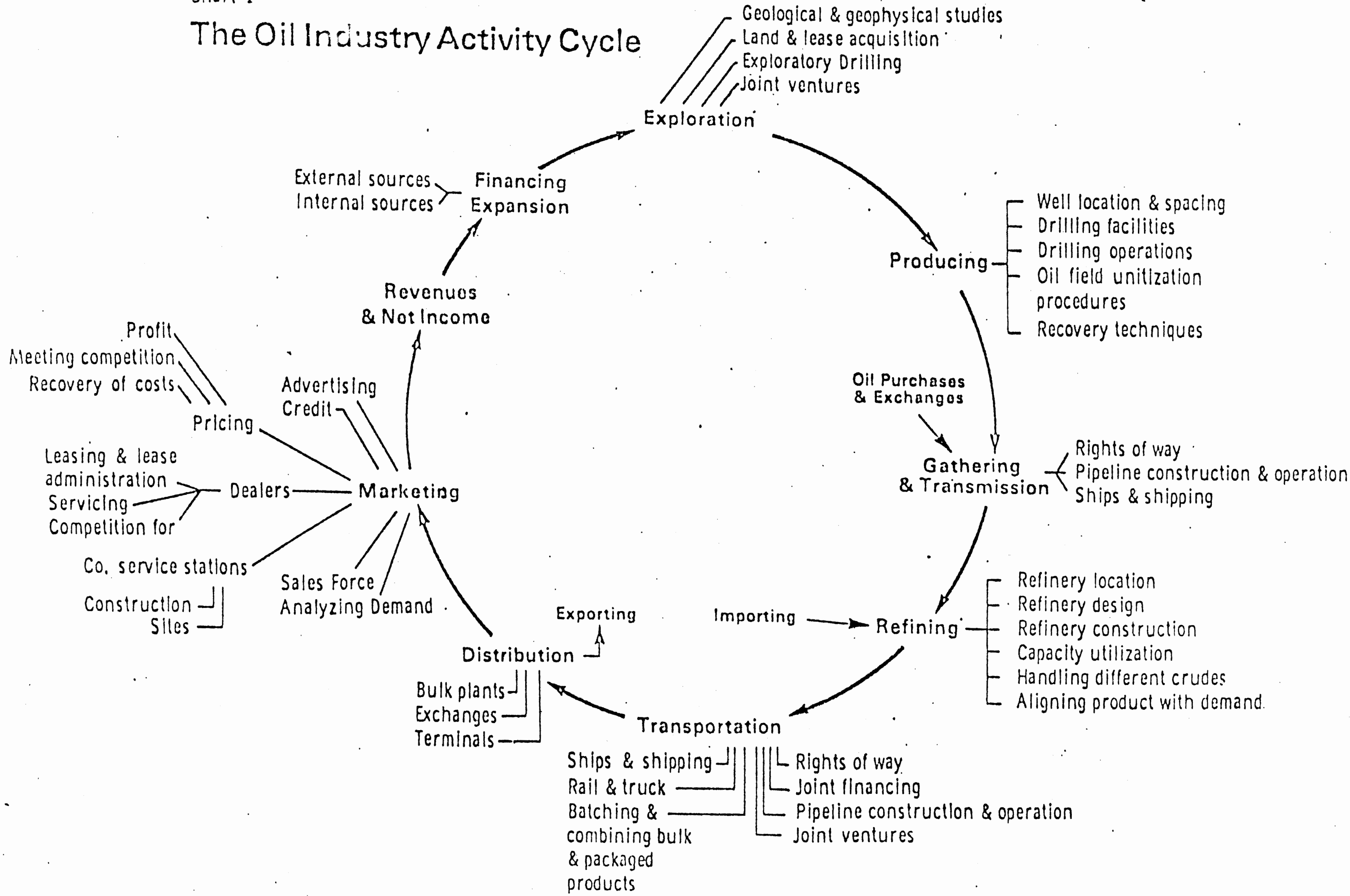
6. <u>Regulation can misdirect research and development efforts</u>. For example, if petroleum were priced artificially low, there would be little or no incentive to develop more costly but necessary energy resources. On the other hand, artificially high prices tending to provide a comfortable profit margin could have the effect of reducing incentive to seek low priced alternatives.

In closing, the best that even enlightened regulation could accomplish would be to shave a few cents off a gallon of gas. This would save consumers little more than three or four dollars a week. On the other hand, if the price fixed by the Board causes serious upsets in the supply/demand balance, fuel shortages and long gas lines would become a permanent or, at best, long-term part of our life.

We urge the members of this Committee and of the New Jersey Legislature to give serious consideration to these bills and then vote against their adoption.

Chart 1

The Oil Industry Activity Cycle



ASSEMBLY BILL A-1208
PETROLEUM REFINERY REGULATION ACT

Statement filed by Exxon Company, U.S.A., with the N. J. Assembly Transportation and Public Utilities Committee for the record of the public hearing held May 30, 1974, in Trenton, N. J. to review A-1208.

Exxon Company, U.S.A., wishes to be recorded in opposition to the proposed bill because of the following considerations.

1. The proposed bill duplicates many of the provisions of the "Emergency Energy Fair Practices Act of 1974" (Chapter 2 Laws of 1974) enacted by the New Jersey Legislature on February 4, 1974. Chapter 2 already provides the Energy Administrator's office with broad regulatory powers duplicated in Sections 4 d, e, g, and i of A-1208.

2. It is our opinion that certain provisions of A-1208 are redundant to federal legislation and regulations on price controls and allocations of petroleum products now administered by the Federal Engergy Office (now FEA). Enactment of A-1208 will cause conflicts, confusion and delays in the complex refining and distribution process. Provisions of Section 4(a) and (b) simply may not be workable.

3. We question the constitutionality of A-1208, particularly as applied to Sections 4 a, b, and c. The present mandatory allocation of all petroleum products is nation wide in scope with States participating in part of the Federal program. However, these are not independent allocation programs but State programs to enforce FEO allocation regulations.

   Authority to allocate petroleum products was added in the 1973 amendment to the Economic Stabilization Act, Public Law 93-281-87 Stat. (27 4/30/73). Section 203 provides:

   a. The President is authorized to issue such orders and regulations as he deems appropriate ... to - (3) provide ... for the establishment of priorities of use and for systematic allocation of supplies of petroleum products including crude oil in order to meet the essential needs of various sections of the nation and to prevent any competitive effects resulting from shortages of such products.

On November 27, 1973, the Emergency Petroleum Allocation Act of 1973 (P.L. 93-159) was signed into law and grants the President the powers to exercise specific temporary authority to alleviate supply shortages of crude oil, residual fuel oil and all refined products produced in, imported into, or refined in the United States.

Also, the price control regulation of Phase IV on petroleum products has been transferred to the Federal Energy Office (now FEA) where regulations have been adopted for the purpose of affecting refinery product mix which A-1208 attempts to do in Section 4 (a).

Federal regulation and law clearly preempt sections of A-1208.

4. Assembly Bill A-1208 further states that "it is imperative that the public safety, health and welfare be protected by empowering the Board of Public Utility Commissioners to 'oversee' the activity of petroleum refineries in this State." This provision of A-1208 is one of the most counter-productive provisions of the bill in terms of energy development and the encouragement of refining development. Any proposal to regulate in-State petroleum refineries under the Public Utility Commission is unsound and will discourage the energy growth we see as being so vital to New Jersey's health and welfare. The proposed legislation also ignores the fact that eighteen petroleum companies market petroleum products in New Jersey but do not refine in the State.

There are fundamental differences between our industry and companies normally regulated as public utilities. The latter companies are those with (usually) only one product or service to sell who are granted a monopoly because in the judgement of the government unit, compelling economic and physical factors rule out having more than one company in the market. For example, costly duplication of facilities is avoided if one company is given a monopoly on (say) water supply. The term "natural monopolies" has been used to describe such companies.

On the other hand, our industry is competitive by nature. They have hundreds of products to sell and have traditionally operated in a market characterized by many competitors with varying cost structures. There are nineteen recognized major brand companies and scores of private brand companies. The major brand company with the highest share of the U.S. motor gasoline market has less than 9% of the volume.

History has shown that for the consumer regulation is a poor substitute for competition. It is our opinion that the N. J. consumer stands to lose if the petroleum industry regulation as proposed in A-1208 were ever to be implemented.

Summary

We note that Assembly Bill 1208 was introduced on February 15, 1974, a time when the FEO allocation program with some early inherent "bugs" was just under way for a very short period of time. This was also the time when this State and the Nation were feeling the full impact of the Mid-East Arab embargo on crude supplies to the United States. Exxon's short fall in essential petroleum products during this period was directly related to the shortage of available crude oil to produce these products. In our opinion, multi-sponsored legislation such as A-1208 (while understandable in light of the concern of many of our citizens about the shortage of products) will do nothing to solve the local or National energy problem and will be a negative measure in terms of essential refinery development and essential supplies in New Jersey.

We urge that the Committee reject A-1208.

Submitted
May 30, 1974.

ASSEMBLY BILL A-1256

An Act to Extend the Jurisdiction of the Board of Public Utility Commissioners to Hydrocarbon Fuels

Statement filed by Exxon Company, U.S.A., with the N. J. Assembly Transportation and Public Utilities Committee for the Record of the Public Hearing Held May 30, 1974, in Trenton, New Jersey.

Exxon Company, U.S.A. wishes to be recorded in opposition to the proposed measure for the following considerations.

1. The subject bill would amend R.S. 48:2-13 to provide that the Board of Public Utility Commissioners "would have general supervision and regulation of jurisdiction and control over the manufacture, sale, distribution, allocation, possession, and use of all hydrocarbon fuels used for energy generation within the State." In the bill statement no specific reason is given for the measure or the need for such legislation.

   As outlined in our statement opposing A-1208, this bill will overlap Federal Law (Emergency Petroleum Allocation Act of 1973) and State Law-Chapter 2 Laws of 1974 in matters relating to product mix, prices, and allocation of petroleum products.

   Hydrocarbon fuels are not defined nor is energy generation, so we can only assume the measure is directed not only at oil products per se but coal and natural gas also. Again, we question the constitutionality of A-1256.

2. Any attempt to regulate our industry under the P.U.C. is also unsound for the reasons indicated in our statement opposing A-1208.

   We also wish to point out that the majority of hydrocarbon fuels supplied to the State of New Jersey are manufactured outside of the State. New Jersey has no indigenous source of any hydrocarbon fuels. The proposal, therefore, to provide general supervision and regulation of jurisdiction under P.U.C. may in itself be counter-productive to energy development goals so essential to economic growth and maintenance in this State.

We urge that the Committee reject A-1256.

Submitted May 30, 1974

STATEMENT BY

TEXACO INC.

TO

THE COMMITTEE ON TRANSPORTATION AND PUBLIC UTILITIES

OF THE

STATE OF NEW JERSEY ASSEMBLY

JUNE 24, 1974

TEXACO APPRECIATES THE OPPORTUNITY TO PRESENT ITS VIEWS IN OPPOSITION TO ASSEMBLY BILL 1208, AN ACT PROVIDING FOR THE REGULATION OF PETROLEUM REFINING OPERATIONS, AND THE SALE AND DISTRIBUTION OF PETROLEUM PRODUCTS REFINED AND DISTRIBUTED WITHIN THE STATE OF NEW JERSEY BY THE BOARD OF PUBLIC UTILITY COMMISSIONERS.

THE STATED PURPOSE OF THE PROPOSED LEGISLATION IS TO PROTECT THE SAFETY, HEALTH, AND WELFARE OF THE GENERAL PUBLIC BY INSURING THAT ADEQUATE SUPPLIES OF PETROLEUM PRODUCTS AT JUST AND REASONABLE PRICES ARE AVAILABLE. WHILE WE AGREE THAT IT IS NECESSARY THAT THE GENERAL PUBLIC BE PROVIDED WITH ADEQUATE SUPPLIES OF PETROLEUM PRODUCTS AT FAIR AND REASONABLE PRICES, THE MOST SEARCHING ANALYSIS FAILS TO SHOW HOW EITHER OF THESE OBJECTIVES WOULD BE ACCOMPLISHED BY THIS BILL. THIS PROPOSAL WILL NOT INCREASE THE SUPPLY OF PETROLEUM PRODUCTS TO THE STATE OF NEW JERSEY AND, IF ENACTED, SUCH LEGISLATION COULD PRODUCE COMPLETELY OPPOSITE RESULTS.

EXISTING FEA MANDATORY ALLOCATION AND PRICING REGULATIONS PREEMPT THIS PROPOSED LAW. SUPPLIERS WILL BE REQUIRED TO DISTRIBUTE AVAILABLE SUPPLIES ACCORDING TO FEDERAL GUIDELINES SO LONG AS FEDERAL REGULATIONS REMAIN IN EFFECT. THE REGULATIONS REQUIRE THE PETROLEUM SUPPLIERS APPORTION THE AVAILABLE QUANTITY OF PETROLEUM PRODUCTS ON A FAIR AND EQUITABLE BASIS TO ALL CUSTOMERS THROUGHOUT THE UNITED STATES BASED ON HISTORICAL PATTERNS AND DEMONSTRABLE GROWTH.

TEXACO SUPPLIED ITS CUSTOMERS IN NEW JERSEY 214 MILLION GALLONS OF GASOLINE IN 1973, AN INCREASE OF 5% OVER 1972. DUE TO THE REDUCED AVAILABILITY OF GASOLINE IN EARLY 1974, APPROXIMATELY 56 MILLION GALLONS OF GASOLINE WAS SUPPLIED FROM JANUARY THROUGH APRIL, A DECLINE OF APPROXIMATELY 12% FROM 1972. AS A RESULT OF IMPROVING AVAILABILITY OF CRUDE OIL FOR REFINING IN THE COMPANY'S REFINING OPERATIONS, TEXACO HAS MADE AVAILABLE INCREASED VOLUMES OF GASOLINE EACH MONTH SINCE MARCH, 1974. IN JUNE, THE COMPANY WILL MAKE AVAILABLE TO ITS CUSTOMERS IN NEW JERSEY AND IN EVERY OTHER STATE IN

THE UNITED STATES, 95% OF THEIR ADJUSTED BASE PERIOD VOLUME. IN ADDITION TO THAT VOLUME, TEXACO IS PROVIDING ANOTHER 3% STATE SET-ASIDE FOR NEW JERSEY AND EVERY OTHER STATE, AND IS FURNISHING 100% OF THE NEEDS FOR AGRICULTURE AND THE DEPARTMENT OF DEFENSE, AS WELL AS VARYING AMOUNTS FOR OTHER PRIORITY USERS.

PETROLEUM PRICES HAVE RISEN SHARPLY DURING THE PAST YEAR DUE TO HIGHER PRICES DEMANDED BY FOREIGN SOURCES AND HIGHER COSTS OF SECURING DOMESTIC CRUDE OIL. THE INCREASE OVER A LONGER PERIOD OF TIME HAS BEEN CONSIDERABLY LESS THAN THE COST INCREASE OF ALMOST ALL OTHER COMMODITIES. IN THE TEN YEARS PRIOR TO 1973, THE AVERAGE DEALER TANKWAGON PRICE OF GASOLINE ROSE BY ONLY 16.4% AS OPPOSED TO AN INCREASE IN WHOLESALE PRICES OF ALL COMMODITIES OF 26%.

FEDERAL MANDATORY PRICE REGULATIONS ALLOW THE MAXIMUM WHOLESALE PRICE FOR PETROLEUM PRODUCTS TO BE THE WEIGHTED AVERAGE PRICE AT WHICH A PRODUCT WAS LAWFULLY PRICED IN TRANSACTIONS WITH A CLASS OF PURCHASER ON MAY 15, 1973, PLUS INCREASED COST OF IMPORTED AND DOMESTIC CRUDE AND REFINED PRODUCT INCURRED SINCE MAY 15, 1973. THE PRODUCT PRICE INCREASES ALLOWED ARE ACTUAL

COST INCREASES INCURRED THROUGH THE END OF THE PREVIOUS MONTH ON A DOLLAR-FOR-DOLLAR BASIS. SUBSTANTIATION MUST BE SUBMITTED TO THE FEA ON ALL PRICE INCREASES UNDER THESE REGULATIONS.

IT IS OUR OPINION THAT THESE FEDERAL REGULATIONS OF PRICE AND ALLOCATION PREEMPT ANY FIELD OF SUCH REGULATIONS THAT WOULD BE ESTABLISHED BY ASSEMBLY BILL 1208.

IN THE EVENT AVAILABLE SUPPLIES OF PETROLEUM PRODUCTS REACH A LEVEL MAKING FEDERAL ALLOCATION AND PRICE REGULATIONS UNNECESSARY, ALL CONSUMERS WILL BE BEST SERVED BY A RETURN TO THE FREE MARKET SYSTEM WHICH HAS BEEN RESPONSIBLE FOR DEVELOPING THE WORLD'S MOST EFFICIENT AND EQUITABLE SUPPLY AND DISTRIBUTION SYSTEM. ONLY A FREE ENTERPRISE SYSTEM,COMPLETELY DEVOID OF PRICE CONTROLS AND PRODUCT ALLOCATIONS, CAN EFFECTIVELY AND EQUITABLY ENCOURAGE COMPETITION AND ENABLE THE PROPER CORRECTIVE FORCES TO BALANCE THE ENERGY SITUATION IN NEW JERSEY, THE UNITED STATES, AND THE WORLD.

THE PRESENT SYSTEM HAS WORKED WELL AND MADE AN ENORMOUS CONTRIBUTION TO THE ECONOMIC GROWTH OF THE STATE OF NEW JERSEY FOR OVER FORTY YEARS. THERE IS SIMPLY NO JUSTIFICATION FOR CHANGING THAT SYSTEM IN ORDER TO REPLACE IT WITH A HASTILY CONCEIVED LAW THAT OFFERS VIRTUALLY NO PROMISE OF IMPROVEMENT. TO THE CONTRARY, THERE IS EVERY INDICATION THAT IT WILL HAVE DISASTEROUS RESULTS FOR THE CITIZENS OF THIS STATE.

AT PRESENT, ALL CRUDE OIL PROCESSED BY REFINERIES IN NEW JERSEY, AND A PORTION OF THE REFINED PRODUCT DELIVERED TO NEW JERSEY CUSTOMERS BY TEXACO AND OTHER MARKETERS, IS IMPORTED FROM OTHER STATES AND FOREIGN SOURCES. THE EFFECT OF ENACTING SUCH LEGISLATION AS ASSEMBLY BILL 1208, IF OTHER STATES TOOK SIMILAR ARBITRARY ACTIONS, COULD BE TO LIMIT CRUDE OIL AVAILABILITY TO NEW JERSEY REFINERIES AND ULTIMATELY REDUCE THE SUPPLY OF PETROLEUM PRODUCTS TO THIS STATE'S CONSUMERS.

ENACTMENT OF THIS LEGISLATION WOULD PLACE THOSE COMPANIES THAT HAVE REFINERIES IN THE STATE OF NEW JERSEY AT A SERIOUS COMPETITIVE DISADVANTAGE WITH THOSE COMPANIES THAT NOW MARKET IN NEW JERSEY AND HAVE REFINERIES OUTSIDE THE STATE. IT WOULD ALSO DISCOURAGE NEW REFINERIES, REFINERY EXPANSION, AND DISTRIBUTION AND MARKETING FACILITIES THAT ARE NECESSARY FOR PETROLEUM ENERGY GROWTH IN THIS STATE.

UNLIKE PUBLIC UTILITIES, PETROLEUM COMPANIES ARE NOT BY ANY DEFINITION MONOPOLIES AND SHOULD NOT COME UNDER THE CONTROL OF PUBLIC UTILITY REGULATORY BODIES. THE OIL INDUSTRY IS HIGHLY COMPETITIVE IN ALL FACETS OF ITS OPERATIONS, EXPLORATION, PRODUCTION, REFINING, TRANSPORTATION, AND MARKETING. ACCORDING TO GOVERNMENT FIGURES, THE TOP 23 OIL COMPANIES PRODUCED ONLY 58% OF THE U.S. LIQUID HYDROCARBON PRODUCTION IN 1972. NO REFINER CONTROLLED AS MUCH AS 9% OF DOMESTIC REFINERY CAPACITY IN 1973 AND, TAKEN TOGETHER, THE EIGHT LARGEST REFINERIES REPRESENTED A COMBINED SHARE OF ONLY 59% OF DOMESTIC CAPACITY IN 1973.

AT THE MARKETING LEVEL, NO PETROLEUM MARKETER IN THE U.S. HAS A SHARE OF AS MUCH AS 8% OF THE GASOLINE MARKET. FROM 1967 TO 1972, MARKETERS OF NON-BRANDED GASOLINES, AS A GROUP, INCREASED THEIR SHARE FROM LESS THAN 19% TO ALMOST 28%. THERE ARE OVER 40 IDENTIFIED PETROLEUM MARKETING COMPANIES COMPETING IN THE STATE OF NEW JERSEY.

THE OIL INDUSTRY'S EARNINGS ARE NOT EXCESSIVE. FOR THE TEN YEARS, 1963 THROUGH 1972, PETROLEUM INDUSTRY'S NET INCOME AS A PERCENT OF NET WORTH WAS ONLY 11.8% COMPARED TO THE ALL-MANUFACTURING AVERAGE OF 12.2%. THE IMPROVED EARNINGS IN 1973 CAME LARGELY FROM ABROAD, AND A HIGH PROPORTION OF THE FIRST-QUARTER PROFITS OF 1974 WERE DUE TO NON-RECURRING INVENTORY PROFITS RESULTING FROM THE SALE OF LOWER COST INVENTORIES AT INCREASED PRICES.

THE PETROLEUM INDUSTRY'S FINANCIAL NEEDS, ACCORDING TO A SURVEY BY CHASE MANHATTAN BANK, IN THE UNITED STATES ALONE WILL EXCEED 500 BILLION DOLLARS IN THE 15 YEARS BETWEEN 1970 AND 1985. THE ONLY POSSIBLE WAY THAT OUR NATION'S NEEDS CAN BE SERVED WILL BE FOR THE OIL INDUSTRY TO GENERATE PROFITS LARGE ENOUGH TO COVER THE STAGGERING COSTS INVOLVED IN NEW EXPLORATION, PRODUCTION, AND MANUFACTURING.

THIS BILL REQUIRES REFINERY OPERATORS TO DIVULGE TO THE BOARD OF PUBLIC UTILITIES HIGHLY CONFIDENTIAL INFORMATION SUCH AS COSTS, VOLUME, ORIGIN AND DESTINATION OF ALL REFINED PRODUCTS FOR PUBLIC DISCLOSURE AT REGULAR INTERVALS. DISCLOSURE OF PROPRIETARY INFORMATION OF THIS TYPE WOULD HAVE THE NECESSARY EFFECT OF REDUCING COMPETITION RATHER THAN FOSTERING IT AND WOULD NOT BE IN THE BEST INTERESTS OF THE ULTIMATE CONSUMER.

TEXACO FILES REPORTS WITH 18 GOVERNMENT DEPARTMENTS, BUREAUS, COMMISSIONS, COMMITTEES AND BOARDS. OVER 200 INDIVIDUAL REPORTS ARE PROVIDED THESE AGENCIES, MANY ON A MONTHLY BASIS. THE COMPANY IS CERTAINLY NOT ATTEMPTING TO WITHHOLD INFORMATION FROM ANY AGENCY. WE SUBMIT, HOWEVER, THAT ENACTMENT OF THIS BILL IS UNNECESSARY AND WOULD REQUIRE ADDITIONAL STATE PERSONNEL TO REVIEW, CATALOG, AND DIGEST THE VOLUMINOUS INFORMATION SUBMITTED PURSUANT TO THIS BILL.

THE STATE IS ALREADY INVOLVED IN THE ADMINISTRATION OF THE MANDATORY FUEL ALLOCATION PROGRAM THROUGH ITS CONTROL OF THE STATE SET-ASIDE WHICH IS DESIGNED TO MEET EMERGENCY AND HARDSHIP SITUATIONS. NOTHING WILL BE ACCOMPLISHED BY VESTING ANOTHER STATE AGENCY WITH THE INHERENT NEED FOR ADDITIONAL MANPOWER AND FUNDING WITH THIS RESPONSIBILITY WHICH WOULD RESULT IN DUPLICATION.

THE FINAL RESULT AND EFFECT OF THIS BILL WOULD LESSEN COMPETITION, DISRUPT COST SAVING LONG-TERM SUPPLY AND DISTRIBUTION PATTERNS, INCREASE REFINERY MANUFACTURING COSTS, INCREASE STATE GOVERNMENT COSTS, AND ULTIMATELY INCREASE THE PRICE OF PETROLEUM PRODUCTS TO THE ALREADY OVERBURDENED CONSUMER. THERE MUST BE CAREFUL AND CAUTIOUS CONSIDERATION BEFORE ANY CHANGE IS MADE IN THE COMPETITIVE STRUCTURE OF THE PETROLEUM INDUSTRY. IT IS OUR BELIEF THAT ASSEMBLY BILL 1208 DOES NOT SERVE THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF NEW JERSEY, AND WE URGE THIS PROPOSAL BE REJECTED.