

HOME HEATING OIL PRICES AND SUPPLIES

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HEARING

BEFORE THE

COMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

THE ISSUE OF HOME HEATING OIL AND THE RAPIDLY IN-
CREASING PRICES WHICH CONSUMERS OF THAT FUEL ARE
FACING

DECEMBER 20, 1978

Serial No. 95-192

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 DiBona, Charles J., executive vice president.

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 Feldesman, James, general counsel.

Energy Department:
 Goldstein, Melvin, Director, Office of Hearings and Appeals.
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 Wade, Jack, president-elect.

New England Fuel Institute, Sidney H. Berson, member, board of directors.

New Jersey, State of, Joel R. Jacobson, commissioner, department of energy.

New York, State of, James L. Larocca, commissioner of energy.

HOME HEATING OIL PRICES AND SUPPLIES

WEDNESDAY, DECEMBER 20, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Anthony Toby Moffett, presiding, Hon. John D. Dingell, chairman.

Mr. MOFFETT. The subcommittee will come to order.

Today's hearings will focus on the issue of home heating oil and the rapidly increasing prices which consumers of that fuel are facing. I might say, as a Member from New England, and from Connecticut specifically, I am well aware, and my constituents are continuing to keep me well aware and sensitive, to these ever-increasing prices.

Since home heating oil was decontrolled in 1976, prices have risen from 9 to 15 cents per gallon, according to various estimates. All information shows that heating oil price increases have far outpaced the rate of crude oil price increases and the rate of inflation; this undoubtedly has created hardship for many people, particularly the poor and those on fixed incomes. The recent announcement of a dramatic and devastating price increase by the OPEC cartel does not add any comfort to the situation of those who are faced with skyrocketing home heating oil bills.

The home heating oil prices have continued to be the subject of special concern by the Congress, because of their impact upon consumers, and because this impact is particularly harsh in certain areas of the country which are heavily dependent upon heating oil, such as New England. When the Federal Energy Administration decontrolled heating oil prices in 1976, the Congress was promised that heating oil prices would be closely monitored and actions would be taken if prices rose more rapidly than justified.

To its credit, the Department of Energy embarked on an effort to look at the effect of heating oil price increases and recently completed a full evidentiary hearing into the home heating oil market. The results of the Department of Energy hearing are alarming. In short, the report found that refiners revenues increased at a rate far in excess of increased costs. These additional profits were estimated to total about \$331 million by April 1979. The report also concluded that there are, "Significant doubts * * * that workable competition exists in the refining sector of the industry." The report recommended improved price and profit monitoring by DOE, as well as the initiation of a rulemaking proceeding to determine whether controls should be reimposed.

Today, we will hear from a number of State officials on the impact of these price increases in their States and their recommendations for action. We will also hear from participants in the DOE hearing, and from some who were requested to participate but did not do so, to determine their views on the DOE report. Most importantly, we will hear from the Department of Energy, and its response to the report.

We are alarmed frankly by some reports that there are Department of Energy officials who are trying to downplay this report from the proceeding and even more importantly are apparently trying to ignore it. If this is true, we will want to know why. One major objective of the hearing is to learn whether the Department of Energy is prepared to take strong action, if necessary, to fulfill its commitment to the Congress to protect consumers from unwarranted price increases.

The chairman of this committee, John Dingell, who was not able to be here today, is concerned, as I am, that once again the Department of Energy has failed to provide our subcommittee copies of its statement in response to our questions within the time specified in our letter to the department. The rules of the committee are quite specific that the statements are to be sent to the committee at least 24 hours prior to presentation.

Other witnesses in the private and public sector do not appear to have a great deal of difficulty in complying with this rule. It is only the Department of Energy that fails to honor it. The committee wishes it would take steps to comply with the hearing requirements so that it complies with the rules tomorrow in the gasoline hearings. Failure to do so does raise the question of how seriously we are being taken. It is something very important to the Congress and the people we try to represent.

One final note: I hope the witnesses will address themselves, including the Department of Energy, to the President's anti-inflation fight. One wonders, as one looks at the Carter anti-inflation program, whether there is an energy component of the anti-inflation fight, or whether energy is exempt? Does it have an exemption from this fight? This is the kind of area that we would like to explore, among others, today.

Our first witness is the Honorable Ella Grasso, the Governor of the State of Connecticut. Governor Grasso, thank you for being with us.

I want to welcome you and say how appreciative the subcommittee and I are for your presence here today. You and I have had the opportunity to work on this problem together. I know your concern, your sense of urgency, and your compassion for the people who are suffering from these high home heating oil prices, Governor.

Before you begin, I would like to ask if any of the other members would like to say anything at the outset of the hearings. The gentleman from Massachusetts? The gentleman from Tennessee?

Governor, feel free to read your statement or paraphrase it. It will be included, without objection, in the record.

STATEMENT OF HON. ELLA GRASSO, GOVERNOR, STATE OF
CONNECTICUT

Governor GRASSO. Thank you very much, Congressman. I would like first to read a statement and to tell you I have listened with great care to my Congressman as he made his opening remarks, and I want to say that once again you have indeed focused on that matter which, to your constituents in the Sixth Congressional District, and to all of the people in the State of Connecticut, all of the people in New England and the Northeast, is a matter of very grave concern. The people of our State are now paying prices for home heating oil that are so high that they would have been unthinkable a few years ago.

The prices are a disaster for all, most especially for the poor and the near-poor and those who must live on fixed incomes. As these prices increase, I am sure the components of all those categories relying upon energy will increase as well. The situation has been compounded by the outrageous action of the OPEC cartel. The price increases already in place and the OPEC action fly in the face of President Carter's very real and commendable efforts to control inflation.

The irony of the OPEC action is that those nations raise the price of oil, which increases prices of oil products in the United States. Then they have the audacity to tell the United States that we had better control inflation or they might raise their prices even more. They create the inflationary pressures, then tell us to control inflation.

And who suffers from that twisted logic? The real victims are those men, women and children who face the cold of winter without the dollars to pay rising bills.

There are three facets to the challenge facing our people. First is the impact of home heating oil price increases in recent months, the effects of the OPEC increase on these prices, and steps the Government can and must take to meet this challenge.

The price of No. 2 heating oil is now more than 5 cents per gallon higher than it was at the close of last year. The average cost is 55.5 cents per gallon.

The Connecticut Energy Division predicts another increase of 2 cents per gallon before the end of this heating season.

What does this mean to an average family in my State? It means the family is already paying \$40 more this winter than it did last winter for home heating oil. It means that, when the additional 2 cents per gallon is added, the family will be paying \$50 more this winter than it did last winter.

When you add it up, Connecticut consumers this winter will pay an estimated \$359 million for home heating oil, \$44 million more than they paid last winter. This increase is a disaster for our already overburdened consumers.

The analysis by the Connecticut Energy Division shows that \$3 of every \$4 of the price increases of the past 3 months have occurred at the refinery level. Unanswered is the question of whether those increases were justified.

Now our people are faced with the OPEC price increase. When that increase becomes effective, another \$114 million will be added to the energy costs imposed on the citizens of Connecticut. More

than \$1 of every \$5 of that additional increase will be paid by consumers of home heating oil. In far too many cases, the added costs will be borne by those least able to pay.

The balance of the \$114 million increase will be reflected in higher prices for gasoline, industrial fuel oil, and residual fuel oil. Since two-thirds of residual is used to generate electricity, further increases can be expected in the family electric bill, adding to the burdens of our people.

It seems to me that all of these increases are a major blow to the effort to control inflation. The very survival of many on fixed incomes is seriously endangered.

The Federal Government should initiate a wide range of actions to meet this challenge in the short and long term.

In the short term:

The U.S. Department of Energy must conduct an immediate investigation of the causes of price increases that have already taken effect. I do not understand why this has not been done. If there have been overcharges, they should be returned to consumers. Last week, the New England Governors, at my request, endorsed this approach and called on President Carter to initiate this action immediately because this has been the passthrough. This has been the creeping problem, and we at the other end of our pipeline are those who are suffering.

The Department of Energy also must monitor prices closely at the refinery level to determine whether competition exists and whether recent price increases are appropriate in a competitive environment. A further study of the nature and extent of recent price increases should determine whether the reimposition of price controls on home heating oil is justified.

Over the long term, the Congress must give priority consideration to a program which provides assistance to those unable to pay their heating bills. Our citizens on fixed incomes, already struggling to survive against inflation, must not be allowed to freeze because they cannot pay skyrocketing costs, and I tell you, Toby, there have been more people who have not been able to pay their bills; people in our district, in our country, who want very much to pay their bills, who always in their lifetime have met their obligations and responsibilities. The people on fixed incomes who are struggling to survive with inflation must not be allowed to freeze because they cannot pay the greater costs. Believe me, nothing has caused me greater anguish as a Governor than to think somewhere, somehow, because of these terrible price costs, any of our citizens would freeze to death because they were not able to have the fuel; they were not able to provide for themselves their minimum levels of subsistence. We talk so slightly about minimum levels of subsistence, and we find it in our neighborhoods. I think when we see it there, the problem becomes more serious.

During the past two winters—and I have come here; you have been there, and you have helped—during the past two winters, the Federal Government has provided Connecticut with approximately \$3 million annually for emergency fuel assistance. We matched these funds. Our State has essentially matched these funds with dollars of our own. In addition, many private fuel banks have

contributed significantly to meeting the needs of the poor and near-poor.

Experience has shown that our State needed an average of \$6.4 million each year. This money helped meet the special fuel assistance needs of those receiving welfare assistance, the working poor and the elderly living on fixed incomes. Last year, 44,000 Connecticut households received dollars from this humane program.

However, our people now face the prospect of further increases this winter, a projected 2 cents per gallon on top of the 5 cents imposed during the past 3 months, and we will be short in the funds that are available for the immediate time frame. The Connecticut Energy Division estimates that an average family of three earning a subsistence-level income will spend between 15 and 20 percent of its available funds for heating during the winter. Families living at this level cannot survive these fuel costs, and we cannot survive without fuel. They are faced with a challenge that can and must be met on a permanent and lasting basis.

The Congress cannot continue to meet these needs with special appropriations after the fact. This cannot be included. A permanent, special crisis intervention program is vital. Funds would be allocated by the Community Services Administration in emergencies through a formula based on need. This is the kind of standby program the Congress must enact, a standby program that, if enacted, can always be helpful.

Our responsibilities to those in need have always been clear. Recent price increases and the actions of the OPEC cartel make our obligations even more clear. But the challenge before us now is how to survive and how to manage. Even as we talk about the potential impact of the OPEC increases, we are being warned that those increases are being passed through even before the fact, so that what might have come at the end of a heating season can, in a very real sense, come while it is going on. Since we don't get very much action as to how this is evolving, what can be done for these controls? Our situation continues to be a difficult one for which we do not have answers that we can bring to our people. Accountability for all of us is very important. I think that it is essential that at every level of government we have this accountability.

I thank you for this opportunity to make this presentation.

[Testimony resumes on p. 30.]

[The attachments to Governor Grasso's statement, as well as the New England Regional Commission resolution, follow:]

SUMMARY SHEET
CONNECTICUT
HOME HEATING OIL PRICES

ALL FIGURES CALCULATED ON THE BASIS OF RESIDENTIAL CONSUMPTION OF 624 MILLION GALLONS ANNUALLY.

WINTER 1977-78

<u>Price per gallon</u>	<u>Total cost</u>	<u>Cost per family</u>	<u>Net Change</u>
50.5¢	\$315,000,000	\$404	

WINTER 1978-79

57.5 (projected)	\$359,000,000	\$460	+14%
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Total increase is 44 Million

OPEC*

60.5*	\$377,000,000	\$484	+ 5%
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*This does not include other increases which may take place as a result of market forces or Federal Regulatory Action. Other costs to Connecticut directly attributable to OPEC action are Gasoline \$39 million, Commercial Heating Oil \$9 million, Residual Oil used for electricity \$48 million.

December 19, 1978

ANSWERS TO QUESTIONS SUBMITTED TO THE STATE OF CONNECTICUT

1.(Q). A. HAS ANY AGENCY OR LEGISLATIVE BODY OF YOUR STATE CONDUCTED ANY HEARINGS HEARINGS OR STUDIES OF MIDDLE DISTILLATE PRICES AND SUPPLIES?

(A). We have been very concerned about the cost of vital fuels for Connecticut's citizens, particularly those on fixed or subsistence level incomes-- the elderly, handicapped and poor, and we have endeavored to monitor the situation particularly as it impacts those individuals. Recent price increases in home heating fuel in the range of 10% over last year have taken on much greater significance.

(Q) B. IF SO, PLEASE DESCRIBE THE NATURE OF THE PROCEEDING AND SUMMARIZE THE FINDINGS.

(A) In August, 1978, the Connecticut Department of Social Services held a public hearing on its proposed regulations pertaining to energy emergency assistance for recipients of Aid to Families with Dependent Children and for needy families with children receiving general assistance.

As a result, efforts have been made this year to streamline the process and reduce administrative costs in this program. The concerned State agencies as well as the representatives of the Low Income and Community Action agencies, together with representatives of fuel suppliers and utilities meet on a regular basis to coordinate efforts.

2.(Q) A. DOES YOUR STATE MONITOR DISTILLATE PRICES?

(A) Connecticut has a Winter Heating Oil Price Monitoring program supported this year by a \$4,000 grant from the U. S. Department of Energy.

(Q) B. IF SO, PLEASE DESCRIBE THE NATURE OF THE PROCEEDING AND SUMMARIZE THE FINDINGS.

(A) The program was developed in conjunction with the other Northeast states last year with funds from NERCOM. The survey is based on prices charged by 65 dealers throughout the state. The information includes weighted average, a regional average, the highest and lowest priced dealers and an average price by dealer size.

The price of #2 heating oil is currently 5¢ per gallon higher than at the close of last year, averaging 55.5¢ per gallon. We estimate another 1 or 2¢ per gallon price increase before the end of the heating season.

The pattern of increase is quite different than what occurred during the 1977-78 heating season when average prices rose from 49.8¢ to 50.7¢ per gallon and receded slightly to 50.5¢ per gallon by the end of the season.

An OPEC price increase of 10% would mean a 2¢ per gallon increase in prices, although the impact of any such increase affect heating oil prices this season.

2 (B) CONTINUED

The cost impact of various price increases has been summarized on Table 2. The 5¢ to date represents an average increase of \$40 in a family's fuel oil bill this heating season. This could rise to \$56 per family if the additional 2¢ in the cost per gallon of fuel oil materializes. At 57.5¢ per gallon, Connecticut home heating oil consumers would pay an additional \$44 million. /

Three-quarters of the recent price increases in heating oil have occurred at the refinery level. Frankly, we just don't know enough about refinery pricing practices to ascertain whether all these increases are justified.

As to fuel oil supply, inventories are currently at 220 million barrels nationally. While this is below last year's level, it should be adequate. A colder than normal winter would produce upward pressure on prices in excess of those already specified.

(Q) C. WHAT HAS BEEN THE EXTENT OF DOE'S TECHNICAL AND FINANCIAL ASSISTANCE TO YOUR STATE FOR ITS MONITORING PROGRAM, AND HAS IT BEEN ADEQUATE?

(A) DOE's financial assistance, both last year and this year, has been adequate. Technical assistance in the monitoring program was not needed.

2. CONTINUED

(Q) D. WHAT INFORMATION, IF ANY, SHOULD DOE BE COLLECTING CONCERNING
MIDDLE DISTILLATE PRICES AND SUPPLIES?

(A) A national and international picture of middle distillate supplies
and prices would be helpful, particularly in the form of historical
trends and comparisons between different periods of time.

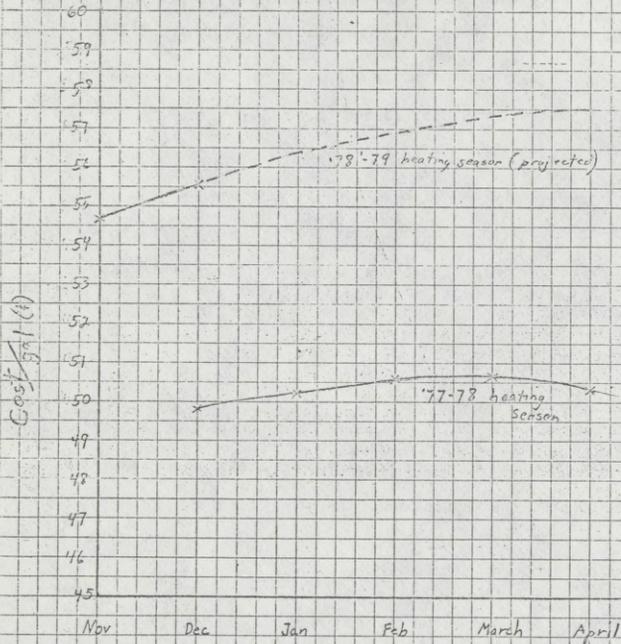
3. (Q) PROVIDE YOUR ANALYSIS OF THE EFFECTIVENESS AND ADEQUACY OF FEDERAL AND STATE FUEL ASSISTANCE AND WEATHERIZATION PROGRAMS.

3. (A) For winters of 76-77 and 77-78, the Federal Government, through a special act of Congress has made available to Connecticut about \$3 million each year for emergency fuel assistance. In both years, it was necessary for the Governor to declare an emergency before the money was forthcoming. The first year, it was distributed through the State Energy Office under special guidelines; the second year, it was distributed through the Department of Community Affairs. In both years, this amount, added to an almost equal amount added through state efforts and to a lesser extent private efforts, appeared adequate within the distribution timeframe, but many needy persons could not be included in the process.

Experience has shown that the State has needed between \$6 and \$7 million during the past two years to meet the special fuel assistance needs of those on welfare grants, the working poor, and the elderly on fixed incomes.

The Federal Government appears to us to have recognized that fuel assistance will be a continuing, chronic need in the action of OMB through their appropriation of \$200 million to CSA for fuel assistance this winter. If Connecticut's share is at the expected level of about \$3.2 million under existing CSA's formula, this amount added to about \$2.3 million from other sources, would be not far behind last year's level.

Price increases in home heating oil



77-78 - 78-79 Heating Seasons

Table 2

43 210 72

1978-79 HEATING SEASON COST INCREASE
TO RESIDENTIAL CUSTOMERS

Cost Increase Cents/Gallon	Increased Cost to Average Household Dollars	Increased Cost to Connecticut Millions of Dollars
1 ¢	\$ 8	\$ 6.24
2	16	12.48
3	24	18.72
4	32	24.96
5	40	31.20
6	48	37.44
7	56	43.68
8	64	49.92
9	72	56.16
10	80	62.40

Average oil consumption for a 6200 degree-day winter is approximately 800 gallons of oil per heating season.

There are approximately 780,000 oil-heated homes in Connecticut

Total gallons for Residential Sector - 624 million gallons

Total cost of #2 to Connecticut @ 57.5¢/gallon = \$358.8 million
@ 50.5¢/gallon = \$315.12 million

3 (continued)

Last year, 44,000 Connecticut households received energy assistance at a total of \$6.4 million.

However, the steep rise in home heating oil costs since September 1978 (5¢/gallon) and anticipation of an additional 1 - 2¢/gallon in the next two months, combined with probable abrupt rises in utility rates will probably leave us considerably short of needed assistance this year.

Attached data (1978 Report of the Commission on Human Services) shows that an average family of three on Welfare spent \$41.00 in 1977 for fuels and utilities per month. A 10% increase already as of December, 1978, would make this \$45.00/month, or about 12.5% of the family income. Rising costs of fuel oil and utilities in the Northeast are pushing this percentage toward 15-20%/month by the next heating season.

If crisis intervention funding in ensuing years is to be reduced, it is essential that the Weatherization Program for Low Income and Aging continues at an increased level of funding. And, in addition, it is important that DOE regulations and guidelines be made more flexible in order to enable states to execute more effective weatherization efforts. The flexibility should particularly provide variable provisions of funding between materials, labor, administration, transportation and training.

To date, the State of Connecticut has accomplished the weatherization of 3,000 units with funds from NERCOM and CSA.

SAMPLING OF
SAVINGS REALIZED FROM
INSULATION ACTIVITIES ON
NEW ENGLAND REGIONAL COMMISSION
WEATHERIZATION ACTIVITIES
As Of 5/31/78

<u>TYPE OF FUEL</u>	<u>ANNUAL UNIT OF SERVICE SAVED</u>	<u>ANNUAL DOLLAR SAVINGS REALIZED</u>
Electricity	97,880.30 Kwh.	\$ 4,306.33
Natural Gas	119,971.78 Cu. Ft.	48,749.29
No. 2 Home Heating Oil	410,949.49 Gallons	207,641.62
		\$ 260,697.24

AMORTIZATION OF INVESTMENT

Total Dollars Available for Materials:	\$ 325,342.00
Total Dollars Used for Labor:	113,869.70
Total Dollars - Materials and Labor	439,211.70
Years Required to Repay Materials Investment:	1.2480
Years Required to Repay Labor Investment:	.4368
Years Years Required to Repay Materials and Labor Investment:	1.6843

TOTAL SAVINGS

Total Barrels of No. 2 Home Heating Oil Saved Annually:	9,784.51
Total Kilowatt Hours of Electricity Saved Annually:	97,880.30
Total Cubic Feet of Natural Gas Saved Annually:	119,971.78

Prepared by: The OFFICE OF ENERGY ASSISTANCE
Department of Community Affairs
Bureau of Human Resources Development
W. JAMES RICE, Commissioner and State Economic
Opportunity Office Director

	Average Monthly Caseload	Average Number of Recipients	Federal Share Estimated Annual Cost	State Share Estimated Annual Cost	Local Share Estimated Annual Cost	Estimated Annual Cost (Total)
1. SSI-SS	9,540	9,540	\$ 0	\$ 11,962,187	0	11,962,187
2. AFDC	42,612	129,397	75,960,863	75,960,864	0	151,921,727
3. AFDC-UF	1,004	4,575	2,324,015	2,324,016	0	4,648,032
4. MEDICAID	90,504	180,860	120,391,740	120,391,740	0	240,783,480
5. CANAD	1,206	1,206	0	2,698,983	0	2,698,983
6. G.A.	14,500	22,500	0	22,729,000	12,209,200	34,938,200
7. FOOD STAMPS	59,307	168,770	42,149,152	1,371,856	0	43,521,008

TABLE 2: COMPONENTS OF THE AFDC FLAT GRANT FOR FAMILY OF THREE

	July 1978 \$ 125.97
Food	29.53
Clothing	13.77
Personal care	4.11
Household expenses	19.74
Utilities	21.64
Heating fuel	23.89
Special needs	123.00
Shelter (Region B)	\$ 361.65
Monthly Total	\$4,339.80
Yearly Total	

3. (Continued)

Another 3,000 units is projected with funds totalling \$1.2 million from DOE, although administrative delays and the lack of labor funds to date have required an extension of the grant to June 30, 1979.

DCA is presently submitting a proposal to DSS for \$900,000 as part of a Workfare Program to furnish the labor for the continuation of the Weatherization Program.

A sampling of 1,000 units weatherized with NERCOM funds provides an excellent example of the potential savings to be realized from a program of this kind. This sampling is attached.

Energy conservation for the low income and aging persons does not cease with Weatherization. The State of Connecticut jointly with DOE is developing an oil burner efficiency program for low income and aging households. In addition, the State has used Energy Extension Service funds to explore ways of energy efficiency/conservation education aimed at low income/aging persons in order to enable them to save energy (and money) beyond home weatherization. Equally important is the matter of tenant/landlord relationships as regards energy use and again our Energy Extension Service is probing this area. The State of Connecticut, one of the ten pilot states to run an EES pilot program, is vitally interested in seeing EES funding continued as a vital part of our state energy conservation outreach effort, particularly because EES has proven to be an excellent way to bring inter-organizational efforts to bear on the energy program.

3. (Continued)

We Recommend:

1. That fuel assistance, with a formula based on need, average heating degree days, energy cost overburden (differential regional costs of fuel and utilities), and reflecting increasing costs of fuel, with \$200 million as a base as of 1978, be continued as an integral part of the National Energy Plan, in accordance with President Carter's articulated philosophy in announcing the Plan. (See attachment).
2. We also recommend that fuel assistance should be tied to progress in weatherization and burner efficiency check and adjustment, together with a special urban thrust for the Energy Extension program as regards tenant education, tenant-landlord workshops in conjunction with the Community Action agencies, and Low Income Planning agencies.

Therefore, the DOE guidelines for use of funds allocated to Weatherization should include not only materials, but be flexible in providing for optimum utilization to accomplish the purpose.

THE WHITE HOUSE
WASHINGTON

APRIL 29, 1977.

In each period of our history, the nation has responded to challenges which have demanded the best in all of us.

This is one of those times.

Our energy crisis is an invisible crisis, which grows steadily worse—even when it is not in the news. It has taken decades to develop, as our demand for energy has grown much faster than our supply. It will take decades to solve. But we still have time to find answers in a planned, orderly way—if we define the changes we must make and if we begin now.

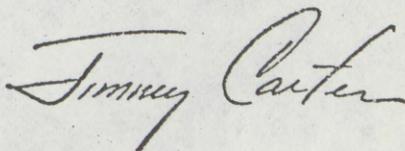
This report explains why we have to act, and gives you the details of our Plan. The Plan is complicated. I am sure that many people will find some feature of it they will dislike along with features they can support. But it is a carefully balanced Plan, which depends for its effectiveness on all of its major parts.

Above all it is fair. Our guiding principle, as we developed the Plan, was that none of our people should be asked to bear an unfair burden, and none should reap an unfair advantage. There will be sacrifices, but they will be gradual, reasonable—and fair.

The changes the Plan recommends will mean a new direction in American life. In some cases heading in that direction may seem inconvenient. But I have faith that meeting this challenge will make our lives more satisfying.

We can rediscover the ingenuity and the efficiency which have made our nation prosper, rather than deepening our dependence on insecure imports and increasingly expensive conventional energy supplies. We can rediscover small-scale, more creative ways of satisfying our needs. If we are successful, we can protect jobs, the environment, and the basic American standard of living, not only for ourselves but also for our children and grandchildren.

I know that, if we work together as a united people, we will succeed.



4. (Q) DOES YOUR STATE HAVE ANY LAWS RELATING TO THE TERMINATION OF SERVICE TO CONSUMERS OF FUEL OIL?

4. (A) Fuel oil deliveries cannot be terminated without three days notice where the responsibility for paying of the bill is with someone other than the resident of that unit. PA 75-315. This Act was amended (PA 77-2, sections 2 and 4; No. 78A) which require that written records be sent. (See attached)

Ad-77-2 ss. 2+4 ; No 78 A

Sec. 19-88a. Procedure for suspension of delivery by fuel oil and bottled gas retailers to rental residences. No person, firm, corporation or partnership supplying fuel oil or bottled gas for the purpose of heating to a residential building which such person, firm, corporation or partnership knows, or reasonably should know, is occupied by any person other than the owner or any other party legally liable to the supplier for such fuel oil or bottled gas shall fail to provide such fuel oil or bottled gas in quantities sufficient to maintain the interior of such building at sixty-eight degrees Fahrenheit, unless such supplier notifies, at least three days prior to the time such building is reasonably expected to require an additional supply of fuel oil or bottled gas to continue to maintain the interior of the building at such temperature, the chief health officer of the municipality, town, city or borough in which such building is located of his intention to discontinue such supply of fuel oil or bottled gas. Such notice shall include: (1) The address of the residential building affected; (2) the name and if known to the supplier of fuel oil or bottled gas, the address and telephone number of the person, firm, corporation, or partnership or its agent financially responsible for the supply of fuel oil or bottled gas; (3) the date on which the building is reasonably expected to require additional supplies of fuel oil or bottled gas to maintain the interior of the building at sixty-eight degrees Fahrenheit; and (4) the reason for the refusal to provide fuel oil or bottled gas to the residential building. Such notice shall be given by telephone or in person during normal business hours of the municipality, town, city, or borough in which such building is located. The person, firm, corporation, or partnership supplying fuel oil or bottled gas shall maintain adequate records at its principal place of business of such notice including the date, time, and person to whom such notice was given. A copy of such record shall be mailed to such health officer on the same day as the notice was given. Within twenty-four hours after such notice was received from the fuel oil or bottled gas supplier, the health officer shall contact the owner, agent, lessor, or manager of such building and advise him of his responsibilities pursuant to section 19-65, and shall post notices in conspicuous places on the premises that service may be discontinued. The name of the supplier shall not be mentioned in such notice. The supplier of fuel oil or bottled gas shall not be liable to such person, firm, corporation, or partnership financially responsible to such supplier for the supply of fuel oil or bottled gas or its agent for any damages whatsoever caused by the negligence of such supplier in making the notification required by the provisions of this section.

(P.A. 75-315)

Sec. 19-89. Reports of communicable diseases. Each physician shall report in writing each case of cholera, yellow fever, typhus fever, leprosy, smallpox, diphtheria, typhoid fever, scarlet fever, all forms and stages of syphilis, all forms and stages of gonorrhea, chancroid or other communicable diseases occurring in his practice, to the director of health of the town, city or borough in which such case occurs, within twelve hours after his recognition of the disease. Each case of syphilitic or gonorrheal infection or chancroid shall be reported by full name, age, address and occupation, and such reports of infected persons shall be confidential and not open to public inspection. When a person suffering from syphilis, gonorrhea or chancroid is employed in the handling of food or fails to return to his physician for observation or treatment or fails to give satisfactory evidence that he is being treated by another physician or fails to give satisfactory evidence of reasonable inability to keep the appointment, the physician shall report such patient to the local director of health giving

5. (Q) WHAT IS YOUR ASSESSMENT OF THE STATE SET-ASIDE PROGRAM?

(A) State set-aside program is adequate with the 3% gasoline and 4% oil percentages. It has worked well in the past.

The gasoline set-aside is being used extensively this year due to the closing of 70 Gasland stations and the rationing of unleaded gasoline to dealers by Shell Oil.

The level of both oil and gasoline seems of the right order of magnitude to cover such temporary shortfalls. We recommend that they remain as they are.

6. (Q) WHAT ADDITIONAL ACTIONS SHOULD THE FEDERAL GOVERNMENT TAKE WITH RESPECT TO MIDDLE DISTILLATE PRICES AND SUPPLIES?

(A) We want to see vigorous DOE price monitoring at the refinery level to determine whether competition is occurring and whether the recent price increases are appropriate in a competitive environment. There should be further study of whether the nature and extent of recent price increases justifies the re-imposition of price controls for home heating oil.

Any immediate action to stimulate gasoline production will negatively effect heating oil production. At this time of the year, adequacy of heating oil supplies must take precedence.

We request that the record be reopened in the Proceeding on Home Heating Oil, before the Office of Hearings and Appeals, Economic Regulatory Administration, U.S. Department of Energy.

PA 75-301—sSB 970
Regulated Activities Committee

AN ACT CONCERNING THE ABILITY TO OBTAIN CATV SERVICE

SUMMARY: The act prohibits owners of multi-unit residential buildings from requiring or accepting payment, or discriminating in rent or services, in return for allowing CATV service. Owners are required to allow CATV wiring, if a tenant requests it, and if the CATV company pays its cost and "indemnifies and holds harmless" the owner for any damages it causes and meets applicable Public Utilities Commission regulations. Owners of such buildings under construction are required to allow CATV installation if the CATV company complies with the above conditions, and most wiring in these buildings must be concealed.

The act also prohibits CATV companies from interfering with existing rights of tenants to use a master TV antenna or individual antenna, and prohibits CATV companies from refusing to serve parts of their franchise area merely because this would require underground lines. **EFFECTIVE DATE:** July 1, 1975

COMMENT: Previously, there was no statute on the providing of CATV service to multifamily dwellings.

PA 75-315—sHB 5761²
Regulated Activities Committee

AN ACT CONCERNING SUSPENSION OF DELIVERY BY FUEL OIL AND BOTTLED GAS RETAILERS

SUMMARY: The act prohibits a fuel oil or bottled gas supplier from terminating service used for heating specified residential buildings, until he notifies the municipality's Chief Health Officer three days before fuel is to run out. The Health Officer must contact the building's owner, advise him of his responsibilities under already existing statute to provide heat, and post a notice to the tenants that services might be cut off. **EFFECTIVE DATE:** October 1, 1975

CONTENT & OPERATION:

Buildings Affected By Act

The act prohibits suppliers of fuel oil and bottled gas for residential heating from failing to provide sufficient fuel to heat the building to 68 degrees, unless the supplier notifies the Chief Health Officer of the locality. This applies to buildings which the supplier knows (or reasonably should know) to be occupied by anyone other than the owner or anyone else who is legally liable to the supplier for the cost of fuel. Thus, the legislation applies to buildings which have residents whom the supplier cannot bill directly for the fuel he supplies (and where the supplier should be aware

of this situation).

Notification By Supplier

The supplier's notification to the Chief Health Officer must be at least 3 days prior to the time at which the building would be reasonably expected to next need fuel. The notice must include: the building's address, the name of the owner or agent responsible for the building's fuel supply (and his address and telephone number, if known), the date on which fuel is expected to be needed, and the reason for the supplier's refusal to provide fuel. This notice may be given by telephone or in person, and the supplier must keep a record of such notice, and to whom it was given. A copy of this record must be mailed to the Health Officer on the same day the notice is given.

Responsibilities of Municipal Health Officer

The Health Officer, within 24 hours of receiving a notice from a supplier, is required to contact the building's owner, agent, lessor, or manager, and advise him of his responsibilities under already existing statute. Under that statute, if a temperature of 68 degrees is not maintained in residential (and other) buildings, then this is deemed injurious to health. If the management is responsible for providing such heat, but does not do so, then the owner or his agents are liable to a fine of up to \$100, or imprisonment for up to 60 days, or both, under that statute.

The Health Officer is also required to conspicuously post notices in the building that service may be discontinued, but the act explicitly prohibits such notices from containing the name of the supplier.

Nonliability of Supplier for Damages

The supplier is not liable to the person responsible for purchasing the fuel for any damages that might result from the supplier's failure to make the required notification.

PA 75-330—sHB 8262
Regulated Activities Committee

AN ACT CONCERNING THE AUTHORITY OF THE POWER FACILITY EVALUATION COUNCIL

SUMMARY: The act repeals a statute which required the obtaining of a location application five years in advance of the construction of certain power generating facilities. Under the previous statute, the Power Facility Evaluation Council (PFEC) had to approve such locations before any right of eminent domain could be exercised by anyone engaged in the generation and sale of electricity. The act requires a certificate, from the Council, for the exercise of eminent domain for a site for any power facility (including transmission lines) which may have a significant adverse environmental impact. Previous statute exempted

A Resolution of the New England Regional Commission
Concerning the Question of Crude Oil Pricing

WHEREAS, Congress has not resolved the question of crude oil pricing in the recently passed National Energy Act; and

WHEREAS, under existing legislation (Emergency Petroleum Allocation Act) mandatory price controls on crude oil expire on May 31, 1979; and

WHEREAS, the administrative options available to the President under existing law will not adequately protect oil dependent regions such as New England; and

WHEREAS, our estimates indicate that allowing immediate decontrol of oil prices would negatively impact this region to the extent of \$700 million to \$1 billion annually; and

WHEREAS, recent studies indicate that the low-income and elderly sectors of the population in New England currently spend 25% of their income on energy; and

WHEREAS, New England's energy costs on a BTU basis are already 26% above the national average (53% more in the industrial sector).

NOW THEREFORE BE IT RESOLVED by the New England Regional Commission that:

- Section 1. There be enacted a comprehensive energy cost protection program with consideration for low income groups and the elderly persons on low fixed incomes.
- Section 2. Any crude oil pricing legislation which is enacted must ensure that oil dependent regions are not placed in

worsened competitive position.

Section 3. The New England Regional Commission's Energy Program work in concert with the New England Congressional Delegation to introduce and support appropriate legislation.

Section 4. This legislation maintain the basic intent of the proposed National Energy Plan on pricing oil and gas on an equitable BTU basis, which will assure that pricing transitions take place in a smooth and equitable fashion.

Section 5. This resolution be transmitted to the President, Secretary of Energy and New England Congressional Delegation.

Section 6. This Resolution is effective immediately.

ADOPTION CERTIFIED BY THE NEW ENGLAND REGIONAL COMMISSION

By _____ DATE _____
J. Joseph Grandmaison
Federal Cochairman

By _____ DATE _____
Meldrim Thomson, Jr.
Governor of New Hampshire
State Cochairman

NEW ENGLAND REGIONAL COMMISSION

RESOLUTION NUMBER

A Resolution of the New England Regional Commission
Concerning Homeheating Oil Pricing

WHEREAS, homeheating oil prices in the Northeast have increased 4-5¢/gallon in the past few months; and

WHEREAS, these recent price increases alone will cost the region's households an additional \$200 million during this heating season; and

WHEREAS, a recent Department of Energy study has concluded that the federal government must develop a comprehensive program designed to assist low income consumers in obtaining adequate supplies of No. 2 heating oil and kerosene at reasonable price levels.

NOW THEREFORE BE IT RESOLVED by the New England Regional Commission that:

Section 1. The Administration should conduct an immediate investigation into the present oil pricing practices at the refinery level to evaluate the recent price increases in homeheating oil. Any overcharges should be returned to consumers.

Section 2. A standby entitlements program should be established for homeheating oil to protect homeheating oil users from escalating prices should imports of high cost homeheating oil be required due to an abnormally cold winter.

Section 3. The Department of Energy's Office of Hearings and Appeals reopen the evidentiary hearing of homeheating oil prices with emphasis on the competitive aspects at the refining level; the purpose of such hearings should be to ascertain if workable competition does exist at the refinery level to ensure an adequate supply of homeheating oil at reasonable prices.

Section 4. Homeheating oil be given a priority status at the refining level during the heating season.

Section 5. This resolution be transmitted to the President, Secretary of Energy and New England Congressional Delegation.

Section 6. This Resolution is effective immediately.

ADOPTION CERTIFIED BY THE NEW ENGLAND REGIONAL COMMISSION

By _____ DATE _____
J. Joseph Grandmaison
Federal Cochairman

By _____ DATE _____
Meldrim Thomson, Jr.
Governor of New Hampshire
State Cochairman

Mr. MOFFETT. Governor, thank you for your excellent statement. The gentleman from Massachusetts, Mr. Markey, do you have any questions?

Mr. MARKEY. I don't have any questions, but I would like to thank the Governor for her eloquent exposition of the problems that beset all of us who represent New England. I want to echo her concern for the OPEC price increase and the impact it will have on consumers in our region. But I also want to note the even greater price increases that have come from domestic sources. Increases that are not easily explainable. Increases which make it difficult for many of us to accept the administration's energy policy when there appears to be no rationale for increases that have already come from our own American-run-and-owned oil companies.

Governor GRASSO. Thank you, Mr. Markey. We don't want all the emphasis on what may happen with OPEC to divert any of our intention from what has happened already during a very short period of time. The drama, the horror, and enormity of that could very well dwarf the significance of this creeping increase that I think is sinister.

Mr. MOFFETT. Mr. Gore, the gentleman from Tennessee.

Mr. GORE. I thank you for your remarks, Governor. My constituents in Tennessee rely very little on home heating oil, but it is a national issue. My concern for this issue is very deep, and I tell you I will continue to work with the chairman of today's hearings in his continuing efforts to get at the bottom of this problem. The issues in this hearing closely parallel the issues in other sectors of the energy part of our economy. I think the facts that we are trying to bring out today will be very helpful as we address other issues in home heating oil. I thank you for a very fine statement.

Governor GRASSO. Thank you.

Mr. MOFFETT. The Chair recognizes the gentleman from Colorado, Mr. Wirth.

Mr. WIRTH. Thank you, Mr. Chairman.

Governor, thank you for being with us. I must say I find, in listening to your very good testimony, a couple of themes that emerge which I hope we will be able to work on immediately. The question of rising utility bills for all consumers is of great concern to all of us today. Concerning the legislation related to lifeline rates, it seems to me that we should move as quickly as possible to see how the home heating oil can fit into that. It is very complicated, but it would be my hope, as all of us address this, that we will be able to perhaps sort out a pricing approach to this set of issues without moving into another realm of regulation. Now it may seem as though those two themes are mutually exclusive, but I don't think they are. I think there will be a possibility for us to tread a public policy line between the need for moving into some kind of further regulation by the DOE and just looking at rate structures to see if there is a way to develop a cushion for the people that you are so justifiably concerned about without creating another set of problems. I hope that in the 96th Congress all of us can get together and address this problem.

Thank you very much for being with us.

Mr. MOFFETT. The Chair recognizes the gentleman from New York, Mr. Murphy.

Mr. MURPHY. It is good to see you. Congratulations on an outstanding victory.

Ella, we not only have this OPEC oil increase to wrestle with, but we have imported about 174 million barrels of oil from Iran in the past 9 months, most of which went to the east coast and the gulf. In fact, 1 million barrels a month go to the strategic petroleum reserve. Coupled with the fact that we can lose that sort of oil because of the political problems in the gulf, the Persian Gulf, I think that our problems on the east coast are far more magnified than many people really think. We appreciate the fact that you are here today. I have a 27-page document I would like to include for the record, which shows the distribution of that product on the east coast.

Mr. MOFFETT. Without objection.

[Testimony resumes on p. 60.]

[The material referred to by Congressman Murphy follows:]

REMARKS AND DOCUMENT SUBMITTED BY

HONORABLE JOHN M. MURPHY

PUBLIC HEARINGS

DATE: Wednesday, December 20, 1978

SUBJECT: Home Heating Oil Prices and Supplies

This country is currently in a situation that I might characterize as approaching a state of emergency. The unstable condition in Iran, a source of nearly ten percent of the oil needs of the United States in general and the eastern half of the United States in particular, could cause skyrocketing fuel prices with the advent of deep winter. This will further feed inflation, disrupt many states such as Ohio and other midwestern states where no fuel will be available at any price just as developed last winter and perhaps we might even reach the chaotic conditions that we experienced in the dreadful winter months of 1973.

We are confronted with the fact that Iran, a major supplier, of the most populated part of the United States, may be lost to us. I have recently received the figures on the United States imports from Iran for the first nine months of 1978. In these nine months, 173,865,886 barrels of oil were shipped to ports along the East coast and Gulf coast. If the situation in Iran continues to deteriorate, the entire Eastern Seaboard and states east of the Mississippi could, in all likelihood, suffer the most severe shortages in history. We all recall the closing of schools, the loss of vital community services, factory closings - with their attendant layoffs and unemployment - and the halting of a whole host of activities that brought entire parts of the nation to a virtual standstill last winter.

I submit for the record this twenty-seven page document which delineates for the first nine months of 1978, the quantities of imported Iranian oil, the importing companies, and the destinations of this vitally needed fuel.

I would point out that nine million barrels of this oil - approximately a million barrels a month - is going into our strategic petroleum reserve and the salt domes of Louisiana to be used by this country in the event of a national emergency.

** DOCUMENT TO FOLLOW **

113865806 10141

U.S. IMPORTS FROM IRAN
IMPORTER: AMOCO OIL COMPANY

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
JANUARY						
Wilmington, Va.	Amoco	Yorktown, Va.	492,254	P	.140	45.90
Wilmington, Va.	Amoco	Yorktown, Va.	504,552	F	1.370	32.60
			996,806			
FEBRUARY						
Wilmington, Tx.	Amoco	Tex City, Tx.	425,019	F	2.510	28.60
Wilmington, Va.	Amoco	Yorktown, Va.	189,777	F	2.600	31.00
			614,796			
MARCH						
Wilmington, Tx.	Amoco	Tex City, Tx.	1,138,995	F/P	2.510	28.60
Wilmington, Va.	Amoco	Yorktown, Va.	1,150,372	F/P	1.400	33.50
			2,289,367			
APRIL						
Wilmington, Tx.	Armada	Corpus Christi, Tx.	394,240	P	2.300	33.00
Wilmington, Tx.	Amoco	Tex City, Tx.	957,663	F/P	2.120-2.610	27.50-31.50
Wilmington, Tx.	Amoco	Tex City, Tx.	1,391,719	F/P	1.050-1.860	34.40-40.60
Wilmington, Va.	Amoco	Yorktown, Va.	1,549,175	P	1.070-2.310	27.60-33.00
			4,292,797			
MAY						
Wilmington, Tx.	Getty	Delaware City, De.	436,170	P	1.960	27.90
Wilmington, Tx.	Amoco	Tex City, Tx.	395,056	F/P	1.920	35.10
Wilmington, Tx.	Amoco	Tex City, Tx.	956,216	F/P	1.950-1.960	27.90-29.80
Wilmington, Va.	Amoco	Tex City, Tx.	740,026	F	1.370-1.400	33.80-36.00
Wilmington, Va.	Amoco	Yorktown, Va.	214,864	F	1.960	27.90
Wilmington, Va.	Amoco	Yorktown, Va.	452,052	P	1.400	35.40
			3,194,344			
JUNE						
Wilmington, Tx.	Exxon	Bayway, N.J.	459,624	P	1.450	33.40
Wilmington, Tx.	Amoco	Tex City, Tx.	861,890	F	1.450-1.810	34.20-36.00
Wilmington, Tx.	Amoco	Tex City, Tx.	798,260	F	2.580	26.90
Wilmington, Va.	Amoco	Yorktown, Va.	748,582	P	1.450	34.20
			2,868,359			
JULY						

U.S. IMPORTS FROM IRAN
IMPORTER: AMOCO OIL COMPANY (Cont)

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>GIULI</u>						
Iverson, Tx.	Amoco	Texas City, Tx.	332,000	F	1.820	56.40
Iverson, Tx.	Amoco	Texas City, Tx.	450,735	F	2.240	29.60
Iverson, Tx.	Amoco	Texas City, Tx.	155,850	F	1.540	57.60
Port News, Va.	Amoco	Yorktown, Va.	194,122	P	2.360	27.20
Port News, Va.	Amoco	Yorktown, Va.	416,196	P	1.300-1.420	33.50-33.70
Philadelphia, Pa.	Armada	Philadelphia, Pa.	450,000	P	1.300	35.70
			1,998,903			
<u>TEMPER</u>						
Port News, Va.	Sohio Petro.	Unknown	376,396	P	1.300	53.70
Iverson, Tx.	Amoco	Texas City, Tx.	985,655	F	1.550-2.340	27.30-35.60
Orleans, La.	Shell	Unknown	450,088	P	1.300	33.70
Orleans, La.	Armada	Unknown	448,102	P	1.300	33.70
Port News, Va.	Amoco	Yorktown, Va.	1,097,806	P	1.340-1.510	32.20-33.30
			3,358,047			

19673419 - 0-miso

U. S. IMPORTS FROM IRAN
 IMPORTER: ASHLAND OIL, INC.

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
JANUARY						
New Orleans, La.	Ashland Oil	Catlettsburg, Ky.	1,214,840	F/P	1.410-1.420	33.80-34.30
New Orleans, La.	Ashland Oil	Canton, Oh.	500,000	F/P	1.410-1.420	33.80-34.30
FEBRUARY						
New Orleans, La.	Ashland Oil	Canton, Oh.	375,000	F/P	1.420-1.460	34.00-37.00
New Orleans, La.	Ashland Oil	Catlettsburg, Ky.	673,868	F/P	1.420-1.460	33.70-34.00
MARCH						
New Orleans, La.	Ashland Oil	Canton, Oh.	318,000	F/P	1.410-1.430	33.80
New Orleans, La.	Ashland Oil	Catlettsburg, Ky.	1,285,788	F/P	1.410-1.430	33.30-33.80
New Orleans, La.	Ashland Oil	Buffalo, NY	124,300	P	1.410-1.430	33.30-33.80
APRIL						
New Orleans, La.	Ashland Oil	Catlettsburg, Ky.	1,325,638	F/P	1.400-1.450	33.60-33.90
New Orleans, La.	Ashland Oil	Buffalo, NY	110,000	F/P	1.400	33.60-33.90
New Orleans, La.	Ashland Oil	Canton, Oh.	277,000	F/P	1.400	33.60-33.90
MAY						
New Orleans, La.	Ashland	Buffalo, NY	240,000	F/P	1.400-1.440	33.60-33.80
New Orleans, La.	Ashland	Catlettsburg, Ky.	802,370	F/P	1.400-1.440	33.60-33.80
Philadelphia, Pa.	Arco	Phila., Pa.	394,370	P	1.440	33.60
JUNE						
New Orleans, La.	Ashland	Buffalo, NY	80,000	P	1.500	33.70
New Orleans, La.	Ashland	Canton, Oh.	250,000	P	1.500	33.70
New Orleans, La.	Ashland	Catlettsburg, Ky.	736,439	P	1.500	33.70
JULY						
New Orleans, La.	Ashland	St. Paul Dk., Mn.	706,313	F/P	1.440-1.470	33.60-33.50
New Orleans, La.	Ashland	Buffalo, NY	348,928	F/P	1.450-1.470	33.50
New Orleans, La.	Ashland	Catlettsburg, Ky.	530,306	P	1.450	33.50
New Orleans, La.	Ashland	Canton, Oh.	250,000	P	1.450	33.50
Philadelphia, Pa.	Arco	Pt. Mifflin, Pa.	383,913	P	1.400	33.50
			<u>2,219,460</u>			

U.S. IMPORTS FROM IRAN
 IMPORTER: ASHLAND OIL, INC. (Cont'd)

Port of Entry	Recipient	Destination	QTY./Bbls.	Fee	Sulphur Content	API Gravity
AUGUST						
New Orleans, La.	Ashland	Catlettsburg, Ky.	643,650	F	1.420	33.50-33.61
New Orleans, La.	Ashland	Louisville, Ky.	8,000	F	1.420	33.50
SEPTEMBER						
New Orleans, La.	Ashland Oil	Catlettsburg, Ky.	249,267	F	1.440	33.50

118,29970 - Ashland Oil

U. S. IMPORTS FROM IRAN
IMPORTER: ATLANTIC RICHFIELD CO.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	927,840	F/P	1.170-1.350	33.00-33.4C
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	1,617,705	F/P	1.250-1.350	33.20-33.5C
Houston, Tx.	Arco	Houston, Tx.	332,584	P	1.400	33.50
<u>MARCH</u>						
Weston, Pa.	Arco	Marcus Hk., Pa.	379,565	P	1.200	40.40
Houston, Tx.	Arco	Houston, Tx.	336,503	F	1.800	33.00
New Orleans, La.	Arco	St. James, La.	487,862	F	1.200-1.210	40.40
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	414,300	F/P	1.260	33.60
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	106,186	F	1.180	32.90
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	427,062	F	1.300-1.360	33.30-33.70
<u>APRIL</u>						
Hamercy, La.	Arco	St. James, La.	396,787	P	1.260	33.50
Houston, Tx.	Arco	Houston, Tx.	354,939	F/P	1.850	33.40
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	833,627	P	1.200-1.550	33.00-33.30
<u>MAY</u>						
Corpus Christi, Tx.	Champlin	Corpus Christi, Tx.	387,616	P	.570	33.50
Houston, Tx.	Arco	Houston, Tx.	1,510,945	P	1.210-1.850	32.90-33.3C
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	951,935	F/P	1.210-1.250	32.50-32.9C
<u>JUNE</u>						
Houston, Tx.	Arco	Houston, Tx.	375,453	F	1.850-2.070	33.60-35.30
Houston, Tx.	Arco	Houston, Tx.	2,008,037	F/P	1.250-1.400	33.00-33.50
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	298,315	F	1.260	33.40
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						
<u>OCTOBER</u>						
<u>NOVEMBER</u>						
<u>DECEMBER</u>						

U. S. IMPORTS FROM IRAN
IMPORTER: ATLANTIC RICHFIELD CO. (Con't)

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravil</u>
<u>JULY</u>						
Houston, Tx.	Arco	Houston, Tx.	48,216	F	1.890	33.10
Houston, Tx.	Arco	Houston, Tx.	1,189,318	F	1.380-1.470	33.40-
St. James, La.	Marathon	St. James, La.	<u>393,411</u>	F	1.230	33.30
			1,623,145			
<u>AUGUST</u>						
Houston, Tx.	Arco	Houston, Tx.	1,047,190	F	1.270-2.200	33.30-
Houston, Tx.	Arco	Houston, Tx.	350,970	P	2.050	33.20
Philadelphia, Pa.	Arco	Philadelphia, Pa.	<u>200,979</u>	P	1.169	32.70
			1,599,139			
<u>SEPTEMBER</u>						
Houston, Tx.	Arco	Houston, Tx.	2,068,072	F/P	1.210-2.130	33.10-
Philadelphia, Pa.	Arco	Philadelphia, Pa.	1,381,695	F/P	1.160-1.560	32.70-3
St. James, La.	Crude	St. James, La.	<u>367,528</u>	P	1.300	33.10
			3,817,295			

19,273,860 - Atlantic Richfield

U.S. IMPORTS FROM IRAN
 IMPORTER: CHARTER INT'L OIL Co.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> St. James, La.	Clark O & K	Blue Island, Il.	1,005,346	F	1.400	33.80-34.8C

FEBRUARYMARCHAPRILMAYJUNEJULYAUGUSTSEPTEMBER

1,005,346 - Charter International
 Oil

U.S. IMPORTS FROM IRAN
IMPORTER: CHEVRON, USA

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
Perth Amboy, NJ.	Chevron	Perth Amboy, NJ.	308,938	F	2.100	33.30
Perth Amboy, NJ.	Chevron	Perth Amboy, NJ.	229,748	F	.210	32.40
			538,686			
<u>FEBRUARY</u>						
Perth Amboy, NJ.	Chevron	Perth Amboy, NJ.	290,900	F	1.900	32.60
<u>MARCH</u>						
Marcus Hk., Pa.	Sohio	Marcus Hk., Pa.	292,484	F	2.100	33.30
Perth Amboy, NJ.	Chevron	Perth Amboy, NJ.	741,819	F	1.300-1.400	33.20-33.60
			1,034,303			
<u>APRIL</u>						
Perth Amboy, NJ.	Chevron	Perth Amboy, NJ.	526,687	F	1.300-1.500	33.30-33.70
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

2, 390,576 - Chevron

U.S. IMPORTS FROM IRAN
 IMPORTER: COASTAL STATES GAS CORP.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> Corpus Chr, Tx.	Coastal Pet.	Corpus Christi, Tx.	659,166	P	1.600	30.80-30.90
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u> Corpus Christi, Tx.	Champlin	Corpus Christi, Tx.	98,997	P	1.640	35.50
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

758,163 - Coastal States Gas
 Copy.

U.S. IMPORTS FROM IRAN
 IMPORTER: CONTINENTAL OIL CO.

<u>Month of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u>	Getty	Delaware City, De.	200,000	F	1.600	30.80
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

200 paid - Continental Oil

U.S. IMPORTS FROM IRAN
 IMPORTER: CROWN CENTRAL PETR. CORP.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u> Houston, Tx.	Crown	Pasadena, Tx.	102,897	F/P	1.310-1.740	33.60-33.8
<u>MAY</u> Houston, Tx.	Crown	Pt. Arthur, Tx.	18,462	P	1.390	33.70
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

121,359 - Crown Central
 Petroleum Corp.

U.S. IMPORTS FROM IRAN
 IMPORTER: DELTA REF. CO.

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
JANUARY New Orleans, La.	Delta	Memphis, Tn.	426,760	F/P	1.300	34.50
FEBRUARY New Orleans, La.	Delta	Memphis, Tn.	415,489	F/P	1.300	34.50
MARCH New Orleans, La.	Delta	Memphis, Tn.	425,437	F	1.300	34.50
APRIL						
MAY New Orleans, La.	Delta	Memphis, Tn.	396,934	F/P	1.400	33.40
JUNE New Orleans, La.	Delta	Memphis, Tn.	822,929	F	1.360-1.600	31.00-33.10
JULY						
AUGUST New Orleans, La.	Delta	Memphis, Tn.	418,838	F	1.360	33.70
SEPTEMBER New Orleans, La.	Delta	Memphis, Tn.	802,367	F/P	1.360	33.10

3708754 - Delta Refining
 Corp.

U.S. IMPORTS FROM IRAN
IMPORTER-ENERGY COOPERATIVE INC.

<u>Month of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./bbbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
JANUARY	Philadelphia, Pa.	Philadelphia, Pa.	1,127,304	F/P	1.300-1.480	33.00-33.60
FEBRUARY	Philadelphia, Pa.	Philadelphia, Pa.	147,294	P	1.350	33.60
Philadelphia, Pa.	BP Oil	Marcus Hook, Pa.	237,780	P	1.350	33.60
			385,074			
MARCH	Philadelphia, Pa.	Philadelphia, Pa.	648,078	F	1.160-1.520	33.50-33.80
APRIL	Philadelphia, Pa.	Philadelphia, Pa.	1,116,864	P	1.400-1.520	33.10-33.40
MAY	Houston, Tx.	Houston, Tx.	300,000	P	1.400	33.50
Philadelphia, Pa.	Arco	Phila., Pa.	413,365	P	1.480	33.00
Wilmington, De.	Getty	Delaware City, De.	188,934	P	1.420	33.10
			902,299			
JUNE						
JULY						
AUGUST	Houston, Tx.	Houston, Tx.	455,066	P	1.550	33.10
SEPTEMBER	Houston, Pa.	Marcus Hk., Pa.	487,459	F/P	1.310	33.30

512 2144 - Energy Cooperative Inc

U. S. IMPORTS FROM IRAN
IMPORTER: EXXON CORP.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> Houston, Tx. NY, NY	Exxon USA Exxon USA	Baytown, Tx. Bayway, NJ	3,349,281 4,543,676 7,892,957	F/P F/P	1.420-1.790 1.420	33.50-33.80 33.50-33.80
<u>FEBRUARY</u> Baton Rouge, La. Houston, Tx. NY, NY	Exxon USA Exxon USA Exxon USA	Baytown, Tx. Baytown, Tx. Bayway, NJ	26 507,883 5,770,798 6,278,707	P P F/P	1.420 1.420 1.420	33.00 33.40 33.10-33.70
<u>MARCH</u> New York, NY	Exxon USA	Bayway, NJ	5,346,720	F/P	1.420	33.00-33.70
<u>APRIL</u> New York, NY	Exxon USA	Bayway, NJ	3,013,230	F/P	1.420	33.20-33.50
<u>MAY</u> Galveston, Tx. Houston, Tx. New York, NY	Exxon USA Exxon USA Exxon USA	Baytown, Tx. Baytown, Tx. Bayway, NJ	84 1,004,327 2,362,580 3,366,991	P F F/P	1.420 1.420 1.420	33.10 33.40 33.10-33.90
<u>JUNE</u> Corpus Christi, Tx. Delaware City, De. Houston, Tx. New York, NY New York, NY	Champlin Getty Exxon USA Exxon USA Exxon USA	Corpus Christi, Tx. Delaware City, De. Baytown, Tx. Bayway, NJ Bayway, NJ	495,924 501,261 521,207 686,827 1,564,305 3,769,524	P P F P/F P	1.500 1.420 1.420 1.500 1.420	33.30 33.30 33.20 32.80-33.40 32.40-34.00
<u>JULY</u> Houston, Tx. New Orleans, La. NY, NY	Exxon, USA Marathon Exxon, USA	Baytown, Tx. Garyville, La. Bayway, NJ	1,629,637 397,332 1,846,843 3,873,812	F P P	1.420 1.420 1.420	33.40 33.50 33.10-33.60

U. S. IMPORTS FROM IRAN
 IMPORTER: EXXON CORP. (Cont'd)

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
CUST. Egus Christi, Tx. Houston, Tx. , NY	Exxon USA	Baytown, Tx.	113,821	F	1.420	33.40
	Exxon USA	Baytown, Tx.	3,240,621	F/P	1.420	32.70-33.50
	Exxon USA	Bayway, NJ	2,939,960	F/P	1.420	33.00-33.50
			6,294,422			
FTEMBER Houston, Tx. , NY	Exxon USA	Baytown, Tx.	2,582,222	F/P	1.420	33.00-33.40
	Exxon USA	Bayway, NJ	1,827,675	F/P	1.420	32.60-33.70
			4,409,897			

4424 6260 - Exxon Corp.

U.S. IMPORTS FROM IRAN
 IMPORTER: GETTY REG. & MKTG.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u>						
<u>MARCH</u> Beaumont, Tx.	Getty	El Dorado, Ks.	405,258	F/P	1.600	30.80
<u>APRIL</u>						
<u>MAY</u> Philadelphia, Pa. Wilmington, De.	Getty Getty	Delaware City, De. Delaware City, De.	185,872 1,483,194 1,869,366	P F/P	1.600 1.650-1.660	33.20 30.70-31.10
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u> Nederland, Tx.	Getty	El Dorado, Ks.	360,264	F/P	1.600	31.00
<u>SEPTEMBER</u>						

2,634,888 - Getty

U.S. IMPORTS FROM IRAN
IMPORTER: MARATHON

<u>Pt. of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u> sw Orleans, La.	Marathon	Garyville, La.	3,028,744	F	1.810	31.20
<u>MARCH</u> sw Orleans, La.	Marathon	Garyville, La.	1,774,644	F	1.780	31.30
<u>APRIL</u> sw Orleans, La.	Marathon	Garyville, La.	410,815	P	1.760	31.10
<u>MAY</u> sw Orleans, La.	Marathon	Garyville, La.	3,093,361	F	1.650-1.840	31.00
<u>JUNE</u> sw Orleans, La.	Marathon	Garyville, La.	2,166,284	F	1.750	31.00
<u>JULY</u> sw Orleans, La.	Marathon	Garyville, La.	1,657,901	F	1.760	31.10
<u>AUGUST</u> sw Orleans, La.	Marathon	Garyville, La.	2,484,603	F	1.600-1.710	31.00-30.50
<u>SEPTEMBER</u> sw Orleans, La.	Marathon	Garyville, La.	2,151,770	F	1.730	30.90

16,716,122 - Marathon

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
U.S. IMPORTS FROM IRAN IMPORTER: MOBIL OIL CORP.						
<u>JANUARY</u>						
<u>FEBRUARY</u>						
<u>MARCH</u> New Orleans, La.	Mobil	Joliet, IL.	307,601	F	1.400	33.50
<u>APRIL</u>						
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u> Beaumont, Tx.	Mobil	Beaumont, Tx.	1,247,433	P	1.200	33.40
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

1,555,034 - Mobil

U.S. IMPORTS FROM IRAN
 IMPORTER: PHILLIPS PET. CO.

<u>Mt of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u> Freeport, Tx.	Phillips	Kansas City, Ks.	449,052	F	1.560-1.610	34.30-34.70
<u>MARCH</u>						
<u>APRIL</u> Corpus Christi, Tx.	Champlin	Corpus Christi, Tx.	228,992	P	1.400	33.30
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

678,044 -- Phillips Pet.

U. S. IMPORTS FROM IRAN
IMPORTER: PRIDE REF. INC.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> Corpus Chr, Tx.	Coastal Pet.	Corpus Christi, Tx.	446,063	F	1.600	30.80

FEBRUARYMARCHAPRILMAYJUNEJULYAUGUSTSEPTEMBER

446,063 - Pride Refining
 Inc.

U.S. IMPORTS FROM IRAN
IMPORTER: SABER REFINING CO.

API
Gravity

Sulphur
Content

Fee

Qty./bbls.

Destination

Recipient

Port of Entry

JANUARY

FEBRUARY

MARCH

APRIL

Corpus Christi, Tx

Champlin

Corpus Christi, Tx

40,229

F

.300

34.00

MAY

JUNE

JULY

AUGUST

SEPTEMBER

40229 - Saber Refining Co.

U. S. IMPORTS FROM IRAN
IMPORTER: SHELL OIL CO.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
Corpus Chr, Tx.	Champlin	Corpus Christi, Tx.	410,359	P	1.410	33.50
Gramercy, La.	Shell	Wood River, Il.	403,707	F	1.480	34.10
Houston, Tx.	Shell	Deer Pk, Tx.	1,027,109	F/P	1.380-1.410	33.30-34.1
			1,851,175			
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u>						
Gramercy, La.	Shell	Wood River, Il.	198,946	F/P	1.410-1.610	33.30-33.5
<u>MAY</u>						
Chester, Pa.	Arco	Philadelphia, Pa.	321,692	P	1.410	33.50
Gramercy, La.	Shell	Wood River, Il.	325,610	P	1.480	33.70
Gramercy, La.	Clark O & R	Hartford, Il.	108,683	P	1.480	33.70
			755,985			
<u>JUNE</u>						
Gramercy, La.	Shell	Wood River, Il.	150,000	F	1.410	33.50
New Orleans, La.	Marathon	Garyville, La.	825,681	P	1.410	33.50
			975,681			
<u>JULY</u>						
Gramercy, La.	Shell	Wood River, Il.	160,081	P	1.410	33.50
New Orleans, La.	Marathon	Garyville, La.	423,225	P	1.480	33.90
Philadelphia, Pa.	Arco	Phila., Pa.	631,777	P	1.410	33.50
			1,015,083			
<u>AUGUST</u>						
Gramercy, La.	Shell	Wood River, Il.	753,656	F/P	1.190-1.260	33.60

5550526 - Shell Oil Co.

U.S. IMPORTS FROM IRAN
IMPORTER-STANDARD OIL OHIO

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
<u>JANUARY</u>						
Beaumont, Tx.	Sohio	Toledo, Oh.	380,086	P	1.400	33.30
Wilmington, De.	Getty	Delaware City, De.	400,562	P	1.400	33.90
<u>FEBRUARY</u>						
Chester, Pa.	BP Oil	Marcus Hook, Pa.	595,457	F/P	1.400-1.420	33.20-33.61
<u>MARCH</u>						
Philadelphia, Pa.	Derby	Philadelphia, Pa.	390,409	F/P	1.420	33.40
Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	237,780	P	1.410	34.00
<u>APRIL</u>						
Beaumont, Tx.	Sohio	Toledo, Oh.	388,845	F/P	1.430	33.60
Chester, Pa.	BP Oil	Marcus Hk., Pa.	354,244	F/P	1.400	33.70
<u>MAY</u>						
Beaumont, Tx.	Sohio	Toledo, Oh.	457,635	P	1.430	33.60
Chester, Pa.	BP Oil	Marcus Hk., Pa.	1,339,348	F/P	1.400-1.530	33.20-33.70
Corpus Christi, Tx.	Derby	Corpus Chr., Tx.	399,979	P	1.410	33.20
<u>JUNE</u>						
Chester, Pa.	Getty	Delaware City, De.	198,092	P	1.570	33.50
Chester, Pa.	BP-Oil	Marcus Hk., Pa.	198,999	F	1.570	33.50
<u>JULY</u>						
Beaumont, Tx.	Sohio	Toledo, Ohio	398,434	P	1.400	33.50
<u>AUGUST</u>						
Chester, Pa.	BP Oil	Marcus Hk., Pa.	743,543	F/P	1.400	33.80
<u>SEPTEMBER</u>						
Chester, Pa.	BP Oil	Marcus Hk., Pa.	624,085	F/P	1.380-1.410	33.30-33.60

7,110 7498 - Standard Oil
of Ohio

U.S. IMPORTS FROM INAN
IMPORTER: STRATEGIC PETRO. RES.

Port of Entry	Recipient	Destination	Qty./Bbls.	Fee	Sulphur Content	API Gravity
JANUARY						
Baton Rouge, La. Beaumont, Tx.	Nordix Term. Sun Term.	Sunshine, La. Nederland, Tx.	347,082 811,080 1,158,162	- -	- -	33.30 34.00-34.1
FEBRUARY						
MARCH						
Baton Rouge, La. Beaumont, Tx. Cramercy, La.	Nordix Sun Oil Koch Ref.	Bayou Choctaw, La. West Hackberry, La. Bayou Choctaw, La.	183,349 613,252 99,130 893,731	P P P	- - -	33.60 31.50-34.C 34.50
APRIL						
Baton Rouge, La. Beaumont, Tx.	Nordix Sun Oil	Bayou Choctaw, La. West Hackberry, La.	653,483 232,024 952,507	P P	- -	33.30-33.9 33.30-33.8
MAY						
Baton Rouge, La. Beaumont, Tx.	Nordix Sun	Bayou Choctaw, La. West Hackberry, La.	504,501 1,445,345 1,949,846	P P	- -	33.50-34.6 33.00-33.6
JUNE						
Baton Rouge, La. Beaumont, Tx. Freeport, Tx.	Nordix Sun Seaway	Bayou Choctaw, La. West Hackberry, La. Bryan Mound, Tx.	546,337 408,420 248,859 1,203,616	P P P	- - -	33.20-33.7 33.40-33.5 33.20
JULY						
Baton Rouge, La. Beaumont, Tx.	Nordix Sun Oil	Bayou Choctaw, La. West Hackberry, La.	817,133 1,100,821 1,917,954	P P	- -	33.20-33.7 33.10-33.1
AUGUST						
Beaumont, Tx.	Sun Oil	West Hackberry, La.	766,340	P	-	33.40-34.1

8,844,156 - Strategic Petroleum
Reserve

U.S. IMPORTS FROM IRAN
IMPORTER: SUN OIL CO

<u>rt of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u>						
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u>	BP Oil	Marcus Hk., Pa.	33,123	P	1.470	31.90
<u>MAY</u>						
<u>JUNE</u>						
<u>JULY</u>						
<u>AUGUST</u>						
<u>SEPTEMBER</u>						

B3, 123 - Sun Oil Co.

U.S. IMPORTS FROM INAN
IMPORTER: SUN OIL CO. - PUERTO RICO

<u>Date of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> Humacao, PR	Sun - P.R.	Yabucaso, P.R.	1,072,097	F	1.450-1.660	32.10-33.60
<u>FEBRUARY</u>						
<u>MARCH</u> Humacao, PR Humacao, PR	Sun - P.R. Sun - P.R.	Yabucaso, PR Yabucaso, PR	630,569 637,632 <u>1,068,221</u>	F F	1.600-17.00 1.440	31.20-31.40 33.10
<u>APRIL</u> Humacao, PR	Sun - PR	Yabucaso, PR	607,496	F	1.470-1.560	33.10-33.50
<u>MAY</u> Humacao, PR	Sun - PR	Yabucaso, PR	328,575	F	1.600	32.30
<u>JUNE</u> Humacao, PR	Sun - PR	Yabucaso, PR	529,948	F	1.700	32.50
<u>JULY</u>						
<u>AUGUST</u> Humacao, PR	Sun - PR	Yabucaso, PR	748,163	F	1.260-1.370	33.20-33.40
<u>SEPTEMBER</u>						

435 4,500 - Sun Oil Co.

U.S. IMPORTS FROM IRAN
 IMPORTER: TEXACO INC.

<u>Port of Entry</u>	<u>Recipient</u>	<u>Destination</u>	<u>Qty./Bbls.</u>	<u>Fee</u>	<u>Sulphur Content</u>	<u>API Gravity</u>
<u>JANUARY</u> New Orleans, La. Ft. Arthur, Tx.	Texaco Texaco	Pt. Arthur, Tx. Ft. Arthur, Tx.	50,516 485,781 536,297	P P/P	1.350 1.350	33.80 33.40
<u>FEBRUARY</u>						
<u>MARCH</u>						
<u>APRIL</u>						
<u>MAY</u>						
<u>JUNE</u> Philadelphia, Pa. Wilmington, De.	Arco Getty	Fort Mifflin, Pa. Delaware City, De.	167,417 288,441 455,858	P P	1.430 1.430	33.40 33.40
<u>JULY</u> Houston, Tx. Wilmington, De.	Exxon USA Getty	Baytown, Tx. Delaware City, De.	359,403 750,670 1,110,073	P P	1.350 1.350	33.20 32.90-33.
<u>AUGUST</u> Wilmington, De.	Getty	Delaware City, De.	736,294	P	1.430	33.40
<u>SEPTEMBER</u> Philadelphia, Pa.	Arco	Ft. Mifflin, Pa.	428,840	P	1.430	33.30

3267,362 - Texaco

Mr. MURPHY. California and the gulf are in better shape, albeit if there is such a thing as better shape energywise in this country. But I think the environmentalists and the industry seem to be moving in the same area. I hope we can have a speedy resolution of the problems and that we do not have unnecessary court delays and undue delays in resolving the energy problem.

We appreciate your being here this morning.

Governor GRASSO. It is nice to see you. Thank you, sir.

Mr. MOFFETT. The Chair recognizes the gentleman from New Jersey, Mr. Maguire.

Mr. MAGUIRE. I also want to commend you on an excellent statement. Once again, we are seeing the results of living in a make-believe world. We say and we hear often that the energy companies are competitive. We were told in June 1976 that if distillate were decontrolled, competition would assure that prices would not rise. Now, of course, we look back and see that yes, once again prices rose, not a little bit, but dramatically, and that people are paying higher bills as a result.

Mr. Chairman, once again competition does not exist in the energy industry in the way that we say we ought to have it exist in America, and we then face higher and higher prices as a result. I hope this hearing will give us some answers on what we can do about it.

Thank you.

Mr. MOFFETT. In that regard, I might say to the gentleman from New Jersey, that the subcommittee is in possession of a statement made by William C. Lane, Jr., the Director of the Office of Competition of the DOE—in response to questions posed by Chairman Dingell. He makes several points regarding competition and I would like to have the entire document, without objection, included in the record.

[Testimony resumes on p. 67.]

[The information referred to follows:]

RESPONSE TO QUESTIONS POSED BY CONGRESSMAN JOHN D. DINGELL
TO WILLIAM C. LANE, JR., DIRECTOR, OFFICE OF COMPETITION

1. The Office of Competition has considered what competitive consequences are likely in the event of removal of allocation controls. This question was examined in a memorandum prepared by my staff which analyzes the competitive problems created by DOE's price and allocation regulations. A copy of that memorandum is attached to this letter. Although I did not participate in the writing or formulation of the memorandum due to conflict of interest problems (see paragraph no. 3 below), I have read the memorandum and substantially agree with its conclusions.

As the memorandum sets out in more detail, it is the continuance of allocation controls, rather than their removal, which is anticompetitive. In brief, the allocation controls have prevented suppliers and purchasers from entering into new relationships where it would be to their advantage, thereby foreclosing buyers from numerous alternative sources of supply. The allocation controls, which fix the distribution system to buyer-seller arrangements as of the 1972 base period, have resulted in distortions of the spot market and have kept a number of inefficient or uneconomically-sized firms in the market. The controls have distorted the market by substituting regulatory rigidity for normal market decisions based on factors related to economic efficiency. Consumers do not reap the benefits of market innovations. Instead, many middlemen whose functions could be combined due to the emergence of new types of retail outlets (such as large volume self-service stations) have been allowed to remain in the market. If the allocation regulations were removed, these individuals would have to demonstrate that their contribution in the distribution and marketing of gasoline is at least equal to the price they charge.

The DOE, and the FEA before it, have looked into the possible anticompetitive effects of removing allocation controls. In fact, this question was addressed in FEA's original proposal in November 1976 to exempt motor gasoline from Federal price and allocation regulations. That original proposal also included a separate proposal to implement Special Rule No. 4, which would provide for a special set-aside for motor gasoline to protect marketers during

the transition period following removal of controls as to their ability to obtain supplies. This rule is intended to protect against any temporary dislocations which might arise from the termination of controls. In my view it is quite adequate.

Despite such protective measures, it is likely that a number of gasoline marketers might be placed at a competitive disadvantage after removal of controls. This, however, does not in itself signal a lessening of competition; to the contrary, in an otherwise competitive market the exit of inefficient firms is a normal result of competitive forces. It is the promotion of competition, rather than the protection of individual competitors, that results in long-term economic benefits to consumers.

In summary, it is quite clear that the pro-competitive effects of motor gasoline deregulation are far more important to society than any benefits that might accrue to individual competitors from their continued protection from the healthy winds of competition.

2. From our earlier work on the economic and competitive effects of allocations and regulations, we have observed that governmental passthroughs do not allow or even consider the economic rate of return necessary to induce companies to undertake the large investments necessary to increase refining capacity, particularly for unleaded gasoline. Since all companies compare the profitability of a number of alternative projects in determining which investments to undertake, this regulatory omission could severely restrict additional refining capacity. The "competition problem" is that the price and allocation regulations have prevented competitive processes from operating so that resources could flow to meet the demand for efficient equipment refining capacity.

Some individuals are not convinced, however, that the regulations are entirely to blame for the potential shortage of unleaded capacity. These individuals have alleged that parallel or collusive actions by major oil companies have created the present relatively tight situation. The Office of Competition is studying the economics of refining and gasoline marketing in a study under Title III of the Petroleum Marketing Practices Act. That Act requires the Department of Energy to determine the extent to which integrated companies are subsidizing their motor fuel marketing operations. In connection with this study, we should be able to address the

question of the amount of market power these companies have in the refining and marketing of unleaded gasoline. Without an overwhelming degree of market power it seems unlikely that these companies would be able to either engage in predatory subsidization or to collusively create shortages of particular refined products.

3. I have not been personally involved in Department proceedings pertaining to price and allocation regulation of motor gasoline, including motor gasoline decontrol and the gasoline "tilt." Due to my previous representation of a number of energy concerns while in private law practice, I have disqualified myself from participation in such Department proceedings for a period of one year in order to avoid the appearance of conflict of interest. I have instead delegated responsibilities with regard to all the above to my staff. Members of the Office of Competition staff have been involved in gasoline decontrol and the "tilt" through preparation of a competitive analysis of the motor gasoline price and allocation regulations, review of the gasoline "tilt" rulemaking before publication by ERA, and attendance at a number of meetings concerning motor gasoline deregulation and the preparation of the Draft Environmental Impact Statement on Motor Gasoline Deregulation. The staff has also looked at the competitive impacts of removal of motor gasoline price and allocation controls in the context of the refinery policy study being undertaken by the DOE. As I have indicated in my earlier statement, I believe that the research being conducted for the Title III Subsidization Study will enable us even more sharply to determine some of the competitive impacts of the price and allocation regulations. The Title III Study will focus primarily on the marketing operations of the petroleum industry and will help us to assess the alleged role of the integrated companies in setting prices and manipulating output. The study has a scheduled completion date of December, 1979.

4. I have not seen any evidence to date which would enable me to make a conclusivestatement regarding competition, or the lack of competition, in the refining segment of the petroleum industry. The issue of competition in this segment is very complicated due to the industry's complexity and the massive extent of the government's intervention in it. Besides that, the notion that one can decide whether an industry is competitive or not is rather illusory. It is not a yes or no, black or white issue. Competition is a process, not a status. The relevant questions are: Can we have more competition? If so, what policy or legislation is required? What are the effects of present regulations and will deregulation lead to a better utilization of existing

refining capacity? Will deregulation permit new entry in refining or stimulate the efficient expansion of existing refinery capacity?

With respect to these more operational questions, it is very clear to me that decontrol can only enhance the competitiveness of the industry, and the efficient allocation of resources within it.

5. (a) The Office of Competition was asked by ERA to participate in the evidentiary hearings held by the Office of Hearings and Appeals (OHA). However, at the time (early July) that we were asked to participate in those hearings, the Office of Competition was in the process of being staffed. As I had only joined the Department in May, and was building my staff, the Office was comprised of only myself and one staff member who was on detail from another agency. At a meeting with ERA staff, I indicated that I was disqualified from personally participating in the proceeding since I had represented a number of heating oil companies while in private law practice in proceedings which were directly related to the OHA proceeding. ^{1/} Given the number of demands on the time of my only staff member, it was decided that he would provide whatever assistance of an advisory nature was requested by ERA staff in preparing ERA's testimony for the hearings. By the time the hearings were held, the week of August 21, 1978, my staff had grown by only two-one other person also on detail, and one official DOE employee. To the extent possible, staff members monitored those hearings and kept informed as to the evidence being presented and the likely outcome of the proceeding.

(b) The staff members who monitored the proceedings and reviewed the findings published by the Office of Hearings and Appeals have advised me that they believe the record compiled by the proceeding to be incomplete. While there may or may not be competitive problems at the refining level of the petroleum industry, no refiner representative testified at the OHA hearings. The findings made by OHA were, as stated in the decision, based on an inference that, since industry representatives did not testify, they would have been unable to offer additional evidence of the existence of workable competition among refiners.

We agree with the OHA finding that antitrust proceedings can often be very prolonged and do not necessarily effect short-

^{1/} Decontrol of Distillate Fuel Oil, and Special Assignment Procedures for Middle Distillates.

term relief for non-competitive conditions in an industry. We do not agree, however, that "anti-trust remedies are not likely to be successful in resolving competitive problems in the refining industry." The fact that a number of antitrust proceedings may have in the past been vitiated or terminated by unwieldiness or political considerations does not constitute evidence that antitrust remedies will never work.

- 6.1 Study of Downstream Subsidization in Motor Fuel Marketing Mandated by Title III of the Petroleum Marketing Practices Act--Our work on this study is discussed elsewhere in the testimony.
- 6.2 Analysis of the Competitive Impacts of U.S. Refinery Policy Options

The OOC is preparing the competition section of the DOE's Refinery Policy Study. This study is being written under the overall direction of DOE's Office of Policy and Evaluation. The purpose of the competition section is to determine whether decontrol of crude and product prices, including elimination of the entitlements program, would result in a reasonably competitive market structure. The major problem in preparing the analysis is that the oil industry has historically been subject to government regulations and it is difficult to predict the operation of the market in an environment unfettered by government controls.

The analysis will examine the competitive benefits or problems created by the elimination of the small refiner bias and by increased foreign competition faced by refineries under decontrol. In addition, the post-decontrol competitive structure of the international and domestic refining markets will be analyzed.

- 6.3 An Examination of Competitive Conditions in the Oil Pipeline Industry

The Office of Competition is gathering additional evidence on the problems of capacity and access limitations in the existing pipeline system.

Our competitive analysis of oil pipeline problems has several concrete applications. The competitive implications of pipeline ownership are relevant in the Department's overall refinery study, in the Department's economic analysis of northern tier refinery supply and West Coast disposition questions.

6.4 NEP II

The Office has prepared analyses of the competitive impacts of various sections of the Second National Energy Plan. In addition, we have prepared a paper on competitive considerations in the development of DOE's Commercialization Program.

6.5 Analyses of the Competitive Effects of Various ERA Regulations and Several Solar and Conservation Initiatives

The Office of Competition has examined the competitive impacts of the Small Refiner Bias and suggested consideration of a number of possible alternatives such as the open market credit mechanism. We have also provided competitive analysis of other regulatory issues, including the East Coast residual oil problem, and are reviewing proposals regarding the simplification of crude oil price controls. The Office has commented on several DOE solar initiatives, including several proposals in the Solar Domestic Policy Review, and has commented on such conservation regulations as the Building Energy Performance Standards.

6.6 Recommendations Concerning the Organizational Conflict of Interest Section of the Procurement Regulations

OOC has worked closely with DOE's Procurement and Contracts Management Directorate in strengthening the organizational conflict of interest section of the procurement regulations. We believe that the Department of Energy, through its procurement process, can play a major role in fostering or inhibiting competition in the energy and energy analysis industries. This is particularly true in emerging technical industries where the configuration of the initial government contracts may determine the early structure of the industry.

Consulting firms are very often employed in the process which leads the Department toward one or another alternate policy or technology. While consulting firms do not make the final decisions, they do provide key analytical and statistical assistance to Departmental policymakers. In order for the Department to receive neutral and unbiased advice, it must be particularly cautious in retaining those firms with close financial or other ties to those particular segments or phases of the energy industry which are the subject of analysis. OOC has worked with the Procurement Directorate to include in the regulations specific examples of financial organizational conflicts of interest.

6.7 Alternative Purchase Mechanisms for the Strategic Petroleum Reserve (SPR) Oil

We have proposed the use of an alternate mechanism for purchasing SPR oil. Specifically, we propose the nondisclosure of the unit price at which SPR purchases are made in order to encourage price concessions. Obviously, there is a policy tradeoff in any decision to mask or to release price data on government contracts between preserving the integrity of the procurement system and enhancing the ability to reduce acquisition costs through secret price shading. There are also potential legal problems with nondisclosure. DOE's Office of General Counsel is currently preparing an analysis of these problems.

7. OOC has not yet entered into any contracts. We have, however, sent out RFP's (requests for proposal) for three contracts for supplemental staff assistance in economic analysis. We are receiving the proposals now, and will be evaluating them in the near future. All three contracts will be awarded under the small business set aside program and multiple awards are contemplated.

Mr. MOFFETT. On page 3, it says:

I have not seen any evidence to date which would enable me to make a conclusive statement regarding competition, or the lack of competition, in the refining segment of the petroleum industry. The issue of competition in this segment is very complicated due to the industry's complexity and the massive extent of the government's intervention in it. Besides that, the notion that one can decide whether an industry is competitive or not is rather illusory. It is not a yes or no, black or white issue. Competition is a process, not a status. The relevant questions are: Can we have more competition? If so, what policy or legislation is required? What are the effects of present regulations and will deregulation lead to a better utilization of existing refining capacity? Will deregulation permit new entry in refining or stimulate the efficient expansion of existing refinery capacity?

I think from what we have seen today, the answer is that deregulation and decontrol are not going to provide that kind of competition.

Governor, thank you very much for your excellent statement. I would like to ask you a few questions, and then we will let you go, because I know you have a busy schedule today.

You stated in your testimony that prices in Connecticut are 55.5 cents per gallon. As of what date?

Governor GRASSO. Now; currently.

Mr. MOFFETT. We received some information from the Department of Energy, in a presentation to the New England congressional caucus, that prices in New England in November were below 54 cents. You state that prices as of November 1 were above 54.5 cents. Again, that is a discrepancy with the Department of Energy, and we have had discrepancies with their figures in the past. Can you tell us something about the gathering of price information?

Governor GRASSO. Yes. I think it is very important because nothing makes me angrier than to have one set of figures and then another set of figures being presented and then find long after the confusion that the only permanent memory is that there have been varying statistics used in the gathering process and the dates have been variable.

We have a program in our State that has been developed in conjunction with the other Northeast States with funds from the

New England Regional Commission. It is based on a weekly survey and based on the prices charged by 65 dealers throughout the State, our major dealers. It includes weighted average, regional average, the highest and lowest price dealers and the average price by dealer size. It is on that basis that our information is developed and secured. This is what they charge our householders. We found that this has been a differing pattern of increase because in 1977-78 the prices went from 49.8 to 50.7 and then receded to 50.5 by the end of the season. But we feel that our figures are timely, and we would match them with any figures, and we would ask to have a chance to review this with the appropriate agency of the Department of Energy so that we may have a consistency. Consistency is important here.

Mr. MOFFETT. You state 75 percent of the increases in price are occurring at the refinery level. Yet the State of Connecticut doesn't really have an ability to monitor the refiners, does it?

Governor GRASSO. No, we don't, and we shouldn't.

Mr. MOFFETT. One of the points you are making is that the Department of Energy should be monitoring refiners; is that correct?

Governor GRASSO. Yes, they should be doing it, monitoring to see where the competition is occurring, whether the price increases are appropriate in a competitive environment, and then I think they should give careful study as to whether the nature of these increases justify the price controls for home heating oil. You will be doing gasoline tomorrow, but an immediate action to stimulate gasoline production is going to negatively affect heating oil production. Right now, it seems to me that the production of heating oil is a matter that should take precedence. We are asking that the record be reopened on the subject of home heating oil before the economic regulatory administration of the Department of Energy.

Mr. MOFFETT. You have been trying to be very constructive in terms of assisting the President in his anti-inflation fight. Have you talked to any people either at the DOE or the White House about reimposing controls on home heating oil? If so, have you received any response at all that would indicate there is any set of circumstances which would lead them to reimpose controls in order to give our people some basic protection?

Governor GRASSO. We sent a letter to Mr. Kahn, and I have had no response. This is a letter we sent some time ago. We have sent to the White House and to the Energy Department all of the actions that have been taken by the New England Governors and the Northeast Governors, and we are still waiting to hear from them.

To respond to the first part of your question, of course, I have been an enthusiastic supporter of the President in his efforts to contain costs and to fight inflation; but we are fighting inflation over here and we are coping with these terrible price increases on the other side that wreak havoc; with the whole process. These price increases impact so very much on my people and on the businesses of our area, I feel it is imperative that we get answers to the questions about what has happened up until now.

I think there has been too much upward drift in prices there. Certainly a penny should mean as much in Washington as it

means in Washington, Conn. That, coupled with what is the potential disaster of the OPEC impact, adds to the magnitude of the problem. The time factor of the increase is also so very important. As these days get colder, people have such serious burdens to carry. As you know, they have tried desperately to meet all of the costs and meet their needs and not have to turn someplace else for assistance.

Mr. MOFFETT. Have you seen any evidence at all in your dealings with the administration and the people running the anti-inflation program that energy is on their list in the fight against inflation?

Governor GRASSO. It is because I have not seen it that I am as frustrated as you in this present situation.

Mr. MOFFETT. Thank you very much for an excellent statement and presentation.

Our next witnesses are from the Department of Energy. First, Hon. John O'Leary, the Secretary of the Department, and Mr. Melvin Goldstein, Director, Office of Hearings and Appeals.

STATEMENTS OF JOHN F. O'LEARY, DEPUTY SECRETARY, DEPARTMENT OF ENERGY AND MELVIN GOLDSTEIN, DIRECTOR, OFFICE OF HEARINGS AND APPEALS, ACCOMPANIED BY WILLIAM C. LANE, JR., DIRECTOR OFFICE OF COMPETITION

Mr. O'LEARY. Good morning, Mr. Chairman.

Mr. MOFFETT. Mr. O'Leary, you may proceed in the usual fashion, either reading your statement or paraphrasing it. It will be included in total in the record.

Mr. O'LEARY. Thank you.

This is a very important matter before the committee. I would like to read the testimony. Let me apologize, Mr. Chairman. The fault for the lateness is mine. You suggested that we were late because we were not paying the proper attention to it. I want to tell you we are late because of the proper attention. I could not get to it until late last night. The testimony was not completed, I am told, until 1 o'clock. We worked on it through several drafts over the weekend and up until yesterday, and unfortunately we just could not get it right until last night.

Mr. MOFFETT. Just so the record is very clear on this, I did not state that you were late because you were not taking it seriously. I simply inquired if you were taking it seriously. If you tell me you are taking it seriously, then I will take your word for it. You have a right to have an opportunity to have your testimony reflect that fact.

Mr. O'LEARY. Thank you.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear today to discuss heating oil supply and price issues. I intend to make a brief statement covering the supply and price situation since decontrol of the product in June 1976, with particular emphasis on the current heating season.

I will provide the committee with detailed written responses to each of the questions contained in your letter of invitation.

SUPPLIES SINCE DECONTROL

First, Mr. Chairman, I would like to assure you that the home heating oil supply situation looks good. Supplies of heating oil have been adequate on a national basis since decontrol, and are expected to remain so during the present heating season. As of December 8, 1978, distillate stocks were 228 million barrels, which is 18.4 million barrels higher than the average stock level for the same week over the 5-year period 1972-77.

It is our conclusion that, barring abnormally cold weather, a crude oil supply interruption or severe distribution problems, heating oil supplies will be adequate to meet demand in all regions of the country through the winter. If we do experience a severe winter, supplies of heating oil can be augmented by increased imports, as they were during the severe winter of 1976-77.

With secondary and primary heating oil stocks at apparently adequate levels, the DOE does not plan to implement any regulatory action to increase supplies at this time. Options are available to the DOE in the event of a severe winter, including the importation of foreign distillate, and the ordering of shifts in refinery yields to produce more distillate. Foreign distillate of 200,000 barrels per day above present levels has been imported in the past and should be available this year.

We have also proposed to reimplement the State set-aside program for middle distillates. We held hearings on the proposal on December 7, 1978, and the record is open to receive comments from the public through today. Also, we are in the process of funding 11 heating oil States to conduct their own surveys of residential heating oil prices on a biweekly basis during this heating season. We met with those States the first week in December and developed parameters for the data collection effort. The data will be used by both the States and the DOE to watch developments in the marketplace. In addition, similar to last winter DOE will establish in early January a consumer hotline to receive heating oil price complaints.

HEATING OIL PRICES SINCE DECONTROL

I would now like to turn to the issue of heating oil prices. Nationally, heating oil prices to residential consumers averaged about 39½ cents per gallon in June 1976 and were approximately 49 cents in September 1978. Using the Office of Hearings and Appeals (OHA) methodology in its recent report to analyze the September 1978 data, home heating oil prices increased approximately 9½ cents per gallon between June 1976 and September 1978. During the same time frame, the costs of crude oil and purchased distillate increased by approximately 4½ cents. Refiners' operating and distribution expenses (commonly called nonproduct costs) are estimated to have increased 1½ to 2 cents per gallon. The balance of the increase, 3 cents, is the result of price increases at both the wholesale and retail levels.

The following figure depicts the allocation of the 9½ cent price increase that occurred between July 1976 and September 1978. During the same time frame, the cost of crude oil and purchased distillate increased 4½ cents. Refiner non-product costs increased

an estimated 2 cents, of which ½ cent is unexplained. I have a table in my testimony that reflects that.

[The information follows:]

HOME HEATING OIL
Components of Price Increases Since Decontrol
(July 1976 - Sept 1978)

REFINERS			WHOLESALERS AND RETAILERS	TOTAL
Cost of Crude Oil and Purchased Distillate	Non-Product Costs*		Non-Product Costs	
	Estimated			
4-1/2 cents	Explained	Unexplained	3 cents	9-1/2
	1-1/2	1/2		

Mr. O'LEARY. These data are consistent with the OHA findings. I should point out, however, that at the time of the OHA hearing data were available only through April 1978—the above data are through September 1978. Thus, prices increased 9.3 cents per gallon between June 1976 and April 1978 and 9½ cents between June 1976 and the end of September 1978. The amount of price increase which could not be accounted for by the ERA model—the one-half cent in the preceding table—was referred to as an overcharge in the OHA report. Thus, OHA concluded that refiners recovered \$193 million more than they would have been allowed under price controls through April 1978. (OHA projections through the end of the 1978-79 heating season totaled \$331 million more than they would have been allowed under price controls through April 1978. OHA projections through the end of the 1978-79 heating season totaled \$331 million of overcharges. This amounts to an average unaccounted for overcharge of four-tenths of 1 cent per gallon over the decontrol period surveyed in the OHA report.

According to a DOE 15-State telephone survey of marketers, home heating oil prices average about 53 cents per gallon at the present time. Thus, since September, 1978, home heating oil prices have increased approximately 4 cents per gallon to the homeowner. Preliminary analysis of this increase indicates that refiners' selling prices to wholesalers increased 2.7 cents per gallon. The other 1.3 cent increase is attributable to the wholesale and retail sectors of the market, and that tracks with the point Governor Grasso made to you with regard to the distribution of these costs with regard to the refiners and the distributors.

We cannot determine the components of the 2.7 cent increase in refiner selling prices to wholesalers since September 1978 with the data presently available to DOE. Preliminary analysis indicates that the increases could have resulted from: (1) Increases in world crude oil cost as a result of the tight world crude oil market following the Iranian situation, (2) expected increases in domestic crude oil costs, (3) historical seasonal price increases, (4) increases in imports of higher priced foreign distillate, and (5) increased profits. We are continuing our analysis as more data become available.

With respect to the 1.3 cent price increase at the wholesale and retail level, those marketers have indicated that their costs have been rising, and price increases would be needed in order to be competitively viable.

The Department of Energy does not publish forecasts of heating oil prices over the short run. However, if past pricing practices are any guide, refiners will likely revalue their inventories of foreign crude and raise prices following OPEC price increases. Therefore, the recently announced OPEC price increase for January will likely raise heating oil prices approximately 1 cent per gallon this heating season. I expect that that 1 cent per gallon increase will come upon consumers in the month of January.

I would now like to turn to the report of OHA with regard to certain issues involving the distribution and sale of home heating oil. OHA conducted an evidentiary proceeding in August of this year to determine what regulatory action, if any, might be needed for this heating season. Two of OHA's major concerns were the issue of refiner nonproduct costs and the issue of competition in the heating oil industry.

As indicated earlier, according to the OHA findings, refiners recovered \$193 million more than they would have been allowed under price controls through April 1978. Because of the unavailability of precise information on nonproduct costs and refinery yields, we cannot confirm or refute that figure.

If the \$193 million figure is correct, this amounts to about four-tenths of 1 cent per gallon during the past 2 years. Based on the approximately 16.5 million housing units in the United States that use heating oil, individual families may have paid \$1 per month more during the heating season than they would have if controls had remained in effect.

Mr. Chairman, this brings me to an observation that I would like to share with you. The OHA report shows that increases have been over the period that they surveyed about 9½ cents per gallon, 9.3 cents per gallon. Roughly about one-half cent of that was attributed to overcharges arising from abuse or potential abuse of alleged monopoly profits on the part of refiners. I think probably while that is very important to look at, and we are going to take a very careful look at it through some steps I will discuss with you subsequently, the real problem I see before this country is the remaining 9 cents. We have to find some way, I believe, to temper the effects of continued sustained price increases on this critical commodity, home heating oil, for the American public. The recently announced actions of OPEC are going to drive that price up another substantial chunk over the next year. Undoubtedly the shift from old to new oil in the United States is going to contribute to that. I think these things are inevitable. We are going to find a continued disproportionate national increase in heating costs to householders. I think we should begin now to think of how we are going to handle that for those people who are less able to afford those rising costs.

ANOTHER OBSERVATION

For a very substantial part of our heating bill we are, as a result of past failures in national policy, absolutely at the mercy of others. I think again the events of last weekend draw a very strong line under that statement. We find ourselves having simply no say in an arbitrary action on the part of OPEC, a thing that will influence the pocketbooks of every man, woman and child in this country. It seems to me that argues for taking the steps the DOE is

now involved in, which over time will bring into better balance that now undue reliance upon imports and undue jeopardy that the American consumer is exposed to because of that.

Mr. MOFFETT. What steps have you gone through?

Mr. O'LEARY. Mr. Chairman, the steps with regard to the latter point, the research programs, the development programs and the demonstration programs that the Department of Energy is now proceeding with which have as their end objective reducing our dependence upon foreign oil.

Mr. MOFFETT. You did mention a half a cent. The OHA report, itself, on page 79, says that the refiners' cost during the same period was shown to have risen only 4.2 cents. The difference between the two figures is 1.3 cents, or 22 percent.

Mr. O'LEARY. That is for a single month, as I am sure Mr. Goldstein will point out to you. The average of that period, \$193 million, I believe is 0.44 cents.

Mr. MOFFETT. Do you have the report available, because I do think this is important? You are saying that that is for a single month. On page 79 of the OHA report it says evidence based on statistical surveys by the DOE conducted established between July 1976 and April 1978, show the refiners increased the price of No. 2 heating oil by a total of 5.5 cents per gallon.

Mr. O'LEARY. That is precisely as stated. Between July and April, the months surveyed, and remember April is still in the heating season and prices tend to be relatively high, the numeric difference that is not unaccounted for is 1.3 cents. Incidentally, we took that out to the following September, September of 1978. That is laid out in my testimony. The numeric difference between July 1976 and September 1978 is 0.4 cents, the unaccounted for one-half cent. The point I think we should note here is that the average over the period July 1976 to April 1978, the period that Mr. Goldstein surveyed, the average that made up that \$193 million of unaccounted for, or overcharges, was 0.4 cents. The 1.3 cents was the month-to-month relationship. The average over that period was a little under a half a cent.

Mr. MOFFETT. That is not what the record says. I don't want to interrupt your testimony.

Mr. O'LEARY. Mr. Goldstein can clarify that.

Mr. GOLDSTEIN. There are two comparisons that are made in the report. The first comparison is between prices charged and costs incurred during the month of July 1976 and the month of April 1978, just those 2 months. The comparison of the price data for those 2 months indicates that at the refinery level there is a 1.3 cent unaccounted-for amount in terms of prices charged. In other words, during the month of April, 1978, price increases amount to 5.5 cents per gallon as compared to the month of July, 1976. If you look at the costs incurred, you find that the nonproduct and product cost increases incurred amounted to 4.2 cents per gallon during that month and that left for that month 1.3 cents unaccounted for.

Mr. MOFFETT. But then, Mr. O'Leary, you say on page 5 of your testimony that the other 1.3-cent increase is attributed to the wholesale and retail parts of the market.

Mr. O'LEARY. That is a coincidence of figures, but it is a totally different number. That is the downstream number.

Mr. Chairman, if I may, one additional point on this: We find in April of 1978 the discrepancy was 1.3 cents from June to April 1978. I think the statistical inference of that is that if we measured another month, perhaps June, it would have been below; they would have been under-recoverings. In the month of September the over-recovering was about 0.44 cents. I think we ought to look at the overcharges over the period, that is to say, take the \$193 million and divide it by the number of gallons sold, and that comes up to about 0.44 cents per gallon. That, I believe, is the significant number in this statistical array before us.

Mr. Chairman, while this is a relatively small addition to individual home heating oil bills, in the aggregate it is sufficiently large for the department to be concerned. We have, therefore, initiated the following actions:

First, we held a conference on December 15 with refiners, wholesalers, retailers, consumers, and State and local government representatives to obtain information on heating oil supply and price issues.

Second, we are requesting the largest refiners of heating oil to provide the department with certified product and nonproduct cost data.

Third, we have asked the Office of the Special Counsel for Compliance to obtain and corroborate nonproduct cost information from selected major refiners in order to see how closely the OHA calculations compare with actual data.

Fourth, we plan to convene a proceeding in January to obtain any additional information required from refiners on this point.

This process will enable us to focus on individual refiners rather than on the aggregate data available to the evidentiary proceeding.

The OHA report also recommended two studies on competition—one at the refinery level and another at the wholesale and retail level. The broad question of refiner competitiveness is obviously most complex.

You had before you Mr. Lane's comments on that. There is already much work being done by the DOE and other Government agencies in this area. The DOE study required by title III of the Petroleum Marketing Practices Act will examine allegations of downstream subsidization in the marketing of motor gasoline. The study, however, will necessarily examine the refining industry as a whole. The Federal Trade Commission has a major antitrust action against Exxon and other refiners, aimed specifically at anticompetitive conduct, structure, and performance in the refining industry. The Department of Justice also has significant activities underway. Before launching on a separate study, we plan to discuss the OHA report and recommendations thoroughly with these agencies that have primary responsibility for competition. Our response will accordingly await the outcome of those discussions.

In summary, Mr. Chairman, experiences since decontrol, particularly during the severe winter of 1976-77, have demonstrated that the heating oil market works effectively and that industry has the ability to respond to unique situations such as those created by abnormally cold weather. As we have testified previously before this and other congressional committees, we believe controls inhibit

industry's ability to respond in a timely fashion to unforeseen developments in the marketplace.

We take seriously our mandate to insure that consumers have access to heating oil at equitable prices. We firmly believe that consumers benefit from a vigorous marketplace that is free of government regulation.

Mr. Chairman, I would like to read a sentence following the material from Mr. Lane that you recently quoted. This is on page 4 of his submission. It says:

With respect to those more operational questions, it is very clear to me that decontrol can only enhance the competitiveness of the industry and the efficient allocation of resources within it.

Mr. Chairman, one final observation, if I may. I believe that the system of regulation that is now administered by the Department of Energy on prices is leading away from competition in the refinery industry. I think we have clear evidence of that in a number of fields. I think, for example, the tightness of the supply of unleaded gasoline is one aspect of that. I deal almost daily with marketers, independent marketers in this business. I hear a repetitive theme that they are being systematically driven out of business by predatory marketing practices on the part of the majors that are joined in by our scheme of regulation. I think that argues that we very, very carefully consider whether the reimposition of controls on middle distillate or the continuation of controls on any of the petroleum products is really the way to engender competition, to assure what we can insure within the strictures that are placed upon us by OPEC pricing, the minimum prices to consumers and maximum availability of these fuels.

Thank you, Mr. Chairman, for your courtesy.

[Testimony resumes on p. 97.]

[Attachment to Mr. O'Leary's statement follows:]

DOE RESPONSES TO QUESTIONS FROM THE SUBCOMMITTEE

1. Aggregate monthly prices for middle distillates at the refinery, wholesale and retail levels for the past three years by region and nationally.

Aggregate monthly prices for middle distillates at the refinery, wholesale and retail levels by region and nationally are contained in the attached tables 9, 10, 11, and 12, excerpted from the Monthly Petroleum Product Price Report. The tables, published in December 1978, present the various prices for heating oil through October 1978 and is the latest available published data as indicated in the attached tables. DOE does not have comprehensive data covering the last three years.

Table 9. Heating Oil Prices to Ultimate Consumers*

Use	Date	Northeast	Census Regions**			United States	
			South	North Central	West		
			(cents per gallon)				
Residential	June 76	40.3	38.3	37.4	41.5	39.3	
	July 76	40.1	38.0	37.6	42.0	39.3	
	Aug. 76	40.7	38.7	37.8	42.2	39.8	
	Sept. 76	41.2	39.0	38.1	42.5	40.2	
	Oct. 76	41.6	39.9	38.5	43.5	40.7	
	Nov. 76	42.7	41.6	39.8	44.0	41.9	
	Dec. 76	43.9	42.5	41.3	43.8	43.0	
	Jan. 77	45.2	43.8	42.9	44.6	44.4	
	Feb. 77	46.1	45.1	43.7	45.4	45.3	
	Mar. 77	46.6	45.3	44.3	45.7	45.8	
	Apr. 77	46.7	45.0	44.5	46.4	45.9	
	May 77	46.5	44.7	44.3	46.4	45.7	
	June 77	46.6	44.7	44.2	46.3	45.7	
	July 77	46.6	44.9	44.5	46.6	45.8	
	Aug. 77	46.8	44.9	44.6	47.0	46.0	
	Sept. 77	47.1	45.3	44.8	46.7	46.2	
	Oct. 77	47.5	45.8	45.1	47.1	46.7	
	Industrial	June 76	34.0	32.1	32.4	37.9	33.7
		July 76	34.0	32.2	32.7	36.4	33.6
		Aug. 76	34.5	32.5	32.7	37.1	33.8
Sept. 76		35.1	32.6	33.2	38.1	34.4	
Oct. 76		35.6	32.8	33.2	37.8	34.6	
Nov. 76		36.8	34.2	34.0	36.4	35.4	
Dec. 76		38.1	35.5	35.6	35.9	36.5	
Jan. 77		39.7	36.5	37.4	36.8	38.0	
Feb. 77		40.2	37.6	38.2	38.4	38.7	
Mar. 77		40.4	37.9	38.7	38.4	39.1	
Apr. 77		40.4	37.8	38.6	38.5	39.1	
May 77		39.9	37.4	38.2	38.0	38.6	
June 77		39.8	37.3	38.2	40.3	38.9	
July 77		39.8	37.2	38.2	40.0	38.8	
Aug. 77		39.5	37.0	38.0	38.9	38.4	
Sept. 77		39.1	37.5	38.3	40.1	38.7	
Oct. 77		40.6	37.8	38.6	40.7	39.5	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-M-1 "No. 2 Heating Oil Supply/Price Monitoring Report."

Table 9. Heating Oil Prices to Ultimate Consumers*--Continued

Use	Date	Census Regions**				United States (cents per gallon)
		Northeast	South	North Central	West	
Institutional/ Utility	June 76	32.0	32.2	30.4	36.1	32.4
	July 76	31.6	32.2	30.5	35.8	32.2
	Aug. 76	32.3	31.6	30.9	36.8	32.4
	Sept. 76	32.0	31.8	31.2	37.8	32.6
	Oct. 76	33.1	32.0	31.2	37.7	32.9
	Nov. 76	34.4	33.1	32.2	36.7	33.7
	Dec. 76	35.2	33.7	34.1	36.8	34.5
	Jan. 77	36.7	35.2	35.9	37.1	35.9
	Feb. 77	40.2	35.8	36.3	38.6	37.1
	Mar. 77	37.5	36.5	37.1	38.2	37.1
	Apr. 77	37.7	36.1	36.3	37.8	36.7
	May 77	37.6	35.9	36.6	38.1	36.7
	June 77	37.2	35.3	36.2	38.4	36.3
	July 77	37.1	36.2	36.7	38.0	36.7
	Aug. 77	37.4	35.7	36.5	37.8	36.5
Sept. 77	37.0	35.8	37.0	38.8	36.8	
Oct. 77	37.7	36.3	36.8	39.7	37.2	
Other Heating Uses	June 76	34.5	33.5	32.4	34.4	33.6
	July 76	36.3	32.1	32.8	37.4	33.5
	Aug. 76	34.2	32.8	33.0	38.9	34.0
	Sept. 76	35.0	34.1	33.5	39.6	35.0
	Oct. 76	35.3	33.3	34.2	39.3	34.7
	Nov. 76	34.4	34.1	35.0	39.9	35.2
	Dec. 76	37.0	35.1	36.3	40.3	36.4
	Jan. 77	37.8	37.0	38.1	40.8	37.9
	Feb. 77	39.5	38.7	39.1	42.4	39.6
	Mar. 77	39.9	38.7	39.1	42.4	39.6
	Apr. 77	40.2	37.9	39.3	43.0	39.3
	May 77	39.7	37.8	39.4	43.6	39.1
	June 77	40.0	37.9	39.5	44.5	39.4
	July 77	39.1	37.9	38.7	45.4	39.3
	Aug. 77	39.9	39.4	41.6	45.6	39.5
Sept. 77	40.6	37.5	38.8	45.4	39.3	
Oct. 77	41.0	37.9	39.1	46.6	39.8	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-M-1 "No. 2 Heating Oil Supply/Price Monitoring Report."

Table 10. Heating Oil Prices to Other Than Ultimate Consumers*

Use	Date	Census Regions**				United States	
		Northeast	South	North Central	West		
		(cents per gallon)					
Rack	June 76	31.1	30.6	30.3	31.2	30.8	
	July 76	31.7	30.8	30.6	31.4	31.1	
	Aug. 76	32.9	30.8	30.8	31.5	31.5	
	Sept. 76	32.2	31.3	31.3	33.0	31.7	
	Oct. 76	32.6	31.1	31.4	32.4	32.1	
	Nov. 76	33.2	32.2	32.1	32.6	32.7	
	Dec. 76	34.3	33.3	33.3	36.9	33.8	
	Jan. 77	35.4	34.6	34.5	33.5	35.0	
	Feb. 77	46.2	35.3	35.3	33.8	35.8	
	Mar. 77	36.7	35.7	35.8	34.5	36.2	
	Apr. 77	36.8	35.5	35.8	34.5	36.1	
	May 77	36.8	35.6	35.8	34.6	36.1	
	June 77	36.9	35.8	35.9	34.9	36.1	
	July 77	36.8	35.6	36.3	35.0	36.2	
	Aug. 77	36.9	35.7	35.8	35.7	36.1	
	Sept. 77	37.0	35.4	36.0	35.7	36.2	
	Oct. 77	37.2	35.6	36.3	35.4	36.5	
	Delivered	June 76	31.7	31.4	31.0	32.2	31.4
		July 76	31.6	30.2	31.5	32.3	31.0
		Aug. 76	32.7	31.4	31.8	32.3	31.8
Sept. 76		32.9	31.5	32.3	31.9	32.1	
Oct. 76		33.2	32.1	32.4	32.2	32.5	
Nov. 76		33.6	33.2	33.2	33.2	33.3	
Dec. 76		34.7	33.4	34.1	33.4	34.1	
Jan. 77		35.5	34.7	35.2	33.7	35.1	
Feb. 77		36.9	36.0	36.2	34.4	36.2	
Mar. 77		37.3	36.4	36.8	35.0	36.7	
Apr. 77		37.8	35.8	36.9	35.6	36.6	
May 77		37.3	35.6	37.0	36.2	36.6	
June 77		37.3	35.3	37.1	36.1	36.4	
July 77		37.4	35.5	36.8	36.1	36.4	
Aug. 77		37.7	35.3	36.6	36.4	36.3	
Sept. 77		37.1	35.3	36.6	36.5	36.3	
Oct. 77		37.4	35.5	37.7	36.6	36.8	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-M-1 "No. 2 Heating Oil Supply/Price Monitoring Report."

Table 11. Heating Oil Prices to Ultimate Consumers*

	1977		1978									
	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.**	Oct.**
<u>Residential</u>												
Region 1	48.5	48.9	49.4	49.5	49.4	49.3	49.3	49.2	49.1	49.1	50.0	51.2
Region 2	48.1	48.6	49.2	49.3	49.3	49.2	49.1	49.1	49.0	49.0	49.7	51.0
Region 3	47.0	47.5	48.1	48.4	48.4	48.2	47.7	47.8	47.6	47.6	48.5	50.0
Region 4	46.1	46.6	47.5	47.6	47.7	47.1	46.7	46.8	46.7	47.4	46.6	47.9
Region 5	45.7	46.1	46.4	46.4	46.5	46.4	46.3	46.0	46.4	46.3	46.8	47.6
Region 6	NA	NA										
Region 7	44.2	44.5	44.5	45.2	44.4	44.6	44.7	44.8	45.0	45.1	45.6	45.9
Region 8	45.4	45.7	45.2	45.5	45.0	45.0	45.0	45.4	45.8	45.5	46.3	46.3
Region 9	44.9	44.5	44.7	45.6	47.0	45.1	44.4	43.9	43.5	44.8	45.0	45.9
Region 10	47.4	47.3	47.4	47.5	47.8	47.6	47.4	47.7	48.1	47.3	47.7	48.3
National Average	47.6	47.9	48.5	48.6	48.6	48.6	48.3	48.2	48.2	48.2	49.0	50.1
<u>Industrial</u>												
Region 1	42.3	42.0	43.7	43.6	42.6	42.8	43.1	41.3	41.4	41.7	42.6	44.1
Region 2	40.9	41.7	42.5	41.9	41.5	41.4	41.1	40.0	39.9	39.8	40.9	42.4
Region 3	39.6	40.3	40.9	40.9	40.2	40.1	39.5	39.1	39.2	39.4	40.4	41.4
Region 4	38.1	38.4	38.4	37.8	38.0	38.1	38.3	38.4	37.7	37.9	38.7	39.6
Region 5	38.6	39.1	39.1	38.8	38.8	38.3	38.1	37.7	37.6	37.8	37.8	38.9
Region 6	35.8	35.9	34.5	34.0	34.9	34.8	34.8	35.6	34.1	35.3	36.0	36.6
Region 7	36.7	37.2	38.3	37.6	36.9	36.2	36.3	36.6	36.8	37.1	37.0	37.8
Region 8	37.4	38.1	38.8	38.9	38.4	36.6	36.4	36.1	35.9	36.1	36.7	39.2
Region 9	37.0	37.1	38.1	39.3	39.0	37.9	38.5	36.9	36.8	37.3	37.4	36.3
Region 10	41.3	40.7	42.6	41.3	41.1	40.6	41.0	40.4	42.2	42.5	42.0	42.3
National Average	39.3	39.9	40.1	39.8	39.7	39.3	38.9	38.6	38.2	38.5	39.2	40.2

* The data in Tables 11 and 12 are derived from a survey sample of approximately 1,300 refiners and distributors by DOE Region (see "Region" in Definitions) who sell heating oil, as compared to Tables 9 and 10, which are derived from a smaller sample.

** Preliminary data.

NA = Not available.

Source: EIA-9 "No. 2 Heating Oil Supply/Price Monitoring Report."

Table 11. Heating Oil Prices to Ultimate Consumers*--Continued

	1977		1978									
	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.**	Oct**
Institutional/												
Utility												
Region 1	41.3	41.8	42.2	43.0	42.9	41.5	43.1	42.6	40.4	42.0	43.2	41.9
Region 2	38.2	41.5	41.2	40.6	39.7	40.8	40.4	38.7	37.3	38.3	37.8	40.2
Region 3	37.7	38.7	39.0	38.6	38.8	39.3	38.8	37.8	37.9	38.0	38.4	39.9
Region 4	36.7	37.0	37.4	38.9	36.5	36.2	36.6	35.9	36.2	35.8	37.2	37.9
Region 5	36.8	37.7	37.6	37.2	37.1	36.9	35.9	35.5	37.1	36.4	37.6	38.2
Region 6	34.7	34.5	32.5	NA	34.1	34.5	34.5	32.3	NA	34.4	NA	36.4
Region 7	36.9	37.1	37.0	36.9	36.2	36.4	35.5	36.3	35.5	36.3	36.7	37.7
Region 8	39.5	40.0	39.5	39.9	38.7	39.3	39.6	40.3	NA	NA	NA	N/A
Region 9	39.4	39.6	39.8	39.6	39.5	40.0	38.0	NA	NA	NA	NA	N/A
Region 10	39.9	40.4	40.0	40.3	39.5	39.8	40.4	38.7	43.9	43.5	42.0	43.0
National Average	37.5	38.6	38.5	38.3	37.6	37.9	37.5	36.5	36.7	36.7	37.7	39.0
Other Heating Uses												
Region 1	41.4	42.1	42.6	41.3	41.6	41.7	42.0	41.5	40.6	41.2	44.3	45.7
Region 2	41.2	42.6	40.4	41.4	40.8	39.8	40.9	40.2	39.8	39.5	42.0	43.0
Region 3	38.1	37.9	38.6	37.9	38.2	38.8	38.0	38.7	39.3	39.7	40.9	40.7
Region 4	39.8	39.1	40.1	39.9	40.1	39.5	39.8	39.8	39.2	39.7	38.0	40.6
Region 5	40.8	41.4	41.6	41.6	40.7	40.1	40.6	40.1	39.8	39.8	40.0	40.5
Region 6	38.8	35.7	36.8	37.0	39.4	39.6	NA	NA	NA	38.2	37.9	40.5
Region 7	42.7	41.5	40.5	42.5	43.3	42.7	43.2	43.1	44.5	44.3	NA	43.4
Region 8	44.1	44.2	44.1	43.9	44.7	45.1	45.3	45.4	NA	44.5	45.8	N/A
Region 9	40.5	38.2	40.5	40.8	40.2	40.4	NA	NA	NA	39.0	40.6	40.9
Region 10	44.4	44.5	44.4	45.0	44.5	42.7	44.1	44.4	45.2	45.6	43.0	45.4
National Average	40.5	40.6	40.7	40.3	40.2	40.1	39.8	40.6	40.4	40.6	40.9	42.0

* The data in Tables 11 and 12 are derived from a survey sample of approximately 1,000 refiners and distributors by DOE Region (see "Region" in Definitions) who sell heating oil, as compared to Tables 9 and 10, which are derived from a smaller sample.

** Preliminary data.

NA = Not available.

Source: EIA-9 "No. 2 Heating Oil Supply/Price Monitoring Report."

Table 12. Heating Oil Prices to Other Than Ultimate Consumers*

	1977			1978								
	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.**	Oct.**
Rack	(cents per gallon)											
Region 1	37.6	R37.9	38.0	37.8	37.8	37.7	37.7	37.5	37.2	37.3	38.4	39.4
Region 2	37.5	37.6	37.9	37.4	37.2	37.6	37.5	37.1	37.1	37.2	38.0	39.2
Region 3	37.3	37.5	37.8	37.6	37.5	37.5	37.5	37.4	37.5	37.4	38.2	39.2
Region 4	36.8	36.8	37.1	36.8	36.2	36.3	36.0	36.5	36.5	36.9	37.4	38.2
Region 5	36.7	36.7	36.8	36.5	36.4	36.2	36.3	36.0	36.0	36.1	36.7	37.7
Region 6	33.9	33.9	33.6	32.6	32.8	33.3	33.8	33.7	33.7	34.3	35.1	36.1
Region 7	36.1	36.3	36.2	35.9	35.5	35.3	36.0	35.9	35.9	35.9	36.6	37.4
Region 8	36.1	36.4	36.6	36.6	36.3	36.2	36.2	36.2	36.1	36.6	37.1	37.6
Region 9	35.7	35.7	35.8	35.5	35.0	35.6	35.1	35.2	34.4	35.0	36.1	35.6
Region 10	36.2	36.2	36.2	36.0	35.8	35.9	35.8	35.9	35.7	35.5	36.1	36.6
National Average	36.8	37.1	37.3	36.9	36.5	36.5	36.6	36.2	36.3	36.5	37.2	38.3
Delivered												
Region 1	38.0	38.3	38.6	38.0	37.5	38.5	38.7	38.8	39.0	39.0	39.4	40.0
Region 2	37.4	36.6	38.5	37.7	37.4	38.4	38.3	38.4	38.2	38.6	38.3	39.8
Region 3	38.0	38.0	38.3	37.8	37.6	38.8	38.6	38.9	38.9	38.4	39.5	40.0
Region 4	37.5	37.7	37.7	37.6	37.6	37.7	37.8	37.6	37.6	38.1	37.4	39.4
Region 5	38.2	38.1	38.1	38.0	37.7	37.7	38.0	37.8	37.8	37.6	38.2	38.9
Region 6	36.4	36.3	35.6	35.4	34.8	36.0	35.4	36.7	NA	NA	34.9	37.2
Region 7	37.0	37.1	37.1	36.9	36.4	36.6	36.6	36.9	37.2	37.2	37.4	37.9
Region 8	37.7	38.0	38.3	38.1	37.7	37.7	37.8	37.6	37.8	37.7	38.0	39.0
Region 9	38.2	39.0	NA	38.5	38.7	NA						
Region 10	36.3	36.3	36.4	36.5	36.3	36.3	36.4	37.1	36.8	36.6	37.0	37.6
National Average	37.7	37.5	37.8	37.7	37.3	37.6	37.5	37.7	37.1	37.1	37.6	38.8

* The data in Tables 11 and 12 are derived from a survey sample of approximately 1,300 refiners and distributors by DOE Region (see "Region" in Definitions) who sell heating oil, as compared to Tables 9 and 10, which are derived from a smaller sample.

** Preliminary data.

NA = Not available.

Source: EIA-9 "No. 2 Heating Oil Supply/Price Monitoring Report."

2. Residential prices for middle distillates on state, regional and national bases on a monthly basis since decontrol.

The attached tables 1 and 5, excerpted from the Energy Data Reports, present residential heating oil prices on a state, regional and national basis. The reports are published monthly as requested, but do not cover the entire period since decontrol, July 1976, as the survey which provides the data, on which the reports are based, was not implemented until November 1977.

Table 1. Average Residential Heating Oil Prices and Ranges

EOE Region	Average Residential Price		Range			
	August 78	September 78	August 78		September 78	
			lower 10%	upper 10%	lower 10%	upper 10%
1	49.1	50.0	46.9	50.9	48.4	51.0
2	49.0	49.7	47.5	50.9	47.9	51.0
3	47.6	48.5	45.0	49.9	46.3	50.0
4	47.4	46.6	43.0	49.8	42.9	49.0
5	46.3	46.8	44.5	47.9	45.0	48.0
6	N/A	N/A	N/A	N/A	N/A	N/A
7	45.1	45.6	44.2	46.9	44.3	47.0
8	45.5	46.3	44.4	46.0	44.4	49.0
9	44.8	45.0	40.5	49.9	40.3	49.0
10	47.3	47.7	43.9	52.0	43.9	50.0
National Average	48.2	49.0	45.0	50.9	46.0	51.0
Revised						

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Revised November 29, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	August 78	September 78		August 78	September 78
Alaska	51.8	52.8	New Hampshire	48.8	50.1
Connecticut	49.8	50.7	New Jersey	48.6	49.4
Delaware	47.6	48.9	New York	49.1	49.9
Washington D.C.	49.2	49.8	Ohio	46.8	47.3
Idaho	45.2	44.9	Oregon	45.5	46.0
Illinois	44.5	45.2	Pennsylvania	47.2	48.4
Indiana	46.2	46.2	Rhode Island	49.1	49.9
Maine	48.9	49.5	Vermont	50.1	51.0
Maryland	48.4	48.9	Virginia	48.4	48.6
Massachusetts	48.6	49.6	Washington	47.3	47.7
Michigan	47.2	47.9	West Virginia	46.1	46.8
Minnesota	45.0	45.6	Wisconsin	45.8	46.1

Table 1. Average Residential Heating Oil Prices and Ranges

DOE Region	Average Residential Price		Range			
	July 78	August 78	July 78		August 78	
			lower 10%	upper 10%	lower 10%	upper 10%
1	49.1	49.1	46.9	50.9	46.9	50.9
2	49.0	49.0	47.5	50.9	47.5	50.9
3	47.6	47.6	44.9	49.9	45.0	49.9
4	46.7	47.4	43.5	48.7	43.0	49.8
5	46.4	46.3	44.8	48.3	44.5	47.9
6	N/A	N/A	N/A	N/A	N/A	N/A
7	45.0	45.1	44.0	46.9	44.2	46.9
8	45.8	45.5	44.7	46.0	44.4	46.0
9	43.5	44.8	40.6	46.4	40.5	49.9
10	48.1	47.3	44.0	52.1	43.9	52.0
National Average	48.2	48.2	45.3	50.7	46.7	50.9

R=Revised

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared October 25, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	July 78	August 78		July 78	August 78
Alaska	52.0	51.8	New Hampshire	49.0	48.8
Connecticut	49.7	49.8	New Jersey	48.5	48.6
Delaware	47.9	47.6	New York	49.3	49.1
Washington D.C.	49.3	49.2	Ohio	47.0	46.8
Idaho	45.1	45.2	Oregon	46.4	45.5
Illinois	44.8	44.5	Pennsylvania	47.4	47.2
Indiana	46.5	46.2	Rhode Island	49.3	49.1
Maine	49.1	48.9	Vermont	50.0	50.1
Maryland	48.0	48.4	Virginia	48.1	48.4
Massachusetts	48.6	48.6	Washington	47.4	47.3
Michigan	46.9	47.2	West Virginia	46.3	46.1
Minnesota	45.3	45.0	Wisconsin	45.8	45.8

R = Revised.

Table 1. Average Residential Heating Oil Prices and Ranges

DOE Region	Average Residential Price ^a		Range			
	June 78	July 78	June 78		July 78	
			lower 10%	upper 10%	lower 10%	upper 10%
1	49.2	49.1	47.2	50.9	46.9	50.9
2	49.1	49.0	47.6	50.9	47.5	50.9
3	47.8	47.6	45.7	49.9	44.9	49.9
4	46.6	46.7	43.5	48.9	43.5	46.7
5	46.0	46.4	43.9	47.9	44.8	46.3
6	N/A	N/A	N/A	N/A	N/A	N/A
7	44.8	45.0	43.9	46.9	44.7	46.9
8	45.4	45.8	43.9	46.0	44.7	46.0
9	43.9	43.5	42.0	46.4	40.6	46.4
10	47.7	48.1	44.2	49.4	44.0	52.1
National Average	48.2	48.2	45.0	50.6	45.3	50.7

R=Revised

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared September 27, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	June 78	July 78		June 78	July 78
Alaska	51.6	52.0	New Hampshire	48.8	49.0
Connecticut	49.6	49.7	New Jersey	48.7	48.5
Delaware	47.6	47.9	New York	49.3	49.3
Washington D.C.	49.1	49.3	Ohio	46.6	47.0
Idaho	44.9	45.1	Oregon	46.4	46.4
Illinois	44.8	44.8	Pennsylvania	47.6	47.4
Indiana	45.4	46.5	Rhode Island	49.5	49.3
Maine	46.9	49.1	Vermont	50.1	50.0
Maryland	46.0	46.0	Virginia	46.2	46.1
Massachusetts	46.8	46.6	Washington	47.7	47.4
Michigan	47.0	46.9	West Virginia	46.3	46.3
Minnesota	45.4	45.3	Wisconsin	46.1	45.8

R = Revised.

Table 1. Average Residential Heating Oil Prices and Ranges

DOE Region	Average Residential Price		Range			
	May 78	June 78	May 78		June 78	
			lower 10%	upper 10%	lower 10%	upper 10%
1	49.3	49.2	47.6	50.9	47.2	50.9
2	49.1	49.1	47.5	50.8	47.4	50.9
3	47.7	47.8	45.5	49.9	45.7	49.9
4	46.7	46.8	42.7	48.9	43.5	48.9
5	46.3	46.0	44.6	47.8	43.9	47.9
6	N/A	N/A	N/A	N/A	N/A	N/A
7	44.7	44.8	43.9	46.9	43.9	46.9
8	45.0	45.4	44.0	46.0	43.9	46.0
9	44.4	43.9	40.9	46.4	42.0	46.4
10	47.4	47.7	44.1	49.3	44.2	49.4
National Average	48.3	48.2	45.9	50.7	44.9	50.6

R=Revised

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared August 26, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	May 78	June 78		May 78	June 78
Alaska	51.6	51.6	New Hampshire	49.1	48.8
Connecticut	50.0	49.6	New Jersey	46.6	48.7
Delaware	48.7	47.8	New York	49.3	49.1
Washington D.C.	49.4	49.1	Ohio	46.9	46.6
Idaho	44.2	44.9	Oregon	46.3	46.4
Illinois	45.7	44.6	Pennsylvania	47.4	47.6
Indiana	46.4	45.4	Rhode Island	49.2	49.5
Maine	46.8	46.9	Vermont	50.3	50.1
Maryland	48.1	48.0	Virginia	48.2	48.2
Massachusetts	46.9	46.8	Washington	47.5	47.8
Michigan	46.9	47.0	West Virginia	46.1	46.4
Minnesota	45.2	45.4	Wisconsin	45.8	46.1

R = Revised.

Table 1. Average Residential Heating Oil Prices and Ranges

DOE Region	Average Residential Price		Range			
	Mar. 78	Apr. 78	lower 10%	upper 10%	lower 10%	upper 10%
1	49.4	49.3	47.9	50.9	47.8	50.9
2	49.3	49.2	47.6	50.9	48.5	50.9
3	48.4	48.2	46.2	49.9	45.9	49.9
4	47.7	47.1	45.5	49.9	42.3	52.5
5	46.5	46.4	44.7	47.9	44.8	47.9
6	N/A	N/A	N/A	N/A	N/A	N/A
7	44.4	44.6	42.6	46.9	43.7	46.9
8	45.0	45.0	44.1	46.0	44.0	46.0
9	47.0	45.1	43.0	48.4	41.6	46.9
10	47.8	47.6	45.4	49.5	44.0	49.2
National Average	48.6	48.6	46.2	50.9	46.9	50.9

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared June 28, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices For Selected States

State	Average Residential Price		State	Average Residential Price	
	Mar. 78	Apr. 78		Mar. 78	Apr. 78
Alaska	53.1	52.5	New Hampshire	49.0	49.0
Connecticut	50.1	50.1	New Jersey	48.7	48.7
Delaware	47.9	48.5	New York	49.6	49.5
Washington D.C.	50.0	49.7	Ohio	46.8	46.6
Idaho	44.5	44.0	Oregon	46.3	46.0
Illinois	45.9	46.0	Pennsylvania	48.4	48.1
Indiana	46.8	46.5	Rhode Island	49.5	49.4
Maine	48.9	48.8	Vermont	50.3	50.7
Maryland	48.1	48.2	Virginia	48.7	48.4
Massachusetts	49.1	48.9	Washington	47.8	47.9
Michigan	47.3	47.3	West Virginia	46.9	46.4
Minnesota	45.3	45.4	Wisconsin	45.6	45.6

R = Revised.

Table 1. Average Residential Heating Oil Prices and Ranges

DCC Region	Average Residential Price		Range			
	Feb. 78	Mar. 78	Feb. 78		Mar. 78	
			lower 10%	upper 10%	lower 10%	upper 10%
1	49.5	49.4	48.0	51.0	47.9	50.9
2	R49.3	49.3	47.5	51.0	47.6	50.9
3	48.4	48.4	46.5	50.7	46.2	49.9
4	R47.6	47.7	45.5	52.5	45.5	49.9
5	46.4	46.5	44.7	48.0	44.7	47.9
6	N/A	N/A	N/A	N/A	N/A	N/A
7	R45.2	44.4	43.2	46.9	42.3	44.7
8	45.5	45.0	43.9	47.1	44.1	46.0
9	R45.6	47.0	42.6	48.5	43.0	43.4
10	R47.5	47.7	44.0	49.0	45.4	49.5
National Average	R48.6	48.6	46.0	50.9	45.9	50.9

N/A: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared 4/26, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	Feb. 78	Mar. 78		Feb. 78	Mar. 78
Alaska	R53.4	53.1	New Hampshire	R49.1	49.0
Connecticut	R50.2	50.0	New Jersey	R48.7	48.7
Delaware	R48.2	47.9	New York	R49.5	49.6
Washington D.C.	49.7	50.0	Ohio	46.6	46.8
Idaho	44.5 ^a	44.5	Oregon	R46.3	46.3
Illinois	R45.8	45.9	Pennsylvania	R48.4	48.4
Indiana	R46.8	46.8	Rhode Island	49.5	49.5
Maine	48.9	48.9	Vermont	R50.6	50.3
Maryland	48.0	48.1	Virginia	R48.9	48.7
Massachusetts	R49.2	49.1	Washington	R47.6	47.8
Michigan	47.3	47.3	West Virginia	46.6	46.9
Minnesota	45.4	45.3	Wisconsin	R45.6	45.6

R = Revised.

Table 1. Average Residential Heating Oil Prices

DOE Region	Average Residential Price	
	January 1978	February 1978
1	49.4	49.5
2	49.2	49.4
3	R48.1	48.4
4	R47.5	47.7
5	R46.4	46.4
6	N/A	N/A
7	44.5	44.8
8	R45.2	45.5
9	R44.7	45.5
10	47.4	47.3
National Average	R48.5	48.7

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared May 1, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	Jan. 78	Feb. 78		Jan. 78	Feb. 78
Alaska	R52.9	51.7	New Hampshire	R49.3	49.4
Connecticut	49.9	50.1	New Jersey	R46.6	48.8
Delaware	48.6	48.6	New York	R49.5	49.6
Washington D.C.	49.0	49.7	Ohio	46.7	46.6
Idaho	44.0	44.4	Oregon	46.0	46.1
Illinois	R45.9	45.9	Pennsylvania	48.1	48.5
Indiana	R46.9	46.9	Rhode Island	R49.8	49.5
Maine	R49.0	48.9	Vermont	R50.8	50.8
Maryland	R48.0	48.0	Virginia	R48.0	48.5
Massachusetts	R49.0	49.1	Washington	R47.6	47.7
Michigan	47.3	47.3	West Virginia	47.0	46.6
Minnesota	R47.2	47.2	Wisconsin	45.6	45.7

R = Revised.

Table 1. Average Residential Heating Oil Prices

DOE Region	Average Residential Price	
	December 1977	January 1978
1	48.9	49.4
2	48.6	49.2
3	47.5	48.0
4	46.6	47.4
5	R46.1	46.3
6	N/A	N/A
7	44.5	44.5
8	R45.7	45.3
9	R44.5	45.2
10	47.3	47.4
National Average	47.9	48.4

NOTE: Data for regions marked N/A (Not Available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared March 29, 1978, in the Office of Energy Data and Interpretation.

Table 3. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	Dec. 77	Jan. 78		Dec. 77	Jan. 78
Alaska	85.0	52.5	New Hampshire	49.1	47.2
Connecticut	44.4	49.9	New Jersey	48.2	48.7
Delaware	47.4	48.8	New York	48.8	49.4
Washington, D.C.	48.6	49.0	Ohio	46.1	46.7
Idaho	44.9	44.0	Oregon	44.7	46.0
Illinois	45.5	45.5	Pennsylvania	47.4	48.1
Indiana	44.9	47.0	Rhode Island	49.1	47.7
Iowa	44.5	48.9	Vermont	50.7	50.5
Maryland	47.7	47.9	Virginia	47.3	47.7
Massachusetts	44.3	48.9	Washington	47.4	47.7
Michigan	47.0	47.3	West Virginia	46.9	47.0
Minnesota	45.0	45.1	Wisconsin	45.6	45.6

R = Revised.

Table 1. Average Residential Heating Oil Prices

DOE Region	Average Residential Price	
	June 1977	November 1977
1	46.8	48.5
2	46.9	48.1
3	45.8	47.0
4	44.9	46.1
5	44.9	45.4
6	N/A	N/A
7	42.7	44.2
8	43.7	45.4
9	44.6	44.9
10	46.1	47.4
National Average	46.1	47.6

Note: Data for regions marked N/A (Not available) in all tables are not published in order to prevent disclosure of individual company proprietary information. Large differences between published regional averages and the national average may occur because prices and margins of firms in these regions are included in the national average.

Prepared February 15, 1978, in the Office of Energy Data and Interpretation.

Table 5. Average Residential Heating Oil Prices for Selected States

State	Average Residential Price		State	Average Residential Price	
	June 77	Nov. 77		June 77	Nov. 77
Alaska	51.5	52.8	New Hampshire	47.1	48.3
Connecticut	47.5	48.8	New Jersey	46.4	47.6
Delaware	46.1	47.5	New York	47.1	48.3
Washington D.C.	46.9	48.2	Ohio	45.2	45.9
Idaho	N/A	N/A	Oregon	45.8	45.8
Illinois	44.2	44.4	Pennsylvania	45.7	46.9
Indiana	45.1	46.3	Rhode Island	47.6	49.1
Maine	46.8	47.9	Vermont	49.1	58.1
Maryland	45.9	47.2	Virginia	46.8	47.2
Massachusetts	46.2	48.2	Washington	46.1	47.5
Michigan	45.4	46.6	West Virginia	45.9	46.5
Minnesota	44.3	44.5	Wisconsin	44.7	45.8

N/A - Not available.

Table 9. Heating Oil Prices to Ultimate Consumers*

Use	Date	Census Regions**				United States	
		Northeast	South	North Central	West		
		(cents per gallon)					
Residential	June 76	40.3	38.3	37.4	41.5	39.3	
	July 76	40.1	38.0	37.6	42.0	39.3	
	Aug. 76	40.7	38.7	37.8	42.2	39.8	
	Sept. 76	41.2	39.0	38.1	42.5	40.2	
	Oct. 76	41.6	39.9	38.5	43.5	40.7	
	Nov. 76	42.7	41.6	39.8	44.0	41.9	
	Dec. 76	43.9	42.5	41.3	43.8	43.0	
	Jan. 77	45.2	43.8	42.9	44.6	44.4	
	Feb. 77	46.1	45.1	43.7	45.4	45.3	
	Mar. 77	46.6	45.3	44.3	45.7	45.8	
	Apr. 77	46.7	45.0	44.5	46.4	45.9	
	May 77	46.5	44.7	44.3	46.4	45.7	
	June 77	46.6	44.7	44.2	46.3	45.7	
	July 77	46.6	44.9	44.5	46.6	45.8	
	Aug. 77	46.8	44.9	44.6	47.0	46.0	
	Sept. 77	47.1	45.3	44.8	46.7	46.2	
	Oct. 77	47.5	45.8	45.1	47.1	46.7	
	Industrial	June 76	34.0	32.1	32.4	37.9	33.7
		July 76	34.0	32.2	32.7	36.4	33.6
		Aug. 76	34.5	32.5	32.7	37.1	33.8
Sept. 76		35.1	32.6	33.2	38.1	34.4	
Oct. 76		35.6	32.8	33.2	37.8	34.6	
Nov. 76		36.8	34.2	34.0	36.4	35.4	
Dec. 76		38.1	35.5	35.6	35.9	36.5	
Jan. 77		39.7	36.5	37.4	36.8	38.0	
Feb. 77		40.2	37.6	38.2	38.4	38.7	
Mar. 77		40.4	37.9	38.7	38.4	39.1	
Apr. 77		40.4	37.8	38.6	38.5	39.1	
May 77		39.9	37.4	38.2	38.0	38.6	
June 77		39.8	37.3	38.2	40.3	38.9	
July 77		39.8	37.2	38.2	40.0	38.8	
Aug. 77		39.5	37.0	38.0	38.9	38.4	
Sept. 77		39.1	37.5	38.3	40.1	38.7	
Oct. 77		40.6	37.8	38.6	40.7	39.5	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-M-1 "Heating Oil Supply/Price Monitoring Report."

Table 9. Heating Oil Prices to Ultimate Consumers*---Continued

Use	Date	Census Regions**				United States
		Northeast	South	North Central	West	
		(cents per gallon)				
Institutional/ Utility	June 76	32.0	32.2	30.4	36.1	32.4
	July 76	31.6	32.2	30.5	35.8	32.2
	Aug. 76	32.3	31.6	30.9	36.8	32.4
	Sept. 76	32.0	31.8	31.2	37.8	32.6
	Oct. 76	33.1	32.0	31.2	37.7	32.9
	Nov. 76	34.4	33.1	32.2	36.7	33.7
	Dec. 76	35.2	33.7	34.1	36.8	34.5
	Jan. 77	36.7	35.2	35.9	37.1	35.9
	Feb. 77	40.2	35.8	36.3	38.6	37.1
	Mar. 77	37.5	36.5	37.1	38.2	37.1
	Apr. 77	37.7	36.1	36.3	37.8	36.7
	May 77	37.6	35.9	36.6	38.1	36.7
	June 77	37.2	35.3	36.2	38.4	36.3
	July 77	37.1	36.2	36.7	38.0	36.7
Aug. 77	37.4	35.7	36.5	37.8	36.5	
Sept. 77	37.0	35.8	37.0	38.8	36.8	
Oct. 77	37.7	36.3	36.8	39.7	37.2	
Other Heating Uses	June 76	34.5	33.5	32.4	34.4	33.6
	July 76	36.3	32.1	32.8	37.4	33.5
	Aug. 76	34.2	32.8	33.0	38.9	34.0
	Sept. 76	35.0	34.1	33.5	39.6	35.0
	Oct. 76	35.3	33.3	34.2	39.3	34.7
	Nov. 76	34.4	34.1	35.0	39.9	35.2
	Dec. 76	37.0	35.1	36.3	40.3	36.4
	Jan. 77	37.8	37.0	38.1	40.8	37.9
	Feb. 77	39.5	38.7	39.1	42.4	39.6
	Mar. 77	39.9	38.7	39.1	42.4	39.6
	Apr. 77	40.2	37.9	39.3	43.0	39.3
	May 77	39.7	37.8	39.4	43.6	39.1
	June 77	40.0	37.9	39.5	44.5	39.4
	July 77	39.1	37.9	38.7	45.4	39.3
Aug. 77	39.9	39.4	41.6	45.6	39.5	
Sept. 77	40.6	37.5	38.8	45.4	39.3	
Oct. 77	41.0	37.9	39.1	46.6	39.8	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-M-1 "Heating Oil Supply/Price Monitoring Report."

Table 10. Heating Oil Prices to Other Than Ultimate Consumers*

Use	Date	Census Regions**				United States	
		Northeast	South	North Central	West		
		(cents per gallon)					
Rack	June 76	31.1	30.6	30.3	31.2	30.8	
	July 76	31.7	30.8	30.6	31.4	31.1	
	Aug. 76	32.9	30.8	30.8	31.5	31.5	
	Sept. 76	32.2	31.3	31.3	33.0	31.7	
	Oct. 76	32.6	31.1	31.4	32.4	32.1	
	Nov. 76	33.2	32.2	32.1	32.6	32.7	
	Dec. 76	34.3	33.3	33.3	36.9	33.8	
	Jan. 77	35.4	34.6	34.5	33.5	35.0	
	Feb. 77	46.2	35.3	35.3	33.8	35.8	
	Mar. 77	36.7	35.7	35.8	34.5	36.2	
	Apr. 77	36.8	35.5	35.8	34.5	36.1	
	May 77	36.8	35.6	35.8	34.6	36.1	
	June 77	36.9	35.8	35.9	34.9	36.1	
	July 77	36.8	35.6	36.3	35.0	36.2	
	Aug. 77	36.9	35.7	35.8	35.7	36.1	
	Sept. 77	37.0	35.4	36.0	35.7	36.2	
	Oct. 77	37.2	35.6	36.3	35.4	36.5	
	Delivered	June 76	31.7	31.4	31.0	32.2	31.4
		July 76	31.6	30.2	31.5	32.3	31.0
		Aug. 76	32.7	31.4	31.8	32.3	31.8
Sept. 76		32.9	31.5	32.3	31.9	32.1	
Oct. 76		33.2	32.1	32.4	32.2	32.5	
Nov. 76		33.6	33.2	33.2	33.2	33.3	
Dec. 76		34.7	33.4	34.1	33.4	34.1	
Jan. 77		35.5	34.7	35.2	33.7	35.1	
Feb. 77		36.9	36.0	36.2	34.4	36.2	
Mar. 77		37.3	36.4	36.8	35.0	36.7	
Apr. 77		37.8	35.8	36.9	35.6	36.6	
May 77		37.3	35.6	37.0	36.2	36.6	
June 77		37.3	35.3	37.1	36.1	36.4	
July 77		37.4	35.5	36.8	36.1	36.4	
Aug. 77		37.7	35.3	36.6	36.4	36.3	
Sept. 77		37.1	35.3	36.6	36.5	36.3	
Oct. 77		37.4	35.5	37.7	36.6	36.8	

* The data in Tables 9 and 10 are derived from a survey sample of approximately 600 refiners and distributors who sell heating oil, as compared to the data in Table 2, which are derived from refiners and large resellers/retailers.

** U.S. Bureau of the Census

Source: FEA-P112-N-1 "Heating Oil Supply/Price Monitoring Report."

3. Any information and analyses concerning refiner price increases since decontrol and the reasons therefore, broken down by product cost increases, non-product cost increases, and product increases.

For the period from decontrol on July 1, 1978, through September 1978, refiner wholesale prices are estimated to have increased by about six and one-half cents per gallon. About four and one-half cents per gallon of this increase can be attributed to crude and imported distillate costs.

One and one-half cents can be explained on the basis of the monitoring model used in the OIA hearing. The remaining one-half cent cannot be accounted for by the model results. The DOE is collecting from refiners that data needed to make a precise estimate of the amount of the unexplained one-half cent that can be attributed to non-product costs.

4. Any projections made by the DOE for price increases in the current heating season with the basis for such projections.

The Department of Energy does not publish forecasts of heating oil prices over the short-run. However, the announced OPEC price increase for January 1, 1978, is expected to raise heating oil prices by as much as a penny per gallon during the heating season. OPEC has announced further price increases for April 1, July 1, and October 1, of 11/8, which when added to the January 1, 1979, increase, could increase prices by as much as three cents over the year.

5. What has been the nature of seasonal variations in the price of middle distillates before and after decontrol?

The Federal Energy Administration computed seasonality factors using the Bureau of Census statistical routine for residential heating oil prices for a representative period, 1960 through 1967, prior to controls. This period was selected because crude oil costs were stable then, and would not affect the estimate of seasonality. The estimated seasonal increase in residential prices prior to controls was 3.2 percent for the period June to February.

As there have only been two winter seasons since decontrol, the Bureau of Census statistical routine cannot be used to estimate seasonality since decontrol. Also, there have been substantial cost increases which the Census routine would not take into account. A summary of the increases from June to January since decontrol are as follows:

	Residential Price		
	<u>June</u>	<u>January</u>	<u>Increase</u>
1976/1977	39.3	44.4	5.1
1977/1978	46.2	48.5	2.3

It should be recognized that costs increased during these periods, and the increases shown cannot necessarily be attributed to seasonality, due to constantly increasing crude oil prices.

6. The Office of Hearings and Appeals estimates that since decontrol, refiners have recovered nearly \$200 million more than they would under price controls. Do you agree with this estimate and, if not, state the basis for your own estimate?

The Department of Energy (DOE) does not necessarily agree with the OHA estimate. This estimate was derived from a statistical model used to approximate refiners' heating oil prices under continued controls. The model incorporated refiners' actual increases in crude costs which were reported to the DOE, but only included an estimate of refiners' increased operating expenses, which are not reported to the DOE. The DOE is currently examining refiners operating expenses directly attributable to No.2 distillate since decontrol to assess the accuracy of the OHA estimate.

7. (a) Provide an analysis of the current supply situation and the extent to which domestic, Caribbean and foreign refineries are expected to fulfill winter demand.

The continuing efforts by refiners to meet unseasonably high gasoline demand have resulted in some concern also about heating oil availability this winter. Under normal circumstances, after the conclusion of the summer peak driving season refiners adjust their equipment to maximize heating oil rather than gasoline production.

As of December 8, 1978, distillate stocks were 228 million barrels, or 13 percent below the 1977 level of 262 million barrels. However, 1977 distillate stocks were unusually high. Current stocks are 18.4 million barrels higher than the average stock level for the same week over the 5 year period 1972-76. It is our conclusion that, barring abnormally cold weather, a crude oil supply interruption or severe distribution problems, heating oil supplies will be adequate to meet demand in all regions through the winter. If we do experience a severe winter, supplies of heating oil can be augmented by increased imports, as they were during the severe winter of 1976-77.

- b. Are you contemplating product entitlements for middle distillates and if so, under what circumstances?

At the present time middle distillate stocks are adequate to meet projected demand and consequently there is no requirement to provide additional incentives for their importation. Obviously temporary product entitlements are an option for providing incremental additional supplies of middle distillates to domestic stocks and have been used for this purpose once in the past in February of 1977. At that time stocks of middle distillates were critically low, the nation was experiencing an unusually severe winter, there were extensive natural gas supply curtailments, severe regional shortages of propane, and localized middle distillate shortages resulting from distribution network constraints caused both by the exceptionally high demand and supply interruptions resulting from heavy snows and river freeze ups. Since none of these conditions are forecast for this winter, the Department is not contemplating any form of temporary product entitlements.

- c. What import fee changes, if any, for middle distillates do you intend?

Changes in the import fee schedule is another emergency measure that could potentially provide incremental additional supplies of middle distillates should domestic stocks become critically low. Since none of the severe winter conditions are forecast that could draw down middle distillate stocks to the critical level the Department is not contemplating any changes in the import fee schedule for middle distillates.

8. (a) What information is DOE presently collecting concerning middle distillate prices and supplies?
- (b) What is the schedule (monthly, weekly, etc.) for such collection, and what are the normal time lags?

The DOE conducts a comprehensive monthly survey of roughly 1,200 suppliers of heating oil throughout the U.S. to collect data on prices and margins of sales to residential, commercial/industrial, and utility users, and wholesale prices to distributors. Statistics from the survey are compiled by sixty days after the month to which they relate.

The DOE has recently implemented a telephone survey of a subsample of firms included in the comprehensive monthly survey to collect residential and wholesale rack prices on a timely basis.

The DOE is also planning to fund 11 heating oil states to conduct their own surveys of residential heating oil prices on a timely basis.

Regarding supplies, the DOE surveys refiners, pipeline operators, and large terminal operators for production, inventories and shipments of No.2 distillate. These data are normally available sixty days after the month to which they relate. The American Petroleum Institute collects these data on a sampling basis from roughly the same reporting universe. The API statistics are normally published weekly 5 days after the period to which they relate.

9. (a) Provide any studies DOE has made of the following:
- (i) impacts of middle distillate decontrol on consumers, particularly low-income persons;
- (ii) competition at the refinery level with respect to middle distillate production.
- (b) Are you presently studying, or do you intend to study, the subjects listed above?

The Department of Energy (DOE) has not developed any studies on the impact of middle distillate decontrol on low-income consumers. The Community Services Administration (CSA) has conducted analysis in this area and some of that material was introduced into the record of the Middle Distillate Evidentiary Hearing.

Neither has the DOE conducted any studies with respect to the issue of competition at the refinery level in the production and distribution of middle distillate. One of the Offices of Hearings and Appeals (OHA) recommendation following the August Evidentiary Hearing was that such a study be conducted. We are asking the Federal Trade Commission, and the Department of Justice to review the OHA findings. In the meantime, our Office of Special Counsel will review non-product cost information at selected major refiners.

10. A table of all DOE contracts currently in effect relative to distillates and related matters, including the purpose of the contract, the term of the contract, the status thereof, and the cost, and stating whether or not it is a sole-source contract.

A contract was signed September 29, 1978, with R. Shriver Associates, 1128 16th Street, N.W., Washington, D.C. 20036, for \$72,780 to conduct a middle distillate market study. The purpose of the contract is to develop information on the distribution and marketing of heating oil at the wholesale and retail levels. The on-going contract is estimated to end April 1, 1979. A final report is due to the Office of Fuels Regulation, Economic Regulatory Administration, not later than 180 days after the initiation of the contract. It is not a sole-source contract.

Mr. MOFFETT. Thank you.

Mr. Goldstein, I realize you do not have a prepared statement, but would you please summarize briefly your findings relating to price increases in costs at the refinery level?

STATEMENT OF MELVAN GOLDSTEIN

Mr. GOLDSTEIN. The material which I will summarize for you is solely the factual material that was established in the decision, itself. As I understand your question, you just want me to focus on prices and costs at the refinery level; is that correct?

Mr. MOFFETT. Yes.

Mr. GOLDSTEIN. The evidence based on statistical surveys which the Department of Energy conducted establish that between July 1976 and April 1978 refiners increased the price of No. 2 heating oil by a total of 5.5 cents per gallon. The refiners' costs during the same period were shown to have risen by 4.2 cents per gallon. The difference between the two figures is 1.3 cents, or 23 percent of the total price increase. These figures are based upon a comparison of prices and costs on July 1, 1976 and April 1, 1978. Based on the evidence taken as a whole, \$193 million is a reasonable approximation of the way refiners' price increases exceeded cost increases during the first year and 9 months after decontrol. The \$193 million figure, when divided to all heating oil sales during the July 1, 1976 through April 1, 1978 period amounts to approximately 44 cents per gallon. The evidence presented at the hearing further indicated that over the entire period of decontrol, through the end of the current heating oil season, the amount of overrecoveries for No. 2 heating oil at the refinery level would amount to \$331 million. Those are the findings with respect to refinery costs, prices and revenue data.

Mr. MOFFETT. The \$331 million figure relates to what?

Mr. GOLDSTEIN. \$331 million relates to the difference between the revenues refiners would obtain in sales of No. 2 heating oil during the period of decontrol through the current heating season and the revenues that would have been obtained had controls remained in effect.

Mr. MOFFETT. Thank you. Now, could you briefly tell us any other conclusions of the report that you think are important?

Mr. GOLDSTEIN. Are there any specific areas of the report that you would like to direct my attention to?

Mr. MOFFETT. What conclusions did you reach?

Mr. GOLDSTEIN. I can review the other findings which were included to in the specific questions that the committee staff posed. In terms of prices and costs at the wholesale and retail levels, the finding was made that during the period of decontrol, that is, July 1, 1976 to April 1, 1978, No. 2 heating oil prices increased 2.5 cents per gallon at the wholesale level and 1.2 cents per gallon at the refinery level. However, the evidence submitted at the hearing was not sufficient to permit a determination to be made as to the amount of increased costs incurred to firms at that level. Although it was evident that the gross margins, the difference between selling price and product cost of retailers and wholesalers did increase during the period of decontrol, actual evidence was lacking as to the portion of the increase which was attributable to nonproduct

cost increases. Accordingly, the statistical evidence, itself, did not indicate the relationship between increases in gross margin and increased nonproduct cost. It did not reveal whether and to what extent increased in gross margins represented increases in profits. However, the evidence taken as a whole indicated that workable competition did exist at the wholesale and retail levels. There were other findings, Mr. Chairman, made with respect to the impact of recent heating oil price increases on low-income individuals and the relationship of competition to the focus of the hearing. With respect to low-income individuals, the report found that although the evidence presented provided valuable insights as to special difficulties which low-income groups have experienced in meeting the higher costs of heating oil, this evidence, taken alone, did not warrant the reimposition of price controls. Nevertheless, the very high percentage of the income which low-income families must devote to meeting rising fuel costs is certainly a factor. It should be taken into account in the process of determining whether further regulatory action is necessary to establish regular prices for heating oil. Further conclusions were reached that significant doubts have been reached by the evidence in the proceeding as to whether appropriate action was taken.

The further finding was reached that the evidence indicates that antitrust remedies are not likely to be successful in the short run in resolving competitive problems in the refining industries. I believe those are the principal findings.

Mr. MOFFETT. Mr. Goldstein, in the introduction of your report, you say this about the proceeding:

The proceeding which ensued was unique in a number of respects. It signified the first time that a major DOE regulatory determination would be based in substantial part on the factual record assembled through an evidentiary hearing. In addition, this proceeding was the first occasion in which staff officials of the department published findings and permitted the individuals who were responsible for making the findings to be cross-examined by adversary parties.

You recall that, I am sure.

Mr. O'LEARY. Yes.

Mr. MOFFETT. Mr. O'Leary, you stressed the importance of the hearing to me last July, saying it would enable us to find out once and for all about home heating oil costs and whether past increases were fair. I do not think it is an exaggeration to say that you are not now regarding it in the same way you did in July. Now you are discounting the findings of the hearing and claiming the record is lopsided. There have been proceedings relating to heating oil since the OHA report was published, for example, one on December 15, and one that you are now talking about having in January.

Is this going to be part of the same proceeding which resulted in the OHA report?

Mr. O'LEARY. It will be a separate proceeding and it follows a recommendation in Mr. Goldstein's report, recommendation No. 3, that we further inquire into the statistical position of the refineries.

Mr. MOFFETT. Is this going to be part of the same record?

Mr. O'LEARY. No; this will be conducted by ERA under Mr. Bardin's present plan.

Mr. MOFFETT. You plan to convene a hearing in January to obtain additional information which seems to indicate that you are following at least one of Mr. Goldstein's recommendation. But what about the other recommendations Mr. Goldstein made? It seems to me that in July you held up this hearing as being something definitive and important. Now we must wonder if there will ever be an end to the deliberations on home heating oil.

Mr. O'LEARY. I regard Mr. Goldstein's report as a very, very useful piece of information. It tells me that there have been in about a \$10 billion market \$100 million—this is annualized; the \$10 billion is the overall value of the home-heating market in this country—there is \$100 million that we cannot account for and that may be excess profits on the part of the refineries.

I think that is a very, very useful piece of data. It says to me that we have to look to the refiners to tell us why they are making overcharges of that sort, and if indeed the overcharges are of that magnitude. I think that Mr. Goldstein has done the very useful service of bracketing the problem.

In a \$10 billion market, if Mr. Goldstein had come in and said there is a 40-cent problem, that would have been de minimus. If he said there is a \$2 billion unaccounted for, that would have been a very startling piece of news. What he said is that there is a piece of the market that is equivalent now to about 1 percent of the prices that people pay for their home-heating oil that may be gouging or overcharging by the refiners.

That means that we have now a discrete target to look at, and we have taken the four steps, or intend to take, the steps that we have not taken, that I have alluded to in my testimony in chief.

Now to pinpoint (a) whether that \$100 million of annual overcharges will stand up; and (b) from that we will be able to figure out how, from the standpoint of overall treatment of the refineries, we ought to handle it.

Mr. MOFFETT. Let me ask again, what particular recommendation are we talking about? What page is it on?

Mr. O'LEARY. Even prior to the completion of the studies referred to above, the Department of Energy should establish procedures which afford refiners an opportunity to come forward with evidence that workable competition does exist. If sufficient evidence is not supplied by refiners to support the proposition that workable competition exists, the economic regulatory administration should institute formal rulemaking proceeding to determine the nature and extent of the price control program that should be instituted for No. 21 heating oil.

Mr. MOFFETT. I do not see how one reading that can get the impression they are calling for the type proceeding you plan. Mr. Goldstein recommends a proceeding in which refiners would prove their competitive nature. You seem to be planning a hearing to allow refiners to comment on the need for such a proceeding. I am not saying it is a bad thing, but is it not true refiners had the opportunity to participate in Mr. Goldstein's hearing along with those who took the opportunity at the time?

Mr. O'LEARY. They had an opportunity.

Mr. MOFFETT. Why didn't they?

Mr. O'LEARY. I have no idea.

Mr. MOFFETT. Do you think it was because there was cross-examination in sworn testimony and they had problems with being confronted with discovery in those proceedings?

Mr. O'LEARY. That is a possibility.

Mr. MOFFETT. Will they have the same problems with what you are doing in January?

Mr. O'LEARY. We will see.

Mr. MOFFETT. We will see? We would like to know.

Mr. O'LEARY. We will all know in January, Mr. Chairman.

Mr. MOFFETT. Is there going to be cross-examination? Is this going to be an evidentiary hearing in the same fashion Mr. Goldstein held, and who will conduct it?

Mr. O'LEARY. I have asked Mr. Bardin to set a hearing in which there would be testimony under oath and opportunity for cross-examination, indeed.

Mr. MOFFETT. Fine. Now, before I call on my colleagues, I would like your reaction to the questions that I raised in the opening statement. Let's say a blue-collar person in my district wants to be supportive of the President's anti-inflation program. First, he or she will want to know if there is some reasonable fairness in energy policies. As a top-ranking energy policymaker what would you say or have the President in giving a checklist of what this administration has done to curb rising energy prices?

Do you have a list of such measures?

Mr. O'LEARY. Yes. Let me go through just a few of those, Mr. Chairman. The administration is operating under the constraints that are built into the price composite, and my advice is that we are underrunning that composite by \$1 billion a year now as a result of conscious administration policy. That is to say, under the composite that was jointly agreed to by both houses of the Congress as the sort of target limit for the compensation that should go to the oil industry for crude, we are now underrunning that composite deliberately by \$1 billion a year. That is because we choose not to go to the full range of the composite but rather to hold domestic price increases for crude, both lower and upper tier, to the domestic rate of inflation, no more, no less.

I have testified before you and your colleagues on this point. I have been vigorously attacked for putting forth and for retaining that position. I think it was the appropriate one to put it forward at the time I put it forward. It is saving consumers in this country approximately \$1 billion a year.

Mr. MOFFETT. But the price is still skyrocketing. You know that.

Mr. O'LEARY. It is; primarily because we have permitted ourselves to get into a position with regard to imports where we are not masters of our fate. That mastery is outside the territorial limits of the United States. We have done that because of a whole series of bad policies that I have inveighed against personally over a lot of years in the past.

The second thing we have done, Mr. Chairman, is we have assisted the Congress—this was not done under the active direction of the administration, but we have assisted the Congress—in coming forward with a compromise on natural gas pricing that this year

compared to some of the alternatives is worth something in the order of \$2 to \$3 billion this coming year to consumers.

Mr. MOFFETT. What alternative?

Mr. O'LEARY. The one about decontrol that was voted by a majority of the Senate and narrowly escaped being put into effect by about a 7-vote margin in the House, if you recall—very, very narrow margin. I was personally active with you 1 year ago, 1½ years ago, in the discussions of that with your colleagues, and I believe the administration had a great deal to do with that vote.

Absent that participation by the administration, I am convinced that consumers in the United States next year will be paying \$3 to \$4 billion more for their natural gas than they are going to be as a result of the good work that you people did, members of this committee did last year and during this past session, in arriving at what is admittedly a compromise that is not totally satisfactory to everyone, but from the standpoint of consumer interests of this country a great deal better than outright decontrol.

In the energy sector we are also prepared now vigorously to go forward with implementation of NEA. The conservation elements will save the consumers of this country billions and billions of dollars over the next 10 to 15 years. We have, with your help, put into effect a tax credit which will stimulate insulation and save individuals, low-income, middle-income, high-income, a great deal of their money, 10 to 15 percent of their heating bills over the years.

We are vigorously, through Mr. Bardin, through Mr. Coleman, pursuing the utility rate reform measures the Congress has placed before us, the fuel switching which will save us a lot of money in the long term.

The very day the President signed the act the regulations with regard to the fuel utilization aspect of the act were put into the Federal Register. So I think that passage under the direction and leadership from our standpoint of President Carter and of your committee and the chairman of this full committee and others in the House and Senate has done an enormous service to consumers over the long term.

We have a record in this last year and three-quarters now, Mr. Chairman, of which all of us can be proud.

Mr. MOFFETT. I will tell you that you cannot sell it to consumers. The way in which the President's anti-inflation program is being perceived and received by the person on the street reflects a great amount of skepticism and frustration over rising fuel costs. You can talk all you want about the fine natural gas compromise, but now we have estimated the price may go up 15 percent this year. The same thing is true for our home heating oil customers. It seems to me unless you consider dramatic protective measures for consumers, they are not going to believe in this anti-inflation crusade. I think you and I both know that.

Mr. O'LEARY. When they see a 10-cent increase in the price of their heating oil over a period of 3 years, they think that something is very, very wrong, and the thing I think is very wrong is that we are absolutely at the mercy of OPEC.

Mr. MOFFETT. We have discussed this before. It is so frustrating to me to have energy policymakers sit back and say: Of course,

OPEC is the culprit. Yet we are doing nothing to combat the power of OPEC.

That is what the past administration did, and that is what the present administration is doing. We send F-15's to the Saudis to say, please keep the price down, but we do not seriously consider any other alternative such as a Government purchase authority. You have told me you were going to seriously consider it, but I do not see that happening. Nor are you considering the William Simon proposals, the sealed bids, or the option system. None of these things are being given serious consideration in this administration.

Sheik Yamani is sitting over there and says, They do not care about high energy prices or they would do something about them.

What evidence does he have to indicate that this administration cares about high energy prices? The President made the Bonn Summit promise, as you know, to get our prices up to the world level. Obviously, such a commitment does not convey to those in Abu Dhabi, Saudi Arabia or elsewhere that we care about the inflationary and social impacts of high energy prices. Why are there are no political alliances being made with other consuming countries? They came and begged us to do so in the early years of the embargo, and we turned our backs on them.

I think the record shows that, and the average person is not unwise to that. Yet, you come to us and say we are at the mercy of OPEC. Of course we are since we refuse to challenge its power. Hopefully we will get into a discussion later, if we have time, of some of the more serious alternatives to the cartel and what the administration is doing about those.

In order of appearance of members who arrived, the Chair now recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. O'Leary, on page 6 of your testimony you say that:

We cannot determine the components of the 2.7-cent increase in refiner selling prices to wholesalers since September 1978 with the data presently available to the DOE.

Is it, in fact, possible to determine these components without ascertaining information on the costs and profits at the various levels and stages of the integrated oil companies and among the various refined products? Today we pretty much have to rely upon the word of the oil companies as to justification for price increases which are passed on to consumers. Vertical accountability is what it is called, and it means knowing within each oil company at which stage there are increases in costs which ultimately be passed on to consumers?

Isn't it true that without such vertical accountability it is surprising that you cannot determine the components of these recent price increases? Would you tell us when we will have that information?

Mr. O'LEARY. We can get a fairly good idea as a result of the audits that I referred to earlier that the special counsel for compliance is now conducting. The special counsel early in December deployed a fairly substantial number of his auditors to, I believe, initially seven of the major refiners. I understand that he will go through others of the major refiners over the course of the next

few weeks and will try to ascertain—and I believe will get a very substantial statistical insight into the nonproduct costs that are associated with the production of this heating oil. That is one element.

The second element has to do with the hearing that we intend to have in January.

The third element has to do with a much longer venture in which we are embarked through the EIA, the Energy Information Administration, to obtain financial reporting on a systematic basis from the majors. You may know that we have received just in the last 2 months final OMB clearance for the form that we will use for this, and we will be, I believe, in a position by about next September to to October to put data on the street with regard to the financial position piece-by-piece of the major oil refiners.

Mr. MARKEY. What is interesting, for those of us who come from New England is that we have already had a 5-cent increase in the price of home-heating oil since September. At the bottom of page 6 in your testimony, you say, “* * * that the recently announced OPEC price increase in January will likely raise heating oil prices approximately 1 cent per gallon during this heating season.”

So we have a situation in which domestic producers have increased home-heating oil prices by 5 cents, and OPEC will increase our prices by 1 cent. The country goes wild when we look at some sheiks, sitting in Abu Dhabi, deciding to increase our prices by 1 cent for this home-heating oil season, while we ignore our own sheiks, sitting in corporate offices in America. And we still do not have the information, after dealing with the major oil companies for 50 years, as to how and why price increases have occurred. We still do not have vertical accountability of companies that exist and are incorporated in our own country. To me that is unbelievable.

Mr. O'LEARY. Mr. Markey, may I give you a little lamentable history to back up the point you are making?

Mr. MARKEY. I would enjoy it greatly.

Mr. O'LEARY. Back in the days of control, in 1975, for example, the spring to winter shift was 4 cents; 36.1 to 40.0—3.9 cents. The next year low to high was about 4 cents, 39.0 to 43.0. The low to high on the next year from the spring was about 45.7 to December price, 47.9. Last year the spring—I am sorry, this year we are running from a summer figure of around 48 up to 53, about a 5- or 6-cent run.

This unfortunately is a habit of American enterprisers. During the period when they do not make much in the way of sales they cut their prices. That is true for shoes, for suits, and for heating oil. In the summertime they do not have much in the way of sales, and they cut their prices. In the winter when you need it, they push those prices up.

Mr. MARKEY. When you met with the New England congressional caucus on December 5, you stated that price increases in middle distillate were a function of the supply situation resulting from continued post-Labor Day gasoline demand. Is that not so?

Mr. O'LEARY. I did indeed.

Mr. MARKEY. On page 1 of your testimony today you say that the supply situation now is good.

Mr. O'LEARY. It is.

Mr. MARKEY. Can you explain that?

Mr. O'LEARY. Yes; we have had somewhat of an improvement in the overall supply situation since early December. There has been an easing off on the gasoline market and gasoline stocks have gone up, and I believe it is permitted because we did have a very, very mild December. Our December stocks for middle distillate, as I point out, are in a comfortable position.

Mr. MARKEY. On the last page of your testimony you say, "We firmly believe that consumers benefit from a vigorous marketplace that is free of Government regulations."

Mr. O'LEARY. I do, Mr. Markey.

Mr. MARKEY. Since there is now a high supply situation, why doesn't this marvelous marketplace reduce prices? Why have we seen the response of increasing prices to low suppliers, but no similar response of decreasing prices to high supplies? Rather prices seem to stabilize at that higher price.

Mr. O'LEARY. Mr. Markey, the unfortunate fact is that we have had always a seasonal pricing pattern for both middle distillate and gasoline. Generally speaking, under controls or not, gasoline prices go down in the winter, middle distillate prices go up, and gasoline prices come up in the summer and middle distillate prices go down. That is a phenomenon of the market, that while distressing to me as a consumer, I have seen throughout my entire adult life.

Mr. MARKEY. That much of an increase in a 2-month period?

Mr. O'LEARY. I just reported to you the low to high has been running 3 to 5 cents—

Mr. MARKEY. That is during a year; not a 2-month period. That is a big difference.

Mr. O'LEARY. It is the low to the high. There was remarkable stability—

Mr. MARKEY. We have not finished the heating season yet.

Mr. O'LEARY. There was remarkable stability at about 48½ cents for the heating price. It did not go into its usual decline in the spring, and I think that is why we are seeing this odd jumpup in just 2 months.

Mr. MARKEY. Let me ask you this. How do energy prices fit into the President's fight against inflation? Do they fit in at all?

Mr. O'LEARY. Of course they do.

Mr. MARKEY. Could you explain?

Mr. O'LEARY. They are a key element in the outlays of the American public and if you do not have some fairly distinct policies with regard to energy prices you would have a large gap in the program.

Mr. MARKEY. Could you give us a firm idea as to when you think DOE will be able to give us information detailing the vertical accountability of the energy industry in this country?

Mr. O'LEARY. Mr. Markey, I really cannot answer that. The Department of Justice has been wrestling with this problem for better than a generation, as you know. The Federal Trade Commission has been in and out of examination of precisely this problem for a long time. Our job is primarily to provide a uniform statistical basis in the form of a standard accounting form that I discussed with you just a few minutes ago in which analysts will have for the

first time a complete data set upon which to draw those conclusions.

We hope to have that done within the next year. For the first time in our long history of struggling with this problem we will have good statistical data on the accounting systems, the accounting results to the refining industry. Then it requires a great deal of analysis to find out in this most complicated of all industries what it means.

Mr. MARKEY. Given the absence of information as to the real inner workings of the energy industry—and understanding that energy, along with food, housing, and health care accounts for 70 percent of inflation for 80 percent of Americans—and noting that the only real control we have on energy costs is through domestic companies, how does DOE fit into controlling inflation?

Mr. O'LEARY. The points I made in response to a similar question from the chairman are a summary of the sorts of things the Department of Energy is now involved in which are aimed directly at the problem of keeping prices of energy down. The unwillingness of the Department to move all the way through the blocks from the composite, for example, is one aspect of that.

Right now, American consumers, as a result of the system of price controls on oil and natural gas that are in effect, are benefiting to the total of better than \$25 billion a year, a very substantial contribution indeed. That, of course, arises from cooperation between the administration and Congress.

The oil industry is subject, just as every other industry is, to the wage and price guidelines that have been set forth by the President in his announcement last month, and now my understanding is the oil industry, along with every other industry, will be reporting their progress under those guidelines in February of this year. Then we will see how they and how other key industries in the economy are doing.

Mr. MARKEY. Using DOE's figures of 9.3 percent over 2 years, this comes out to a 23-percent inflation rate?

Mr. O'LEARY. Yes; that is correct. May I give you a little historical perspective there?

Mr. MARKEY. Fine.

Mr. O'LEARY. We have taken a look at the real price of heating oil in cost of dollars over the last few years. Let me just read those for you for Octobers, including the present October. In 1975, 37.3; October of 1976, 36.7; October of 1977, 39.5; and October of 1978, 38.4.

That is to say, over that period of time there has been a change from 36.6 to 38.4 in the real price, that is October to October now, for heating oil.

Mr. MARKEY. DOE's figures show an increase since January 1976 of 28 percent. With recent OPEC increases and recent price increases by refiners, the rate of increase is even higher. How can citizens and industries stay within inflation guidelines when energy costs are not contained—even apart from OPEC, a variable which we relatively cannot control. What can we do about our own energy companies if we do not have the necessary information?

Mr. O'LEARY. I think for the past we do have information, Mr. Markey. We did, as you know—because it hit with particular viru-

lence in your part of the country—conduct a sophisticated and some very, it is claimed, burdensome—so burdensome that this committee in its authorizing action has forbidden us to do it again—

Mr. MARKEY. That is at the retail level. We are talking about refiners.

Mr. O'LEARY. It was all the way through the system. We did a monitoring system that showed in the very severe winter of 1976-77 there was no breaching of the price guidelines that have been laid out and in last winter, which was for many parts of the country the worst in our history, in the upper Midwest there was a breaching of 0.1 of 1 cent for a couple of months, to the degree, then, that we can get a statistical fix upon this, there have not, at least during the last two very severe winters, been price abuses.

I think that has generally been concurred in. It may be we are seeing in this very rapid runup now there are price abuses this winter, and we intend to find that out with the same degree of vigor that we went into this problem last winter. We have set up a hot line again. We are working with your State energy office supporting your State energy office so that we get reporting—

Mr. MARKEY. There is no question you are cooperating fully with the States in monitoring the increases. What we need is not merely a reporting system to tell us how high prices have gone and whether they have or have not broken some artificial ceiling, but rather, we need to know why prices have gone up.

We need to know what abuses have occurred in this very narrow monopolistic industry?

Mr. MOFFETT. Will the gentleman yield at that point?

Mr. MARKEY. I yield.

Mr. MOFFETT. As Mr. O'Leary probably remembers, at that rather stormy New England caucus session we had, I read a lengthy list of things that you have failed to collect, although you have within the power to collect them. Perhaps in some cases it is a near impossibility, but I do not think that is true with most of the things on this list. You perhaps recall the list.

Mr. MOFFETT. It begins with an unavailability of information on production values, lack of data on refiners operating costs specifically for sales of heating oil, inability to aggregate gross margin data in individual nonproduct costs in order to explore specific margin fluctuations, methodological and data limitations, some of which are inherent in the calculations of averages but others of which are unexplained, inability to accurately reflect regional refiner gross margin because the calculations are based on national crude and nonproduct costs, the regional market is not calculated by using regional costs—and inadequate refiner gross margin calculation—since gross margin increases cannot be specifically allocated to cost of product.

This is a lengthy list supplied by the Department of Energy itself from a June 1978 analysis. So I think the gentleman from Massachusetts makes a very good point. We are not sure that you are collecting all the information that you can from these refiners. In too many instances, industry data is being accepted as given, and I think that is the real point of contention.

Mr. O'LEARY. I think that is a good point to concentrate on for a minute. I mentioned in my testimony and again in the discussions we had that one of the four things that are now concurrently underway to respond to Mr. Goldstein's report is a very specialized line of activity by the Office of Special Counsel for Compliance. He has people out, auditors, CPA's, looking at the books of refiners in precisely these areas you are mentioning, and we are either going to find that they have incurred these costs or they have not incurred these costs. I think that probably given the nature of the beast and the complexity of the accounting systems of the majors, and just to give you something that you know, the largest of the major runs an annual gross sale of around \$56 billion, just under \$60 billion. That equates to a good-sized country.

In order to get a handle on their accounting systems and understand what they are doing, you really have to get in with accountants, into their computer system, as we are doing, and break these costs out. I think we are doing precisely the points you raised.

Mr. MOFFETT. I understand it is a tough chore, but you promised us 2 years ago it was going to be accomplished. We just wonder if it is happening fast enough, if the Department has the aggressiveness and even courage to go in and get this kind of information.

Mr. GOLDSTEIN. I promised 2 years ago we would set up the standard accounting system reporting, and I tell you we are moving as fast as the system permits us to do on that. We did have a long holdup while there were objections from industry to the reporting system, but I think we can look back upon this 2 years as one which has taken us to a point where we have a form cleared through OMB, and that for the first time in a few months we will begin to turn out these data that people have been crying for for 30 years.

Mr. MOFFETT. The Chair now recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you very much, Mr. Chairman.

Mr. O'Leary, I have a lot of respect for your competence and the work you have done. But I have very serious concerns about the Department's approach to this study which has come out. I had occasion to see Secretary Schlesinger on one of the interview programs on Sunday, and he was asked a very pointed question about the conclusions of this study, that there is a serious doubt about the workability of competition in this part of the refinery industry. His response was that that was a tangential matter to the work of this office of hearings and appeals, and it was not central to their study, and that really they did not focus on it. Yet, I see in your statement today—and I quote: "Two of OHA's major concerns were the issue of refiner nonproduct cost and the issue of competition in the heating oil industry." And on page 224 of that study they say, "The issue of the adequacy of competition is at the core of this proceeding."

They say, "No restrictions were put on any of the participants to offer whatever evidence they wished to offer regarding the adequacy of competition within the refining industry." Yet the American Petroleum Institute, the Atlantic Richfield Corp., declined to present evidence for reasons that OHA found totally unconvincing, and the inference was they were scared of the adversary nature of

the proceeding or for some other reason did not wish to join the argument over the issue of competition or the lack thereof.

Some of their conclusions which were reached after this lengthy examination are that, first, there are high barriers to entry in this industry; second, each of the major vertically integrated refining companies is engaged in dozens of joint ventures with every other vertically integrated refiner; third, in the course of conducting these joint ventures, the companies exchange their operating information and have an opportunity to utilize the operating information of their so-called competitors on a daily basis; fourth, in the normal course of operation these companies are familiar with all of their so-called competitor's prices and have substantial information concerning their competitors supplies and their production rates; fifth, the existence of joint ventures in such a high number and the opportunity for further highly profitable joint ventures tends to reduce their incentive which might otherwise exist to engage in price competition.

Considering all the evidence, they came to the conclusion that they could not find any evidence of competition, that the evidence did not show that competition existed.

You come in here today after that—and I am not directing my vehemence at you personally because I think it reflects the Secretary's position taken on the interview program last Sunday, and I am afraid it reflects the whole philosophical approach of the Department of Energy toward the absence of competition in this industry. You come in here and you tell us that the market works effectively, and we firmly believe that consumers benefit from a vigorous marketplace.

Yet, after this lengthy hearing there is no evidence that there is competition. They are all working together in joint ventures on a daily basis. They give each other information on prices and supplies and production rates. They are looking forward to further joint ventures tomorrow and the next day and the next day. They are invited to prove there is some competition, show us some evidence of competition.

"No, we don't want to participate," they tell us; and in spite of that scenario, you come in and testify to us that there is a vigorous marketplace and it has all the earmarks of competition. It just does not gibe.

Mr. O'LEARY. Mr. Gore, I can understand your frustration with this. I have dealt with this industry for a lot of years, and have from time to time felt precisely the same frustration, but let me give you the best answer I can to what you are saying.

We have had a very, very careful scrutiny of the price behavior of the middle distillate sector of this industry now over the last 2 years. The 2 years are among the worst in our history from the standpoint of weather. If there was ever a time when you could really rig the market, the winter of 1976-77, the worst in many parts of the country, including those of some of your associates on this panel, the worst in better than a hundred years, the worst in recorded history—last winter not quite so severe in terms of the cold and bad weather but sustained over a record period of time, again a very, very bad period.

We did monitoring in both of those winters. We found that to the degree that this tells you anything, there was not a price runup that could have been avoided by at least the regulatory scheme that we had in effect in June of 1976. There was no evidence at all that there was price gouging, and I really tend to equate price gouging with an absence of competition. I think that was a fairly good showing that there is in this industry a fairly competitive run at least with regard to this particular run—

Mr. GORE. I beg to differ with you. I think the classical economic analysis will show that if you have a shared monopoly or oligopolistic structure, the level of prices is maintained at a level that is higher than would otherwise be reached were competition at work, but that those participants are well aware that there is a limit to how much they can gouge the consumers, and that they maintain the level just under that limit, and they bump up against that ceiling constantly.

I think that is the classic performance of a shared monopoly.

Mr. O'LEARY. Mr. Gore, I do not know how as a practical regulator we can meet that sort of test.

Mr. GORE. If I may interrupt, one way you do not meet it is to completely close your eyes to it and to become an apologist for the industry. Again I speak for the Department as a whole, not you personally.

Mr. O'LEARY. I am very pleased that you are not addressing those remarks to me, Mr. Gore, because if they were addressed to me they would be totally invalid.

Mr. GORE. I said at the outset I have respect for your career and your competence and your ability, but the department as a whole has taken the stance of closing its eyes to the problems that are highlighted by this report and that have been brought out by a number of their reports. Just as I said, this Sunday Secretary Schlesinger again says, you know, there does not appear to be any problem with this, and puts a face on the report that is completely at odds with what the report itself says.

Mr. O'LEARY. Mr. Gore, I did not see Secretary Schlesinger's press conference on Sunday because we had a power failure, would you believe, down in my part of the country. But let me tell you again that the Department takes this, as I have testified here this morning, very seriously, so seriously that we have diverted from the large refinery audits—the thing that I cherish most dearly of all other regulatory things we are doing—we are diverting manpower away from that to check this nonprofit cost business with regard to the major refiners, the very point that is at issue here.

I have asked Paul Bloom's people to drop what they are doing. Anyone who knows about that knows that is the first regulatory priority I hold in the Department of Energy and it is like tearing off a thumb to do that. Nonetheless, a substantial number of people are over on the product cost business. The first thing we did was to hold that hearing on December 15. We are also going in for the hearing that we will hold in January and we are getting the data on the basis of the requests that we are putting out to the refiners that will answer precisely these questions. We do take it seriously.

I testified before that if there is evidence of significant price gouging—significant is something we are going to have to define—

then we are going to have to take the steps that are necessary to protect the American people.

Mr. Gore, I want you to think of this. We are talking about here—Mel's report is talking about—a half cent in a 95-cent runup over the past 3 years. The best that we could have done if he is correct is to avoid costs to consumers of one-half cent a gallon, about \$1 a month, and still, because of the rest of the system in which we live, they would still have to incur those costs of the other 9 cents. As I said in my opening statement, it seems to me one of the things we ought to be doing as a matter of our duty to the people of this country is taking a look at how we can handle, particularly for the people who are most hurt by that 9 cents, that 9-cent problem.

When I was in the State of New Mexico we had that problem with a vengeance. It is 46th in income, and we looked at it as something that required resolution and assistance to the people of that State and took some legislative steps to help them. I think it is a matter of national importance that we have done an ad hoc job on it for the last two winters, and I think we ought to find out in the course of this session whether or not that is good enough.

Mr. GORE. I am going to conclude my part of this very quickly because I have neither large numbers of heating oil consumers nor refiners from my district, but I do consider the issue to be extremely important because it parallels other issues within this matter of our economy, and as a general proposition if we continue to adopt the deregulation approach to every sector of the energy industry, the importance of effective and vigorous antitrust enforcement should be increased markedly. I hope that the recommendations of the task force on changes for the Sherman Act and the Clayton Act are adopted rather quickly.

I think that the department could help in this regard by recognizing the serious anticompetitive problems that exist not just in the home-heating oil industry but if we are going to remove the Government's role entirely from the energy industry and give them a de facto exemption from the inflation guidelines, then I do not think we can simply assume that there is vigorous competition, a vigorous marketplace within the energy industry, particularly when the evidence tends to point in the other direction.

Thank you, Mr. Chairman.

Mr. MOFFETT. The Chair now recognizes the gentleman from New York, Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Goldstein, why would it take you until September 17, 1979, to report to the public on your conclusions?

Mr. GOLDSTEIN. You are referring to the competitive studies that were the subject of recommendation 1?

Mr. MURPHY. Yes.

Mr. GOLDSTEIN. If you follow through with the recommendation, you will see the specific nature of the type of studies that are recommended. Those studies tend to be somewhat complex and require some degree of analysis, if I might point that out. I think you will see why that degree of time was pointed to as a minimum degree of time to promulgate preliminary data.

Mr. MURPHY. Why have not the studies been going on since the 1976-77 heating season?

Mr. GOLDSTEIN. I believe that my appearance today was confined solely to answering questions as to the report. I am simply not able to respond to that type of question.

Mr. MOFFETT. The Chair would say as Mr. Goldstein has said, he is serving as the judge in that situation. We are somewhat bound by that.

Mr. MURPHY. Why will not these studies include the heavier heating oils used in the heating of houses, housing projects, and schools?

Mr. GOLDSTEIN. The specific subject of study of the evidentiary proceeding that we were asked to conduct related to home-heating oil. We were bound by that requirement.

Mr. MURPHY. Maybe Mr. O'Leary would like to comment on the question.

Mr. O'LEARY. You are talking about residual fuel oil, Mr. Murphy?

Mr. MURPHY. Yes.

Mr. O'LEARY. We have had no representations that there has been overcharging in that market. It is, as you know, dominated by imports in your part of the country particularly. The east coast refiners for many years have avoided the production of residual fuel oil. I think probably on average east coast refiners produce something like 4 percent of their total runs in the form of residual fuel oil, and consequently there is an enormous reliance on foreign refiners to provide for the requirements in your part of the world.

We, of course, note what is going on in the world market that determines prices for your constituents that you are referring to here, but other than having a statistical handle on it, we have no regulatory tools to influence other than those we are now exercising in the form of the entitlements program. You know that we are making a deliberate change in the entitlements program that is effective this winter that will tend to reduce the price paid by your customers below those that they otherwise have to pay.

I think that we just have a different market situation here, Mr. Murphy. Most of the middle distillate comes from domestic refiners that are subject to the overview of the Department of Energy. Most of the residual fuel oil particularly on the east coast comes from Caribbean refiners that are simply not subject to that overview.

Mr. MURPHY. Not only are they coming from Caribbean refiners, that is those that have cut back, but refineries in other parts of the world are participating in that market. On that basis I think it might be a good idea for you to study the situation as well.

Is natural gas a competitive fuel with home-heating oil?

Mr. O'LEARY. It is competitive in one sense, but in a dynamic market sense it is not competitive. The householder cannot easily switch back and forth simply because he does not have the appropriate multiple-burning equipment in his home.

Mr. MURPHY. He can switch once or twice.

Mr. O'LEARY. Over time there has been a tendency to go in your part of the country from coal to heating oil to natural gas. These are the sorts of things that might occur every 10 years. They do not respond to very short-term market movements.

Mr. MURPHY. It was that availability of gas that kept No. 2 oil prices down for many, many years.

Mr. O'LEARY. The presence of very low-priced natural gas was a strong stimulant to that middle distillate market. Of course, when we got into a situation—as in many parts of the United States—where there were moratoria brought about because of natural gas sources, a lot of that distillate went off the market.

We are now seeing some of that returned in part, at least, because of the passage of the Natural Gas Policy Act. During this past session of Congress we think that we will see a substantial amount of gas coming into the interstate market from the intrastate market.

That has led the Department of Energy to believe that we can now dispense with the moratoria on new house hook-ups, and we should have that additional marketing discipline in the middle distillate market.

May I say in that regard one of the very useful things about the Natural Gas Policy Act is the fact that it does protect one of the things on our list of criteria for that act, when it finally became enacted—it does protect the householders against a price rise.

As you probably know, under incremental pricing provisions of the bill the first price increases will go to industry, until the price of the industry is at that of competitive heating oil, middle distillate or residual fuel oil.

Only at that time—and that will take several years in many markets—will the higher prices begin to find their way into the householder's bill.

Mr. MURPHY. Natural gas still being at competitive fuel price?

Mr. O'LEARY. Yes. The household market for a good many years to come, and even well beyond that. If we are successful in generating new supplies of natural gas, it will be distinctly competitive with middle distillate.

Mr. MURPHY. Then why did the Department of Energy negate a contract opportunity with Algeria to bring liquid natural gas into the Brunswick, Ga. complex, so that that gas would be shaved into the pipelines coming to the northeast?

Mr. O'LEARY. The reason we have taken a relatively negative view of the LNG contracts is because they are not low-cost natural gas. They are relatively high cost.

They are higher than middle distillate by and large, although they would, through the process of rolling the price in, that would not be felt in the market. The overall impact of those sorts of transactions would be to raise the price to consumers in the United States.

Mr. MURPHY. It would put it out of the competitive range of No. 2 oil.

Mr. O'LEARY. Not immediately, but that is a function of the percentage of the high cost that is rolled in with a much higher percentage of the low cost domestic natural gas. As that percentage of high-cost imported gas rose, it would tend progressively to raise even the weighted price of gas to the point where it was not competitive with middle distillates.

Mr. MURPHY. Has the department settled on a percentage of liquid natural gas that should be part of a natural gas consumption?

Mr. O'LEARY. No, we have not settled on that percentage. We prefer to look on these things on a transaction-by-transaction basis.

Mr. MURPHY. I thought you had a hearing over a year ago in order to determine this.

Mr. O'LEARY. We had a hearing. Indeed, we had a long study going forward in the Department of Energy and its predecessor, the FEA.

The conclusion of that is we should address these matters on a case-by-case basis; that is to say, it is difficult to elaborate a policy that has sufficient applicability that it will permit us to handle with discretion individual cases as they come before us.

Mr. MURPHY. Have you decided on a price index, an increase mechanism for changes in the price of imported natural gas?

Mr. O'LEARY. No. Here again we decide these matters on a case-by-case basis. They are negotiated between the principals, between the parties of the transaction, who bring it before us. We either say yes, we like it or no, we don't.

Mr. MURPHY. Have you ever decided any case on a case-by-case basis?

Mr. O'LEARY. We have indeed. We have decided negatively on TAPCO this week. We have decided positively on the PAC Indonesia, about 2½, 3 months ago.

Mr. MURPHY. It just seems to me the more gas available in the system and, of course, the more product in that system, the more we go to the question of the competition between fuels, as well as the competition between or amongst fuel suppliers.

That would be theoretically the pressure to bring prices down into a competitive range.

Mr. O'LEARY. We share your view. The more gas in the system, the more competitive and the better it is, provided the gas is low-price gas. If it is very high-cost gas, most of the marginal transactions involving LNG tend to be high cost, then it really doesn't fit that purpose.

Mr. MOFFETT. The Chair now recognizes the gentleman from New Jersey, Mr. Maguire.

If the gentleman would permit, I might also announce that we do intend to go straight through, for those members who are here, and also for witnesses and others in the room who would like that information.

Second, it is our understanding that Mr. Kahn will appear tomorrow to discuss some of the questions Mr. Markey and others were asking about the inflation fight and how energy fits into that picture.

The gentleman from New Jersey.

Mr. MAGUIRE. Thank you, Mr. Chairman.

I want to explore the numbers a little more fully, Mr. O'Leary, particularly those you cite on pages 3 and 5 of your testimony. Let's start with the \$331 million figure which you cite and which is contained in the findings of the OHA report, on page 131.

How did we get in this discussion this morning down from \$331 million to the figure I believe you used a number of times, \$100 million?

Mr. O'LEARY. \$331 million has 2 actual years, or roughly 2 actual years, plus a prognostication for most of a 3d year.

Mr. MAGUIRE. So the \$100 million is an annual figure, based on the \$331 million?

Mr. O'LEARY. It is a rough annualization, yes.

Mr. MAGUIRE. Now, if we look at the period of time, June 1976 up to let's say the present, you have indicated that there is a 13½ cent per gallon increase, 9 cents of which you label nonproduct cost. Am I correct so far?

Mr. O'LEARY. No, I don't think so. What I have said is that we have a fairly good handle on the increases through September, and I have an exhibit that shows those for you.

They show, for example, that the cost of crude oil purchased distillate is 4½ cents, the nonproduct costs for refiners 1½ cents, with an unexplained half a cent, and then nonproduct costs at the retail and wholesale distribution level 3 cents.

That gives a total of 4½, out of that 9½ that are under the heading of nonproduct costs between refiners and the distribution chain.

Mr. MAGUIRE. So you are not excluding increases at the wholesale and retail levels when you use the term nonproducts costs?

Mr. O'LEARY. Yes, I am saying that we have costs that appear to be cost justified at the wholesale and retail level under the general heading of nonproduct costs. They account for 3 cents of the 9½ cent increase through September of 1978.

Mr. MAGUIRE. If you add the 1.3 which you have projected, you end up with 4.3, right?

Mr. O'LEARY. That is correct, yes.

Mr. MAGUIRE. And in similar fashion, if you take the refiners' operating and distribution expenses, which on the top of page 4 is 1½ to 2 cents—let's take 2—then you add the 2.7 for the additional period of time, which you project on page 5, and you have 4.7, correct?

Mr. O'LEARY. I think that part of that 2.7 is crude. That is the total costs at the refinery level. We feel that about 0.6 to 0.8 of that is the crude cost.

Mr. MAGUIRE. OK. Then let's just say 2 cents of it is refiners. So, we are dealing with 4, then, roughly speaking.

If you deal, then, with the first set of figures—namely, the cost of crude plus purchase of distillate—you start with 4½ cents and then add to that another cent.

Mr. O'LEARY. We would add a little under a cent. It would be close to 5½, between 5.3 and 5.5.

Mr. MAGUIRE. You see, I am concerned about the way you have waved away most of 13½ cents of increase and gotten us down to a figure of \$100 million a year.

Mr. O'LEARY. No. Can I correct that?

Mr. MAGUIRE. Well, no, not yet. Let me finish the sentence.

We have three categories here. We have the price of the crude plus the purchased distillate. We have the refiners' operating and

distribution expenses. Then we have the wholesale and retail levels.

Now, I take it of the 13½ cents 4 point something roughly falls in each of the two categories, as I do the calculations here on the piece of paper.

I take it you have no audit information on price increases at the wholesale and retail levels as to the extent to which they might or might not be justified. Is that correct?

Mr. O'LEARY. That is correct.

Mr. MAGUIRE. So, for one-third roughly of that 13½ cents, we just simply don't have any information.

Mr. O'LEARY. Well, we have some indicia. There has been a startling attrition at the retail end of this business, which indicates that people at least over the period of decontrol have been faced with some rough sledding.

I think that that is an indication that probably there is not unusual price increases at that end of the business.

Further, we had the finding in the OHA report of competition, and we did find competition in the distribution chain.

Mr. MAGUIRE. Well, on the other hand, as I read the report, it seemed to suggest the fact that it asked this study be conducted, be given a priority status, with respect to the degree of competition between wholesale and retail.

Mr. O'LEARY. Mr. Goldstein probably ought to speak for himself. My understanding is the report did find competition at the wholesale and retail end of the business.

Mr. MAGUIRE. I am not sure that competition per se was found.

Mr. Goldstein?

Mr. GOLDSTEIN. Yes, I think that the evidence did suggest that competition, workable competition, existed at the retail and wholesale levels of the petroleum industry. The decision points to substantial evidence to that effect.

You are correct, Congressman, in stating that recommendation No. 1 did indicate that a further study should be conducted in order to possibly isolate local areas in which competitive problems might exist, and in order to gather the nonproduct cost data which was not available during the course of the hearing.

Mr. MAGUIRE. But you felt this needed to be given a high level of priority?

Mr. GOLDSTEIN. Recommendation No. 1 does say the highest level of priority, yes, sir.

Mr. MAGUIRE. So presumably there may be some findings somewhere along the line in this area on which we presently have no information?

Mr. GOLDSTEIN. Yes. Mr. O'Leary—

Mr. MAGUIRE. Which could result in a finding that in fact people are being gouged at least in some areas at this level. Would that be at least a possibility?

Mr. GOLDSTEIN. Well, I guess if further data is developed which leads to that conclusion, then it would certainly be a possibility.

Mr. O'Leary is correct in characterizing the report as affirmatively finding on the basis of the evidence workable competition to exist at the wholesale and retail level.

Mr. MAGUIRE. Okay. With respect to the crude oil purchased distillate, how much of the aggregate is purchased distillate?

Mr. O'LEARY. I am told, Mr. Maguire, that a very small amount of that would be purchased distillate.

Mr. MAGUIRE. Excuse me. Would you repeat that?

Mr. O'LEARY. I am told that a very small amount of that would be purchased distillate.

Mr. MAGUIRE. And would most of that be purchased in the import market?

Mr. O'LEARY. I am told further it is about 0.1 percent, a tenth of a percent, largely in the 200,000 barrels a day that we import.

Mr. MAGUIRE. Would there be some spot market?

Mr. O'LEARY. Spot market and the import market tend to merge, yes.

Mr. MAGUIRE. Do you think that the purchase of distillate ought to track the world market, and do they in fact?

Mr. O'LEARY. No. The U.S. price for distillate is under the world market because there is a significant difference in the crude cost to world refineries as opposed to the U.S. refineries.

Mr. MAGUIRE. In any case, the jury is still out on the wholesale and retail. Also, as Mr. Gore so eloquently explained a few moments ago, it appears as if a case has been made rather persuasively in the OHA report that we have serious problems with the refiners.

The refiner cost increases are roughly a third of the 13½ cents. So, we may be dealing in the end with a good deal more than \$100 million a year.

Mr. O'LEARY. Well, Mr. Maguire, I think if we are confining ourselves to translation to the OHA report, their data base ceased in April 1978. You, of course, are putting data into it to get to your 13½ cents, data that is essentially November-December data.

Mr. MAGUIRE. But that data comes from your opening statement.

Mr. O'LEARY. Indeed it does, but I think the fact of the matter is we have seen—I put into the record in some detail—we have seen that this market is characterized by seasonal swings.

I think you are better off to operate on annual averages. The data that we are now deriving from Mr. Goldstein's exercise on this particular point is that we have an unaccounted for of somewhat less than a half a cent on an annualized basis.

Now, as I pointed out, in the month of April that unaccounted for, the last month that he dealt with, was about 1.3 cents. I think probably if he had gone back to a mid-heating season month, January or February, he might have found 2 cents unaccounted for.

But I think the point to remember is that there is underrecovery during the summer months and overrecovery during the winter months in this industry.

Mr. MAGUIRE. Well, is it the case that in the last few years we have had a decline in prices in the spring and summer?

Mr. O'LEARY. It is a case, I think, in every year except 1978 that we have had a decline. I would be more than—

Mr. MAGUIRE. The pattern, as I understand it, is not so much up and down as stepping up and stepping down.

Mr. O'LEARY. It stays up primarily because of the content, the crude cost element of the cost. You recall that we have now for almost 2 years under an agreement arrived at with the chairman of this subcommittee advanced the price of crude in this country by the internal weight of inflation.

We do that on a monthly base. Each month the price of domestic crude goes up.

Now, over that last 2 years, until January of this coming year, the price of imported crude has been relatively stable, except for the shift from heavier gravity to higher gravity crude, but relatively stable.

Nonetheless, there has been inexorably, week in and week out, an increase in the raw material cost that goes into this industry.

Mr. MAGUIRE. And the aggregate of 13½ cents, this period of time we are talking about, I think translates to something in excess of a \$6 billion cost for consumers—the figure I have, 1 cent equals \$500 million, if that is correct. Is that correct?

Mr. O'LEARY. Over what period of time?

Mr. MAGUIRE. Well, over a year.

Mr. O'LEARY. If it were to be sustained over a year, that would be correct. What we have in the record is a 9½-cent increase, which translates to about a \$2 billion increase over that period of time.

Mr. MAGUIRE. But you have already acknowledged the 13½ cents as being what we have today. So, to continue to do the analysis on the basis of last September's figures seems to me to be a bit inappropriate.

Mr. O'LEARY. But to do it—to assume that that has been in effect for a year is totally inappropriate.

Mr. MAGUIRE. Okay. That is obviously correct. I accept that. But, I am talking about the aggregates that we are dealing with here. I think that in discussion today we have had a tendency to minimize both these aggregates and their impact.

I am concerned about that. I don't think we are talking about nickles and dimes here. I think we are talking about billions of dollars.

Mr. O'LEARY. No. We are talking about as far as the record is concerned \$200 million ascertained and another \$100 million, roughly \$133 million or \$134 million projected over a 3-year period.

Mr. MAGUIRE. Okay. We will await the results of your additional priority studies with great interest, Mr. O'Leary.

Why does home heating oil average some 10 cents a gallon more for homeowners than industrial users, on table 11, which you submitted with your testimony? National average October 1978 for residential 50.1. National average for industrial at the same point 40.2.

Mr. O'LEARY. Well, let me tell you the generic reason. Generally speaking, it is very large deliveries at a single point versus a series of very small deliveries spread over many points.

It is largely a logistics differential. The home heating oil market is characterized by deliveries in the 100- to 200-gallon range. The industrial heating market is characterized by deliveries in the truckload range.

Mr. MAGUIRE. So, you think the whole 10 cents, it is quite a percentage, 20 percent of what people pay—is that all attributable to logistics differences?

Mr. O'LEARY. I would hazard that it is, but of course that depends upon the validity of Mel Goldstein's finding that there is in fact competition in the distribution end of the chain.

I am surprised at the structure of this industry, whenever I have the opportunity to review it. My recollection is that the average retailer in this business has something like 14 employees and operates four to five trucks.

There are members of this industry here that I am sure can qualify those figures, but it is not an industry that is characterized by large economies of scale.

In getting the delivery to the point of distribution, the truck would be dispatched in the morning, he would go to a bulk supply plant and, of course, in all likelihood there would be a difference in the price there versus the price that the industrial user would receive.

Then he spends some hours in making small drop-offs to a number of household consumers. It is really quite a costly operation.

I would, however, defer to the people with a hands-on knowledge of the industry on this question, Mr. Maguire.

Mr. MAGUIRE. Well, I am concerned about that rather substantial difference. I think it might also be we will find it has something to do with the lack of competition in some sectors as well.

Mr. O'LEARY. Well, that, of course, goes to the discussion we just have been having of whether or not there is competition at the retail and wholesale ends.

I am satisfied from my own observation of this business that there is fairly intense competition at the retail end. I don't know enough—

Mr. MOFFETT. Would the gentleman yield on that point?

Mr. MAGUIRE. Surely.

Mr. MOFFETT. On the question that the gentleman is raising, I would like to ask a question along the same line.

The question that Mr. Maguire raises I believe comes from table 9.

Mr. MAGUIRE. Table 11.

Mr. MOFFETT. Table 11. But in table 9, I believe it is, we also see that the difference between residential and industry in June of 1976 is a difference between 39.3 residential and 33.7 industrial. Do you see that—June of 1976?

Mr. O'LEARY. Yes, 39.3 to 33.7.

Mr. MOFFETT. So that is roughly 5½ cents. Yet, when we turn three pages further along we find that the average shows a 10-cent difference between industrial and residential prices—50 cents to 40 cents, according to your own figures.

Is there any reason why the difference between industrial and residential would be increasing so greatly?

Mr. O'LEARY. Yes, over that time we have been running at a very rapid rate of inflation on labor costs and equipment costs. I would imagine that that accounts for at least some portion of that cost differential.

I cannot account for it beyond that. I would be glad to take a look at what we have available within the Department of Energy on that question and provide it for the record at this point, Mr. Chairman, if that would be satisfactory.

Mr. MAGUIRE. That would be fine. We would appreciate that.

You referred to the fact that a number of retailers have been driven out. I would think that that might suggest, would you agree, that there may be additional problems with respect to less competition as a result of that situation?

Mr. O'LEARY. It may be, but apparently the competition has been so intense at that end of the business and the margin so thin, because of the intense competition, that companies that have been—I have heard stories from members of the industry—companies that have been in the business for generations are simply unable to weather this particular cycle that we are in now.

So that would indicate at least on a prima facie basis that there is competition in the industry, I think, Mr. Maguire.

Mr. MAGUIRE. All right.

Now, Mr. O'Leary, one of the attachments that you have given us to your testimony indicates that the API publishes weekly statistics, and those are valid for 5 days after the period to which they relate.

You have also indicated that you collect data on a monthly basis from roughly 1,200 suppliers and that that data is available 2 months after the end of the month to which it relates.

What is the reason for the enormous disparity there just in, let's say, the prowess of the two organizations in collecting data?

Mr. O'LEARY. I have discussed this at some length with the independent data gathering organization within the Department of Energy, and I stress the word independent in this context.

They tell me that the difference is that they have very high-grade numbers after 2 months and their competitors have very low-grade numbers after 5 days or a week; that is to say, the standard that EIA imposes upon itself is one of a very, very high degree of reliability and validity in the data series that they present.

That, they tell me, just simply requires time. The API number and the other industry numbers apparently are not subject to that test. Indeed, over the years I have noted significant errors in their numbers.

You will find quite often that there will be corrections, I would say maybe as often as one out of five, in their published numbers. So what they have done, quite consciously, is they have traded accuracy for time.

Mr. MAGUIRE. Do we use their numbers in any way?

Mr. O'LEARY. Yes, we use their numbers in a way. We keep a watch on their numbers, always with an eye to the point that I have just made, that their numbers may or may not have the pinpoint accuracy that our numbers have.

Mr. MAGUIRE. But you don't think we could do better with better numbers, more quickly?

Mr. O'LEARY. Yes, I think we can do better from the standpoint of time, but I am told by EIA we sacrifice quality as we draw time in.

Mr. MAGUIRE. One final question.

Mr. O'Leary, you said earlier, answering a question about what we are doing about inflation, one of the things you cited was the fact that under EPCA the crude composite is \$1 billion under what it should be or could be under the law.

I am wondering if you feel that that \$1 billion flows through to the consumers of refined products.

Mr. O'LEARY. I think by and large it does. Now, here again it goes to whether or not the system is working in a competitive sense.

I will again refer to the finding of the Office of Competition, Mr. Lane, who is with us here, that the best way to insure these benefits to consumers is with an unregulated market in which we do our best to insure vigorous competition.

I think one of the things that appears to be a disagreement here is the sort of intervention in the market. I am not at all opposed to intervention in the petroleum market as long as it leads toward enhanced competition.

It is my observation that the intervention that the Government has indulged in at least over the last 5 years has not had that result. I think that I could convince you of that in the gasoline market. I believe that Mr. Lane's office shares that view.

One of the things that we ought to do is look at other approaches to intervention in this market to insure competition, rather than putting, as many—including that savant, Fred Kahn—have said the dead hand on it.

Mr. MAGUIRE. Are you going to be coming before us a couple of months from now arguing that crude should be taken out from under controls?

Mr. O'LEARY. The Congress has already made that argument, Mr. Maguire. They have said that as far as they are concerned this is a matter of Presidential discretion, as of June 1, 1978, and so this will be an administrative act of the President under guidelines set down 2½ years ago by this very Congress, should it occur.

Mr. MOFFETT. Will the gentleman yield.

What is the recommendation likely to be?

Mr. O'LEARY. I have no idea, Mr. Chairman.

Mr. MAGUIRE. With respect to the \$1 billion and whether or not it actually reaches the consumer, I do think it is a very relevant question because obviously consumers don't consume crude oil directly.

In fact, the situation that we have here before us today is one in which the bulk of price increases for distillate are in fact unrelated to the price of crude—a portion of it is related to the price of crude, but most of it isn't.

So, I don't share the gentleman's confidence that that \$1 billion which he cited earlier is actually going to the consumers.

Mr. O'LEARY. Mr. Maguire, I do have data. I have the data that result from the scrupulous review of this market that took place during the past two winters.

Those data indicated a minimum of breaching—if you can accept the trigger price as being somehow indicative of the price that you would gain under controls—of that price. It was not significant.

Indeed, I regard Mr. Goldstein's data to more or less support that conclusion.

Mr. MAGUIRE. I thank you.

Mr. MOFFETT. The Chair now recognizes the gentleman from Louisiana, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. O'Leary, I share your concern about reimposing regulations on this market if there is no need for it. I understand my colleague's concern that there could conceivably be a little pressure from their consumers about the high cost of fuels.

Too often an answer for those cries for help is that the Government can do something about it. Very often the Government is a big part of the problem. I think controls and regulations at this point will be counterproductive to the consumer.

It might well cost a great deal more money. I would hope until you have far more information than has been revealed here today that you would continue in your pursuit of withholding any further regulations on this market to give it a chance to try to do the best we can in the free market system to keep the prices down as low as we can, understanding that OPEC has a great deal to do with this, inflation has a great deal to do with this, minimum wages have a great deal to do with it and OSHA standards.

There are a lot of things that can account for some of these price increases besides somebody trying to make a profit.

Recently the President unveiled his voluntary guidelines to control inflation, guidelines which I support and hope work, and immediately the question came, what happens if they don't work, and we began to have talks of mandatory wage and price guidelines.

Do you think or have you explored whether some businessmen, refiners, wholesalers, retailers, have possibly increased their prices just a little bit more than the present market dictates to take care of a situation of not wanting to get caught by mandatory wage and price guidelines?

Mr. O'LEARY. There might have been that. If so, it was a foolish action because we are not bound to take today as the basis should some more rigid formula have to be applied.

You can take, for example, last June and use that as a basis. So, I think if that was done, it was not wise. It compounded the problem, increased the probability of more stringent regimes than are now contemplated and would be counterproductive in the extreme. I would say on balance probably it didn't occur.

Mr. MOORE. Mr. Goldstein, did that come up in the terms of your hearing, that question of whether or not anybody in the chain of producing and selling heating oil was contemplating perhaps, reacting a bit early, to the possibility of mandatory wage and price guidelines?

Mr. GOLDSTEIN. No, it did not. Of course, the hearing was conducted in August, which was significantly prior to the announcement of the guidelines.

Mr. O'LEARY. On that point, I would like to provide one little thing that kind of bites at the back of my mind with regard to one of the potentials for this run-up.

The refining industry in the United States has been in a position of expending a great deal of money—and I might say quite unwill-

ingly—in order to upgrade and revise the refinery capacity to keep pace with the demand for unleaded gasoline.

Under our scheme of regulation, they are not compensated for that in the controlled price of gasoline. One of the things that I think has occurred pretty systematically over the last 4 years is tilting the prices over to middle distillate; that is to say, I think we are in the position where the heating oil consumers in this country may be and probably are paying for the gasoline consumers in this country, or paying a substantial amount of that gasoline bill.

I think that may account for some of this list chunk of money here.

Now, we don't condone that. It seems to me that if we start with the view that it really costs more to produce gasoline than it does middle distillate—and clearly it does—and that is compounded by the requirement for substantial investments to create the clear fuel needed for unleaded gasolines, then we shouldn't require the home heating oil customer to pick up a chunk of the tab for that.

They are in different parts of the country by and large. Of course, they are on different bases. One is involuntary. The home heating oil customer has no choice, he is locked in and his needs are dictated by weather.

The other is, to a surprising degree, voluntary; that is to say, gasoline consumption. So, I think one of the things we are going to be looking at in this next month is that aspect of the market.

To remedy that, Mr. Moore, we attempted to institute the so-called tilt rule, which would permit a disproportionate accounting for fuel oil prices against gasoline; that is to say, raise the legal ceiling prices on gasoline and take some of the pressure off the middle distillate.

As you may know, the Ralph Nader organization intervened against that rule and it is now tied up in the courts. We hope, however, to prosecute the rule on time.

It seems to me it is just not contributing to the welfare of this constituency, the constituency for home heating oil, to load those charges away from motor fuels on the middle distillate.

We ought to keep them on motor fuels where they belong, if that is the case.

Mr. MOORE. Mr. O'Leary, I would ask in your future determinations of trying to find out why we have the unaccounted for 1 cent a gallon increase, or whatever the figure is, to give some attention to the possibility that people may be wrongly reacting toward the possibility of mandatory wage and price guidelines.

Mr. O'LEARY. We certainly shall.

Mr. MOORE. The second question I would have is to Mr. Goldstein. A moment ago my colleague, the gentleman from Tennessee, was commenting about the lack of competition at the refining level, or perhaps there being the possibility of some sort of shared monopoly in that regard. He was quoting findings from your report.

Now, did I understand you to say that those findings were based upon the evidence you had before that hearing, relevant to an independent complete study of the refining industry of the United States today?

Mr. GOLDSTEIN. Yes, that is correct.

Mr. MOORE. I understand, according to the passage read by Mr. Gore of Tennessee, we were a bit perturbed at the fact that people were invited to present information and did not, people in the refining industry, their trade associations and what have you.

Mr. GOLDSTEIN. We noted in the decision that the American Petroleum Institute and the Atlantic Richfield Co., had filed petitions to intervene as a party in the proceedings, and midway through the proceeding withdrew their participation and requested that they be dismissed as parties.

Mr. MOORE. Did you invite the industry as a whole to participate in the proceedings?

Mr. GOLDSTEIN. Yes, we did. Notice was published in the Federal Register in April of this past year inviting any organization or person to participate in the proceedings by filing a motion to intervene.

Mr. MOORE. While I disagree with those findings that you found, I do agree with your consternation at their not having been more participation.

I think one of the problems we have today, in any analysis or defense of the free enterprise system, is that those operating within it don't seem to take much interest in coming before a body such as yours to explain what is going on so the public can see it, which gives rise to suspicions, some of which may be correct. But I can certainly understand your consternation.

You did comment in the report, however, that the Department of Justice did present information based on a complete study they have done, their opinion that there is competition at the refining level of fuel oil, is that right?

Mr. GOLDSTEIN. The evidence presented by the Department of Justice did not involve a complete study. The Department of Justice presentation involved testimony by an expert economist witness, which related primarily to the definition of relevant markets for analysis of competition.

That expert witness did testify that in his view there were not competitive problems present in the refining industry based upon that analysis, upon that product flow and market analysis.

Mr. MOORE. Then if I understood Mr. O'Leary's remarks, as far as you are concerned you do not have the information yet within the Department of Energy to make a conclusion as to the competition at the refining level of industry in the United States today, is that right?

Mr. O'LEARY. No, Mr. Moore. As I indicated earlier, we are taking a number of steps to put us in a better position to understand that. Let me caveat that whole situation.

Other agencies of the Federal Government have been now for years attempting to make this same finding in a dispositive manner. The Department of Justice has been engaged in it, in proceeding after proceeding after proceeding for a very long period of time, without definitive results.

The Federal Trade Commission has been similarly involved in this. It simply is impossible in the course of a very summary proceeding to have this kind of a question put to rest for good and all.

Mr. MOORE. If I may interrupt, that was my point in asking questions of Mr. Goldstein. I don't think even he would say—and I give him the chance to respond—that his hearing puts to rest the issue of whether there is or is not competition at the refining level.

His finding was based upon the absence of evidence to provide the contrary.

Mr. O'LEARY. I would like to repeat, I think that is correct. It is a very difficult thing to do. I think we can get a feeling for it, but we certainly did not do it in a dispositive way within any meaningful period of time.

We are, however, seriously concerned at Mr. Goldstein's findings. Let me repeat the steps that we are taking in response.

First, we held a conference with refiners, consumers, local government representatives, retailers, and others on December 15 to find out how they perceived the market.

Second, we are requesting the largest refiners to provide the Department with certified product and nonproduct cost data.

Third, we have asked the Office of the Special Counsel to obtain and corroborate nonproduct cost information from selected major refiners in order to see how closely the OHA calculations compare with actual data.

Finally, we plan to convene a proceeding in January to obtain any additional information required from refiners.

I indicated earlier that that proceeding would be, I believed at the time, contemplated to have cross-examination by adverse parties.

Mr. Goldstein tells me that he understands from discussions with Mr. Bardin that that probably will not occur, that we will have a panel, and the panel will conduct the cross-examination in the form of a legislative type hearing.

Mr. MOORE. One additional point. I don't think we are going to settle this morning the issue of whether there is or is not competition within a free market definition at the refiner level.

Aspersions have been cast; questions have been asked. I am not sure we are going to settle that at all this morning.

But I would like, since the record has brought up this issue, if you have the information with you now to present it, and if you don't, can you get it for us? I ask the chairman to hold the record open if it is presented later.

I would simply like a list of the names of every domestic refiner of residential home heating oil who produced during the year 1978, a list of the names of every one of the refiners and what percent of the total domestic production he produced that year.

Just so we will have an idea, are we talking about 3 companies, 20, 30, 50? I don't know. What is the percent for Exxon as opposed to some of the smaller outfits, or some of the very small independents?

Then, on the second part of that, the names of all of those who are producing it and exporting it to the United States, what percent of the market they are bringing into this country.

Obviously all home fuel oil is not U.S. domestically produced. A great deal of it is produced outside of the country. Take the Northeast, where we have a problem.

So, if you would give that information to us I think it would be helpful for us to have some idea what we are talking about.

Mr. O'LEARY. We will get the data on the domestic refiners. It is going to be difficult to get it on the foreign refiners. I think we tend to lose track of other than country of origin. We cannot sometimes track it back to the individual refinery.

Mr. GORE. Will the gentleman yield?

Mr. MOORE. Yes.

Mr. GORE. Just briefly, to amend his request, if you are amenable, I would also like to see the eight-firm concentration ratios by region, the four-firm concentration ratios by region, and some indication of the extent of joint venture participation by the companies involved in the top eight firms.

Mr. O'LEARY. I think that the first two points are contained already in the OHA report.

Mr. GOLDSTEIN. What do you mean by region?

Mr. GORE. Geographic regions of the country.

Mr. GOLDSTEIN. How are you disaggregating geographic regions? In the way it was done in the OHA report? In terms of the way Federal regions are selected?

Mr. GORE. Either way, whichever is in your opinion most instructive. DOE regions would be, I think, possibly the easiest way to do it. I don't know how the EPT have broken down—

Mr. O'LEARY. I think probably the easiest way to handle this is on a PA'd region basis.

Mr. GORE. Yes: I suppose so, except there are only five of those, right?

Mr. GOLDSTEIN. If I can comment, Mr. Gore.

Mr. GORE. That is too big, it seems to me.

Mr. O'LEARY. All right. We will do it on the basis of Mr. Goldstein's breakdown.

Mr. GOLDSTEIN. It is already on page 112 of the OHA decision.

Mr. GORE. Thank you very much. I thank my colleague for yielding.

Mr. MOORE. Mr. Chairman, that concludes my questions, but one last remark.

Mr. O'LEARY. Can I make one remark. You say you have concluded?

Mr. MOORE. I was going to.

Mr. O'LEARY. Can I make one last point with regard to your last comment, and that is concentration of their industry.

It is my observation that the sweep of Government policies that impacts upon this industry are leading toward less intense competition than would be desirable.

I think here of the built-in bias of EPA's rule that really without intending to at all put the major in a much stronger position than someone who wants to build a grassroots refinery because the major has the capacity for making inplant tradeoffs and the grassroots refiner has—the aspirant has nothing with which to trade.

I think that that is significant.

Second, I think that we are finding that our rules are having a devastating effect on competition in this industry, at least prospectively, because we are in the process of killing dead the viable edge of this industry, the cutting edge of this industry, the independent.

I think if we want to address root causes in this business, this proceeding should go into that with some of the witnesses that are scheduled before you.

We are really doing the consumer in this country terrible harm by tilting the whole business in the direction of the majors, away from the minors, who traditionally have provided the good, strong, competitive edge in this industry.

I think that is something that won't reflect itself clearly in the data that you are going to be developing here.

But we are seeing it in this market every day. The independents are being hurt, are closing up their doors at the distribution end of the channel and the majors are just getting stronger and stronger at the distribution end of the channel.

I think it is a matter of very, very serious national concern, and it arises from totally unintended sources, including the scheme of regulation that DOE has in place, Congressman Moore.

Mr. MOORE. Mr. O'Leary, that is a profound statement with which I greatly agree. I am finding in Louisiana, from whence I come, that independents, whether they are producers or refiners or marketers or retailers, are having one devil of a time competing.

I think part of this goes to the regulatory scheme. Any regulatory scheme is a burden on the smaller fellow as opposed to the big guy. Exxon can do business with you tit for tat, bureaucrat for bureaucrat. But some small outfit has a very difficult time doing that.

I agree with your comment, and I am glad to see you feel that way.

Mr. Chairman, I would like to amend my first request because of the caveat you just entered, Mr. O'Leary, and say could you also give us the same figures and breakdown for, say, the last year before we went into the regulatory scheme on home heating oil.

We are out of it now. Let's go back to before we went into it. So, we can have a comparison of how many businesses were operating then as opposed to now.

Mr. Chairman, this could go without being said, but you raised the issue—and recently battles still rise in my memory—about what it is the administration has done for the consumer.

Of course, all of this is in the eyes of the beholder. I would have to agree with you that the Congress very wisely turned down the industrial users natural gas tax, and equalization tax, as not being in the interest of any sort of consumer of fuel products.

It may be in the interests of reduced use, conservation, having us use less. But, it is not in the interest of a reasonable price for what we have to use. In fact, we are forcing those prices up, very inflationary. The Congress very wisely turned that down.

But then I wonder if the test for natural gas decontrol was from the consumer point of view why did the administration oppose you and me when we joined forces representing supposedly the producers and consumers in opposition of that bill, neither one wanted, why did we pass one at all.

Mr. MOFFETT. In light of Mr. O'Leary's eloquent statement a few moments ago about how Government regulations are hurting competition, it is interesting to ponder the effect of natural gas deregulation is going to have on small producers and independents.

Of course, it is a piece of legislation which you have enthusiastically promoted on the Hill. I wonder how in fact that becomes an exception. I suppose you are going to say it was the lesser of two evils.

Mr. MOORE. Mr. Chairman, it wasn't the lesser of evils, as I remember at the time, because you and I both agreed at that point it did nothing to stimulate production, nothing to protect the consumers.

So, we decided better no bill at all. I really wonder if we passed that bill—because by one vote if you remember we passed that bill—I wonder if it wasn't because we had to salvage the moral equivalent of war, rather than a political reason.

Mr. MOFFETT. I guess we will continue to wonder. We don't need to refight that battle with Mr. O'Leary.

Mr. O'Leary, on the business of the increases, you seem to have argued that it doesn't matter if prices are too high for a specific month so long as this 2-year average we are talking about seems reasonable.

And you are cautioning us to continue to look at that 2-year average; certainly a longer period of time than a month.

What is your understanding about that trigger mechanism? Wasn't the trigger mechanism really originally put into place to protect against unwarranted increases for short periods of time?

I think of our home heating oil consumers back home, hearing your caveats that although the price is higher in the winter and of course higher for specific months, prices are reasonable because we have to look at the long term.

But there is still a great possibility, isn't there, that gouging could occur for a short period of time without detection.

Mr. O'LEARY. Yes, I think that there is inherent in this business, from the very beginning, congressional concern, concern of FEA, and now DOE, is the potential for short-run gouging.

I think it is fair to take a very careful look, month to month. But it is not fair to extrapolate a single month into a year.

That was the basis of the discussion we were having there with Congressman Maguire. He was attempting to take a 3 cent or 4 cent difference and project that times 12. It really was valid to take that times two. That was the time in which that actual price increase was in effect.

I think at the end of that discussion we were not apart on that point.

Mr. MOFFETT. What do you do for our consumers, if you find unreasonable price increases for a given month or two or three, in the short term?

Mr. O'LEARY. Well, remember, we took a careful look at this over the last two very severe winters, and we didn't find that an unreasonable price increase because we had served notice on the system that if we found it we would take action—we didn't say precisely what—take action to cure it.

That still stands, Mr. Chairman. If we find there are unreasonable price increases at any point in this system, we will go out and do what is necessary to get it straight.

Mr. MOFFETT. But what is unreasonable? I keep coming back to this. It really upsets me because we tend to develop these general words in Government, these phrases, without defining them.

A while ago you talked about—and it was your own characterization—what you called the remarkable stability of prices when they were at 48 cents.

Mr. O'LEARY. Yes, last year.

Mr. MOFFETT. Home heating oil customers in the country hear your characterization of a remarkable stability at 48 cents. I went to Chile not long after the junta took power there. They had thousands of people missing and tortured and the United States Ambassador said to us, "Gentlemen, they are doing a remarkable job on internal security."

It reminds me of your statement that there is a remarkable stability in 48 cents. It totally ignores the fact that we have real suffering out there, even if you feel stability in prices is occurring or is beneficial if it occurs at a high level.

I understand you are not a social welfare agency, but who do we turn to as representatives to get some idea of when this whole thing becomes critical. When do we determine we have stretched that rope so far that the tolerance, the tolerance of these people and their budgets, is so limited that we have to stop in and take significant protective action.

I understand that you are looking at it in terms of one item on their bill. But who looks at it in terms of the fact that 80 percent of the people spend 70 percent of their income on four basic necessities: energy, health, housing, and food.

We have this very nice intellectual, I think, elitist argument that our energy prices should be a lot higher. It doesn't take into consideration what is happening to people's pocketbooks overall.

Maybe we are a little bit unfair with you because we ask you to be sensitive to the entire pocketbook and your job is energy. We don't want to be unfair with you in that regard.

At the same time, it does really beg the question of whether there is anybody in the administration who has the responsibility to make a determination that it has gone far enough, that consumers are bearing unfair burdens.

A 5-cent increase in 2 months is just too outrageous. We have an administration that at least says it is concerned about inflation and that steps will be recommended to curb inflation. But inflation caused by rising energy costs is ignored.

We don't get a sense of urgency from you. This is why we have these confrontations.

Mr. O'LEARY. I think it is because we are really talking about two different things.

The trigger for this hearing is a finding of Mr. Goldstein of abuses of the system, or potential abuses of the system to the extent of a half a cent on 9½ cents.

The point that I tried to make in my opening remarks, Mr. Chairman, is that I would like to think about that as a serious business, and I think that we are addressing it as a serious business in the best way the Government can—find out the facts and then take the action predicated upon those facts.

But what I would like to do is also attend to the other 9 cents. As I characterized that earlier, I think it is an emergent national problem. It is not going to get any better. The prices of home heating oil are going to go up.

There are a lot of people on fixed incomes. There are a lot of elderly people in this country. I have testified before other committees to this effect, that are literally faced day in and day out from now on until March with a choice between eating and heating, between food on the table or enough heat in the house to maintain a semblance of a decent standard of living.

I think that that is getting to the point where it is a national problem and one that we ought to address with the best that is in us. It is the forgotten man in this whole energy debate. It stands in the way of much that is sensible.

It should be dealt with, and I think that—to the degree that we can have a discussion of that aspect—the other 9 cents, which is really where the low-income people are being floored—I am sorry—then I think that we will have been looking at what I at least see as the entire problem.

If we were to maintain controls from July until now, the bill for those people would have gone up from \$400 to \$600 a year. We are talking about \$20 a year over this period of time on the basis of the wildest extremes of overcharges.

The strategic increases are not reached by a control system. The question is, from the standpoint of social policy in this country, are we going to permit the low- and fixed-income people to continue to bear the brunt of this or should we begin a discussion at the Federal level, and with States, I think.

I look upon it, from my experience as a State officer, as a shared responsibility. Can we begin a discussion of this.

Secretary Schlesinger met with the NAACP last week, and in the course of it the NAACP representatives raised the problem of fuel stamps with the Secretary. The Secretary said, and I heartily endorse this statement, that is something that we should look at carefully because we do have a problem.

Mr. MORFETT. I understand that. You know what the next big move is going to be. In fact, it is already underway, by the industry and by the utility companies. They are not foolish. They are not without perhaps some compassion in this thing for poor people, but they are also concerned about keeping customers.

The next big move is going to be support of energy stamps for the poor or some emergency fuel assistance from the Government.

As the Governor of Connecticut was saying earlier, there are just countless people that don't qualify for these programs—the working poor, walking poor. They are real life people.

I am afraid we are going to sell out the interests of blue-collar working people by making this move to try and pick up the support of the groups that represent the poor for decontrol.

We have seen that happen already in a number of forums, where the low-income representatives are led to the notion that, "We will be for energy stamps; we will take care of you with some sort of assistance, if you come out for decontrol."

The people who are going to get caught and splashed in the middle of that are the kind of people that Mr. Markey and I represent, blue-collar working people.

Mr. O'LEARY. You are going into tomorrow's problem. I am addressing yesterday's problems—and really the focus of this hearing. This hearing arises from a finding on Mr. Goldstein's part of overcharges that represent a half a cent on that fuel cost. There is another 9 cents over the same period.

It seems to me that you cannot attack the half cent sensibly without addressing at least to some degree the other 9 cents. That is where the problem is. We don't just wave a wand to deregulate. We do it under congressional rules that are joined in by the whole Congress of the United States. The Congress has spoken on that, and you will speak again, I suspect, but the fact of the matter is, prices are going to go up, as witness last weekend's announcement from OPEC, and there is not a thing we are going to do about it. That is the millstone that will grind the low-income people, the elderly.

Mr. MOFFETT. We are concerned with the whole packaging. Let me add that there are indications from other data it is 13.7 and not 9 cents. But on OPEC, let's briefly get down to your contention that we are not going to do anything about it and there is nothing we can do. This is what bothers a lot of us—the defeatist attitude the administration has embraced, just as the one before it did, that we cannot do anything about that cartel. There is no way of cracking it. The only solution we get is the industry's solution which is decontrol, and there is an illusory promise that then we will get more production. What about the nations that instituted purchase authorities so the Government unit buys the oil? What about the ideas of Morris Adelman from MIT, and of William Simon? What about some political attempts to crack this cartel?

Mr. O'LEARY. First of all, let's describe what we are doing already. Without the intervention of your Government, your executive branch over two, now three, administrations, heaven knows where the OPEC price would be. This has been one of the premier objectives, to keep that price within limits.

Mr. MOFFETT. They sent Blumenthal over there. He went over on his knees and came back and said I promise you a modest increase. That is what he was promised by the representatives in Addis Ababa. What kind of influence is that?

Mr. O'LEARY. What kind of increase would we have had if he had not gone on that trip?

Mr. MOFFETT. You mean his trip was effective?

Mr. O'LEARY. His trip was effective.

Mr. MOFFETT. Do you really believe that? They are laughing at us. You know that. They are laughing at us for a number of reasons which you and I might agree on. They get F-15's and a Government that moves toward decontrol.

Mr. O'LEARY. Mr. Moffett, I don't agree with you. I am very close to the data, and the data I have indicates that the Blumenthal mission was effective. In addition to that, we have had price stability from OPEC for the last 2 years. The price has not gone up. As a matter of fact, it has gone down in real terms, probably better than 15 percent over the last 2 years. That has been an accomplishment

that would not have occurred had this Government not put a very strong emphasis on it. In addition to that, we have reviewed Professor Adelman's plan, and I don't think it will work. You are dealing with a cartel. They are not bound by antitrust rules. If we went into blind bidding of the sort he has prescribed, I think they simply would go into a room and say let's squeeze the price up. I don't think it will work. I think you have to go after much more basic formulas in order to bring discipline to that market. We are looking at those alternatives very hard now, and we have been for some time. They take the form of a lot of things that many people would regard as unpleasant. It means building domestic capacity in order to provide a lid on the OPEC aspirations. It is one of the things we are just going to have to do.

Mr. MOFFETT. I want to thank you for your patience and attentiveness. You have been here a very long time today. We appreciate your being here.

Mr. O'LEARY. It is a pleasure being with you, Mr. Chairman. Thank you for what I regard as a very welcome hearing.

Mr. MOFFETT. The Chair now calls our next witnesses: Mr. James L. Larocca, of the New York State Energy Office; Mr. Henry Lee, director of the Commonwealth of Massachusetts Energy Office, and the Honorable Joel Jacobson, commissioner of the New Jersey Department of Energy. We will begin with Mr. Larocca. Would each of you please identify yourself, your full name and title, for the record?

STATEMENTS OF JAMES L. LAROCCA, COMMISSIONER OF ENERGY, STATE OF NEW YORK; JOEL R. JACOBSON, COMMISSIONER, DEPARTMENT OF ENERGY, STATE OF NEW JERSEY; AND HENRY LEE, DIRECTOR, ENERGY OFFICE, COMMONWEALTH OF MASSACHUSETTS

Mr. LAROCCA. I am James Larocca, commissioner of energy, in the State of New York.

Mr. JACOBSON. I am Joel Jacobson, commissioner of the Department of Energy in the State of New Jersey.

Mr. LEE. I am Henry Lee, director, Commonwealth of Massachusetts Energy Office.

Mr. MOFFETT. We thank you gentlemen for coming, and we apologize for the long wait. We know you are very busy, but you understand why we had to focus in on the witnesses who preceded you.

Mr. Larocca, please begin.

Mr. LAROCCA. Thank you, Mr. Chairman. The long wait was worth it in that I found it illuminating from many respects. I am tempted to depart from my prepared remarks to react to what I heard here. A few minutes ago, the chairman raised the question of who we look to. We look to you. The U.S. Congress has the power, jurisdiction, and the ability to deal with the problem that you heard described here today. I frankly do not believe that the action contemplated by the Department of Energy is going to come up with a solution that is compelled by the circumstances and terrible hardships now coming to bear in New York and the Northeast.

In New York, we feel that recent extraordinary price increases in the cost of home heating oil, increases that appear unjustified,

as well as recent shortages of unleaded gasoline—allegations which in our view are similarly without merit—are merely a prelude to a devastating, serious impact that will result from full implementation of the OPEC price increase. The full annualized impact of OPEC's increase in New York will be to increase our energy bill by \$630 million, an intolerable additional economic burden to our residents and our businesses. New York relies on petroleum products to meet 65 percent of its energy needs compared to only 45 percent nationally. We are the Nation's largest consumer of petroleum products. Increases in the prices of petroleum products thus have a disproportionately severe impact on the State's economic health; and in the case of home heating oil, recent price increases underlie a growing threat to our public health.

The price of home heating oil in New York State has increased 24.4 percent since July 1, 1976, the date on which price and allocation controls were lifted from middle distillates. This percentage increase is almost twice the increase in the Consumer Price Index (CPI) for New York and northeastern New Jersey for the same period. From August 1 through December 1, 1978, the price of home heating oil has increased nearly 8 percent, and for the month of November alone, the price rose an astonishing 2.4 percent—probably three times faster than the CPI. As you know, home heating oil price increases during the past 4 months have been a driving force behind our inflationary spiral. At present, the average price of home heating oil in New York State is 52.8 cents per gallon. In certain areas within the State, the price is 56.9 cents per gallon.

The inflationary impact of these price increases in New York is staggering. Moreover, because virtually all our home heating oil comes from refineries outside the State, the recent price increases have resulted in substantial outflow of dollars from the State's economy. The rising rate of inflation and continuing loss of dollars will combine to restrict economic growth in New York State. This situation is not solely limited to New York; discussion with government leaders in the Mid-Atlantic and New England States indicate that this problem is severe throughout these regions.

A grave threat posed by these price increases is the growing likelihood that low-income households will not be able to secure heating oil when they need it. We have found that current high interest rates, increasing insurance premiums and changing refinery supply practices substantially limit the ability or willingness of fuel oil dealers to extend credit to customers. An informal survey of retail oil distributors in New York State indicates that an additional 4-5 cents a gallon cost in home heating oil, as we have experienced since August, adds approximately 10 percent more fuel oil customers to a cash-on-delivery (c.o.d.) payment system. Low- or fixed-income accounts and new homeowners, who often are young people at the early stages of their income earning careers, are the types of customers most often switched to a c.o.d. basis. For many, particularly the elderly poor, the choice may well become "heat or eat."

Federal programs established to address these hardships have been, at best, marginally successful. Programs have not fully reached the population at risk. Far larger numbers of families are

threatened by the inability to cover fuel costs than are covered by the emergency assistance program, supplemental security income, and emergency aid of adults and similar programs. In the past, EEAP started too late, terminated too soon, and was far too restrictive in its guidelines. For example, it appears that a recipient of aid in the past is, by virtue of that fact, barred from receiving aid during future heating seasons.

The relatively modest material grants under the weatherization program are ineffective in cases where old houses need substantial repairs done by skilled labor. It is this class of housing, most in need of effective retrofit, that is not reached under existing Federal programs.

The most disturbing undercurrent in all of this is that the reasons offered by the industry to account for recent price increases in the cost of home heating oil do not appear to justify the severity of the price hikes. Contrary to early industry claims (claims occasionally supported by DOE): Inventory levels of home heating oil appear reasonable; production rates are high; and increases in the cost of crude appear to have been modest. And I believe you heard Secretary O'Leary testify to that effect. Production rates are high and increases in the cost of crude appear to have been modest, at least until this OPEC action. As we see it, there are two sets of issues for this committee and this Congress to address.

First, Congress must act to relieve the hardships already being experienced by low- and fixed-income groups in their efforts to cover rising fuel oil prices.

Second, the Department of Energy immediately must begin to vigorously monitor price and costs at the refinery level and, in addition, establish a consistent monitoring program at the wholesale and retail levels. As the data made known to this Congress, it seems to me the case for the reimposition of Federal price controls on petroleum products will be made in a compelling way. With regard to our first recommendation: The problems of the low and fixed-income are compounded by the fact that they often pay for fuel oil on a cash-on-delivery basis. Fuel oil dealers, for the most part, require their customers to accept a minimum volume of oil which, in some instances, now exceeds the amounts these families can afford.

Emergency assistance programs which are adequately funded, operated throughout the year, and designed in such a way that benefits are available to a wider range of participants, are needed to assure that eligible families receive necessary relief to pay for needed fuel supplies. In New York we have had snow on the ground for almost a month at this point, and yet new regulations for the 1978-79 winter season have not been promulgated under the energy emergency assistance program of the Federal Government. That is the same program that suggests if you received assistance under this program in the past, you will not be eligible this year, the year in which the price increases have exceeded all previous periods.

In a further attempt to moderate the increasing costs of fuel, the weatherization program for the homes of low-income families should be modified to provide an increased level of aid, to streamline eligibility requirements, and to speed up the application proc-

ess. The program as designed is inadequate for older homes in cold climates. These homes, many of which are located in New York State, are often poorly insulated, and, as a result, require more money to pay for materials than the program guidelines permit. As you know, it relies on CETA personnel to insulate a home and in most cases these are personnel not at all qualified for the work at hand.

Regarding our second recommendation: Recent drastic fuel oil price increases cause serious economic impact and potential public health and safety problems for New York State, particularly as the heating oil season progresses. These increases do not appear to be justified. Therefore, the need exists to trace the price rise from its origin to the retailer. A biweekly price monitoring system for home heating oil and kerosene must be activated. DOE should monitor, for each type of petroleum product, costs incurred by refiners and prices charged by refiners to resellers. Further, DOE should establish a consistent State monitoring program at the wholesale and retail levels which could be implemented by those States desiring such a program.

I am frankly appalled when I hear the Secretary of Energy tell us that a department with 20,000 people and a budget of \$10 billion cannot determine the components of 2.7 percent increase in refiners' price increases to wholesalers since December this year with the data currently available to them. If they don't know, who does?

As part of any monitoring program, there must be a realistic trigger mechanism which should be implemented as a mechanism for determining whether middle distillate price controls should be reimposed. The proposed Federal and State monitoring system and trigger mechanism should, as a minimum:

Establish a statistical margin of error of no more than 2 percent of the refinery price; I heard some discussion of why the trigger mechanism had not gone out and why the price controls continued under the original theory. Under existing theory the allowance was 2 cents, and 2 cents on a gallon of heating oil as an allowable statistical error can hide a lot of sins. I think that is part of the reason that it never came to pass, even in the face of all these rapid and unprecedented increases in the pricing product that the mechanism never went off.

It must also utilize separate distillate fuel index prices for residential, commercial, industrial, and governmental customer categories to account for differences in quantities purchased, delivery methods, and distributor margins and to prevent unwarranted price changes affecting only one or two categories of customers.

If you will examine the trigger which was to have operated, you will see that because the measuring is spread over various sectors across various kinds of fuel, it is not likely that it will ever go off, even though the increases over a period of time for a certain class of users would otherwise call for a reimposition of controls. I think, however, that more thorough investigation will establish clearly the justification for reimposition of controls. I heard a great deal of discussion about what the DOE would be doing prospectively with regard to these various proceedings. I frankly think that the information is now available to this committee and to this Congress,

and you now can know what you need to know to fully deal with this problem.

I also note that there was a discussion of the narrow focus of this hearing on a particular proceeding which dealt with only No. 2 distillate oil over a period of time. The committee should be aware, and it is widely known, that there are now pending in various administrative processes in the DOE 64 different cases which allege an aggregate overcharge on petroleum products to the consumers of this country of \$1.8 billion. I think it is highly misleading for this committee to simply focus on the DEX-0123 hearing record that you have and take that perspective or that identified overcharge as the only problem around. That is part of a vastly larger problem, and that is these 64 cases identifying \$1.8 billion in overcharges since 1973. In New York, our share of those overcharges is \$113 million. This is money that consumers in New York are alleged to have been overcharged by the petroleum industry.

On Monday of this week, Secretary O'Leary identified an additional 4 to 5 billion dollars' worth of potential overcharges being pursued by his Department. Do not let the matter at hand, the identification of overcharges only in distillate No. 2, deflect from the wider inquiry which is: Are there indeed \$1.8 billion worth of overcharges that can be documented, and the cases suggest that they can be documented, and, more importantly, will the next several months show that the number is more appropriately \$4 to 5 billion? For every person in this country, \$4 billion to \$5 billion is more than \$20 a head. The broader record will show there is a substantial record of overcharges.

My final point, Mr. Chairman: We in New York find that we depend on products coming outside our borders for 92 percent of our petroleum products. For all of our products we have only two small refineries in our State. We have neither the personnel, technical competence, nor legal jurisdiction to reach to the source of this problem. We believe the only jurisdiction that exists and is capable of being exercised is here. It resides not necessarily with the executive branch, but with the Congress, and the Congress has before it sufficient information to warrant, in our view, immediate consideration of a return to Federal price controls for home heating oil and to reject out of hand any attempt to, by extension, bring to gasoline a price decontrol process which is widely expected to be brought by the President in January.

If gasoline is decontrolled, I think we can expect to see a repeat of the history that we have seen under home heating oil decontrol, and that is a rate of increase in the price which exceeds the rate of increase in the consumer price index by a factor of more than 2 to 1.

[Testimony resumes on p. 158.]

[Mr. Larocca's complete statement and attachments follow:]

Mr. Chairman and members of the committee, I appreciate this opportunity to discuss with you issues related to the price and supply of home heating oil.

INTRODUCTION

New York State consumes more middle distillate products than any other State. Over 17% of the nation's No. 2 oil used for space heating purposes is consumed in the State. During 1977, the New York State consumers used 85.6 million barrels of No. 2 oil at a cumulative cost of approximately \$1.67 billion. The residential sector accounted for 81% of total consumption and 84% of total cost.

Rising oil prices pose a serious inflationary threat to economic stability. In New York State, home heating oil prices have increased by more than 10% since November 1977, and nearly 8% since the beginning of August 1978. Because virtually all our home heating oil comes from refineries outside the State, the recent price increases have resulted in a substantial outflow of dollars from New York. The rising rate of inflation and loss of money from the State's economy, if continued, will combine to restrict economic growth in New York State. This situation is not solely limited to New York; discussions with government leaders in the mid-Atlantic and New England regions indicate that many states share a similar concern.

The reasons offered by the industry to account for recent price increases in the cost of home heating oil, do not justify the severity of the price hikes. Our analysis of available Department of Energy (DOE) and industry data on refiner crude oil acquisition costs and home heating oil inventory levels does not support the 3¢/gallon average price increase charged by refiners to distributors between August 1, 1978 and November 1, 1978.

Another grave threat posed by these price increases is the greater likelihood that low-income households will be able to secure heating oil as needed. As the price of home heating oil rises, increasing numbers of retail distributors are imposing strict payment terms on their customers, many of whom are on low or fixed incomes and are classified as "marginal" accounts. Health and safety problems will develop if these people are unable to secure oil when they need it. It is imperative that the Federal Government take action to assist low or fixed-income consumers in obtaining adequate supplies of home heating oil at reasonable price levels.

Taking a step back, there are two distinct issues that arise from the price increases of No. 2 oil since August. First, the refining industry has failed to provide convincing evidence to

justify these higher prices; and second, increased home heating oil costs contributed significantly to declining lifestyles and quality of life for low-income families and elderly persons in the State.

With regard to the former, I recommend:

- . The Department of Energy track the progression of prices at the production, refining, wholesale and retail levels.
 - .. immediately activate, at the refinery level, a bi-weekly federal price monitoring system for home heating oil and kerosene;
 - .. establish a comprehensive monitoring program at the wholesale purchaser-reseller and retail levels; and
 - .. reimpose a trigger mechanism which utilizes separate distillate fuel index prices for residential, commercial, industrial and government customer categories to account for differences in quantities purchased, delivery methods and distributor margins and to prevent unwarranted price changes affecting only one or two categories of customers.
- . Department of Energy reconsider the reimposition of middle distillate price and allocation control.

With regard to the latter, I recommend:

- . Congress take action to relieve the special hardships and difficulties experienced by low or fixed income groups in coping with rising fuel oil prices.
 - .. fund emergency energy assistance programs at adequate levels;
 - .. have program operating guidelines in place before the start of the heating season;
 - .. expand existing program eligibility to encompass a wider range of participants; and
 - .. review the Weatherization Program to allow an increased level of federal aid on a case-by-case basis.

Appended to this statement is a set of answers responding to the questions posed in Chairman Dingell's invitation for my appearance today (Appendix A). The balance of my testimony will address the overall price and supply situation in New York State; our analysis of the regional refiner price increases and supply conditions; the consequences of increasing oil costs on New York consumers; and recommendations to this subcommittee.

OVERVIEW OF NO. 2 OIL USE, RECENT PRICE AND SUPPLY TRENDS IN NEW YORK STATE

Home heating oil satisfies the space heating requirements of approximately half of the State's 3.4 million one and two family homes. No. 2 oil accounts for one out of every four barrels of oil consumed in the State. Because this fuel is consumed principally for space heating, demand is extremely weather sensitive. Because of this extreme dependence on home heating oil, any price changes are of grave concern to New York State.

Home heating oil price increases experienced by New York residential consumers since August already equal the price rise during the entire extraordinarily cold 1976-77 heating season and far surpass other recent seasonal increases.

As of November 1, 1978, home heating oil prices had risen 24.4% (from 41.4¢/gallon to 51.5¢/gallon) since July 1, 1976, when

price and allocation controls were lifted for middle distillates. For a similar period, the Consumer Price Index (CPI) in New York and northeastern New Jersey increased 12.7% (see Appendix B, Table I). Evidence presented by the Department of Energy's Office of Fuels Regulation (OFR), within DOE, at a hearing conducted by the Economic Regulatory Administration's Office of Hearings and Appeals within DOE (Docket No. DEX-0123 - No. 2 (Home) Heating Oil) closely parallels our findings. According to an OFR exhibit,¹ national prices to residential users increased by approximately 23% since July 1, 1976. The national CPI for the same period rose 12.5%.

By December 1, 1978, the average retail price of home heating oil in New York State had reached 52.8¢/gallon and, in some areas, the retail price had reached a high of 56.9¢/gallon. Thus, between November 1 and December 1, 1978, the average price of home heating fuel rose another 2.4%. During November we estimated that the CPI rose only .8%.² The increase in the average retail price of No. 2 oil during November equates to a 7.2% fourth quarter rate of increase. Inflation during 1978 is expected to rise between 8.0 - 8.5% annually, which represents a 2.2% quarterly gain. The price of home heating oil in New York State continues to increase at a rate which is about three times the increase in the cost of living.

ANALYSIS OF REGIONAL REFINER SUPPLY AND PRICE DATA

According to widely published reports, the industry has attributed the recent, dramatic price increases of home heating oil to a combination of factors, principally to low inventories and to increases in the composite cost of crude oil. Other reasons generally cited indicate that production is down because of breakdowns at refineries and unduly extended gasoline runs.

Over the past several years, the price of heating oil at the refiner level has tended to rise somewhat during the fall and winter seasons. However, it is particularly difficult to justify the severe price increases of late. Our analysis shows that

refinery breakdowns have not severely affected production and stocks are not at alarmingly low levels. Because these factors are among the primary indicators of changes in ultimate consumer prices, we are at a loss to explain the devastating recent upward movement in home oil prices.

In a news media briefing, Deputy Secretary of Energy O'Leary echoed industries earlier claims of a 10% increase in the price of crude oil since last year. Data assembled by O'Leary's own Energy

¹Office of Fuels Regulation Exhibit 1 - Increase in National Average Residential Heating Oil Price: June 1976 through April 1978, referenced in the Decision and Recommendations - No. 2 (Home) Heating Oil of the United States Department of Energy, Office of Hearings and Appeals, page 47.

²The national unadjusted CPI rose 0.8% in October 1978 to 200.9% from 199.3% in September 1978 (1967 = 100). Generally, the anticipated 8.0 - 8.5% annual increase in the CPI for 1978 equates to 0.7 - 0.8% per month.

Information Administration and published in the Monthly Energy Review fails to support this comment. The composite refiner cost of crude oil (the weighted average of foreign and domestic crude prices) during the period January - June of this year rose only 2.8%. Data on crude oil acquisition cost for subsequent months has not been released by DOE at the time this statement was prepared. Applying last year's trend to price performance since June of this year, indicates that the composite cost of crude oil will increase by some 2.4% through the end of this year. Consequently, for the year, the composite crude oil cost should rise only about 5.2% or about 1-1½¢/gallon. By contrast, prices for the refined product have risen by more than 10%, or 5¢/gallon during the past year.

Recent supply data for home heating oil, based on information publically available from DOE and the American Petroleum Institute (API) (see Appendix B, Table II) reveal that inventories have increased steadily since August 1978 -- the very same period that the industry is reported to have cited product shortages as partial justification for price increases. In fact, the increase in stocks during each succeeding week of November 1978 is in contrast to past years practice when stocks were frequently drawn down. According to data from the American Petroleum Institute, during November 1978, middle distillate stocks, excluding kerosene, in PAD districts I-IV, increased 5.5% during the course of the month. In both 1975 and 1976, stocks showed a net decline for the month of November and in 1977 the atypically high inventories were increased by only 3.2%. Indeed, as of December 1, current year stocks actually exceed comparable 1975-76 levels and are not significantly below 1977 levels. It should be noted that the 1975 and 1976 inventories were deemed adequate ... enough so that middle distillates were removed from Federal Price and Allocation controls. In fact, stocks of No. 2 oil proved sufficient to satisfy demand during one of the coldest and most severe winters (1976-77) in the past hundred years.

Another indication that stocks should prove sufficient for the current heating season is the interstate pipeline company reports of increases in availability of natural gas compared with the prior year's levels. Consequently, heavy demand for No. 2 oil this year, as an alternate fuel, is unlikely to arise as in the past two winters when natural gas deliveries were curtailed to industrial firms, schools, hospitals, and government buildings.

Domestic production of No. 2 oil has increased in each month since August 1978, and in September, October, and November, production has exceeded 1975 and 1976 levels. Compared to 1977, production since September has closely tracked last year's levels, and in November, it actually increased slightly compared to a small decline in 1977 (see Appendix B, Table III). The data on the level of inventories and No. 2 oil production are clearly at odds with the industry's claims.

⁴ Boston Herald American, December 6, 1978, page 13.

A survey of barge reseller posted prices (which are indicative of major petroleum supplier prices) at New York Harbor, reveals that approximately 75% of the recent price increases are attributable to increases at the refinery level. The DOE Office of Hearings and Appeals, Decision and Recommendations on No. 2 (Home) Heating Oil, mentioned earlier, indicates that refiner prices during the 1978-79 heating season will continue to rise at a rate which exceeds the cost increases refiners are incurring.

The report also points out that a relatively consistent pattern of overcharges has occurred since the decontrol of middle distillates. It is estimated that refiner overcharges for No. 2 oil for the period of July 1, 1976 through April 1979 will total approximately \$331 million.

In summary: inventories are at adequate levels; rates of production are at least equal to 1975 - 1977 levels; the Office of Hearings and Appeals report indicates refiner overcharges are likely to continue at a rate which will exceed the cost increases refiners will incur (p. 87); composite crude oil cost increases have been relatively modest; and industry spokesmen themselves insist that supplies of home heating oil will be adequate to meet anticipated demand. In light of all these factors, it is most difficult to understand the alarming incidence of recent price increases of No. 2 home heating oil.

CONSEQUENCES OF INCREASING HOME HEATING OIL PRICES

Without doubt, the most disturbing aspect of the recent price rise of home heating oil is the reaction of retail distributors in restricting the payment terms to their customers. We have found that current high interest rates, increasing insurance premiums and changing refinery supply practices substantially limit the ability or willingness of fuel oil dealers to extend credit to customers. An informal survey of retail oil distribution in New York State indicates that an additional 4-5¢/gallon cost in home heating oil, as we have experienced since August, adds approximately 10% more fuel oil customers to a cash-on-delivery (C.O.D.) payment system. Low or fixed-income accounts and new home owners, who often are young people at the early stages of their income earning careers, are the customer types most often switched to a C.O.D. basis.

A report prepared one year ago for the State Energy Office entitled The Impact of Rising Energy Costs on the Elderly Poor in New York State,⁵ demonstrates that the elderly poor have nearly exhausted their potential for reducing energy bills by eliminating wasteful or excessive patterns of consumption and, therefore, are

⁵Welfare Research Inc., Study of the Impact of Rising Energy Costs Upon New York State's Elderly Poor (Final Report, January 1978). This report was supported by a grant from the New York State Energy Office. A copy of the report has been provided as Appendix D of this statement.

forced to make difficult decisions about expenditures for necessities. These people are very aware of their obligation to pay fuel oil debts, and because they sacrifice other necessities to pay for needed oil supplies, find their lifestyles and quality of life rapidly declining. Unfortunately, the choice is often "heat or eat". Efforts to maintain heating and other utility expenses at the lowest tolerable levels often result in illness or other health problems.

New home owners frequently are burdened by many housing related expenses and costs of providing food, clothing and medical care for family members. In distributing their available monies, these families are not always able to give highest priority to satisfying their fuel oil dealer debts.

One measure of the magnitude of the fuel oil payment problem might be the number of households with total income of \$10,000 or less residing in oil heated homes. Such a population is selected because this income level is at least 27% below the national medium family income of \$13,719 (in 1975 dollars) and because reliable data are available for this category of family.

A New York State residential insulation study⁶ indicates that 10.3% of all oil heated one and two family homes in New York are owned or rented by households with less than \$10,000 incomes and represent 278,000 families--comprising perhaps one million people. Further, in New York State there are 563,000 families designated "near poor".

If nearly half of all families live in oil heated homes, as earlier indicated, then approximately 282,000 "near poor" families are burdened with significantly soaring heating oil prices.

Families in need of assistance number in the hundreds of thousands; yet, during the 1977-1978 heating season, only 87,000 families (including those receiving Emergency Energy Assistance Program (EEAP) funds) were aided through emergency programs⁷ in meeting their home oil heating costs.

In the past, these programs have been ineffective in fully reaching their target population groups. The Impact of Rising Energy Costs on the Elderly Poor in New York State report concludes that, for at least this population, potential participants often have not heard of emergency assistance and energy conservation programs. Specifically, of the sample surveyed, only 19% were aware of the 1976-77 Special Crisis Intervention Program (the counterpart to the 1977-78 EEAP program), 46% were cognizant of the Supplemental Security Income and Emergency Aid to Adults programs, while 18% were familiar with the CSA sponsored weatherization program.

Our efforts to determine either the number of families receiving EEAP money to supplement fuel costs or the number of total EEAP cases have been unsuccessful to date, despite our calls to

⁶New York State Energy Office, New York State Public Service Commission, and New York State Electric Utilities, New York State Residential Insulation Survey, (Final Report, September, 1977).

⁷Emergency Assistance for Families, Emergency Assistance for Adults and Emergency Energy Assistance Program funds.

federal regional CSA offices. Even though assembling data on the significance of these programs has been surprisingly difficult, it is reasonable to conclude that the price increases since August 1978 and likely higher costs through the remainder of this heating season will continue to expand the rolls of families in need of financial assistance.

During the last two heating seasons, timeliness has been the major obstacle to providing financial assistance to low-income and elderly families for payment of winter fuel bills. The programs were late in getting started and were terminated too quickly. These delays in getting programs underway create problems for poor and elderly persons who must pay their fuel oil bills at the sacrifice of other necessities. The arbitrary time limits and restrictive guidelines in the distribution of funds for low-income or elderly persons resulted in a \$40 million turn back which amounted to 20% of the total national program fund.

Another problem associated with the financial assistance program is that guidelines in the past have been too restrictive. For example, public assistance families are not eligible under the Energy Emergency Assistance Program (EEAP). Last heating season there were 513,900 public assistance cases of which 353,700 required additional aid under the Supplemental Security Income program. Therefore, over one-half million households, by the very nature of the EEAP eligibility criteria, are excluded from this program.

In New York State, we already have snow on the ground and new regulations for the 1978-79 program have not been promulgated to administer the current heating season Energy Emergency Assistance Program funding. Furthermore, individuals and families that received EEAP assistance last year may not be considered in the current program. As heating needs occur from year to year, such a restriction on eligibility appears senseless.

A second major consequence of the recent, and in our view, unjustified home heating oil price increases is the resulting drain of income from the States economic base. The 4¢/gallon rise since August already has forced home heating oil users to expend \$148 million more for fuel on an annual basis. Insofar, as 75% of these additional costs have ultimately gone to refineries, of which there are only two small facilities in New York State, the State has essentially lost all economic benefits from such spending.

Further, with heating oil prices likely to continue to increase, as they have during the course of past heating seasons and as they will be impacted by the OPEC price increases, New York will again experience an adverse impact on economic growth. Each additional 1¢/gallon price rise on No. 2 oil costs No. 2 oil consumers 37 million dollars which otherwise could contribute to expanding economic activity in the State. With such an adverse economic impact at stake, and with OPEC price increases assured, it is essential that all price increases are thoroughly and accurately justified.

The 14.5% OPEC price rise, based on the \$12.70 marker crude price, by itself will add another \$630 million to oil costs for

New York consumers on an annual basis. Utilities will pay higher prices for generating fuel, which in turn will be passed along to consumers; resulting home heating oil price increases will be passed on to residents; and industrial energy costs will rise. Such events can only limit efforts to spur growth in the State's economy and act to fuel inflation related price increases for all commodities to consumers.

RECOMMENDATIONS

Up to this point, I have discussed the current situation with regard to middle distillates in New York State and I have explained why we are concerned about the industry's justification for the large rise in prices. Two impacts are clearly evident: the doubts surrounding the industry's rationale for price increases based on their own data and the adverse impact of increased fuel oil costs upon the poor and elderly. Therefore, we offer the following recommendations.

- Since the price of home heating oil eventually charged to ultimate consumers is a function of the prices charged at the levels of production in the industry (refining, wholesaling and retailing), the Department of Energy should track the progression of prices by:
 - .. implementing a bi-weekly price monitoring system at the refiner level for home heating oil and kerosene;
 - .. investigating a trigger mechanism to determine if middle distillate price controls should be reimposed. Such a trigger should allow for statistical error of no more than 2% of refining prices and should utilize separate indices for residential, industrial and government customers; and
 - .. establish a consistent program for wholesale and retail price monitoring at the State level.

Results of a more thorough investigation of recent price hikes may justify reimposition of controls. Such investigation should be vigorously pursued.

- New York State urges Congress to take action to relieve the special hardships and difficulties experienced by low or fixed-income consumers in coping with rising fuel oil costs by:
 - .. adequately funding financial assistance programs;
 - .. operating such programs throughout the year; and
 - .. designing assistance programs in such a way that allows for a wider range of participation.

Regarding our first recommendation:

The recent drastic fuel oil price increases have serious economic impacts for New York State, especially as the heating oil season progresses. These increases do not appear to be justified; therefore, the need exists to trace the price increases from the origin to the retailer. A bi-weekly price monitoring system at the refiner level for home heating oil and kerosene is a necessary first step in such a tracking process. DOE should collect data on operating, to include crude oil, costs for refiners, and price change by refiners to resellers. Monitoring that includes a trigger mechanism and separate indices will account for differences in quantities purchased, delivery methods and distributor margins and will prevent

unwarranted price changes affecting only one or two categories of customers.

Further, establishing a consistent state monitoring program at the wholesale and retail levels allows those states desiring to implement such a program to assess the appropriateness of prices changed by home heating oil distributors.

Regarding our second recommendation;

Rapidly rising prices for home heating oil also pose potential health and safety problems. In New York State, ultimate consumers of heating oil are not protected under any existing authority from arbitrary discontinuance of service. The New York State Public Service Commission rules and regulations to protect persons from disconnection of utility service during cold weather months does not apply to heating oil distributors. The problems of the low and fixed-income are compounded by the fact that they often pay for fuel on a cash-on-delivery basis. Fuel oil dealers, for the most part, require their customers to accept a minimum volume of oil which, in some instances, now exceeds the amounts these families can afford.

In a further attempt to moderate the increasing costs of fuel, the weatherization program for the homes of low-income families should be reviewed to allow an increased level of aid, to streamline the eligibility requirements, and to speed up the application process. The program as designed is inadequate for older homes in cold climates. Many of these type homes are located in New York State and are poorly insulated.

The New York State Residential Insulation Survey previously, referenced on page 8, indicates that 50% of all one and two family homes built before 1950 have no insulation in their exterior walls and 30% of these dwellings have no insulation in their attics.

These type houses need more money to pay for and to install materials than the present \$400 program guidelines permit. The weatherization program needs skilled workers to assist CETA personnel and should be supplemented by CSA 22A12 funds to assure that its conversation goals are realized.

Recent price increases of home heating oil at this early time in the heating season warrant your immediate attention. I am confident that you share our desire to assist already hard pressed consumers and thus meet the obligations set forth in the Emergency Petroleum Allocation Act of 1973 (EPAA), Section 4 (b) (1), to protect the public health, safety and welfare.

Thank you.

ANSWERS TO QUESTIONS FOR STATES
RELATING TO MIDDLE DISTILLATES

1. State hearings on studies of middle distillate prices and supplies:

The New York State Assembly's Office of Legislative oversight and analysis prepared a report entitled Impact of Decontrol of Home Heating Oil on New York State Consumers in anticipation of a hearing held July 27, 1978. Oil industry, fuel oil distributors and consumer groups testified at this hearing. The committee is continuing to assess the data collected at that time.

The State Energy Office (SEO) has not conducted hearings on these matters; however, it has conducted ongoing studies of middle distillate prices and supplies. The results of these studies are provided in the text.

2. Price Monitoring:

The State Energy Office has monitored retail home heating oil prices in New York State during the past three heating seasons. Retail sellers in approximately 33 counties are surveyed every two weeks by Office staff. Respondent information for a matched sample is then analyzed to provide average home heating oil prices for the State and regional groupings as needed.

During the current heating season, SEO staff have also followed wholesale prices as posted in New York Harbor for barger reseller purchases as an indicator of prices charged by refiners to home heating oil distributors.

As of November 1, 1978, retail No. 2 oil prices have risen 24.4% (from 41.4¢/gallon to 51.5¢/gallon) since July 1, 1976, when middle distillates became exempt from price and

Index (CP) in New York and Northeastern New Jersey increased 12.7%. Evidence presented by the Department of Energy's Office of Fuels Regulation at a hearing conducted by the Department's Office of Hearings and Appeals (Docket No. DEX-0123 - No. 2 (Home) Heating Oil) closely parallels our findings. According to their report, national prices to residential users increased by approximately 23% since July 1, 1976. The national CPI for the same period rose 12.5%.

By December 1, 1978, the average retail price of home heating oil in New York State had reached 52.8¢/gallon and in some areas, the retail price had reached a high of 56.9¢/gallon. Thus, between November 1 and December 1, 1978, the price of

home heating fuel rose another 2.4% while it is estimated that the CPI rose only 0.8%. The cost increase in the average retail price of No. 2 oil during November equates to a 7.2% fourth quarter rate of increase. Inflation during 1978 is expected to rise between 8.0-8.5% annually, which represents a 2.2% quarterly gain. It is apparent that the recent price trend of home heating oil in New York State has escalated sharply. The upward movement of No. 2 oil prices continues to increase at a rate which is about three times greater than the increase in the cost of living.

The New York Harbor posted prices, combined with DOE crude oil price data indicates that these higher retail prices are, in large part, the result of price increases imposed by refiners. Since August 1978, the refiner price to fuel oil distributors has risen 3¢/gallon equating to 75% of the increase in the home delivered price of No. 2 oil. Available data on crude oil cost changes does not appear to justify this sudden upward movement of prices at the refinery level.

The composite refiner cost of crude oil (the weighted average of foreign and domestic crude prices) during the period January - June of this year rose only 2.8%. Data on crude oil acquisition cost for subsequent months had not been released by DOE at the time this statement was prepared. Applying last year's trend to price performance since June of this year, indicates that the composite cost of crude oil will increase by some 2.4% through the end of this year. Consequently, for the year, the composite crude oil cost should rise only about 5.2% or about 1-1½¢/gallon. By contrast, prices for the refined product have risen by more than 10%, or 5¢/gallon during the past year.

In light of the economic impact resulting from recent price increases and potential public health and safety problems that may well develop as the heating season progresses, New York State requests that the Department of Energy take the following actions:

- Immediately activate a weekly federal price monitoring system for home heating oil and kerosene at the refinery level. In addition, to enable rapid startup of a comprehensive monitoring program, DOE should organize a consistent state monitoring program at the wholesale purchaser-reseller and retail levels for those states desiring to implement such a program.
- Reimpose a trigger mechanism for federal price controls. The proposed federal and state monitoring system and trigger mechanism should:
 - .. establish a statistical margin of error of no more than 2% of the refinery price;
 - .. utilize separate distillate fuel index prices for residential, commercial, industrial and government customer categories to account for differences in quantities purchased, delivery methods and distributor margins and to prevent unwarranted

price changes affecting only one or two categories of customers.

- Consider immediate reimposition of price controls. To aid in this effort, the State requests that the record be reopened in Docket No. DEX-0123, Proceeding on (Home) Heating Oil, before the Office of Hearings and Appeals, Economic Regulatory Administration, to determine on an expedited basis whether the nature and extent of the price increases during the past three months justify reimposition of price controls.

3. Federal and State assistance and weatherization programs:

The programs in place are:

- Emergency Energy Assistance Program (EEAP). Established in 1977 by Congress through a special supplemental appropriation to the Community Services Administration (CSA).
- Supplemental Security Income (SSI). A federal "flat grant" program established in 1974 to provide assistance to the aged, blind, and disabled who have little or no income.
- Emergency Assistance for Families (EAF). Part 372 of the Social Services regulations authorized this program to assist families receiving benefits and can be given to families without public assistance.
- Aid for Dependent Children (ADC). Part 352.5 of the Social Services regulations grants funds for heating allowances.
- Emergency Assistance for Adults (EAA). Part 397 of the Social Services regulations authorizes funds to make up for the lack of emergency allowances in the SSI.
- Home Relief (HR). Part 352.5 authorizes the granting of funds for heating allowances.
- Weatherization. This program is authorized under part C Title III of the Energy Policy and Conservation Act 1975.

The major problem with most of the programs has been timeliness; startup of the programs were unduly late and termination was too rapid. A brief evaluation of each program in terms of adequacy and effectiveness follows:

Emergency Energy Assistance Program (EEAP).

Eligibility is determined through income documentation. Allocation of funds is based on a family system.

- a. The number of elderly whose income is below 150 percent of poverty guidelines.
- b. The number of persons below 125 percent of the poverty guidelines.

A grant of \$250.00 per household may be obtained on a once per lifetime basis. Start up time was late and the termination date too soon. The program should cover a whole calendar year period.

Supplemental Security Income (SSI).

Each individual living alone, once judged eligible, may receive \$250.25 per month. A total of \$189.40

comes from federal funds and the remaining \$60.85 is provided by the State. The program is administered by the Social Security Administration including the State's portion. However, this federal program has no allowance for an emergency situation such as a price increase in home heating oil.

Emergency Assistance for Families (EAF)

Eligible families must have a child under 21 residing in the household of a parent or other eligible relative and there must be a crisis situation threatening the family. EAF may be authorized only once every 12 months.

The funds are provided 50 percent by the federal government, 25 percent by the State and 25 percent by the local government. Use in fuel emergencies is permissible. Data not available as to incidence of use.

Aid for Dependent Children (ADC)

Assistance is provided to children living with a parent or other relative when the child is deprived of parental support or care by reason of death, absence or incapacity of a parent or unemployment of the father. Funds are provided 50 percent by the federal government, 25 percent by the State and 25 percent by the local level.

An advance of funds on next month's grant to cover fuel emergencies is permitted, but this simply puts the problem forward in time.

Emergency Assistance for Adults (EAA)

In order to obtain a grant for fuel/utilities assistance, an SSI recipient must apply at the local welfare office and be able to show proof that either a shut-off is pending or has occurred. The welfare office will then pay back fuel bills up to four months. The funds are provided 50 percent by the State and 50 percent by the local county. Data not available as to incidence of use, but summary reports indicate that localities tend to use advances on ADC and Home Relief, negating the potential EAA benefits.

Home Relief (HR)

This is a general assistance grant program developed by the State for persons who do not meet federal standards for SSI, ADC, or EAF. Assistance is authorized to eligible single persons, childless couples and intact families who do not qualify for ADC.

Funds are provided 50 percent by the State and 50 percent by the local level. Funds may be advanced on next month's grant to cover fuel emergencies, but this action simply puts the problem forward in time.

Weatherization

One of the purposes of this program is to encourage and facilitate the implementation of energy conservation resources in dwelling units, owned or occupied by low-income persons, through financial incentives and assistance. The community action agencies are granted responsibility to administer this program. The cost of weatherization materials provided with financial assistance shall not exceed \$400.00 in the case of any dwelling unit. Where the cost of retrofitting has exceeded the authorized limitation, weatherization funds have been supplemented by CSA 22A12 funds.

Manpower, necessary to install insulation in homes, is drawn from the CETA program. Unfortunately, weatherization does not have a high priority within the CETA program and personnel on weatherization projects are frequently among the first to be reassigned to other projects. Low income houses in New York are older than average, substandard and/or poorly insulated, and are located in a cold climate. Proper insulation needs for these homes would cost approximately four times the present allowance limitation. The weatherization program should be expanded to include experienced workers to assist CETA personnel and dollar limits should be raised for the cold climate areas to assure its conversation goals are realized.

4. Termination of service:

The State does not have any laws relating to the termination of fuel oil consumers.

5. Assessment of State Set-Aside Program:

The New York State Energy Office has provided DOE with an assessment of the State Set-Aside Program in testimony dated December 20, 1978, submitted to the Department of Energy. In brief, the middle distillate Set-Aside program of recent years has provided an important means of relieving emergency shortages for users of home heating oil. I urge DOE to reinstate the program and have it in place in a timely manner. The Set-Aside volume should be sufficient (4 percent) to satisfy emergency or hardship requirements and the Set-Aside program should continue to be administered by State Energy Offices, who have shown their capability in past years to successfully implement the program. A copy of these comments is attached to my written statement (see Appendix A-2).

6. Additional Federal actions with respect to middle distillate price and supplies:

The recommendations made elsewhere in the text are summarized below:

- New York State urges Congress to take action to relieve the special hardships and difficulties experienced by low or fixed-income consumers in coping with rising fuel oil costs.
- Since the price of home heating oil eventually charged to ultimate consumers is a function of the prices charged at the production, refining, wholesaling and retailing levels of the industry, the Department of Energy should track the progression of prices.

Appendix A-2
Statement by
James L. Larocca
December 20, 1978

COMMENTS PRESENTED TO THE
DEPARTMENT OF ENERGY
ON
SPECIAL SET ASIDE PROCEDURES
FOR MIDDLE DISTILLATES

BY
JAMES L. LAROCCA
COMMISSIONER
NEW YORK STATE ENERGY OFFICE

The New York State Energy Office, on behalf of the State of New York, submits this statement to the Department of Energy, Economic Regulatory Administration in response to a request for comments regarding the Special Set-Aside Procedures for Middle Distillates published in the Federal Register (43 FR 54180; November 20, 1978).

SUMMARY

New York consumes more home heating oil and other middle distillates than any other State in the nation. Over fifty-three percent of the residential dwelling units in the State rely on middle distillates as their primary source of energy for space heating; small industrial and commercial users are also heavily dependent on middle distillates.

The middle distillate Set-Aside program has provided an important means of relieving emergency shortages for users of home heating oil and related products. The program for State Set-Aside for middle distillates expired on March 31, 1978.

New York State strongly urges that a Set-Aside program be put in place for the coming winter. The remainder of this statement discusses the following three points:

- A Set-Aside program is needed to ease emergency supply problems.

- The Set-Aside volume should be four percent of total supply.
- The Set-Aside program should be administered by the States.

A SET-ASIDE PROGRAM IS NEEDED

The New York State Energy Office has been certified by the Department of Energy (DOE) as the State Agency of Petroleum Allocation. Our experience is that the Set-Aside program has been an effective means of bridging short-term supply gaps. Such supply imbalances are likely to recur this winter as well, for the following reasons:

- From time to time, prime suppliers withdraw from marginally profitable markets and the normal channels of distribution are disrupted. Problems arising during the period of readjustment required while a new prime supplier is secured can be eased by use of Set-Aside.
- Prime suppliers sometimes impose restrictive seasonal quotas upon sales of products to their distributors. Distributors are often required to purchase large amounts of product during the summer, or face reduction of their winter allotments. Set-Aside can relieve end-user supply problems caused by such situations.
- Severe winter weather subjects the petroleum product distribution network to temporary disruptions. Frozen rivers and coastal areas, damaged piers, icy roads, halted railroad operations, cancelled barge shipments and undue demand on the pipeline systems can cause critical short-term shortages. A Set-Aside program provides an important means of meeting fuel requirements in such circumstances.
- Refinery and distribution facility breakdowns may contribute to shortage conditions. Allocation of product from Set-Aside accounts can relieve local shortages in areas which are ordinarily served by one or a few suppliers.
- In New York State, approximately ninety percent of the natural gas consumers with alternate fuel capability require heating oil when gas supply is curtailed. Set-Aside allocations are thus important to keep dual fueled industries operating.
- The Set-Aside plays an important role in stabilizing the spot market in periods of shortage. Purchasers of surplus product on the open market during periods of shortage encounter problems of reduced credit terms, difficulty in finding a supplier of fuel conforming to sulfur standards, and competitive prices. The Set-Aside serves as a source of product when these conditions threaten the availability of supplies to end-users.

The ability to order the issuance of product from Set-Aside volumes is an important means of insuring that consumers of heating oil will be provided with adequate supplies during unforeseen emergency conditions or hardship situations. Prudence requires that a Set-Aside be in place to deal with unexpected severe disruptions of middle distillate supply.

THE SET-ASIDE VOLUME SHOULD BE FOUR PERCENT OF TOTAL SUPPLY

The Set-Aside should consist of four percent of each prime supplier's estimated monthly total supply to be sold into a State for consumption therein. Past experience has shown that four percent as the level of Set-Aside volume would be sufficient to satisfy emergency or hardship requirements.

The scarcity of middle distillates during January and February of 1977 demonstrated the importance of having sufficient Set-Aside volume available to relieve supply imbalances. The State experienced blizzard conditions in its Western area in combination with river and off-shore freezeups and far below normal temperatures. These conditions, in turn, halted railroad operations, damaged piers, imposed extraordinary demands on pipe lines, etc. These interruptions in the normal supply patterns created demands for heating oil beyond the supply capability of suppliers. During January and February of 1977, under the Set-Aside program, the Energy Office issued 560 directives allocating 12.2 million gallons of middle distillates to regular oil users across the State.

Our experience indicates that a larger amount of Set-Aside than is actually allocated must, nonetheless, be available Statewide to provide the flexibility to meet serious local shortages. A four percent Set-Aside is needed to assure adequate supplies. Setting the figure at this level does not disadvantage the suppliers, since unused volumes would not be lost but instead would return to the supplier of record.

THE SET-ASIDE PROGRAM SHOULD BE ADMINISTERED BY THE STATES

The Set-Aside program should continue to be administered by the State Energy Offices. Since November 1973, when an allocation program was put into effect, New York State, and other states which rely heavily on petroleum products to meet energy demands, have designed and implemented sophisticated procedures which have proven successful in alleviating the hardships resulting from product shortages. To duplicate the capability already established for State administration of Set-Aside volumes would be inefficient and unnecessary.

We urge that the ground rules for the program require that applications for Set-Aside assistance be made in writing before

any assignments are ordered. Our experience indicates that applications and assignments can be handled in a timely manner without having to rely on after-the-fact certification of the validity of an emergency or hardship situation.

Appendix B
Statement by James L. Larocca
December 20, 1978

Table I
New York State Home Heating Oil
Wholesale and Retail Prices and CPI Data

Date	2/ Wholesale (c/gal)			3/ Retail (c/gal)			Wholesale Increase As % of Retail Increase (averages)	4/ Consumer Price Index
	Low	High	Average	Low	High	Average		
Dec. 1 '78	38.50	41.00	39.75	49.7	55.9	52.80	0.0	5/
Nov. 24 '78	38.50	41.00	39.75	49.7	54.9	52.34	78.7	5/
Nov. 1 '78	38.50	39.75	39.12	48.8	54.9	51.54	87.9	6/
Aug. 1 '78	36.00	37.60	36.80	46.8	51.9	48.90	30.0	196.7
Nov. 1 '77	36.00	37.00	36.50	44.8	49.9	47.90	63.8	188.5
July 1 '76	30.70	34.00	32.35	39.9	42.9	41.40	--	176.7
Total in- crease from July 1, 1976 to Dec. 1, 1978	7.80	7.00	7.40	9.8	13.0	11.40	64.9	22.5

1/ Date of middle distillate decontrol.

2/ New York Harbor barge reseller postings reported in Journal of Commerce.

3/ SEO distributor survey.

4/ NYC and northeastern NJ - all items CPI.

5/ Not available.

6/ October 1978 index.

PREPARED BY: New York State Energy Office
Two Rockefeller Plaza
Albany, New York 12223

December 20, 1978

Table II

Stocks of Distillate Fuel, excluding Kerosene
In PAD Districts I-IV

(Volumes in thousands of barrels)

Stocks at End of Month	1975	1976	1977	1978
August	170,381	193,989	211,552	182,818
September	209,439	206,346	232,188	199,539
October	218,937	210,401	233,199	203,528
November	216,127	208,723	248,913	217,345
December	200,008	174,937	231,455	-
Stocks at end of each week in November				
first	218,525	210,975	240,347	206,628
second	220,467	210,675	245,927	207,132
third	222,429	204,978	245,334	212,173
fourth	221,925	207,014	247,550	214,086
fifth	216,127	200,723	248,913	217,345

SOURCE: American Petroleum Institute, Weekly Statistical Bulletin, August
29, 1975 - December 1, 1978

PREPARED BY: New York State Energy Office
Two Rockefeller Plaza
Albany, New York 12223
December 20, 1978

Table III
United States Distillate Fuel Production
(thousands of barrels a day)

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
January - August (average)	2592	2838	3256	3082
September	2812	2947	3314	3250
October	2745	2995	3363	3340
November	2767	3180	3339	3344
December	2783	3255	3324	NA

SOURCE: U.S. Department of Energy, Energy Information Administration,
Monthly Energy Review, October 1978 (For data from January 1975 -
June 1978).

American Petroleum Institute, Weekly Statistical Bulletin, July 7,
1978 - December 1, 1978.

PREPARED BY: New York State Energy Office
Two Rockefeller Plaza
Albany, New York 12223
December 20, 1978



Appendix C
 Statement by
 James L. Larocca
 December 20, 1978

STATE OF NEW YORK
 ENERGY OFFICE

JAMES L. LAROCCA
 COMMISSIONER

AGENCY BUILDING 2
 EMPIRE STATE PLAZA
 ALBANY, NEW YORK 12223

November 17, 1978

The Honorable James Schlesinger
 Secretary of Energy
 U.S. Department of Energy
 1000 Independence Avenue, S.W.
 Washington, D.C. 20586

Dear Secretary Schlesinger:

Recent price surveys in New York indicate that home heating oil prices have increased by more than 10% during the past year and by as much as 5.8% in certain areas of the State since September. Increases that have already occurred since September equal the price rise during the entire extraordinarily cold 1976-77 heating season and far surpass other recent seasonal increases. Further, heating oil prices will likely continue to increase, as they have during the course of past heating seasons and as they will likely be impacted by expected OPEC price increases.

Increasing middle distillate prices have a substantial adverse impact on the State's economy. A 1¢/gallon increase in the cost of heating oil results in \$37 million additional cost for home heating oil users in New York. As a result of the price increases since September, home heating oil users in the State are already paying \$148 million more for fuel on an annual basis. Approximately 75% of the recent increases are attributable to price changes at the refinery level. Because virtually all our home heating oil comes from refineries outside the State, the recent price increases create substantial outflow of dollars from New York.

In addition to the general economic hardship caused by these recent price increases, current high interest rates and changing refiner supply practice substantially reduce the willingness and financial capability of distributors to extend credit to their customers. Without doubt, these circumstances will increase the number of customers who may not be able to secure oil as needed.

In light of the economic impact resulting from recent price increases and the potential public health and safety problems that may well develop as the heating season progresses, New York State urgently requests that the Department of Energy take the following actions:

- Immediately activate a weekly federal price monitoring system for home heating oil and kerosene at the refinery level. In addition, to enable rapid startup of a comprehensive monitoring program, DOE should organize a consistent state monitoring program at the wholesale purchaser-reseller and retail levels.
- Reimpose a trigger mechanism for federal price controls. The proposed federal and state monitoring system and trigger mechanism should:
 - .. establish a statistical margin of error of no more than 2% of the refinery price;
 - .. utilize separate index prices for residential, commercial, industrial and government customer categories; and
 - .. identify distillate purchases by customer category.

Separate index prices by customer category will account for differences in quantities purchased, delivery methods and distributor margins and will serve to prevent unwarranted price changes affecting only one or two categories of customers.

- Consider immediate reimposition of price controls. To aid in this effort, the State requests that the record be reopened in DEH-0058, Proceeding on Home Heating Oil, before the Office of Hearings and Appeals, Economic Regulatory Administration, to determine on an expedited basis whether the nature and extent of the price increases during the past three months justify reimposition of price controls.

The dramatic increases in heating oil prices at this early time in the heating season warrant immediate Federal intervention. We will be pleased to meet with you at your convenience to pursue any of these issues raised in this letter.

Sincerely,


James L. Larocca
Commissioner

Appendix D

The Impact of Rising Energy Costs on the
Elderly Poor in New York State, Final Report

Ten copies were submitted to the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce. Additional copies are available from the New York State Energy Office, Two Rockefeller Plaza, Albany, New York 12223.

Mr. MARKEY [presiding]. Thank you very much. In the interest of expediting the hearing, it would be helpful if subsequent witnesses could concisely summarize their testimony so that we will be able to get to a round of questions and then be able to get to the next panel.

Our next witness is Mr. Joel Jacobson, commissioner of energy for the State of New Jersey.

STATEMENT OF JOEL R. JACOBSON

Mr. JACOBSON. Thank you, Mr. Chairman. I will not be repetitive. I would like to say that the State of New Jersey, with a sensitive antenna for price increases on petroleum products, held a series of hearings on October 4. Many of the questions posed here were propounded there. I think our experience will be helpful to this committee and also helpful to the Department of Energy as it proceeds in the future to seek information concerning prices. The first thing that came out immediately was the very interesting and amusing quote from the Federal Energy Administration, where they recommended decontrol of No. 2 home heating oil in June of 1976. On page 2 of my testimony, I would just like to read:

"Further on in their findings, FEA said: "For example, the analysis of historic gross margin levels would indicate that if all of the FEA's findings about projected supply, demand and competitive pressures are wrong, prices might rise by as much as 1.0 cents per gallon."

That was June 15, 1976, sir. Six days later, Mr. John Hill appeared before the Congress to make a statement in which he said the price of home heating oil will rise by 4 cents a gallon over the next 30 months with or without Federal price controls. He said he had no fear that prices would rise sharply if controls are ended. Tomorrow, sir, is exactly 6 months since Mr. Hill made that statement. I would like to tell you that in New Jersey Mr. Hill was less than prophetic. The price has not gone up 1 cent. It has not gone up the 4 cents he predicted. The price of home heating oil on June 30, 1976, was 39.4 cents. This morning in Newark, the price is 54.1 cents, an increase of 14.7 cents. Mr. Hill's predictions were less than accurate, and I fear less than honest. I think the fact that we held these hearings in Newark will indicate the nature of some of the problems that the Department of Energy will be facing. I continually pose questions to the representatives of the major industries as to how they compute the cost of producing a specific unit of a refined product. The answer that I got ran something like this: It is too complex; it is complicated; it is impossible to subtract. It is imprecise; it is academic; it is subjective. You name the adjective; they produced it.

One major told me in a particular brochure which he handed me that he could compute the cost factors in an increase in price, but he could not compute the cost factors in determining the original price. I said to him, How is that possible? His answer was, I am sorry, that is not my department. I will send you the information.

One major came before us and absolutely refused to say anything about any price issue. He just refused to answer. I talked to one of his competitors at the conclusion of the hearing, and the competitor laughed and said to me, your 13-year-old son knows the answers to those questions. Why would he be opposed to telling you? There

is a strong reluctance for the industry to produce the information upon which rational and intelligent judgments must be made. If Mr. Moore were here, I would like to agree with something he said. I would agree with his contention that if the industry can justify an increase in price, it should be delighted to have the opportunity to do so, so that the American people can understand what they are doing. One must infer the consequence of that, that perhaps since they make no effort, that perhaps they cannot. The impact of the precipitous increase in home heating oil before the OPEC increase was significant. You have heard all the data and all the consequences and there is no need for me to repeat it. Our prognosis of the impact of the OPEC increase for the future runs something in the nature of \$250 million a year as an initial impact, obviously something of serious concern to us in the State, as I know it is to you.

If I may, I would like to respond to some of the points I read today with three articles I read in the newspapers. Sometimes what is right before our eyes is sometimes too easily ignored. I recall President Carter saying that by 1980 he would like our price of oil to reach the OPEC price, which at that time will be \$14.52. It may be wise to listen to an article that appeared in the New York Times last Friday, in which Mr. Walter E. Levy, a consultant to governments on the economics of oil, warrants that to gear the price to the OPEC price is not the wisest thing to do. He says the capital projects of the oil-producing countries cost about two or three times as much as competing facilities in developing countries. I was taught in economics 1 and 2 that you relate a price of the article to the cost, not the political price. If we gear our price to the OPEC level, we are playing politics, not economics.

I would like to indicate that with regard to the impact of the OPEC price, in yesterday's Wall Street Journal there is an article which says the following: To some oil industry analysts what is immediately clear was the bounty they believe will be forthcoming for certain oil companies as a result of the OPEC price. He goes on to say that "for those operating in non-OPEC areas, the price increase will have very positive effects."

An analyst says that the impact on domestic oil companies will be positive because it will allow higher prices for certain U.S. crude oil such as stripper, production oil and crude from the Alaskan slope. Another analyst says he expects to raise his earning estimates for oil companies which participate in oil production outside OPEC areas. He listed them, and one of them will be appearing before you later this afternoon. Finally he says:

In the current recessionary environment he expects the oil industry earnings to outperform the corporate earnings average and he is recommending an overweighting of selected oil stocks in investment portfolio.

One last point before I conclude my recommendations, sir. I continue to hear, as I know you do, the argument by the oil producers that we must increase these prices to provide them with the resources and the incentive to go out and dig for new resources. I am not going to repeat the old gag about Mobil Oil digging until they struck Montgomery Ward, which they bought. But it appears to me we might listen to a gentleman by the name of Orrin Atkins, president of Ashland Oil. A week or so ago, he announced a new

policy for his company. He has come up with a new corporate strategy that limits operations largely to petroleum refining and marketing. His reasons were that the refining and marketing sector of the oil business had become more profitable lately, thanks to higher prices, greater volume, and improved operating efficiency. According to Mr. Atkins, it will become increasingly hard to build new refineries because of the environmental limitation. Thus, it will be more profitable to expand existing facilities which will be a boon for existing refineries. We see a pretty strong outlook for refineries in the next decade along with a continuing strong demand for refined products like home heating oil; we think the refinery business is a good place to be.

I believe we should permit the free market philosophy of supply and demand to operate. I question that it is a free industry, but let's assume it is a free industry. I know that every time the tight situation exists, and there is a heavy demand, we are told the law of supply and demand applies and the price must go up. We have seen situations where there is a diminished demand and the price should go down, but at this point the law is repealed because instead of lowering prices, they argue that their sales are down and their revenues are eroding, and in order to maintain profit margins they must raise prices. When I was in school, we had a con merchant in the schoolyard tossing a coin, saying heads I win and tails you lose. This seems like a reincarnation of that boy I knew in school. With industry assets on the increase, with industry sales on the increase, with net income on the increase, cash flow, profit margins, earnings per share on the increase, market value on the increase, dividends on the increase, when does the consumer get a break?

I would like to conclude by recommending as fervently as I can that the Department of Energy be authorized, and, in fact, required that they extract precise data from the industry concerning their cost-price judgments. I would regard obfuscation like we received in New Jersey as totally unacceptable. Not to be corny, but I remember a great President of the United States saying this Nation would not remain half slave and half free. It appears ridiculous to expect us to maintain a viable economy when you control half a barrel of oil but not the other half. It should be all in or all out. In view of the fact that domestic price increases were precipitous before the OPEC increase, and in view of the fact that the increase has compounded the problems, and, as you brilliantly pointed out our demands for meeting inflation, it appears to be imperative for this State, this Nation, and all the citizens, that we exist under the system of controls and that controls be expanded, not diminished.

As a quick aside, I hope we can see the price of gasoline continued and a price differential between regular and unleaded maintained at the refinery and the pump. With regard to the subject at hand today, it appears to me one of the national imperatives of this country is to impose tomorrow morning the control on home heating oil—the controls which were unwisely, unjustly, and perhaps, dishonestly, removed.

[Mr. Jacobson's prepared statement follows:]

TESTIMONY OF COMMISSIONER JOEL R. JACOBSON
NEW JERSEY DEPARTMENT OF ENERGY
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C.

DECEMBER 20, 1978

Good morning, ladies and gentlemen. My name is Joel Jacobson, I am the Commissioner of the New Jersey Department of Energy. New Jersey is deeply committed to fair and equitable energy pricing. Recently, the price of home heating oil has increased dramatically. New Jersey, in response to these rising prices, has just completed a preliminary series of public hearings to determine why this increase in price occurred.

Eight major refineries, two independent refineries, and representatives of the wholesaling, retailing and consuming sectors testified about price increases and supply shortages. The hearings touched on such issues as the sharp price increases in #2 heating oil; the accelerated rate of increase in home heating oil as compared to that of gasoline; the increasing price of unleaded gasoline over regular gasoline; reductions in allocations to retail gasoline dealers; and, tie-ins between sales of regular and unleaded gasoline to retailers.

Today I would like to address my statements on the findings of our Department as they relate to home heating oil.

Number 2 oil heats over half of the homes in New Jersey. Overall, our State is the fourth largest market for #2 oil in the nation with sales topping 38.5 million barrels in 1977.

As we began our hearings on November 27th of this year, the price of home heating oil had risen 9 cents a gallon at the reseller tankcar level since its decontrol in June, 1976. In addition, the price of this vital commodity had risen 2.5 cents a gallon at the reseller tankcar level between August and November of this year. This price increase was not only sharp but it occurred earlier than normal this season. Yet, we detected no abnormal conditions that could reasonably explain this trend. A large part of the inquiry in our hearings centered on the pricing of this product. We recognized that there may be legitimate reasons behind these price increases. Yet, when we look at the bulk of our testimony and the pattern of price increases over the period since June, 1976, those reasons are not clear at all.

I have quoted you the price increases for home heating oil in New Jersey since decontrol. Now let me read to you what the Federal Energy Administration said our price increases would be:

"FEA believes the most important determinant of price behavior after exemption will be the supply/demand balances generated by competition among refiners and distributors under conditions of plentiful refining capacity and adequate supplies of crude oil. FEA finds that competitive forces will be sufficient to preclude any rise in middle distillate prices."

"For the reasons set out above, FEA finds that there is no reason to expect any price increase in middle distillates as a consequence of exemption from price and allocation controls. (Underscore added) As the analysis...sets out, however, there are uncertainties surrounding the relative influence of the various factors bearing on future price moves. Some of these factors, such as pressures to restore margins of historic levels to cope with inflation, generate pressures for price increases even though most of the factors appear to generate pressures for price stability or even price decreases." (Underscore added)

Further on in their findings, FEA said:

"For example, the analysis of historic gross margin levels would indicate that if all of the FEA's findings about projected supply, demand and competitive pressures are wrong, prices might rise by as much as 1.0 cents per gallon (Underscore added) Accordingly...FEA will set forth its estimate of the economic impacts of 1.0 cent per gallon rise in middle distillate prices for the purpose of soliciting public comment on its economic impact analysis, even though its finding is that there will be, in fact, no adverse economic impact associated with an exemption of middle distillates from controls."

Let me repeat to you the price of #2 fuel oil has risen by 9 cents a gallon in New Jersey since decontrol in 1976.

Recently, the Office of Hearings and Appeals in the U.S. Department of Energy released its "Decisions and Recommendations on #2 (Home) Heating Oil". One of the findings was that the price increases in heating oil through the end of this heating season would result in overcharges approaching \$331 million nationally. This was a conservative estimate representing a consideration for the delining rate of increase in the prices of #2 oil during late 1977 and early 1978. What we have seen, instead, is an accelerated rate of increase this fall. As a result, it seems reasonable to assume that overcharges will greatly exceed that \$331 million figure by next spring. I can only reiterate to this Committee that the greatest share of the burden of these overcharges is borne by individual homeowners whose consumption of this product is relatively inelastic -- they are dependent upon it. Our hearings have demonstrated that poor people and people on fixed incomes who very often live in urban areas are the consumers who are least able to affect the structural charges in their homes that can result in significant conservation of home heating oil. These people absorb the brunt of oil company overcharges.

When we turned our attention to the increasing price of #2 oil relative to regular gasoline, we received some interesting responses from the major oil companies.

In our research, we found that the price of #2 oil rose 9 cents per gallon in New Jersey and gasoline rose 6.3 cents per gallon at the reseller tankcar level from the time that fuel oil prices were decontrolled on June 30, 1976 to November 30, 1978. Of course, we were curious to learn why the price of #2 oil increased so dramatically since its decontrol -- particularly in its relation to regular gasoline -- when refiners contend that they assign costs volumetrically. The refiners verified our numbers -- in one case, to the tenth of a cent. We continually heard that refiners contend that the price increase differential between #2 oil and regular gasoline is nil, if taken all the way back to 1973. However,

we are interested in the 2 1/2 year period between decontrol and today. We want to ascertain whether profits on #2 oil had increased, or whether the increased cost of producing unleaded gasoline is being passed along through higher prices for #2 oil which, as I stated earlier, is New Jersey's primary fuel for home heating. One of our witnesses, representing New Jersey's labor unions, asserted that heating oil prices were subsidizing gasoline prices and that the current regulatory framework was encouraging such subsidies to be ground into high heating oil prices.

We queried all of the refiners attending our hearings on this issue. One refiner answered that if we went back to May 15, 1973 we wouldn't find any difference. Another refiner told us that any selection of an arbitrary time period would reveal different levels of cost increases. One major refiner replied, "No. In our case, again. I can't speak for the industry, certainly I don't think we did that at all." However, another major refiner indicated that there may be some element of credibility in this theory. He replied to our question, "Do you feel now there is in effect a subsidization of gasoline prices by home heating oil prices because of the pass through costs that are allowed?" with "No. I wouldn't say that. I would say this, that some of the manufacturing costs are put more on heating fuels than on gasoline. You are not subsidizing them. There you are allocating the costs more on the heating fuels than on gasoline.

If you are assigning manufacturing costs this way then one product is subsidizing another. In this case, the heating oil customer is subsidizing gasoline prices that are, economically speaking, inappropriately low.

The preponderance of oil company testimony at our hearings and elsewhere asserts that refining costs are assigned on a volumetric basis by refiners regardless of whether the product is controlled or decontrolled. The refiners told us that a detailed cost assignment process was academic subjective, and not cost-effective. Yet, one refiner did not echo this sentiment.

A representative of this major oil refiner was asked the following question: "Let me take you to either side of the regulation, either before or if regulations come off. How would you go about pricing that product?" His answer was "Certainly the cost of producing and refining and marketing the product are -- we attempt to track costs in every product line. Then, of course, the other big factor is the competitive marketplace." So it does appear that refiners can ascertain their real costs by product line. This same refiner went on to say in response to further inquiry that "The costs can be computed. I can't tell you what they are, but we have people who keep track of that stuff."

It is our contention that because of the greater cost of producing gasoline, especially unleaded, the prices of gasoline and heating oil rising at the same rate could only mean that the price of heating oil is absorbing some of the costs associated with producing gasoline. If you hold profits constant, volumetric cost assignment results in an equivalent increase in the price of each unit of output regardless of the nature of that product.

What we have seen is even worse: heating oil prices have increased more than gasoline prices in New Jersey since June, 1976. The only conclusion that we can draw is that either profits are being extended on heating oil or costs are being allocated inaccurately.

One of New Jersey's fuel oil jobbers was questioned as to why the price of #2 oil was rising relative to regular gasoline. His response was that the price of #2 is "subsidizing" the price of gasoline. He went on to say that he doubted that #2 prices would decline since demand for the middle distillate portion of the barrel would increase with General Motor's increased production of diesel-fueled automobiles, higher demand for jet fuel, and the use of #2 as a "swing fuel" in industrial processes and by utilities.

Only last week we were threatened with spot shortages of jet fuel. We can only wonder whether this means that heating oil supplies will be diminished in order to provide more jet fuel. If supplies of heating oil are down, prices will certainly go higher and consumers will pay more to heat their homes.

It is the responsibility of government to seek the accurate pricing of petroleum products. The price of each product should reflect what it costs to bring it from the well to the end-user. Federal petroleum pricing policies should encourage pricing that reflects the true costs of bringing home heating oil to the consumer.

We have questioned the major oil companies, the jobbers, the retailers, and the consumers. We have considered the testimony and looked at the record of #2 fuel oil prices and supplies. It is our reasoned conclusion that only re-regulation of #2 fuel oil can result in equitable and appropriate pricing signals.

Mr. MOFFETT. Thank you.
Mr. Lee?

STATEMENT OF HENRY LEE

Mr. LEE. I, too, come from a State that uses a dominant amount of heating oil. Seventy percent of our homes heat with oil. I come from a State highly populated with low-income people who live in cities. I come from a State in which the increase in oil prices is a very real and tangible burden to people, who are finding the situation increasingly difficult to bear. It is more than simply an economic phenomena of the marketplace. It is reality to hundreds of thousands of people.

Let me summarize quickly for you the present situation as I see it. The Massachusetts Energy Office is presently monitoring retail and wholesale prices. Specifically, we monitor 108 retailers and approximately 12 wholesalers. From this survey, we compute average prices and price ranges for each of the six major regions of the State. I am attaching a copy of our latest retail survey. [See p. 167.]

In September of this year, the average cost of heating oil in Massachusetts was 50 cents a gallon. Today, that average cost is 54.4 cents per gallon. Very simply put, we have seen a 4½-cent increase in the last 3½ months—an increase which far exceeds the recently announced OPEC hike.

Let me try to break down the reason as I see it for these increases: We have seen some upward pressure on prices at the retail level ranging from about 0.5 cents per gallon to approximately 1.3 cents—primarily due to higher interest rates. The remaining 3-to-4-cent increase can be traced directly to the refinery industry. We contend that about 1 cent can be attributed to increased costs to domestic crude oil. We can argue that approximately 0.8 cent can be attributed to inflation and nonproduct costs. We cannot explain the remaining 1 to 1.5 cents.

I admit that some of this increase probably can be accounted for, when, and if, accurate statistics on what is going on at the refinery level becomes available to us. However, it is very difficult for a State to obtain updated information from either DOE or from the industry. The problem with DOE is that before EIA will give us a figure, they must weight, check and recheck it—a process that seems to take between 60 and 75 days.

However, compared to the major oil refiners, DOE is a cornucopia of information. I could go into a litany of how difficult it is to obtain information from this industry. Their refusal to take part in DOE's evidentiary hearings and their consistent tactic of hiding behind a battery of lawyers are only two examples. In our quest for information on wholesale prices for our latest survey, at least one major oil company refused to give us their wholesale price stating, "It was privileged information."

I am willing to admit that some of the increase that we cannot account for may eventually be proven to be legitimate. However, I retain two basic suspicions:

First, that the accusation of overcharging contained in the report by DOE's Department of Hearings and Appeals may very well be accurate. In fact, the \$331 million overcharging figure stated in that report may be low, since the price projections from which that

figure was derived were much lower than the actual price increases that have since taken place.

Second, we strongly suspect that the refineries have been, for a long time, imposing some of their gasoline costs on to distillate fuels during the heating season. For example, it is our understanding that the heating oil prices have gone up higher than the consumer price index, while gasoline's increase has been going up either even with the CPI, or a little bit lower. The difference between the price of heating oil and the price of gasoline in Massachusetts is almost one-half of what it was 5 years ago.

The domestic refining industry was confronted this fall with above-average demand for gasoline during the period after Labor Day. This situation posed a dilemma, either try to meet this demand and risk causing a shortfall in heating oil inventories, or cut back slightly on gasoline sales and begin to build up a supply of heating oil. The industry, in a moment of brilliance, happened on a third strategy, which consisted of promoting new gasoline products, producing as much gasoline as possible, and allowing heating oil inventories to drop. This strategy resulted in unprecedented gasoline sales and lower distillate oil inventories, which then allowed the industry to dramatically increase the price of heating oil and thereby making even more money.

If one looks carefully at oil inventories over the last 3 years, one will find that the changeover from gasoline production to heating oil, by many refineries, was about 3 to 4 weeks late. What we may be seeing is a classic case of the industry manipulating the market in order to create an environment in the marketplace in which prices can be increased.

In summation, the responsibility for the higher heating oil prices can be placed directly in the lap of the domestic refining industry.

Now let me turn to what is probably the hardest question. What should government do about the problem?

First, and foremost, regardless of one's beliefs on price controls, the attitude of the industry or the reasonableness of OPEC, there is one fact we should all be able to agree on. The price of energy is going to continue to go up. The burden on lower and fixed income people is going to get heavier and heavier. As aforementioned, we in Massachusetts have literally hundreds of thousands of people who earn \$5,000 to \$10,000 a year. It costs between \$850 and \$1,000 to heat a home. In some cases, this figure is higher than the total rent bill. Furthermore, most people in these income brackets purchase on a c.o.d. basis—thereby concentrating the payments in a 5-month period. Literally, people in Massachusetts are having to choose between heating and eating.

Since I do not believe that we are ever going to find a way to lower energy prices, we must find a way to help those people. I would strongly urge the Congress to develop a permanent program of emergency fuel assistance for those people within 125 percent of the poverty level. I would also urge Congress to consider adding a new program to the existing low-income weatherization effort. The existing program gives 100 percent Federal grants up to \$800 to weatherize homes of families who are within 125 percent of the poverty level. The families who earn between \$7,000 and \$11,000 are not eligible for any Federal energy conservation assistance

except via the new tax credit, and yet find it equally impossible to obtain the necessary funds to insulate their homes or replace their dilapidated oil burners. I would suggest consideration be given to a program which would provide weatherization rebates of up to 50 percent for those within 150 percent of the poverty level, and up to 25 percent for those within 175 percent of the poverty level. The rebates should be given only when the actual work is completed or contracted for, and a maximum figure per rebate set, and should be funded over a 10-to-15-year period. A similar program for general housing improvement is now funded by HUD.

Second, the Federal Government should make it a national policy to give preference to heating oil production during the heating season. Never again should we allow the refining industry to delay switching from heavy gasoline production to heavy heating oil production. If distillate oil inventories are kept high, it will be very difficult for any segment of the industry to get away with unjustified price increases.

Third, I would strongly urge this committee to urge DOE to initiate an immediate 6-month investigation into the domestic refining industry. This investigation should explore not only the events of this fall, but also the generic issues relating to competitiveness raised in the evidentiary hearing findings. Specifically, the investigation should look into:

One, the marketing practices and comparative profitability of individual refineries—particular attention should be paid to concentration ratios and the existence or nonexistence of price competition.

Two, the reasons behind the failure of the domestic refining industry to expand their capacity. It is very clear that demand for refined products is on the verge of outdistancing the capability to meet the demand. Do we have a situation in which government regulation has stifled investment in new capacity, or do we have a classic case of deliberately constraining supply to increase prices and thereby profits?

Three, is the current 4½-cent price increase justified on a cost basis? Has there been a tendency to push gasoline costs onto heating oil during the winter months when demand is inelastic?

Four, what would happen if some form of price controls were reimposed at the refinery level, and should those controls be triggered by supply or by price considerations?

Once this investigation is completed, decisions should then be made on whether to subject all refined products to price controls or to remove controls on all products. We should seek to avoid the present situation whereby one set of products is controlled and one is not.

Five, the Federal Government must give a higher priority to developing transportation conservation programs. National gasoline consumption was up 5 percent in November relative to 1977 and Massachusetts consumption was up to 1 percent. These increases compared vividly with decreases in heating oil and industrial oil consumption, where there continues to be a moderate conservation ethic. No such ethic seems to be present in the transportation sector.

Finally, DOE should be strongly urged to provide more complete and timely information to the States on what is going on at the refinery level. Eight- to ten-week delays in information in order to increase the accuracy from an 85-percent confidence level to a 95-percent level is contrary to the interests to those of us who are trying to explain pricing trends to our citizens.

I appreciate the opportunity to testify, and I have attached for your interest a copy of our latest survey. Please consider some of the programs I mentioned in my testimony regarding helping those people, because they desperately need that help.

[Attachment to Mr. Lee's statement, follows:]

HEATING OIL PRICE SURVEY

State Average—54.4, Dec. 14, 1978

Eastern.—Average—54.6¢/per gallon; Range—51.9 to 55.9¢/per gallon. Increase since October 1—4.1 cents.

Southeastern.—Average—54.4¢/per gallon; Range—52.0 to 55.9¢/per gallon. Increase since October 1—4.1 cents.

Cape.—Average—54.75¢/per gallon; Range—50.9 to 56.5¢/per gallon. Increase since October 1—3.55 cents.

Central.—Fitchburg/Leominster area: Average—50.9¢/per gallon; Range—48.9 to 52.9¢/per gallon. Increase since October 1—5.0 cents. Worcester area: Average—54.5¢/per gallon; Range—52.5 to 55.4¢/per gallon. Increase since October 1—3.6 cents.

Western.—Average—53.2¢/per gallon; Range—48.0 to 54.9¢/per gallon. Increase since October 1—3.6 cents.

Berkshires.—Average—54.6¢/per gallon; Range—52.0 to 55.7¢/per gallon. Increase since October 1—2.9 cents.

Mr. MOFFETT. We would like to thank all of you for a very helpful statement.

Mr. Markey?

Mr. MARKEY. Before I begin, I would like to commend Mr. Lee for the job he has done for the State of Massachusetts over the last several years, serving in two administrations. He is soon to leave the service of Massachusetts. His efforts, I think, not only helped our State, but also helped this committee, the administration, and the country by providing critical help in formulating a fair and equitable energy policy. For that, Mr. Lee, I thank you.

Mr. LEE. Thank you very much.

Mr. MARKEY. Can you tell me whether you think that over the past several years DOE has shown a bias in favor of gasoline production over home heating oil because while gasoline is used everywhere, only a relatively small number of States, 15 or 20, are dependent upon heating oil? Has that perhaps helped lead to increases in the price of home heating oil which have narrowed the gap between the price of home heating oil and gasoline? Do you think that there is that prejudice in DOE policies?

Mr. LEE. Well, I think there is a slight prejudice there, but I think that the bigger problem is that DOE's reaction to pricing policies by the domestic refining industry is very passive. However, there is a very strong bias in the domestic refinery industry in that direction. I think DOE is taking a very passive attitude. Every time I talk to DOE, I feel they don't understand what it is like for a family who lives in your district and what these prices do to that family. It is like a bunch of economists talking to each other. I think there is a very passive reaction to a trend which has been a

basic foundation of the industry's pricing policy. The industry was founded on gasoline 75 years ago, and it has continued to be biased toward gasoline today. It will continue unless government does something about it.

Mr. MARKEY. What do you mean by a slight bias?

Mr. LEE. I think the stronger trend is passivity rather than a bias.

Mr. MARKEY. Toward what result?

Mr. LEE. The result is that there has been a strong reaction over the last few years, in which I feel that the heating oil customer has been discriminated against to the benefit of the gasoline customer.

Mr. MARKEY. Do you think that we ought to decide that production of home heating oil ought to be given preference during the winter, regardless of problems with gasoline supply, given the vital link between heating homes and people being able to survive?

Mr. LEE. Very definitely.

Mr. MARKEY. How should we implement that decision?

Mr. LEE. One, I would consider there a couple of things to do. First of all, consider establishing a certain date or period in which refineries have to switch from heavy production of gasoline to heavy production of distillate. If you do ever consider going back to price controls, perhaps gear it to supply rather than price in setting the trigger mechanism, thereby providing an incentive to keep inventories high going into the winter heating season. I would think you should go so far as to consider putting gasoline on an allocation of 95 or 97 percent during the winter, or whatever is sufficient to get the heating oil up. If you authorize an allocation program and put it in ahead of time, it will be better than this fall, where Shell went to 75-percent allocation because they increased their sales 14 percent in the month of November. I think these actions were basically irresponsible. I think these types of actions should be done because people's lives depend on distillate oil.

Mr. MARKEY. Thank you.

Mr. MOFFETT. The Chair recognizes the gentleman from New York, Mr. Murphy.

Mr. MURPHY. I would like to congratulate the representatives of the three States for their very forthright statements. It all seemed to focus together. Mr. Larocca, what are the people doing now to conserve energy, and what has been their performance?

Mr. LAROCCA. In New York we, per capita, use only two-thirds what the rest of this country uses in energy. In many respects in New York people have already done virtually all of the things within their own reach that they can do to conserve energy effectively and are nevertheless facing a staggering increase in the cost of the energy that they need.

Mr. MURPHY. Do you think the public skepticism or cynicism of the way industry and government virtually together have been treating them is justified?

Mr. LAROCCA. I hope that cynicism is not yet justified, but skepticism clearly is. If you look at the development since 1973 to date, there is little to give the average consumer in this country any faith in the industry that is producing the energy or the Government that is contending with the various policy issues surrounding it. Just in the past year in New York, we know that we already

conserve better than any other State on a per capita basis, yet in the fall months we were told that there was going to be a need for rationing of gasoline because of a dramatic upsurge in the use of gasoline. We examined those figures and found there was no dramatic upsurge, and the rationing schemes propounded by the oil companies rapidly disappeared. We were told in 1976 that there was no need to further control the cost of home heating oil, and we have experienced a 25-percent increase. Every time these things happen, and it is happening again this weekend as OPEC raises its prices, there is a pronouncement from Washington to the effect that people have to conserve more. We have a national policy that operates on the theory that we are going to get the price of energy up in order to get the use down. What do you tell a State like New York, which is down further than any State in the Union, and our people cannot still pay their bills? We have done a study on one segment of the population, the office of aging, on the impact of rising energy costs on the elderly poor in the State of New York. This report is heartbreaking in what it is doing to a substantial population group in New York.

[See appendix D, p. 157.]

Mr. MOFFETT. Without objection, that will be included in the record.

Mr. LAROCCA. I would offer a second report that we did when we tried to respond to the various Federal conservation programs, and we did a residential insulation survey because so many of our programs are based on the basis of people doing more to their homes and conserving in those ways. For a family that has \$10,000 or \$12,000, most of these Federal programs don't mean a thing. They don't have the money to buy the insulation, storm windows, or doors, because perhaps they don't own the house, and every time they turn around, the cost of energy goes up, so they never get far enough ahead of the game to do the cost conservation measures. Since 1973, there is no issue that has given rise to more skepticism on the part of our citizens than energy probably more than even Vietnam in terms of public disappointment in government. I get buttonholed now everywhere I go to the effect that people look to the State. I come down here to testify to this committee. I hear this committee looking at the DOE and the DOE throwing up their hands, and they can't tell you why the cost has gone up in the last 3 months. They say they don't have the information. So skepticism is well founded.

Mr. MURPHY. Previous witnesses have talked about the young family, and you just brought in the older person. A 200-gallon drop would be a \$106 c.o.d. price tag or a 400-gallon drop will be a \$400 price tag. It seems like a lot of cash for those people in their homes at a given point in time in the difficulties we have in society today. I would say we are also compounding a problem with a serious security problem.

I have read your comments on recommendations concerning price moderation. Can New York, New England and the Middle Atlantic States survive economically without price moderation?

Mr. LAROCCA. I really do not think so. One of the reasons for economic distress in New York and the Northeast in the last 7 years is because of our heavy petroleum use and what has hap-

pened to the cost of petroleum. If that spiral continues and is unchecked—and I think a lot of what we heard today is going to continue to be unchecked—I do not know how we can turn it around and start to rebuild and to make the Northeast and New York, an attractive place to live and to survive as a consumer.

I think the category of people who go from depressed to desperate will increase substantially in the next 12 months. New York's bill is going to be in excess of \$630 million; \$1.5 billion in the Northeast. That may be a conservative number. I do not see how economic recovery can progress in the absence of some moderation.

Mr. MURPHY. What would be your recommendation on fuel stamps?

Mr. LAROCCA. I looked at the array of Federal programs that have already come up and there is an incredible botch of conflicting regulations, as I observed. My testimony spells it out a little more. The regulations for this year's program are not even out yet. I cannot imagine introducing a new form of subsidy which I understand some say might accrue mainly to the benefit of industry rather than consumers.

Mr. MURPHY. You only have to wait until December of 1979 for the results of the latest study.

Mr. LAROCCA. Thank you.

Mr. MOFFETT. The Chair recognizes the gentleman from New Jersey, Mr. Maguire.

Mr. MAGUIRE. Mr. Chairman, I wanted to express my appreciation—and I think this is shared by all the people of New Jersey for the outstanding work Mr. Jacobson has done in our State in the last several years, first as chairman of the public utilities commission and now as commissioner of the department of energy. It is a pleasure to have you with the committee today.

Mr. LAROCCA. Thank you.

Mr. MAGUIRE. You made quite a point of the fact that at least apparently there is a subsidizing of gasoline prices through artificially high home heating oil prices. I do not think in your testimony you commented on the anomaly we have in the law, which is that gasoline prices are still controlled but home heating oil prices are not. I believe Mr. Lee commented on that. I wondered if you might want to comment on that as well.

Mr. JACOBSON. Yes, sir, I thought I did when I said we cannot really control one-half of the barrel and decontrol the other half, and that is what I had in mind.

Mr. MAGUIRE. All right. So you would take the position that the first level of analysis would be we ought to deal with all refined products in a similar fashion?

Mr. JACOBSON. My bottom line is I do not think, in light of what has happened domestically and by OPEC, we can continue without imposing rigid controls at all levels on all items.

Mr. MAGUIRE. Would you agree with Mr. Larocca, if I understood his testimony correctly, that we have enough evidence before us now to base a judgment that controls on home heating oil ought to be reimposed?

Mr. JACOBSON. Absolutely. I strongly recommend it.

Mr. MAGUIRE. Mr. Lee, would you agree?

Mr. LEE. No, I do not agree with putting controls on the retail-wholesale sectors, and my reluctance at the refinery level is based on the fact that I do not have sufficient information regarding that sector. My suspicion is that controls probably should be put back on at the refinery level, but I would not make that statement unequivocally until I got more information, but controls should not be put on at the retail level and not at the wholesale level.

Mr. LAROCCA. Let me clarify I was not recommending controls at the retail level. I was recommending controls at the refinery level.

Mr. MAGUIRE. The kind of controls we had previously?

Mr. LAROCCA. That is right.

Mr. MAGUIRE. So we have a split decision on that one at the moment at least.

Mr. JACOBSON. Let me point out one other point. My primary impetus is to try to serve the needs of our consumer. I must point out that the reseller of home heating oil has had his profit margins increased but at the same time there is a curious thing, that his rate of return has decreased. They will argue against home heating controls for that reason. I have concern for that problem, but in my establishment of priorities I am really more concerned with the consumer in this instance than with the reseller.

Mr. MAGUIRE. Would you include controls over resale as well or not?

Mr. JACOBSON. Yes, sir, I would, in light of our economic conditions today. I would.

Mr. MAGUIRE. Your testimony also seemed to suggest, Mr. Jacobson, insofar as you talked about the necessity to determine where the costs fall, et cetera, that you might be looking here for some form of cost-based pricing. Is that a correct inference from your testimony or not?

Mr. JACOBSON. I was hoping that you would gently guide the Department of Energy to make the exhaustive analyses that are required. I thought you did more than that today.

Mr. MAGUIRE. What, though, would be your own view about whether we should look for a scheme that would in effect be a cost-based scheme? Or have we just moved too far away from that?

Mr. JACOBSON. I think it is absolutely necessary. Industry is going to continue to hide behind antitrust statutes, and in my judgment, sir, this is ridiculous. To reduce it to the level we in the East will understand, that Macy's does not tell Gimbel's, is ridiculous. They know perfectly well what the other is doing. To hide behind the antitrust statutes is an attempt to obfuscate, and is an insufficient response that should not be continued.

Mr. MAGUIRE. Mr. Lee, if you had the data, would you advocate a cost-based pricing approach?

Mr. LEE. I would if I could obtain sufficient data to find out what is going on. The other thing I am concerned about—think I put it in my testimony—is that the industry claims and DOE claims there is a problem with refinery capacity. They claim that the reason there is that problem is that controls have restrained development of future refineries. On the other hand, you look at what Mr. Jacobson pointed out, which I agree with, is that every type of measurement of the success of the industry shows upward move-

ment, that is, profit to dividends, to any way you want to measure the industry.

If they actually have the money and they are not investing it in sufficient refinery capacity, then what is happening? Do we have a classic case of restraining supply to increase profits or is Mr. O'Leary correct that you have a regulatory maze that has built-in restraints? I do not know the answer. I have never seen sufficient data from which to make a decision on that problem.

Mr. MAGUIRE. Mr. Larocca, you alluded in your remarks to the 2-cent flexibility factor that was part of the monitoring that was to be done after June 1976 when controls were lifted. Then, of course, there is in addition to the 2-percent flexibility factor a 2-cent seasonal adjustment factor as well. I wonder if you think that this is part of the problem when we get into a situation now with overcharges? Is this sort of an open invitation to have overcharges that were sanctioned, in effect, by the mechanism we were using to monitor? The thing does not trigger in, in other words, unless some sort of threshold is crossed and the threshold perhaps in retrospect was generous. Would you comment on that.

Mr. LAROCCA. I do not know if I am really prepared to relate that to the possible overcharge matter, but I think that the 2-cent statistical error alone was more than ample to cover a lot of real changes that were going on. The seasonal adjustment had a potential compounding effect too.

Remember, starting in July of 1976, 2 cents a gallon measured against the price at the time the price controls came off was a very substantial margin of error. If it had been 2 percent rather than 2 cents on the gallon, I think you would have found that the price fluctuations that did take effect would have called for the trigger to go off.

Mr. MAGUIRE. Would the other two gentlemen care to comment on that point?

Mr. LEE. I have always felt that the monitoring system that we had before was a nightmare. It had not only 2-cent flexibility, it was 2 months late in coming into effect. They broke the trigger in the north central area in April and they came up with it in July. Then you have continuing disputes as to whether the formula is accurate or not. You go around in circles and it does not supply you with accurate and timely information. I just find that the previous system was such a nightmare.

I sympathize with trying to find a solution to the problem, but the previous monitoring system did not solve the problem. Two years ago we had it in effect, and I remember we had hearings, as Mr. Jacobson just had recently.

We claimed we had a 5½-cent increase over the course of that winter. DOE was saying it was not 6½ because in this formula we take into effect this variable and that variable and we really only have a 4½ even though the consumer sees a 6½. I felt like Alice in Wonderland.

Mr. MAGUIRE. Today we only had a half a cent, as you noticed in earlier testimony. Really, all the rest of it was thoroughly explainable.

Mr. Jacobson, do you have any comment on this?

Mr. JACOBSON. Yes. Past monitoring is less than effective and less than vigorous. We have offered the facilities of our State to be utilized in monitoring. We believe we are in a position to do it. We are looking for authorization from the Federal Government to do that. It will be done on a much more rigid conformist attitude than has been perfectly apparent in the past.

Mr. MAGUIRE. Do any of you have any comment on Mr. O'Leary's presentation today—I gather all of you were here—in particular on his conclusion, "We firmly believe the consumers benefit from a vigorous marketplace free from government regulation," at least insofar as that principle is applicable to this case?

Mr. JACOBSON. I am not going to give you an economic answer. I am going to give you a political answer. I suspect Mr. O'Leary is a victim of the trial balloon syndrome; having sent it up, he is now being shot down, and I think it is unfortunate. He is a fine gentleman.

Mr. MAGUIRE. Does anyone else care to comment?

Mr. LAROCCA. The question is really broader than price control or not price control. To determine whether a free market mechanism would really operate is a much broader inquiry, and I think you have to look at everything from the way in which we subsidize this industry, taxation structure, policy. To give you a political answer, if you put that issue to a vote in my State as it applies to the history of prices since decontrol, there are few who would put any faith in a free market mechanism as having been of any value in the home heating oil area.

Mr. MAGUIRE. Mr. Larocca and Mr. Lee both have advocated some sort of income-related subsidy for consumers at the lower income levels at least, and I know Mr. Jacobson has worked on this in New Jersey. I wonder if anybody has any ideas as to how much that would cost us to do it, where the dollars would come from and whether or not there would be effects that could have been labeled inflationary.

I guess I am groping for a bit more by way of specific recommendations, and I would invite you, if you are not prepared to give fuller answers, to submit some fuller proposals to us. I think Congress would find them of interest.

Mr. JACOBSON. We wrestled with that problem, as you know, in our statement. There are two problems. First, whatever relief you offer to those who require it must be assumed by somebody else. Unfortunately, whatever system we have been able to devise puts that new burden on the shoulders of those who should not be burdened. We have been unable because of legal challenges to do what I thought was necessary. Certainly with regard to lifeline for electricity rates.

The other problem, as noble as the motivation is to do that, I really think sometimes we are being diverted, that we are only treating the symptom, that we are ignoring the cause. I think the root cause of our problem goes to questions posed by the chairman, by you and by others, that this is the significant road to engender that relief that all of us do need, not those in just low income but the working man too.

Mr. MAGUIRE. Mr. Lee.

Mr. LEE. I would suggest that total cost nationwide for such a program would be in the vicinity of about \$300 million or approximately \$100 million more than you have had in the emergency program over the last 2 years. I would make that program permanent. I would change its regulations. I think the regulations are out today. One of the provisions I was told about—and I have not read it—is if you are from a State that has a program of preventing utilities from shutting off people, that you cannot provide payment in arrearages for electricity or natural gas, which I think is one of the most regressive things I have heard come out of the Federal Government if it is accurate.

I would also urge strongly in addition to the emergency payment that you take a look at the whole weatherization program, take a look at the tens of thousand of people in urban areas that earn between \$11,000 and \$5,000—we have about 140,000 in the city of Boston in that range and they are not insulating their homes. In Suffolk County, which is the county in which Boston is in, in Massachusetts, we find that the levels of insulation are 25 percent less than the statewide average. I think you need a program.

West Germany has developed a program to meet that kind of problem. Canada has. It will cost you some money, I admit, but I would argue that it is not so inflationary. We have just developed a study called the New England energy policy alternative study. One of the things we found is that since about one-half of what you pay for oil goes out of the country for foreign oil, so that if you can maintain that kind of money, in terms of saving energy within your economy, the economic implications are substantial.

For example, if we had in our State an authority to put forth bonds to insulate all the residential houses in the State, the benefits to the economy of Massachusetts would be probably more than seven times the cost. We have documented this through a study. New England energy policy alternatives study, final report. I will leave a copy with the committee.

[This may be found in subcommittee files.]

Mr. Lee. I do not think it is that inflationary. But even if it is, it is terribly important, for unless you begin to reach these people, the people earning below \$11,000, you will continue to have a substantial problem, probably worse, and you will never be able to alleviate it.

Mr. MAGUIRE. Mr. Larocca, did you want to comment on this?

Mr. LARocca. I would only observe as a small energy agency we have not done all that much examination of the various programs you might describe as social programs, but even a cursory examination tells us they are so botched up you might well be able to structure some effective relief by not exceeding dollar amounts of any of these programs but simply by straightening them out and getting them moving. I suspect if Henry's figure of \$200 million is accurate, the share we would get in New York on that is not going to be enough to make a real dent.

We also observe New York is a State that does have a provision in the law that prevents utilities from cutting off electric or gas customers, which is to make a new class of people ineligible for this relief.

Mr. MAGUIRE. Thank you very much.

Thank you, Mr. Chairman. I would just note it is nice to have this balance of officials. We have three officials here from three States where people are on the receiving end of our Federal policies, and it is very helpful to have their testimony.

Mr. MOFFETT. Gentlemen, we do greatly appreciate your testimony. Thank you very much.

The Chair now calls Mr. Sidney Berson, New England Fuel Institute, New Britain, Conn.; Mr. Robert Greenes, National Oil Jobbers Council, Washington, D.C.; Mr. Abraham Ouriel, managing director, Independent Heating Oil Dealers of Rochester, Rochester, N.Y.; and Jack Wade, National Oil Jobbers Council.

Will you proceed, gentlemen. As we have said to other witnesses, your statements will be included as part of the record and you may feel free to paraphrase and summarize, if you would.

STATEMENTS OF ABRAHAM OUIEL, MANAGING DIRECTOR, INDEPENDENT HEATING OIL DEALERS OF ROCHESTER, (N.Y.); SIDNEY H. BERSON, MEMBER, BOARD OF DIRECTORS, NEW ENGLAND FUEL INSTITUTE; AND ROBERT GREENES, CHAIRMAN, FUEL COST AND SUPPLY AVAILABILITY TASK FORCE, NATIONAL OIL JOBBERS COUNCIL, ACCOMPANIED BY JACK WADE, PRESIDENT-ELECT

Mr. OUIEL. Mr. Chairman, for the past 5 years I believe that our group has been the only marketing group in the United States that has wanted price controls on the products they wish to sell. My colleagues here may disagree with me vehemently, but we found, as our customer gets slaughtered out there, so do we. If that consumer cannot pay the precipitous cost of heating oil, we can no longer stay in business and be viable. My contemporaries have not come to that realization as yet.

This is a brochure of the President's anti-inflation program. If something is not done immediately about heating oil, you can throw that program right out the window.

Our customers today in upstate New York are paying including sales tax, almost 60 cents a gallon. We would rather have a complete price control structure from the refinery down to the reseller to protect the consumer, because if the consumer is no more then the distributor will be no more.

My statement is there for your staff to read. On it, I explain many things that have gone on in the past, which you are all well aware of. My statement before this same body 29 months ago concerning decontrol is as if I were Mr. George Ball the former Under Secretary of State, warning the administration about the perils of Vietnam. I would have to say I told you so, we never got that free market. The small distributors are falling by the wayside. If this administration does not do something quickly before the cold weather really hits, holy hell is going to break loose, just like the war in Vietnam.

[Testimony resumes on p. 181.]

[Mr. Ouriel's prepared statement and attachment follow:]

I.H.O.D.

INDEPENDENT HEATING OIL DEALERS OF ROCHESTER

177 EAST BROAD STREET ROCHESTER, NEW YORK PHONE: 716-546-8288

STATEMENT OF ABRAHAM OURIEL, MANAGING DIRECTOR
BEFORE SUBCOMMITTEE ENERGY AND POWER DECEMBER 20, 1978

MY NAME IS ABRAHAM OURIEL, MANAGING DIRECTOR OF THE INDEPENDENT HEATING OIL DEALERS ASSOCIATION. OUR ORGANIZATION WAS FOUNDED IN 1973, IN ORDER TO BETTER REPRESENT THE NON-INTREGATED, NON-MAJOR HEATING OIL DISTRIBUTOR.

THE BASIC TENET OF OUR GROUP IS TO SEEK THE WELL BEING AND ECONOMIC VIABILITY OF THE CONSUMER OF HOME HEATING OIL.

MUCH TO OUR DISMAY SUCH HAS NOT BEEN THE CASE OF ALL THE OTHER DISTILLATE MARKETING ASSOCIATIONS IN THE COUNTRY. SUFFICE TO SAY, THAT OUR PRESENCE HERE TODAY AMONG THIS PANEL OF MARKETERS IS THAT OF A "DEVILS ADVOCATE" TO COUNTER THE BRAIN WASHED PHILOSOPHY OF THESE OTHER MARKETING GROUPS.

OUR ASSOCIATION BELIEVES IN A FREE MARKET FOR MIDDLE DISTILLATES AND WE WERE QUITE DISAPPOINTED SUBSEQUENT TO DECONTROL WHEN WE DIDN'T GET THAT FREE MARKET. JUST TO ENUMERATE A FEW ITEMS; MANY OF OUR DEALERS LOST NIGHT AND HOLIDAY KEY-LOCK LOADING PRIVILEGES, COUPLED WITH CURTAILED TERMINAL HOURS. THIS IS AN EXTREME HARDSHIP FOR URBAN DEALERS. 90 % OF THEM HAVE NO STORAGE WHATSOEVER AND LOAD THEIR PRODUCT DAILY. THIS CAUSED A "GREY MARKET" TO DEVELOP. THE "GREY MARKET" BEING A NETWORK OF DISTRIBUTORS THAT EXCHANGE HEATING OIL TRUCK TO TRUCK ON THE DAYS AND NIGHTS WHEN THE SUPPLY TERMINALS ARE CLOSED. IN MOST CASES THESE "HOLIDAY COSTS" ARE UNFORTUNATELY PASSED ON TO THE CONSUMER.

THE DECONTROL OF RESIDUAL FUEL WAS IN ITSELF A GOOD PROCEDURE. THE RESID BUYER, USUALLY BEING A UTILITY, OR AN INDUSTRIAL PLANT HAS THE SOPHISTICATION IN IT'S PURCHASING POWERS TO SHOP AND GET THE LOWEST POSSIBLE PRICE. THE POLITICALLY DANGEROUS DECONTROL OF MOTOR GASOLINE IS FRAUGHT WITH UNCERTANTIES. BUT THE MOTORING PUBLIC CAN EASILY SHOP WHILE DRIVING THE HIGHWAY FOR THE LOWEST GASOLINE PRICES. SUCH IS NOT THE CASE WITH THE CONSUMER OF HOME HEATING OIL. HE IS, AS ALWAYS, A "CAPTIVE CUSTOMER". THE HOMEOWNER NEVER KNOWS THE PRICE OF HIS HEATING OIL UNTIL AFTER DELIVERY. HE USUALLY IS ON AUTOMATIC CHARGE ACCOUNT DELIVERY AND HE HAS THE ADDITIONAL CONVENIENCE OF 24 HOUR FURNACE REPAIR. RARELY WILL HE SWITCH FOR A LOWER PRICE. HE DOES NOT WISH TO UPSET THE CONVENIENCE OF SERVICE HE HAS SO LONG ENJOYED. BOTH REFINERS AND SUPPLIERS OF HOME HEATING OIL KNOW THIS FULL WELL AND DO NOT HESITATE TO PASS THROUGH MORE AND MORE UNJUSTIFIABLE INCREASES. THEREFORE, THE HOME HEATING OIL MARKET SHOULD BE PRICE CONTROLLED AT WHOLESALE AND RETAIL BEFORE THE CONSUMER IS NO MORE.

GENTLEMEN, THE BLOOD OF THE CONSUMER IS ON THE HANDS OF ALL THE MARKETERS OF HEATING OIL IN THIS LAND. AS IN VIET NAM, WE ARE LIKE THE FOOT SOLIDER UNDER THE COMMAND OF OUR SUPPLIERS TO SLAUGHTER INNOCENT CONSUMERS.

THE PRECIPITIOUS RISE OF WHOLESALE HEATING OIL HAS NEVER BEEN FULLY PASSED THROUGH BY THE DISTRIBUTOR TO THE ULTIMATE CONSUMER.

WITNESS THE NON ATTENDANCE OF THE MAJOR OIL COMPANIES AND THE AMERICAN PETROLEUM INSTITUTE AT THE RECENT EVIDENTUARY HEARINGS OF THE DEPARTMENT OF ENERGY HELD THIS PAST AUGUST. THEY OBVIOUSLY DON'T WISH

TO DISCUSS THEIR ON-GOING RIP-OFF. JUST LIKE TAKING THE FIFTH AMENDMENT THEY DON'T WISH TO INCRIMINATE THEMSELVES.

I ALSO HAVE FOR THE RECORD A COPY OF THE NEW ENGLAND FUEL INSTITUTE'S BULLETIN OF JULY 1, 1976; A DAY AFTER THE UNFORTUNATE DECONTROL OF HOME HEATING OIL. (ENERGY ACTIONS 3 and 4); WHERE MR. CHARLES H. BURKHARDT'S HEADLINE, "WE WIN THE BIG ONE" STATES THAT HEATING OIL CAN INCREASE UP TO 14 ¢ PER GALLON. NEW ENGLAND FUEL INSTITUTE, THROUGH ITS' SPOKESMAN, MR. BURKHARDT, SEEMED TO ENJOY WITH ABSOLUTE GUSTO AN IMPENDING 14 ¢ PER GALLON RIP-OFF OF THE CONSUMER. IT WAS IMPOSSIBLE FOR THE CONGRESS TO WITHSTAND THE ONSLAUGHT OF FOUR HUNDRED MISGUIDED NEW ENGLAND HEATING OIL DEALERS THROUGH THE HALLS OF CONGRESS ON TUESDAY, JUNE 29th.

THE TRIGGER MECHANISIM SET UP BY MR. FRANK ZARE AND COMPANY, AS A POLITICAL COMPROMISE WAS A COMPLETE FARCE. LESS THAN ONE YEAR LATER, THE TRIGGERS WENT OFF ALL OVER THE PLACE AND THE BODIES OF THE CONSUMERS WEREN'T EVEN MOURNED OVER, SAVE BY A FEW CONSUMER GROUPS WHOSE VOICES ARE NEVER REALLY HEARD IN WASHINGTON, AS THEY DON'T HAVE THE MONETARY CLOUT OF THE OIL INDUSTRY.

ON DECEMBER 13th., THE COURT OF APPEALS HERE IN WASHINGTON RULED IN FAVOR OF FIFTEEN MAJOR OIL COMPANIES, ALLOWING THEM TO PASS THROUGH A MYRIAD OF NON-PRODUCT COSTS TO THE DISTRIBUTOR AND EVENTUALLY TO THE CONSUMER. PREVIOUSLY; ONLY INCREASES OF CRUDE OIL COULD BE PASSED THROUGH. THIS LITERALLY ALLOWS THE MAJOR OIL COMPANIES AND REFINERS TO USE A LARGE CANNON TO KNOCK OFF THE CONSUMER RATHER THAN THEIR OLD DOUBLE-BARRELL SHOT GUN. OPECS RECENT 14½ % INCREASE WILL NEVER MATCH THE PERCENTAGE OF INCREASES THAT THE REFINERS WILL BE ALLOWED TO PASS

THROUGH UNDER THIS NEW RULING. "PITY DR. ALFRED KAHN AND HIS VALLIANT BAND." I COULD GO ON AND ON TELLING THIS SAD TALE. OUR ASSOCIATION DOESN'T REALLY BELIEVE THAT THIS ADMINISTRATION REALLY GIVES A DAMN ABOUT THE CONSUMER.

YOU MAY WONDER WHY OUR ASSOCIATION HAS ALLIED ITSELF WITH THE CONSUMER MOVEMENT. THE POTENTIALLY LOWER COST OF HOME HEATING OIL WILL NOT ONLY KEEP THAT CONSUMER AWAY FROM ALTERNATE FUELS, BUT WILL ALSO ALLOW THE MARKETER TO EXTEND TRADITIONALLY EASY CREDIT TERMS. AS THE CONSUMER GOES SO GOES THE MARKETER OF HOME HEATING OIL.

THIS MAKES OUR THIRD APPEARANCE BEFORE A CONGRESSIONAL COMMITTEE AND OUR FOURTEENTH WITH THE OLD F.E.A. AND NOW D.O.E., NOT TO MENTION THE MANY STATEMENTS MADE BEFORE MUNICIPAL AND STATE BODIES. IF THIS IS TO BE ANOTHER EXERCISE IN FUTILITY, WE ACCEPT THAT. OUR GROUP WILL COME BACK AGAIN AND AGAIN IN THE HOPE THAT THIS GOVERNMENT WILL ADMIT ITS' ERROR UNDER ENERGY ACTIONS 3 and 4, JUST AS THIS GOVERNMENT HAS BELATEDLY ADMITTED ITS' ERROR IN VIET NAM.

A POSTSCRIPT. AT THE TIME OF THE DRAFTING OF THIS STATEMENT, A SURVEY OF MARKETERS HAS SHOWN THAT MANY INNER CITY END-USERS WERE NOW PURCHASING 25 GALLONS OF HEATING OIL (2 DAYS SUPPLY AT PRESENT TEMPERATURES) FOR \$23.00. IT'S REALLY COME DOWN TO " HEAT OR EAT ".

I WOULD BE MOST HAPPY TO ANSWER YOUR QUESTIONS RELATING TO THE MIDDLE DISTILATE PROBLEM.

IHOD ANSWERS TO SUBCOMMITTEE QUESTIONS

The following are the written comments of our Association, pertaining to the questions posed to marketers, re: Middle Distillates by the sub-committee on Energy and Power:

1. The findings of the Office of Hearings and Appeals show that some people in the Energy Department have finally seen the light. The revelations of past price-gouging and future price-gouging by the refiners of middle distillates has been exposed.

(a) Our estimation on the extent to which distillate prices have exceeded prices which would have been permitted under controls is approximately 12¢ per gallon at the refiners gate. Our projection for such "overcharges" this winter without government pricing controls on the refiner would be a minimum of an additional 5 to 8¢ a gallon. If some short-fall of supply should occur without price controls, the retail price of heating oil would easily supercede the retail cost of motor gasoline, including the 12 to 14¢ State and Federal highway taxes which home heating oil does not include, "as yet."

(b) The reasons for price increases since decontrol are:

1. The complete absence of price controls.
2. A trigger mechanism which was a farce.
3. An ineffective monitoring system.
4. A refining tilt toward home heating oil, that being a "captive market."
5. etc., etc., etc.

The level of such increases occurred at 90% refinery charges, 5% wholesale and 5% retail.

(c) The competitive workability of the refinery is nil, at wholesale, fair, at retail, excellent.

(d) The need for additional monitoring of prices is tantamount to a police officer observing a crime in progress and doing nothing about it.

2. The changes in financing arrangements with suppliers since decontrol are monumental. Distributors no longer enjoy 30-day credit terms. In many cases, they no longer receive 10-day or cash discounts. The billing department of many refiners are now regionally consolidated, causing undue hardship on the distributor.

All the above washes on to the end user. From the refiner through the distributor, that economic bullet penetrates the heart of the consumer.

3. The assessment of DOE's performance in the middle distillate regulatory area is basically what we would call a Bureaucratic cop out. They had the chance when the triggers went off to reimpose price controls but they drowned in a sea of lobbyists that decided to keep the rope of the consumer and on going and ever growing project.

What is now required is to simply refine the old price controls into new price controls, reflecting entitlements and the small refiner bias to accrue through all distributors to the consumer.

In Rochester, New York, the United Refining Company has used their 6¢ entitlement subsidy to purchase upwards of 40% of the retail customers in our area from former competitors. Their retail price does not reflect that subsidy. The intent of the small refiner bias was to allow those small refiners the cushion to expand refining capacity. Such has not been the case in many parts of the country. There has been a proliferation of newly built "Tea Cup" refineries (10,000 barrels a day) to garner this lucrative subsidy. We call that welfare for the rich.

Mr. MOFFETT. Mr. Berson:

STATEMENT OF SIDNEY H. BERSON

Mr. BERSON. Mr. Chairman, I am going to make some comments. It was in June of 1976 that I appeared at the same panel with Mr. Ouriel and we disagreed then and I disagree now primarily because the marketing segment of the industry should not bear the onus of the costs that have been put upon the consumer. The marketer, as I see him, is buffeted between his supplier and his consumer. The greatest pressure upon him is a competitive pressure by the consumer. The consumer has become a very sharp buyer. He knows where value is.

The attitude of the suppliers, on the other hand, the refiners, as far as the marketer is concerned, has been an extreme stiffening of their position vis-a-vis the marketers. The military allowances, the freight allowances, the competitive discounts they used to give before 1972, to my knowledge, no longer exist. They used to be a very maternal industry. They used to help to a great degree the markets who are their customers. As far as I can tell today, this no longer does happen.

It is not a personal experience but I am aware of some of the marketers who have cut credit terms. Some of them have not changed their historical amount of credit terms, which puts the marketers in an awful position of inflation.

There used to be a free market in the marketer's ability to buy a product. You have a choice of companies to go to. For whatever the reason, this no longer occurs. It was mentioned earlier at one of these panels. If the independent refiners were allowed to establish refineries and thus create a competitive condition, we might find it difficult.

We are concerned in the marketing segment about another topic discussed earlier, that is, the tilt. Of course, we do not feel we should have to, as a retail industry, subsidize the gasoline industry. We are concerned also about the rapid escalation of cost which we must pass through. We also do wonder about the 5 or 6 cents of cost increases that have occurred even before OPEC announced theirs. Maybe the refiners have anticipated OPEC, but maybe they have not. We do not understand that. We just understand that we are the buffer. We are the small marketers who have to answer that telephone and respond to the people who say, Why are you doing this to me?

We are not doing it to them at all. We are passing it through.

I have put together a couple of numbers from my company, and my company is an average-sized company that does averagely well. We have earned 1½ percent on our revenues. We have earned 2.6 percent on the assets we employ. We have earned 3.8 percent on our net investment. I could sell my business tomorrow, put the money in the savings bank without any gimmicks and make more money.

This is a squeeze. Another couple of numbers. Our margins as a percentage based upon profits are down by 20 percent from what they were in 1972. Our cost for interest and our bad debts have increased 400 percent since 1972. Our nonproduct costs, the costs that are not fuel oil but all the other costs, are up by 250 percent. I

give you these numbers because they are the good numbers. I was called by my supplier 1 week ago and I was asked if I would take over a business that is in your district, Mr. Moffett, that is going bankrupt this week, and tomorrow morning we were going to do something about it. And not only has he not made a profit but he has lost all the investment he put into the business 10 years ago, he cannot cope with it. He does not understand the fact that because in terms of cents per gallon his margin is larger now than 10 years ago, why is he going broke?

He personifies a great part of this industry, that is not sophisticated enough to understand what their costs really are. Yet they are being blamed for a lot of the price increases.

I would also take exception at this point with another comment of Mr. Ouriel's, that the controls at the retail level historically—I have been through two sets: 1942 through the war, and 1971 through 1976. A lot of times a ceiling becomes a floor. Historically the oil industry at the marketing level made larger profits during the period of controls than they did in the free market. If I had just been profit oriented, I would say give us controls and I know I will make more money. But in the long run that is the wrong thing to do.

I might make one suggestion. I personally have been deeply involved in the conservation effort in the past year. I have sent letters to my customers offering free A audits. That is the audit in which someone visits the homes, makes recommendations and helps implement those recommendations. We are getting very, very slow response. I would request that this body take into account some method of getting their attention, maybe putting some teeth into it, so that people will respond. We have found where the people have taken conservation efforts seriously, there has been an enormous amount of conservation, 20 to 30 percent is not uncommon at all, sometimes 40 percent. We believe that is really the way to go.

We also are concerned, in talking about the availability of the marketers, about the fact that they are having trouble coping with inflation. One of the problems they have is that they are so close to the consumer customers that they are more reluctant to turn them off than very, very large companies who are more impersonal, who may have a credit department emanating out of Houston, Tex., instead of Connecticut or New York. But they need help. The type of help they need—they might have gone to the SBA—is kept from them because of some antiquated SBA rules. A dealer who is smaller than average, a few million-gallon-a-year dealer—I believe someone categorized the average as being about 4 million gallons—is no longer eligible for SBA help because of a \$2 million revenue limit. We have spoken to some of the SBA people.

They say it is beyond their ability to make the change without legislative effort, and I would highly recommend to help the marketing segment of the industry and help them help the consumer to carry them over that tough winter, give them the ability to carry those accounts.

Those are my comments right now.

[Testimony resumes on p. 224.]

[Mr. Berson's prepared statement and attachments follow:]

STATEMENT
of
NEW ENGLAND FUEL INSTITUTE
on
MIDDLE DISTILLATE PRICES AND SUPPLIES

I. Introduction

My name is Sidney H. Berson. I am President of Energy Unlimited, Inc., whose Oil Power Division is an independent fuel oil retail company serving consumers in the central Connecticut area. I am a member of the Board of Directors of the New England Fuel Institute, a member of the Board of Directors and Secretary of the Independent Connecticut Petroleum Association, past Chairman of the Fuel Oil Committee of the National Oil Jobbers Council, and a member of the Fuel Oil Marketing Advisory Committee of the Department of Energy. I am pleased to appear on behalf of the New England Fuel Institute (NEFI) in response to the Committee's invitation to discuss the supply and price situation in the middle distillate market.

NEFI is an association composed of more than 1,000 independent retail and wholesale home heating oil distributors throughout a six-state region. The independents serve over 2,400,000 retail home heating oil customers and market about 86% of the 4 billion gallons of No. 2 home heating oil sold throughout the area at the retail level and 40% of all gallonage sold at wholesale.

II. Prices

A. Increases at Refiner Level

The Committee has requested specific information on current and future prices of middle distillates. As a trade association NEFI is, of course, precluded from collecting such information or providing projections as to price trends. However, the recent increases in the price of home heating oil during the

last three months have been intensively analyzed by the New England Congressional Caucus and the Massachusetts State Energy Office, and NEFI wishes to submit for the record the December 5 Report of the Research Office of the Caucus and the Massachusetts State bi-weekly reports on home heating oil prices of November 22 and December 8, 1978. Both reports underscore that recent price increases have not come from the wholesale or retail levels; rather that the movements in wholesale and retail prices have simply reflected increases initiated by the large refiners. Obviously retail and wholesale marketers cannot afford to absorb these increases and are thus forced to pass them on to their customers; however, as these analyses have shown, wholesale and retail increases have in many cases lagged behind, in time and magnitude, the refiner increases.

On December 11, 1978 the Wall Street Journal reported that the average price of home heating oil rose 5.8% in the period between October 1977 and October 1978, to 50.74 cents per gallon from 47.96 cents.^{*/} This 5.8% increase compares with an 8.9% increase in the overall price of goods and services in the United States for that period as measured by the Consumer Price Index. The comparable figures for November are not yet available; while fuel oil prices did escalate during that month, it is likely that the price performance measured over the past year will demonstrate that the fuel oil increases have been in the same range as the general rate of inflation. Fuel prices cannot be expected to remain stable in an inflation-

*/ A copy of the article is being submitted for the record.

ary economy. Unfortunately all prices have been rising, and until general inflation is brought under control, fuel prices will be affected by the same inflationary forces as all other commodities.

B. "Tilt" of Costs onto Heating Oil

In its Decision and Recommendations on No. 2 (Home) heating oil,^{*/} the Office of Hearings and Appeals of DOE found that from the period June 1976 until the Spring of 1979, refiners will have recovered approximately \$331 million more than they would have recovered under controls. While this figure seems dramatic, on closer examination it is equal to approximately .2 of 1 cent per gallon.

Putting aside the question of whether the Office of Hearings and Appeals figures are accurate, that Decision ignores a far greater increase in the cost of home heating oil--from 1 to 2 cents per gallon--which is a direct result of the continuation of price controls on motor gasoline. These controls force refiners to pass through onto heating oil increased refining costs associated with the production of gasoline.

As the Committee is aware, it costs substantially more to refine gasoline than it does heating oil because of the sophisticated downstream equipment required for motor fuels. Prior to controls and during the period when both gasoline and fuel oil were controlled, refiners allocated these additional costs

*/ Decision and Recommendations of the Office of Hearings and Appeals, U. S. Department of Energy, regarding No. 2 (Home) Heating Oil, November 20, 1978.

to gasoline; unfortunately the current DOE regulations prohibit a refiner from allocating more than the volumetric proportional costs of producing gasoline to that product. Thus, if gasoline production at a given refinery is 50% of the facility's output, the refiner may only pass onto gasoline 50% of crude oil acquisition and refining costs--even if the costs attributable to gasoline production may be 60% or more of the total costs. The result of these regulations is higher prices to heating oil consumers, the majority of which are middle and low-income families. As a result of the unfair and inequitable DOE regulations, for the past two and a half years fuel oil consumers have been forced to subsidize the production of gasoline. The costs have been enormous--more than \$100 million in New England and more than \$500 million nationwide. In brief, the Office of Hearings and Appeals ignored a far more serious cause of increased heating oil prices--the DOE regulations which force refiners to pass unwarranted costs onto fuel oil and force fuel oil consumers to subsidize gasoline production.

NEFI has repeatedly urged that DOE institute the "tilt" regulations which would permit refiners to allocate additional costs associated with the production of gasoline onto that product.^{*/} The Institute has testified on numerous occasions before the DOE and the Congress on this issue. Recently, NEFI wrote to Mr. Ralph Nader objecting to the filing of a law suit by his organizations to block the tilt regulations and asking

^{*/} The statement submitted by NEFI at the Department of Energy hearings on "Amendment to the Mandatory Price Regulations Allowing Refiners to Allocate Additional Increased Costs to Motor Gasoline", December 19, 1978, is being submitted for the record.

Mr. Nader to support the cause of fuel oil consumers by joining our efforts on behalf of the proposed DOE amendments.^{*/}

In summary, prompt implementation of the tilt regulation is the most effective--in fact the only--way to insure the stabilization of fuel oil prices for the remainder of this Winter. The impact of the tilt should fully offset any price movements resulting from the OPEC crude oil increase effective January 1, 1979.

III. Supply and Demand

The weather during the next several months will of course determine if distillate supplies are sufficient. However, at present it appears that supplies will be adequate to meet the requirements of the 1978-79 winter. Primary stocks are rising and are now equal or above those in the winters of 1975-76 and 1976-77.^{**/} NEFI understands that secondary stocks, those at the terminal (wholesale) level, are also adequate.^{***/} In fact,

^{*/} A copy of the November 29 letter is being submitted for the record.

^{**/} The American Petroleum Institute reports of nationwide stocks of middle distillate have been as follows:

November 3, 1978	217.6 million bbls
November 10,	218.0 "
November 17,	222.7 "
November 24,	224.9 "
December 1,	228.7 "
December 8,	228.9 "

The Oil Buyers Guide, December 18, 1978 reports, "East Coast: Ample inventories dull demand for No. 2 oil on the open market."

^{***/} See statement of Independent Fuel Terminal Operators Association at hearings on "Assessment of the Short-term Middle Distillate and Gasoline Supply Situation and Price Trends", before the Economic Regulatory Administration, Department of Energy, December 15, 1978.

many facilities in our area are completely full. Moreover, at the tertiary level--the dealer and the homeowner--tanks are nearly at capacity. Thus, barring a foreign supply interruption or a very severe winter, NEFI does not foresee any supply difficulties this heating season.

As a result of somewhat warmer weather and continued strong conservation efforts by home heating oil consumers, demand this Fall has been running at lower levels. According to the Department of Energy's "Petroleum Demand Watch", for the four weeks ending December 8, 1978, demand for distillate was 12.9 percent below the 1977 level, down 20.9 percent from 1976, and 10.5 percent below 1973.^{*/}

It should be remembered that even during the last two very severe winters, when demand reached record levels, there were no fuel oil shortages and no one went without heat. In fact, even the State Set-Asides were scarcely used. Because middle distillates were exempt from price and allocation controls, the distribution system functioned efficiently and was able to adjust quickly to meet shifting supply demands. There is no reason to think it will act any differently this Winter. However, NEFI is convinced that shortages will arise if the distribution system is disrupted by the Federal Government. Thus, we strongly recommend that the Federal Government refrain from any action which would interfere with the normal operation of the market.

*/ "DOE Petroleum Demand Watch", Office of Public Affairs, Department of Energy, December 18, 1978.

IV. Competition in the Fuel Oil Market

A. Findings of Federal Government

In the White Paper on "The Competitive Viability of the Independent Fuel Oil Marketer", the Fuel Oil Marketing Advisory Committee of the DOE found that "there is strong competition in the home heating oil market on both the independent wholesale and retail levels".^{*/} This conclusion was reaffirmed by the Office of Hearings and Appeals of the DOE in its Decision on No. 2 (Home) Heating Oil, which stated: "the record does not contain any evidence suggesting a lack of workable competition at the wholesale or retail levels of the No. 2 home heating oil industry on a national basis". (p. 135). The Department of Justice also concurs in this judgment.^{**/} As the Committee knows, competition at these two levels of the distribution system ensures that product will be delivered to the consumer at the lowest possible price.

Even during the period of price and allocation controls, retail prices were far below allowable ceilings. The Committee might be interested to note that in June 1976, when controls were removed, the "maximum allowable selling prices" of a representative group of New England dealers ranged from 60 to 90 cents per gallon. Thus, today, 2-1/2 years after decontrol, home

^{*/} The White Paper was submitted to the Subcommittee on Energy and Power in testimony presented by NEFI on February 23, 1978.

^{**/} White Paper on the "Competitive Viability of the Independent Fuel Oil Marketer" prepared by the Fuel Oil Marketing Advisory Committee of the Department of Energy (December 5, 1977). Decision and Recommendations of the Office of Hearings and Appeals, U. S. Department of Energy, regarding No. 2 (Home) Heating Oil (November 20, 1978). Statement of Factual Position of the Department of Justice before the Office of Hearings and Appeals, U. S. Department of Energy, regarding No. 2 (Home) Heating Oil Hearing (June 30, 1978).

heating oil prices are still far below the levels they could have reached under the DOE mandatory controls.

In short, controls don't keep prices down (in fact, they make them higher); competition is the best assurance of lower prices for consumers.

B. Impact on Margins

While the White Paper concluded that the wholesale and retail levels of the heating oil market were highly competitive, it also found that "while competition maintains a downward pressure on home heating oil prices and thereby benefits the consumer, it does limit severely the costs which a marketer may recover". The economic viability of the independent marketer remains precarious. Margins continue to be squeezed by price increases from refiners, and by competitive and consumer pressures. In addition, increased labor costs in this labor-intensive industry take their toll. Moreover, the fuel oil business is a cyclical business dependent upon inventory financing, and the recent increase in the costs of borrowing (a 50% increase over a year ago) has created particularly serious problems. As a result of these cost pressures and the highly competitive nature of the market, the average dealer makes a net profit of approximately 1/2 cent per gallon--less than a 1% return on sales.

V. Monitoring

There has understandably been serious concern over the recent price increases for fuel oil. While the upward movement appears to have abated, we believe this Committee and the con-

suming public deserve an explanation of the reasons for the recent moves. As companies who have direct and daily contact with consumers and who depend on their good will for our survival, we don't like to receive price increases and we don't like to pass them on to the homeowners.

We are obviously deeply concerned and disturbed that there are no quick answers or solutions. When measured over a period of time, fuel oil price increases appear to have followed the general rate of inflation. As long as the price of domestic crude oil continues to rise (as mandated by the Congress), as long as OPEC is able to mandate sharp increases in crude oil prices as it did on December 17, and as long as inflation continues to ravage the U. S. economy, fuel oil prices are likely to rise at the rate of inflation. As sellers of the product, we wish this were otherwise; but oil prices cannot, under present laws and economic conditions, be expected to remain stable. Nothing else is. The answer is clearly not direct Federal action or intrusion into the marketplace. This would cause serious supply dislocations and force consumer prices even higher, particularly if it occurred in the middle of the heating season.

We therefore recommend that monitoring by the individual states at the retail and wholesale levels continue so that those offices could quickly alert the Department of Energy should any problems arise. The reports by the Massachusetts State Energy Office show that an effective job is already being done. Frankly, the states can do a better and faster job than the Federal Government. NEFI would also recommend that increased monitoring of

refiner prices be done here in Washington by the national office of the DOE. Such monitoring will help to alert the agency, the Congress and the public to any growing problems at that level of the distribution system.

VI. Conclusion

In conclusion, NEFI believes that (1) stocks of middle distillate are adequate to meet the requirements of the 1978-79 heating season; (2) vigorous competition on the wholesale and retail levels of the distillate market will continue to exert a restraining impact on prices, and (3) prompt implementation of the gasoline tilt regulations will stabilize prices for the homeowner for the remainder of the Winter and fully offset the impact of the recent OPEC action.

Thank you.



THE COMMONWEALTH OF MASSACHUSETTS
ENERGY OFFICE

73 TREMONT STREET • BOSTON, MA 02108

(617) 727-4732

MICHAEL S. DUKAKIS
GOVERNOR

HENRY LEE
DIRECTOR

FOR IMMEDIATE RELEASE

November 22, 1978

Home Heating Oil Prices Continue
to Rise

CONTACT: Larry Carpman

The latest Massachusetts Energy Office survey of 108 oil dealers released today shows a 1.8 cent per gallon increase in the average retail cost of heating oil since November 1, or an approximate three-cent increase since the beginning of the heating season.

The average price across the state is now 53.2 cents per gallon, with prices in some areas as low as 46.9 and as high as 55.9 cents per gallon. The Cape Cod area has the highest average at 54.0 cents per gallon while the lowest prices are in the Springfield and Fitchburg areas at 52.4 and 49.1 cents per average gallon respectively.

(A complete region-by-region breakdown of the costs is attached).

"The recent retail price increases," said Energy Office Director, Henry Lee, "generally reflect earlier increases in refining prices which occurred in late October and early November. The differential in prices in the ranges cited in our survey in most cases represents the difference between full-service and non full-service dealers. Most all the increases in prices can be traced back to the refining level," Lee added.

"We see no major trends in the last few weeks which would cause us to change our estimates of a seven-cent jump in heating oil costs by the end of the winter season," said Lee.

"Our figures show," said Lee, "that heating oil inventories have risen appreciably in the last few weeks and this increase in supply should take away some of the upward pressure on prices if the winter is not abnormally cold."

Meanwhile, in other energy supply and price issues, the Energy Office released the following information:

--Gasoline inventories in New England are down dramatically compared with each of the last two years. The inventories are now about 4.4 million barrels, compared with 5.7 million in 1977 and 6.4 million in 1976. This shrinkage in supply can directly be traced to the increase in the demand for gasoline by passenger automobiles. Although no gasoline shortages are expected, a continued drop in inventories could cause a further increase in prices.

--There continues to be a tight supply of unleaded gasoline across the Northeast. Prices of unleaded gasoline are up five cents since January, 1978, and are expected to go even higher.

--The Energy Office is continuing to monitor the impact of the recent closings of many of the Gasland stations in the western part of the state. At this time, the office does not see gasoline supply problems in this area as a result of the Gasland bankruptcy case.

REGIONAL FUEL COSTS for November 17, 1978

EASTERN MASSACHUSETTS (Essex, Middlesex, Norfolk, and Suffolk Counties)

Average Price Per Gallon:	October 3 - 50.5¢
	November 1 - 52.5¢
	November 17 - 53.6¢

Present Range:	50.9¢ to 54.9¢
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SOUTHEASTERN MASSACHUSETTS

Average Price Per Gallon:	October 3 - 50.3¢
	November 1 - 51.6¢
	November 17 - 52.9¢

Present Range:	49.9¢ to 54.9¢
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CAPE COD (Barnstable County)

Average Price Per Gallon:	October 3 - 51.2¢
	November 1 - 52.6¢
	November 17 - 54.0¢

Present Range:	50.8¢ to 55.9¢
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CENTRAL MASSACHUSETTS (Worcester)

Average Price Per Gallon:	October 3 - 50.9¢
	November 1 - 52.3¢
	November 17 - 53.3¢

Present Range:	51.9¢ to 54.9¢
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CENTRAL MASSACHUSETTS (Fitchburg)

Average Price Per Gallon:	October 3 - 45.9¢
	November 1 - 47.5¢
	November 17 - 49.1¢

Present Range:	47.9¢ to 50.9¢
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WESTERN MASSACHUSETTS (Franklin, Hampshire, and Hampden Counties)

Average Price Per Gallon:	October 3 - 49.6¢
	November 1 - 50.4¢
	November 17 - 52.4¢

Present Range:	46.9¢ to 54.5¢
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BERKSHIRES (Berkshire County)

Average Price Per Gallon:	October 3 - 51.7¢
	November 1 - 53.2¢
	November 17 - 53.2¢

Present Range:	50.0¢ to 54.9¢
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FOR IMMEDIATE RELEASE

December 8, 1978

Home Heating Oil Prices Rise

CONTACT: Larry Carpman

The Massachusetts Energy Office today released its latest survey of home heating oil prices which shows a .8-cent per gallon increase in retail prices over the past two weeks.

This rise brings the jump in heating oil prices to four cents per gallon since September and puts the statewide average at 54 cents, with a high of 55.9 reported on the Cape. The bi-weekly survey includes 108 retail oil dealers. (A complete region-by-region breakdown of the survey is attached).

During the past few weeks, the Energy Office has been assessing the causes of the recent increases. The four-cent increase can be broken down approximately as follows:

--A .6-cent increase at the retail level, primarily to cover inflation and increased interest rates.

--A one-cent increase in crude oil costs. (The Department of Energy (DOE) thinks this figure may be closer to 1.5 cents).

--A .8-cent increase at the refinery level because of non-product costs, or inflation.

--A 1.6-cent increase for which the Energy Office does not have a firm explanation.

"We believe the 1.6 cents can be traced back to the refinery level," said Energy Office Director, Henry Lee. "To date, we have received no formal information on why this increase has occurred," Lee added. "DOE officials have told us they believe the actual increase in crude oil costs is about .5 cents higher than our figures."

Accurate refinery data has, as a rule, a 60-day lag time. Therefore,

data breaking down refinery prices for November will not be received until late January.

"Our original suspicion of a tendency by refiners to pass some gasoline cost increases onto heating oil persists," Lee said. "Furthermore, we are very uncertain that all of the 1.6-cent increase can be justified on a cost basis," Lee added.

It has become clear, from recent events in the gasoline market and from DOE information, that the nation's appetite for refined products--both heating oil and gasoline--is on the verge of outstripping the capacity of American refineries to supply those products. Earlier this fall, the refining industry kept producing substantial amounts of gasoline to meet an unprecedented demand for the post-Labor Day period. At the same time, however, the refineries allowed heating oil inventories to slip and, soon after, prices skyrocketed.

The industry has now built up its heating oil inventories to a satisfactory level, but now gasoline inventories are down.

"These trends demonstrate that the American refinery industry will find it extremely difficult to meet 100 percent of the demand for all products simultaneously," said Lee. "This situation should continue for at least two more years, unless there is a substantial reduction in the use of motor fuel by the American public. It is very important to Massachusetts that during the heating season, heating oil be given priority over gasoline in terms of production and allocation, both by DOE and the oil refiners," Lee added.

"It is also imperative that DOE take a stronger leadership position in developing programs to equitably reduce the consumption of gasoline through effective transportation and conservation programs."

The Energy Office still believes there will be no shortages of either gasoline or heating oil during this winter. (National inventories for gasoline are up seven million barrels over the last week). Problems may persist, however, with both the continuing upward pressure on heating oil prices and the low supplies of unleaded gasoline.

The following chart, prepared by the Massachusetts Energy Office, represents the approximate cost breakdown to get a gallon of heating oil to the consumer.

Present average price - 54 cents per gallon*

Crude oil costs	28-31 cents per gallon
Transportation costs	4.5-6 cents per gallon
Refinery	4.5-6.5 cents per gallon
Wholesaler	1-1.5 cents per gallon
Retailer	
Oil delivery only	8-9 cents per gallon
Full-service	3-4 cents per gallon

*NOTE: The numbers in these ranges may not add up to exactly 54 cents because at each step in marketing, firms differ in terms of price.

HEATING OIL PRICE SURVEY as of December 1, 1978

STATE AVERAGE - 54.0 Up .8¢ from 53.2 as of 11/17 Survey

Eastern

Average - 54.2/per gallon
Range - 50.9 to 55.9/per gallon

Increase since November 17 - .6 cents

Southeastern

Average - 53.8/per gallon
Range - 50.9 to 54.9/per gallon

Increase since November 17 - .9 cents

Cape

Average - 54.5/per gallon
Range - 50.9 to 56.9/per gallon

Increase since November 17 - .5 cents

Central

FITCHBURG AREA

Average - 50.3/per gallon
Range - 48.9 to 51.0/per gallon

Increase since November 17 - 1.2 cents

WORCESTER

Average - 54.1/per gallon
Range - 52.5 to 54.9/per gallon

Increase since November 17 - .8 cents

Western

Average - 53.2/per gallon
Range - 50.9 to 54.9/per gallon

Increase since November 17 - .8 cents

Berkshires

Average - 54.2/per gallon
Range - 52.0 to 55.6/per gallon

Increase since November 17 - 1.0 cents

Increases in Prices for Home-Heating Oil May Not Be as Sharp as Reports Indicate

By PETER B. ROCHE

Staff Reporter of THE WALL STREET JOURNAL
NEW YORK—Recent headlines would suggest that the home-heating oil picture this winter is pretty grim.

Supplies are said to be tight. Prices are at record highs. Refiners are accused of overcharging the public.

But, although fuel-oil prices have, indeed, been rising lately, the increases may not be as sharp as such reports might indicate. And, even though heating-oil inventories are down from last year's overstocked levels, supplies are expected to be more than adequate.

According to unpublished government figures obtained by the Petroleum Industry Research Foundation, a private industry research group based in New York, the average price of home-heating oil rose 5.8% in the period between October 1977 and October 1978 to 50.74 cents a gallon from 47.96 cents. That compares with an 8.9% increase in the overall price of goods and services in the U.S. for that period as measured by the Consumer Price Index.

There have been some further fuel-oil price boosts in recent weeks. Fuel oil was a major factor cited by the government last week in its announcement that producer prices for finished goods took a major jump in November.

Unaccustomed Speed

But what has startled consumers isn't just the size of the increase in heating-oil prices this fall but its unaccustomed swiftness.

Since August, retail prices have surged four cents a gallon or more in some states. In New York State, the nation's biggest home-heating oil user, retail prices are up to about 55 cents a gallon in some areas, four cents higher than earlier this year.

Are these increases justified? The suppliers insist that they are and that more price boosts probably are due before winter's end.

But observers say that year-to-year comparisons at this point distort what is happening. In the 1977-1978 winter, they note, there was a surplus in heating-oil supplies. As a result of bulging inventories, prices, wholesale and retail, were soft. Last February, when prices might have been expected to rise, or at least to hold steady, Exxon Corp., the nation's largest fuel-oil supplier, cut its quote 1/4 cent a gallon.

"There was a glut of home-heating oil last year and the companies suffered for it," says one big East Coast fuel-oil retailer. "Now they are saying that since they didn't get the price they wanted last winter, they will get it this year," he adds.

A look at Exxon's price moves on home-heating oil tells the story. In February, the company lowered prices 1/4-cent a gallon in major oil-consuming states and then took further cuts in some selected areas. Its next major price change was in late August when it increased prices 1/4 cent a gallon. It followed with a one-cent-a-gallon increase in late September and 1/2 to one-cent increases Oct. 24. The total increase so far has been two cents to 2 1/2 cents a gallon.

Mobil Corp. says that its recent price increases on home-heating oil haven't quite recouped all the cost increases that the company has experienced during the past year. "Crude oil and manufacturing costs, alone, have risen more than two cents a gallon, outstripping the 1 1/2 cents a gallon rise in Mobil's selling prices," a spokesman says.

This year, heavy demand for gasoline has forced many oil companies to continue to produce large volumes of motor fuel at a time when they normally would be increasing production of home-heating oil. The two products are produced from condensed vapors formed during the initial phase of the refining process.

A refiner can change production from

one product to another within a range of about 25% to 35% of total volume. Although this sounds like a narrow band, the cumulative effect of the annual swing in production for the industry as a whole is significant.

The later-than-normal switch to fuel-oil production this year helped create the tighter-than-normal supply situation that allowed refiners to boost prices comparatively sharply early in the heating season. Now, supply is growing steadily, perhaps precluding such sharp price boosts in the months ahead.

Inventory Figures Listed

Stocks of home-heating oil rose to 223.7 million barrels in the week ended Dec. 1, up from 214.9 million barrels the week before. Although still well below the 253.1 million barrels on hand at the same time last year, inventories were higher than the 213.7 million barrels for the comparable period in 1976.

According to Shell Oil Co., which has been at the center of the gasoline-supply controversy this year and has been forced to reduce shipments to its dealers, "the industry's distillate (home-heating oil) supply capability for this season appears to be adequate." Industry observers agree.

But, although supplies appear to be comfortable now, consumers are still likely to be hit with higher fuel bills as the winter progresses. There are several reasons.

World oil prices on the spot, or immediate cash purchase, market have soared due to the psychological impact of supply interruptions in Iran. U.S. crude-oil prices also have increased gradually under current-price controls. Storage shipment and operating costs also have risen. "Adding it all up, I've simply got to charge more money for my product," says one major refiner. "And, in the future, there's sure to be more pressure on prices," he adds.

Indeed, the expected increase in world oil prices in 1979 following this month's meeting

of the exporting nations in Abu Dhabi, combined with the simultaneous cost increases at home, could add an additional penny or two to heating-oil prices sometime next year, some observers predict.

The recent suggestion that oil companies have already been overcharging customers, as charged by some Energy Department officials and state regulators, has raised the question of reinstatement of price controls on heating oil. Those controls were removed in July 1976.

Last week, however, Deputy Energy Secretary John O'Leary said in Washington that he hadn't seen any solid evidence of "price gouging" by refiners and said that they had been able to justify the increases to the department so far.

At a hearing called by the New Jersey Department of Energy to inquire about fuel price boosts this year, Richard C. Knowles, manager of the Northeastern region of Exxon's Exxon U.S.A. unit, stated that "the increased cost of energy seen by consumers isn't reflected in the earnings of suppliers. Exxon U.S.A. still makes only a modest profit on its refining and marketing investments—about one penny, after taxes, for each gallon of product sold."

THE WALL STREET JOURNAL
Monday, Dec. 11, 1978

NEW ENGLAND

*Economic Research Office*

53 D STREET, S. E., WASHINGTON, D. C. 20003. TEL (202) 543-3380/3381

JOEL F. EISENBERG, Director

December 5, 1978

To: The New England Congressional Caucus

From: Joel Eisenberg

Re: Home Heating Oil Prices

There has been a great deal of concern expressed throughout New England about the rapid increase in home heating oil prices. This memo analyzes those increases and their causes.

- 1) As you can see in Table 1, a spot check of home heating oil prices at the retail level throughout the region indicates a price to the consumer averaging about 55¢ a gallon. This price is approximately 5¢ a gallon higher than the price being charged last year in November.
- 2) Most of this increase can be attributed to the refinery cost of heating oil. The refinery (contract cargo) price has jumped 4¢ a gallon since July, as indicated on Table 2. Wholesale and retail price increases have primarily reflected the pass through of the higher refinery prices.
- 3) These refinery increases are abnormally large for such a brief portion of the heating season. During all of the abnormally cold 76-77 heating season, from July to March, prices at the refiner level increased 5.5¢, mostly during the colder months. Last year they increased only about 1.5¢ over the entire heating season.
- 4) These increases have come at a time when heating oil stocks have been consistently lower than in previous years. This is shown in Table 3.
- 5) These lower stocks may reflect increased production of gasoline during the late summer and fall. This gasoline was being produced at the expense of distillate because the former was in unusually high demand.
- 6) Stocks of home heating oil have returned to near normal for this time of year. This means that, short of an unusually cold winter,

supply should remain adequate.

7) Given these higher supplies of home heating oil it would seem unlikely that any further significant refinery cost increases could be justified during the remainder of the heating season. Under normal conditions we could expect to see another .5¢ to 1¢ increase from the combined retail and wholesale level in the months ahead.

8) Additional price increases could be caused by a number of factors. Amongst these are:

1. Tightened supplies due to abnormally severe weather;
2. Continued pressure on crude prices as a result of the turmoil in Iran;
3. A significant rise in crude prices as a result of the OPEC meeting later in December;
4. Continued high demand and spot shortages for gasoline supplies.

9) No evidence is apparent that would justify this level of refinery increases over such a brief period of time. This level of the market should be very carefully scrutinized.

Table 1
Spot Check
Retail heating oil prices
Nov. 30, 1978

1. New Haven, Conn.	56.9¢
2. Waterbury	55.9¢
3. Hartford	55.9¢
4. Portland	53.9¢
5. Bridgeport	54.4¢
6. Boston, Mass.	54.9¢
7. North Adams	54.6¢
8. Springfield	54.55¢
9. Danvers	54.9¢
10. Cambridge	54.9¢
11. Framingham	54.9¢
12. Plymouth	54.9¢
13. Medford	54.9¢
14. Worcester	53.9¢
15. Quincy	55.9¢
16. Lewiston, Maine	53.3¢
17. Portland	52.9¢
18. Burlington, Vermont	54.9¢
19. Laconia, N.H.	54.9¢
20. Manchester	53.9¢
21. Providence, R.I.	54.5¢
22. Pawtucket	54.9¢

Table 2
Home Heating Oil
Contract Cargo Price Increases*

	July - Nov.	July - March
75-76	2.2¢	3.7¢
76-77	1.5¢	5.5¢
77-78	1.5¢	1.5¢
78-79	4.0¢	

* This reflects refiner charges plus transportation to New York. Since some product is also purchased on a "spot" basis, actual refiner prices charges to wholesalers could tend to be somewhat higher.

Home Heating Oil
Terminal Price Increases**

	July - Nov.	Non-Refinery Increases	July - March	Non Refiner Increases
76-77	2.0¢	.5¢	6.1	.6
77-78	.7¢	-.8¢	1.9	.4
78-79	3.9¢	-.1¢		

** Wholesale

Table 3

(000 Barrels)

Distillate Stocks

	75-76	%	76-77	%	77-78	%	78-79
Aug.	190,886	+4.7	199,821	+8.5	216,743	-13	188,128
Sept.	211,459	+6.2	224,486	+5.0	235,692	-11.7	204,567
Oct.	225,954	+4.9	237,020	+4.2	246,969	-12.8	215,317
Nov.	235,000	+1.5	231,400	+12.6	260,503	-14.4	223,000
Dec.	222,033		207,871		263,124		
Jan.	193,359		170,189		226,436		
Feb.	159,460		133,528		179,699		
March	149,778		142,580		152,341		
April	142,067		147,710		137,174		
May	141,980		150,681		138,644		
June	157,623		171,511		151,977		
July	177,967		195,336		169,240		

- Gasoline Stocks
(000 barrels)

	75-76	76-77	77-78	78-79
Aug.		225,835	248,943	211,182
Sept.		229,666	247,068	217,005
Oct.		227,448	247,711	219,954
Nov.		220,872	245,062	215,888
Dec.		229,457	254,100	
Jan.		244,148	266,962	
Feb.		248,524	274,857	
March	241,915	256,511	272,533	
April	233,560	258,514	260,174	
May	218,107	255,069	240,732	
June	221,918	253,504	231,519	
July	224,471	252,325	226,182	

STATEMENT

of the

NEW ENGLAND FUEL INSTITUTE

on

"AMENDMENT TO THE MANDATORY PRICE REGULATIONS
ALLOWING REFINERS TO ALLOCATE ADDITIONAL
INCREASED COSTS TO MOTOR GASOLINE"

I. Introduction

My name is Ronell Harris. I am President of the Harris Oil Company of Portland, Maine and am appearing on behalf of the New England Fuel Institute ("NEFI"), of which I am President. With me today is Mr. William J. Breed, President of the Johnson & Dix Fuel Corp. of Ascutney, Vermont, a member of the Board of Directors of NEFI and also a member of its Fuel Oil Supply Study Committee. We wish to comment on the Department of Energy's ("DOE") "Amendment to the Mandatory Price Regulations Allowing Refiners to Allocate Increased Costs to Motor Gasoline" and the Draft Environmental Impact Statement ("DEIS") which addresses that proposal.

NEFI is an association composed of more than 1,000 independent retail and wholesale home heating oil distributors throughout a six-state region. The independents serve over 2,400,000 retail home heating oil customers and market about 86% of the 4 billion gallons of No. 2 home heating oil sold throughout the area at the retail level and 40% of all gallonage sold at wholesale.

II. General Comments

The primary objective of the proposed regulations is to permit refiners to allocate increased costs to gasoline on a greater than pro rata volumetric basis or to "tilt" those costs to gasoline. Such action will restore the traditional relationship between market prices for gasoline and fuel oil, reflecting

the higher costs of producing gasoline. NEFI has continually supported this amendment and believes that its implementation is long overdue, ^{*/} both as a matter of equity and as a matter of law.

The Emergency Petroleum Allocation Act of 1973 ("EPAA"), 15 U.S.C. §§751 et seq. requires that the DOE promulgate regulations which to the maximum extent practicable "equitably distribute crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, . . . and among all users." (Emphasis added). ^{**/} In addition, EPAA mandates that DOE regulations provide for "minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms." ^{***/}

Since 1976, when middle distillates were exempted from allocation and price controls, DOE regulations have not permitted more than a volumetric share of crude oil acquisition and refining costs to be allocated to gasoline. This lack of flexibility has unnecessarily increased the cost of home heating oil and forced consumers of that product to pay inequitable (i.e., higher) prices.

As the panel is well aware, it costs more to refine gasoline than it does heating oil, due primarily to the sophisticated equipment required for processing and higher refinery

^{*/} See Statement of Robert Fawcett on behalf of NEFI on "Allocation of Increased Costs to Gasoline" (March 24, 1977).

^{**/} Section 4(b)(1)(F) of EPAA, supra.

^{***/} Section 4(b)(1)(I) of EPAA, supra.

capital and operational costs. In recent years gasoline production costs have risen much more sharply than fuel oil costs because of the more complex equipment required for the production of unleaded gasoline, as well as the additional quantity of crude oil required to produce each gallon of unleaded gasoline. Unfortunately, homeowners rather than motorists have borne a disproportionate share of these increases.

Prior to the institution of mandatory petroleum price regulations in 1973, and from 1973 to 1976 when both gasoline and heating oil were under price controls, the relative costs of producing gasoline and heating oil were accurately reflected in refinery pricing and thus were equitably borne by the consumers of each product. However, since July 1, 1976, DOE regulations have prohibited the tilt of additional costs to gasoline prices. Thus, if gasoline production of a refinery is equivalent to 50% of that refinery's total volumetric output, the refiner may pass only 50% of the production costs onto gasoline -- despite the fact that the costs attributable to gasoline production may be 60% or more of the total costs. Since a refiner cannot afford to absorb these additional costs, they are then passed through to the consumer of decontrolled products, particularly home heating oil. This distorted allocation creates fundamental, long range economic problems for home heating oil consumers, the majority of which are in the middle or lower income brackets and whose homes operate with antiquated oil heating equipment, often 30 to 40 years old.

Through its regulations, DOE has directly and knowingly forced these consumers to subsidize the production of gasoline at enormous cost.

DOE estimates that the additional costs borne by home heating oil consumers have equalled one to two cents per gallon. In New England alone the additional burden on fuel oil consumers since July 1, 1976 has been more than \$100 million; nationally the total has been more than \$500 million. NEFI emphasizes that these figures are minimum totals, and the actual consumer burden was probably far greater.

As DOE is aware, home heating oil is an essential product in our region. Fuel oil consumers in New England and throughout the nation have substantially reduced consumption over the past five years.^{*/} In fact, there is little more conservation which could be achieved without a great deal of personal and physical hardship. The impact of adding costs to fuel oil is proportionately greater on lower income families because they consume considerably more heating oil than gasoline. Further, in the height of the winter, the homeowner has little choice but to use heating oil while there are choices that can be made as to the use of an automobile and the consequent consumption of gasoline.

^{*/} The DOE Petroleum Demand Watch, released December 18, shows that for the four weeks ending December 8, 1978, demand for distillate was 12.9% below the 1977 level, down 20.9% from 1976, and 10.5% below 1973.

NEFI, an association of over 1,000 small, independent heating oil distributors, has supported and continues to support DOE's proposal to permit the tilting of increased costs to gasoline as has historically been done under free market conditions. When the Department announced the promulgation of the tilt regulations on October 22, NEFI was pleased that action was finally being taken to correct this inequity. DOE's subsequent decision to delay the implementation of these regulations is regrettable and wrong. The environmental issue (fuel switching) that has been raised by certain parties is not significant in the context of this regulation; further, we believe that the Congressional mandate established by the EPAA is controlling and requires prompt implementation of the regulation.

III. Specific Comments

A. Delay of Tilt

In the Federal Register Notices of December 8, 1978, 43 F.R. 57609 and 43 F.R. 57610, DOE announced that it will continue its rulemaking concerning the "tilt" regulations "at least until completion of a final environmental impact statement" ("EIS"). DOE explained that a draft environmental impact state-

ment ("DEIS") concerning the deregulation of motor gasoline discusses the tilt regulations as an alternative to that proposal. The DEIS for deregulation will be reviewed in order to determine whether to implement the tilt. By its action, DOE appears to be taking the position that the tilt regulations cannot be implemented without an EIS. NEFI disagrees.

B. NEPA Requirements

Under Section 102(2)(C) of NEPA, 42 U.S.C. §4332(2)(C), "Congress authorizes and directs that to the fullest extent possible . . . all agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement of the responsible official on -- (i) the environmental impact of the proposed action" (emphasis added).

To determine if an EIS is required in any instant case, one must review (1) the specific guidelines of the Federal agency involved with the project and (2) the interpretations of NEPA by the courts.

1. DOE Guidelines

DOE's published guidelines implementing NEPA are contained in 10 C.F.R. Part 208. Specifically, DOE states,

The following types of actions are not ordinarily considered to be major Federal actions affecting the quality of the human environment: adjustments, assignments, exceptions, exemptions, other proceedings, appeals, stays or modifications or recessions of orders pursuant to Part 205 of this Chapter. 10 C.F.R. §208.3(c) (emphasis added).

Since DOE views the tilt as a partial deregulation or exemption and since complete exemption of motor gasoline from regulation is not a "major Federal action" warranting an EIS, partial exemption cannot, in fact and in logic, be considered such an action.

2. Judicial Guidance

The courts have not specifically defined the meaning of the phrase "major Federal action significantly affecting the quality of the human environment." NAACP v. Wilmington Medical Center, Inc., 436 F.Supp. 1194 (D. Del. 1977); Breckinridge v. Rumsfeld, 537 F.2d 864 (6th Cir. 1976), cert. denied 97 S.Ct. 785, 429 U.S. 1066, 50 L.Ed 2d 777, Mont Vernon Preservation Soc. v. Clements, 415 F.Supp. 141 (1976); Julis v. City of Cedar Rapids, Iowa, 349 F.Supp. 88 (1972). Generally the phrase is defined on a case-by-case basis. Transcontinental Gas Pipe Line Corp. v. Hackensack Meadowlands Devl. Comm., 464 F.2d 1358 (3d Cir. 1972).

The first portion of the phrase, a major Federal action, is one that requires substantial planning, time, resources or expenditure. Township of Ridley v. Blanchette, 421 F.Supp. 435 (1976); Natural Resources Defense Council, Inc. v. Grant, 341 F.Supp. 356 (1972). The term "major Federal action" connotes a Federal

action of considerable importance. Within the meaning of that definition, implementation of the tilt regulations is not a major Federal action; it simply provides refiners with additional flexibility to allocate to gasoline the higher refining costs associated with the production of that product. At most, DOE predicts that the increase of gasoline prices will be approximately 3-4 cents per gallon. In light of the fact that gasoline prices have increased 35 cents over the past five years, the 3 to 4 cent increase is relatively minor.^{*/} The sharp increases of recent years appear to have had little impact on total consumption patterns; according to the latest DOE Demand Watch, "Motor gasoline demand was 1.3 percent above last year's demand, 3.7 percent above the 1976 level, and 9.5 percent above the 1973 level."^{**/} The impact of the tilt on total consumption can thus be expected to be insignificant.

The second half of the phrase "significantly affecting the quality of the human environment" generally has been held to mean "having an important or meaningful effect, direct or indirect." Smith v. City of Cookeville, 381 F.Supp. 100 (1974); Natural Resources Defense Council, Inc. v. Grant, supra. It is being argued that while the tilt may not affect total consumption, it will affect the relative consumption of leaded and unleaded fuels (i.e., result in fuel switching). NEFI disagrees. First, in view of the insignificant impact of the major escalation of prices over the

^{*/} Draft Environmental Impact Statement: Motor Gasoline Deregulation, U.S. Department of Energy (November 1978), at p. xviii.

^{**/} DOE Petroleum Demand Watch published by DOE Office of Public Affairs (December 18, 1978).

past five years, it is unlikely that the tilt will have a significant impact on fuel switching. Second, no credible evidence, sufficient to meet judicial standards of proof, has been provided in support of the allegation that fuel switching will occur. Third, there is evidence that at least half, perhaps more, of the switching is done for reasons of performance, not price. Fourth, according to DOE's DEIS "under the worst case fuel switching assumptions (one percent likelihood) for price differential effects, an incremental impact could delay achievement of the National Ambient Air Quality Standards in problem cities by about 7 months for oxidants and 16 months for carbon monoxide." In light of this possible minor delay in attaining these standards, the tilt regulations cannot be said to have a "significant effect on the environment," requiring an EIS.

In summary, sufficient evidence has not been provided to establish that the regulation will have a "significant effect," in accordance with the established judicial precedents.

C. Purpose of EIS

The primary purpose served by the preparation of an EIS is: (1) to provide the decision-makers with information concerning the environmental consequences of the proposed action, and (2) to provide the consuming public with environmental information and provide an opportunity for their participation in the decision-making process. Citizens Against Toxic Sprays, Inc. v. Bergland, 428 F.Supp. 908 (1977); Warm Springs Dam Task Force v. Gribble, 431 F.Supp. 320 (1977). In the instant case regulatory

action to date has met these objections. DOE has reviewed the environmental consequences of the proposed tilt regulation and the public has had ample opportunity since 1977 to participate in the rulemaking process.

D. Additional Procedures

Further, should DOE promulgate the tilt regulations without additional proceedings, its action could not be overturned. A Federal agency is justified in concluding no EIS is required if that decision is grounded on supporting evidence. Nucleus of Chicago Homeowners Ass'n. v. Lynn, 254 F.2d 225 (7th Cir. 1975); Hanly v. Mitchell, 460 F.2d 640, 646 (2d Cir. 1972), cert. denied 409 U.S. 990, 93 S.Ct. 313, 34 LEP 256. The preliminary assessment on fuel-switching due to the tilt is sufficient to meet this standard. No further action need be taken.

E. Timing

Additionally, there is a compelling reason why DOE should honor its commitment and implement the tilt regulations, effective December 1, 1978. If implementation is delayed until February or March 1979 when DOE completes the final EIS, as suggested in the Federal Register Notice, unnecessary costs associated with gasoline production will be passed through onto home heating oil and inequitable prices will be perpetuated contrary to the EPAA for another heating season.

IV. DOF Authority

Even if we assume that DOE completes its review of this issue and determines that fuel switching significantly affects the environment, the Department cannot refrain from implementing the tilt in order to "protect the environment"; for such an act would involve an implicit determination by DOE that the burden for assuring that there is clean air must be placed on a group of consumers -- home heating oil consumers -- who have not created the problem.^{*/} This would be a violation of the basic principles of law and equity which require that there be a causal relationship between the creator of the problem and the solution to that problem.

Furthermore, while DOE should consider the environmental consequences of its actions, the mandate established by the Congress in the EPAA requires that the Department ensure equitable pricing among all users of refined petroleum products. Thus, if there is any statutory conflict between EPAA and NEPA, NEPA must give way. Flint Ridge Development v. Scenic Rivers Association of Okl., 426 U.S. 776, 96 S.Ct. 2430, 49 L.Ed. 2d 305 (1976).

This issue is of fundamental importance to fuel oil consumers and involves basic issues of law and equity; therefore, if DOE were to refrain from implementing the tilt in order to "protect the environment," those consumers would, we believe, be forced to seek court relief.

^{*/} It should be noted that the impact on the home heating oil consumer is magnified by the fact that refiners generally produce twice as much gasoline as home heating oil. As a result, each one cent per gallon of increased costs not passed on to gasoline forces a two cent per gallon increase in the cost of home heating oil.

V. Conclusion

In conclusion, DOE, as mandated by EPAA, should implement the tilt regulations in order to lessen the burden on home heating oil prices this winter. DOE can take such action without further delay because under DOE guidelines and judicial interpretations of NEPA the tilt regulation is not a "major Federal action significantly affecting the quality of the human environment," thereby warranting an EIS. Moreover, objectives served by an EIS have been met by the regulatory process to date. Delay only continues unnecessarily high home heating oil prices and injures the very consumers DOE is mandated by Congress to protect.

NEFI urges immediate promulgation of the tilt regulations.

Thank you.

New England Fuel Institute

20 SUMMER STREET • P.O. BOX 383 • WATERTOWN, MASSACHUSETTS 02172 • (517) 924-1000 • Telex: NEFI-WTN 922-401

November 23, 1978

Mr. Ralph Nadar
Public Citizen
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Ralph:

It was with some considerable consternation and alarm that I read about the recent legal action filed by you and two of your organizations; Public Citizen and the Center for Auto Safety, the purpose of which was to block the gasoline cost pass-through regulation of the Department of Energy that was promulgated to become effective on December 1. This legal action, if successful, would be a serious blow to the hard pressed consumers of home heating oil throughout the East Coast and the 26 heating oil marketing states in the nation and would result in perpetuating a gross inequity that has seen heating oil consumers of the United States subsidize the cost of gasoline throughout the nation for over two years.

This legal action, in view of the purpose of the tilt regulation that was to become effective December 1, is fundamentally anti-consumer and would result in extending and perpetuating what is a blatant consumer injustice.

Because of this I would suspect that the legal case was filed without your complete review or understanding of the issues at stake. For this reason, I am taking this opportunity to bring to your attention the facts of the case and hope that you will prevail upon the people in your organization to withdraw from the proceeding.

It would appear that those of your staff who are handling this action have misunderstood the primary issue that resulted in this regulation being promulgated. This is, whether the home heating oil consumer should continue to subsidize costs directly related to the production of motor gasoline. The ancillary questions of leaded-unleaded pricing and fuel switching are merely secondary issues. It is substantially a question of heating oil consumers paying the bill for gasoline consumers.

As you probably well know, it costs more to produce and refine gasoline. This is due primarily to the sophisticated equipment that is required for the process and higher refinery capital and operational costs. In recent years gasoline production costs have risen much more sharply than fuel oil costs because of the necessary complex equipment required to be installed in order to produce unleaded gasoline as well as the additional quantity of crude oil required to produce each gallon of unleaded gasoline.

Prior to the institution of mandatory petroleum price regulations in 1973, and from 1973 to 1976 when both gasoline and heating oil were under price controls, the relative costs of producing gasoline and heating oil were equitably borne by the consumers of each product.

However, since July 1, 1976, unfortunately for the 14 million heating oil consumers in the United States, the Department of Energy and its predecessor organization, the Federal Energy Administration, has had in effect a regulation which prohibits refiners from passing onto gasoline (leaded and unleaded) more than the volumetric proportional costs of producing gasoline. Therefore, if gasoline production of a refinery is equivalent to 50% of that refinery's total output, the refiner may pass onto gasoline only 50% of the crude oil costs and 50% of the related operational refinery costs -- in spite of the fact that the costs attributable to gasoline production may be 60% or more of the total costs.

This creates the basis for a substantial, continuing economic inequity for heating oil consumers. The misallocation of costs resulting, creates fundamental, long range problems for home heating oil consumers, the majority of which are in the middle or lower income brackets since oil heating equipment has been on the market for over 75 years and heats a massive number of older homes.

Since 1976, for two and a half years now, these consumers are in a second class position and have been forced to subsidize the production of gasoline causing the price of home heating oil to be pushed higher and higher because of an arbitrary quirk and peculiarity of the DOE regulations. This cost to heating oil consumers has been enormous and the DOE estimates that the additional costs of gasoline production borne by home heating oil consumers has equalled one to two cents per gallon.

In New England alone homeowners as a minimum, have been forced to pay \$50,000,000 more per year for their home heating oil bills and on a national basis the total has been at least a quarter of a billion dollars. For the past two and a half years New Englanders have subsidized gasoline production to the tune of at least \$125,000,000 and for the nation homeheating oil consumers have paid \$625,000,000 more than they should. And please note, these are minimal totals. The actual consumer burden was probably far greater.

It is with some certainty that I feel that I need not remind you that home heating oil is an essential product and that substantial conservation steps have already been taken by homeowners over the last two years to reduce the substantial economic impact that rising heating oil bills have caused. To do anything that would perpetuate this continuing impact which would continue if the legal action is successful, is inequitable, unjust and lacks the quality of mercy.

Further, there is little more home heating oil that could be conserved without a great deal of personal and physical hardship, and the impact on low income families is proportionately greater because they consume considerably more heating oil than gasoline. Further, in the depth of the winter, the homeowner has little choice but to use heating oil while there are continual optional judgements available as to the quantitative use of an automobile and the consequent consumption of gasoline.

Those of us at NEFI, an association of over 1,000 small business, independent heating oil distributors, support the DOE proposal, as did our Senators and Members of the House of Representatives. Our actions were an attempt to right an unjust situation, a very serious wrong, to the purpose that the subsidization of gasoline costs by hard pressed fuel oil consumers of our region would cease.

There is no doubt that this subsidization is a clear and obvious cause of inequity and injustice. It is unfair and oppressive and further is a clear consumer issue. For this reason we are deeply concerned and disturbed that your organization, as a long time friend of the consumer, would attempt to block a DOE regulation that favors heating oil consumers, as an adjustment of an inequitable situation. We cannot understand how your organization could attempt legally to perpetuate a system under which heating oil consumers bear the burden of increased costs that should be attributed to gasoline consumers.

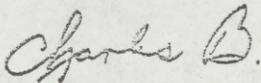
The fuel switching issue, which is the core of the legal cause of your groups' position, is not a primary issue, merely a secondary one. It cannot be properly or effectively dealt with in the context of the tilt regulations. The solution to this problem lies elsewhere.

It would appear that unfortunately, in their zeal to help the consumer, your people have confused the issues and have ignored the fundamental consumer issue I have set forth above. In our opinion, your organization has taken an unfair, anti-heating oil consumer position. We cannot believe that you would want hard pressed home heating oil consumers in the United States to continue to suffer economically under the inequitable situation that the "tilt" regulation would adjust.

Of course, any of us will be happy to meet with you to discuss this matter in depth at your convenience, but it appears that the facts are so clear and so apparent, that we look to your reconsideration and withdrawal of the legal action which would be in line with the philosophy and programs that you have so often expressed and effectively achieved on behalf of American consumers. We would then hope that you would join us in supporting the DOE regulation to remove this long standing unfair consumer burden that has cost New England alone more than \$100,000,000 and the heating oil consumers of the nation \$600,000,000.

I look forward with some anticipation to hearing from you.

Sincerely,



Charles H. Burkhardt
Executive Vice President

CHB:jb

P.S.: Because of their direct interest in this matter, I am sending copies of this letter to New England's 12 Senators and 25 Members of the House.

CB.

November 1, 1978

Dear Valued Customer:

From time to time when an extraordinary event occurs in the oil industry, I have communicated with our family of customers to attempt to help them understand what is going on--and this is one of those times. In the past 10 weeks our cost of oil has increased in excess of 3¢ a gallon. This increase is in addition to the approximate 10% increase in all of our other costs--labor, repair parts, interest, insurance, soap, taxes and all the other things that are required to make a business go. We are told (as if this were not enough) to expect another 3¢ increase within the next 8 to 10 weeks; and I must say that we are appalled at the amount of money it will take for you to heat your homes and for us just to remain in business.

Many of you will ask, and rightfully so, how the retailers (that's us) fare in these times. Do we make a killing with so much money being handled? Or are we left dangling by our suppliers? Unfortunately, the answer is that our margins as a percentage of our sales have gone down in a steady decline since 1973 when the initial price upheaval took place. This reduction has occurred in the face of rapidly escalating costs of doing business.

As we attempt to understand what is happening and who is at fault, we can only look to our suppliers, the refiners who are commonly called "the majors"; these are the small group of people who drill, refine, and transport the fuel oil to people like us, the retailers. We are told that these companies require these additional profits to convince them that they should gamble millions and even billions of dollars in looking for oil in such places as Alaska and off the continental shelf. We are told that this is far better than importing it from foreign countries which might at the most inopportune time be at odds with us. We are told a lot of things, but the net result is that prices this year will increase between 5¢ and 6¢ a gallon; this is a 10% to 12% jump.



ENERGY UNLIMITED

INC.

In spite of the foregoing over which we appear to have no control, I want you to know that our company is attempting to respond to these increases in two very different ways:

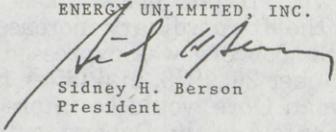
- 1) I am active nationally in the oil industry serving as a member of the Department of Energy Fuel Oil Marketing Advisory Committee which is the oil industry's voice into the Department of Energy. You can be sure that I am most vocal in requesting the D.O.E. to attempt to make the refiners justify this rapid escalation in our costs.
- 2) We have responded to our mutual problems through complete dedication to the conservation of oil. Our Energy Savings Program ("ESP") has been acknowledged to be one of the best of its type in the country. Those of you who have taken advantage of it surely understand that the conservation response to oil prices is the best response.

It is interesting to note that while the increase in cost we worry so much about amounts to approximately 10% - 12%, the initial savings by way of conservation are generally in the area of 15% - 30%. However, we have found that energy conservation is not a one-shot saving, but rather continued attention must be paid to the maintenance of the lowered level of energy consumption in the succeeding years. We are committed to continue and assist our customers in this effort.

Over the next few weeks you will undoubtedly read and hear of numerous other theories and rationale of why your oil prices are rising so dramatically. Although we at Oilpower will do all we can to keep your total energy costs down, we must all renew our commitment to control our consumption since no one has yet found a way to control the multi-national refiners.

Sincerely,

OILPOWER DIVISION
ENERGY UNLIMITED, INC.



Sidney H. Berson
President

Mr. MOFFETT. Thank you very much.

STATEMENT OF ROBERT GREENES

Mr. GREENES. I will try to make points that have not been made previously by summarizing my testimony. The National Oil Jobbers is a federation of 43 State and regional trade associations representing thousands of independent small businessmen, and our members market approximately 25 percent of the gasoline marketed in this country and 75 percent of the home-heating oil.

I am in the heating oil business in New York City. I also represent the Empire State Petroleum Association of New York, the same State Mr. Ouriel comes from, and I represent over 600 members who are engaged in the marketing of the largest volume of heating oil sold by any State in the Union.

With me on my left is Jack Wade of Elizabeth, N.J., who is president-elect of the National Oil Jobbers Council and who represented the council as a witness in the evidentiary hearings of DOE last August.

NOJC has worked consistently to maintain a posture of openness and communication in its relations with consumers, refiners, and the Government. We were the only industry representative participating at the heat oil evidentiary hearing last August, and the evidence presented by the Office of Fuels Regulation and the conclusions reached by the Office of Hearings and Appeals confirmed what we have been saying all along. The wholesale and retail levels of the heating oil industry are characterized by workable competition for they compete not only among themselves, but also with the massive electric and gas utilities, and as a result, rates of return at the wholesaling and retailing levels have been constrained. In other words, the small, independent resellers of heating oil have not been profiteering at the expense of their customers.

It is important to note that consumers are not the only ones concerned with recent price hikes. NOJC members have been alarmed by the extraordinary increases being levied at the refinery gate, and this concern was expressed directly to Secretary Schlesinger on October 20, 1978, in a letter from Jack Wade.

Congressman Gore would be interested in this. A copy was sent to Mr. Shanenfeld in the Department of Justice. So we were aware at that time of the implications, both in the Department of Energy and the Department of Justice.

The issue was raised again by Jack at the DOE Fuel Oil Advisory Committee on October 23, and it has been the subject of discussion at NOJC Fuel Oil Committee meetings.

Because the real reasons behind the precipitous increases can only be speculated upon by marketers and because they must respond to their customers' worried questions, we have addressed inquiries to the 18 major refiners requesting some explanation. Those letters were sent November 21, and responses are now beginning to trickle in. We will be happy to provide copies of that correspondence for the record if this panel deems it worthwhile, but time constraints prevented analysis of the responses prior to this hearing.

On annualized average price increases, annualized average price increases for heating oil are deceptive and not representative. No one uses heating oil on an annualized average basis. In the regions of the country I come from, we use 50 percent of our oil in December, January and February. The price in December, January and February is the important price, not the annualized price averaging the July and August price. So I suggest that the committee, in regarding the testimony and evidence presented today, look for weighted average prices depending upon usage rather than annualized.

At the evidentiary hearing, NOJC undertook to represent the interests of the retail and wholesale segments of the petroleum industry and the findings made by the Office of Hearings and Appeals were consistent with the position advanced by the council.

Briefly, we stated that the DOE should not reimpose controls on, or reinstate benchmark monitoring of the retail or wholesale segments of the heating oil industry. The great weight of the relevant testimony supported the conclusion that these segments of the distribution chain are vigorously competitive both in structure and in practice. Although product and nonproduct costs to the independent marketer have been rising significantly, the competitive forces in the marketplace are operating so effectively that he is not always able to pass them through to his customers.

We maintained that consumers would not be served by the reimposition of controls on the wholesale or retail levels. The hearing record clearly showed that residential prices of heating oil increased greatly during the period of controls and supports the conclusion that the reimposition of controls would not insulate poor and fixed-income families from the devastating effects of rising prices. We have seen how increases in product and nonproduct costs as well as heavy State and local taxes have contributed to the consumers' burden—and none of these would be effectively contained by a system of regulated prices.

Inflating oil prices, as Mr. Berson said, are taking their toll on independent marketers as well as on consumers. Because the price of heating oil has risen so extremely since the embargo, many residential customers are having difficulty paying their oil bills on time. To the independent oil dealer, this translates into the expensive burden of aging accounts receivables which in turn translate into a higher cost of doing business—a part of which at least must be passed through to the same customers who are having trouble in the first place. At the same time that aging accounts receivables are restricting his cash flow, his suppliers are demanding full cash payment from him in less time than before or reducing or eliminating other historical discounts or terms of sale.

There are some who have demanded that fuel oil dealers be prohibited from cutting off customers for nonpayment of bills in the same way that utilities have been restricted.

It is unrealistic to compare the small oil dealer with the large regulated electric and gas utilities which have the financial flexibility to carry accounts receivables for a longer period of time. Those utilities are guaranteed a fair rate of return on investment; heating oil dealers obviously do not enjoy such a luxury.

NOJC believes that over the short term, the most effective means of protecting consumers without undermining the competitive viability of independent heating oil industry is in the form of voluntary measures promoted by the government and supported by industry and consumers. A voluntary program at the State or local level could be designed to target specific problem areas and through a coordinated dialog the interested groups could develop, evaluate and recommend potential solutions. With specificity as the rule, interference with market mechanics could be kept to a minimum. Levels of flexibility and imagination in dealing with problems could be reached which would be unheard of at the Federal level.

NOJC has endorsed and pledged to support the concept, encouraging its State and regional association members to take a lead role in establishing a dialog. Consumers and dealers could have a round table in which they could be having an opportunity to join in recognizing common interests and working together to achieve mutually important goals such as reduction or abolition of State sales taxes on heating fuels, which in many areas have constituted a significant component in the residential price of oil.

At the Federal level the DOE Fuel Oil Marketing Advisory Committee could address those problems which are being experienced in broad regions or across the Nation; the committee could study the situations reported and develop appropriate recommendations for legislative or regulatory action.

The more critical data-gathering role, however, should be placed at the State level where prices, supplies, inventories, et cetera, could be observed with a precision and familiarity that cannot be achieved by the DOE on a short-term basis.

As part of the monitoring system which was announced last year, DOE included the funding of a pilot program in the six New England States which involved the development of a coordinated effort between energy offices in those States and the DOE. In each instance the States were allowed to tailor the mechanics of their heating oil survey programs and quick response systems to meet the needs of their individual circumstances. In every instance the State energy officers were in a position to address the requirements of the small business heating oil distributors as well as those of the consumers.

Assistance in the form of funding and program guidelines for the States from DOE may be necessary to implement the concepts of the New England program on a national scale. Moreover, it would be desirable for DOE to conduct the indepth analysis of the data collected by the States. It would seem clear and supported by the great weight of the evidence that the benefits of such a program would be far preferable to the continued development by DOE of crude benchmark gross margins.

NOJC believes that the comprehensive study of the heating oil market which has been commissioned by DOE's Office of Fuels Regulation and endorsed by the OHA findings will provide additional insight in the complex issues confronting the independent heating oil industry. There are gaps in the information which is currently available, and we believe this is largely a result of the fragmented, competitive nature of the business.

I would like to introduce a new point at this juncture, Mr. Chairman.

Over the long term we believe that just as this subcommittee has endorsed the sheltering of residential natural gas consumers from the impact of escalating prices, so too it should consider providing similar relief to the residential consumers of heating oil.

As for the refiners, we would prefer not to venture an opinion as to the competitiveness of the refining industry since we, as marketers, do not have access to the information and evaluation resources which would be required to make such an opinion responsible. As I indicated earlier, NOJC is interested in seeing more in the nature of cost justifications for recent price increases that appear on the surface to be greater than usual for this time of year. As a result, we support Mr. O'Leary's recommendation this morning which called upon the DOE to study refiner methods of cost allocation as well as that which summons the refiners themselves forward to defend their marketing practices in the period since decontrol.

We have filed a written submission with the subcommittee regarding middle distillate prices and supplies, and we are ready to answer questions on those as well as on my remarks here today. Thank you for your attention.

Mr. MOFFETT. Thank you, Mr. Greenes. In terms of that proposed January proceeding, sometimes called a conference, you say you endorsed it. You and your organization went through a rather rigorous proceeding, with sworn testimony, cross-examination, and so forth. You may have heard Mr. O'Leary respond to one of my questions earlier today and say that he has requested that a similar proceeding be conducted in January. He seemed to step back from that later on in the hearing, though. It seems to me unfair that a different type of proceeding would be held in January than what you went through. Do you not think so?

Mr. GREENES. Our original position was that the refiners be called forth in some type of evidentiary hearing, and I think the chairman himself suggested that to Mr. O'Leary. I noticed Mr. O'Leary's words very carefully, as you did. He was requesting Mr. Bardine to consider holding that type of hearing. I would say our recommendation is that the hearing should be at least on the level where the refiners come forward under oath and be subject to cross-examination and to cost-justify the increases on heating oil.

Mr. MOFFETT. You may recall that later in the hearing, Mr. O'Leary indicated he had received information that would seem to indicate it is not going to be that type of proceeding. I can assure you that I am going to look into that and I think some other members of the subcommittee will also.

Mr. GREENES. If it were not, I am sure we would not agree that would be sufficient.

Mr. MOFFETT. Thank you.

As far as your proposal for some sort of incremental pricing—I think you were talking about something similar to the natural gas incremental pricing—do you have any suggestion as to how that might work, how it might be put together?

Mr. GREENES. Yes. We have some. I do not think it appropriate to introduce all of them orally into the record now. We would like to hold the record open so that we might submit them to you.

Mr. MOFFETT. You may.

[The following information was received for the record:]

NATIONAL OIL JOBBERS COUNCIL

Incremental Pricing of Oil
Under DeregulationBACKGROUND

The National Oil Jobbers Council has not formally endorsed the implementation of an "incremental pricing" provision for oil. The purpose of this paper is to present a discussion of the possible effects of such a provision in any oil deregulation program enacted in the United States. Current regulations on the price of oil are scheduled to expire on May 31, 1979, but may be extended temporarily by the President, and may, of course, be extended for any amount of time by an act of Congress.

An "incremental pricing" provision would assume that, under a deregulation proposal, oil which has already been discovered and is being produced currently, would continue to be regulated at a price lower than the deregulated market price. An "incremental pricing" provision, in this context, would allocate the price¹ of the old, regulated oil to the residential use of heating oil, similar to the incremental pricing provision for natural gas in the National Energy Act.

The benefit of such a system would be that it would protect heating oil users from the sudden, sharp increases in the price of oil under deregulation. Since oil heat tends to be used primarily in older homes, occupied to a large extent by those in lower income classes, an incremental pricing provision would protect those least able to absorb the shock of deregulated oil prices.

The main drawback to such a system would be its complexity. The problems that have already been uncovered in the implementation of the incremental pricing program for natural gas may be increased in the sale of fuel oil, which operates in a free market, rather than the controlled, public utility environment of natural gas.

CURRENT REGULATIONS

Currently the price of crude oil is divided into several cate-

¹Note that only the oil itself, theoretically at the lowest cost base, would allocate produc-

ice of the oil would be allocated, not the purpose of pricing, it would be that the residential user had received the opportunity to attempt would actually be made to allocate users under this proposal.

gories. The main categories for the purpose of this analysis are:

- Lower tier crude oil, which is considered "old" oil. The ceiling price for this oil is the price that was posted on May 15, 1973 for this oil or similar oil in kind or quality. Monthly adjustments for inflation are made in this 1973 price. Presently about 40% of domestic oil production is lower tier oil, at an average wellhead price of about \$5.50 a barrel.
- Upper tier crude oil, which is considered "new" oil. The ceiling price for this oil is the price that was posted on September 30, 1975 for this oil or similar oil in kind or quality. Monthly adjustments for inflation are made in the 1975 price. Presently about 35% of domestic oil production is upper tier oil, at an average wellhead price of about \$12.00 a barrel.

ECONOMIC ANALYSIS

Because it is impossible to determine at this time what sort of crude oil deregulation program will be implemented, it is impossible to predict the economic effect of such a program at this time. However, based on certain assumptions, the following calculations can be made.

If the current ceiling price is maintained for old, lower tier oil, and the other categories of oil are deregulated, if the lower tier oil is reserved entirely for home heating use, and if current average margin levels at the refiner, wholesale, and retail level remain as they are currently, then the price of home heating oil to the consumer under these circumstances would be 36¢ per gallon.

HEATING OIL--PRICE ESTIMATE Lower-tier incremental pricing

\$5.50	Lower tier price per barrel
+ \$1.50	Average transportation charge
\$7.00	Price per barrel to refiner
- 42	Number of gallons in a barrel
\$0.17	Crude oil cost per gallon of oil
+ \$0.19	Combined average gross margin
<u>\$0.36</u>	Price per gallon of oil

If heating oil continues to be used at the same rate that it has in past years, and if all lower tier oil is reserved for heating oil use (with excesses being carried over into the

following years), and assuming that the supply of lower tier oil declines at the same rate that it has in the past, then, if incremental pricing begins in mid-1979, the supply of lower tier crude for heating oil would last until mid-1981.

If all regulated oil--both lower and upper tier--continued under present regulation and were merged into one weighted-average classification for heating purposes, the price of a gallon of heating oil to the consumer would be 43¢ per gallon.

HEATING OIL--PRICE ESTIMATE
Lower- and upper-tier incremental pricing

\$8.54	Weighted average price per barrel
<u>+\$1.50</u>	Transportation charge
\$10.04	Price per barrel to refiner
<u>÷ 42</u>	Number of gallons in a barrel
\$0.24	Crude oil cost per gallon of oil
<u>+\$0.19</u>	Combined average gross margin
<u>\$0.43</u>	Price per gallon of oil

Because the definitions of what would constitute "old" upper tier and "new" oil cannot be speculated about at this time, it is not possible to determine how long this low-price supply of heating oil would be available.

The issues to be decided under an incremental pricing proposal from an economic viewpoint would be (a) how best to phase in and out of the lower heating oil price, and (b) what kinds of regulated oil will be used for heating purposes, and (c) what "mix" of these different categories will be implemented. Incremental pricing may be considered more a device for phasing in the effects of deregulation, rather than a mechanism for actually lowering the price of heating oil.

MECHANISMS

Several mechanisms may be used to implement an incremental pricing program for oil.

One way is direct controls over the wholesale and retail prices of heating oil. This price information would have to be calculated by a government agency, based on assumptions on the amounts of regulated oil allocated to heating oil production. Data from refiners and marketers would certainly have to be gathered and audited to determine the appropriate markups on the price to the consumer.

A second method is direct application by the buyer to the seller of the product, certifying that the buyer qualifies for

the lower home heating rate of oil. These certificates would have to be based on standards set by the government, and would be subject to audit. The price charged to these qualified consumers would have to be set by law.

A third method would be some form of tax credit or deduction for purchases of home heating oil. Revenue losses incurred in this way would be offset by a tax on other purchases of oil products.

A fourth method would be some "entitlements" transfer from users of home heating oil to users of other oil products. This would have to be done less directly than it is done among refiners under the current entitlements program, and would include heavy government agency involvement.

This is by no means an exhaustive list of either the methods which could be used to implement incremental pricing, or the benefits and drawbacks of each. Several other methods or issues will probably develop as incremental pricing of oil is further discussed.

Mr. GREENES. Obviously our theory would be the same, to reserve part of the old crude oil, lower tier of crude oil, if in fact crude oil will continue to be regulated past May 31, 1979, and reserve part of that old oil for residential heating use in the same manner as we have now reserved old controlled gas and shelter when it is used for residential heating for natural gas customers.

I think we have some specific proposals in that area that the Congress should consider.

Mr. MOFFETT. Without objection, we will leave the record open for any suggestions you might have in that area. And also without objection we will leave the record open for copies of your letters, which you were kind enough to share, to us, to the refiners, and their responses.

[Testimony resumes on p. 243.]

[The letters referred to follow:]



National Oil Jobbers Council
1707 H Street, N.W., 11th Floor
Washington, D. C. 20006 • 202/331-1198

November 21, 1978

Mr. E. J. Hess
Vice President, Marketing
Exxon
P. O. Box 2180
Houston, TX 77001

Dear Mr. Hess:

During the past few months heating oil marketers and their customers have experienced an inordinate increase in the price of No. 2 oil, which has now received a great deal of attention in the public media.

Since July 1st of this year, the rate of increase to date in the contract cargo price of No. 2 oil at New York Harbor, for example, has ranged from 9 to 14 percent, according to Platt's Oilgram. Such increases exceed even the high current rate of inflation.

Last year the rate of increase for the entire last half of the year averaged only 4 percent, and in the last half of 1976 the average increase was approximately 8 percent. As a result of the numerous price increases coming forth on a daily basis from our suppliers, we have become very concerned about the justification for these increases - a justification which has not accompanied the price increase announcements.

Our own ability as individual marketers to handle the supply needs of our customers has been adversely affected by the hardened attitudes of our suppliers toward our respective lines of credit. This has required us to borrow additional money at higher rates of interest in order to maintain the supply we need to satisfy our members' customers. This situation coupled with the inability to justify the latest round of increases has strained the relationship between our marketers and their customers.

It is readily acknowledged that oil is the most reliable and efficient fuel for home heating purposes, and if we relied solely on the efficacy of our product, we could successfully compete in the open market. However, when we are confronted with inflationary costs, which we must by necessity pass on, we jeopardize not only ourselves, but the general well-being of our customers as well.

Therefore, in light of these already abnormally high, unexplained price increases, coupled with statements from the Department of Energy anticipating additional increases by the end of this year, I am asking you to provide us with an explanation that we may provide to our customers as to what reasons lie behind these price increases and what actions your company has taken to prevent the need for such increases in the future.

At the time when an effort is being made to deregulate the price of one petroleum product (gasoline), it is incomprehensible to me that our suppliers would increase the price of fuel oil, resid, and kerosene, thereby drawing attention to an apparent capriciousness to raise the prices on those products which are not subject to government regulations. I anxiously await your response.

Sincerely,

William G. Lyden
President

EXXON COMPANY, U.S.A.

POST OFFICE BOX 2180 • HOUSTON, TEXAS 77001

MARKETING DEPARTMENT

E. J. HESS
VICE PRESIDENT

December 27, 1978

Mr. William G. Lyden, President
National Oil Jobbers Council
1707 H Street, NW, 11th Floor
Washington, D.C. 20006

Dear Mr. Lyden:

Your letter of November 21, 1978, questioned the justification for recent distillate price increases and asked for an explanation.

You indicated that NOJC members were faced with rising interest rates and the inflationary impact on operating costs which by necessity they must pass on to their customers. Exxon, as a supplier, is not immune from these same problems. Our costs are also increasing at every level of the manufacturing and distribution process. These include:

- Increased crude and refinery operating costs.
- Higher seasonal storage and deferred billing costs.
- Rising marine and pipeline transportation tariffs.
- Rapidly rising prices for imported distillates.

There are many factors which have caused distillate prices to rise during 1978. Exxon has increased foreign imports of heating oil to satisfy current demands and build inventories for the winter. The necessary imports required have been hard to find and have been available only at costs well above the domestic market price. These supplies are high cost due to an increasingly tight offshore light crude situation, low offshore product inventories, and a limited ability of foreign refineries to produce additional distillate without producing unneeded high sulfur fuel oil. The high cost supply steps being taken to meet current demand and build inventory eventually must be reflected in the marketplace.

Each of Exxon's price changes during this year was made in response to the competitive environment that existed at the time. Since the beginning of this year, Exxon's distillate prices have increased a total of 7.4%, less than the rate of inflation.

Prices for distillates in the marketplace must be high enough to attract new entrants and increased participation by existing suppliers. The major impediment to new entries or increased participation is the perception of the future climate for that business. Several years of price controls under formulas which do not recognize the effect of inflation or the need for a return on new investments have eroded confidence in the future attractiveness of all segments of the heating oil business. Restrictive price monitoring systems and the threat of recontrol further increase the erosion in investor confidence, and ultimately could lead to regulatory-induced shortages.

Sincerely,



Sam G. Van Sickle
Vice President-Marketing

Amoco Oil Company

General Office
200 E. Randolph Drive
Chicago, Illinois 60601
312-856-5244

December 4, 1978

Mr. William G. Lyden
President
National Oil Jobbers Council
1707 H. Street, N.W.
11th Floor
Washington, DC 20006

Dear Bill:

This is in response to your letter of November 21st concerning the price increases for various refined products and heating oil, in particular, these past few months.

There are a variety of circumstances which, in our judgment, have brought these increases about, namely: demand, supply, inventory levels, and increasing raw material (crude) costs, and non-product costs, a term now used in the industry to identify costs other than crude.

The most important of these are the items of cost, raw material, as well as the cost of doing business. I can only speak for Amoco Oil in this respect. I am sure other refiners and marketers are faced with similar situations.

Since the January to June period 1976, just before distillate decontrol and up to October 31, 1978, Amoco's average fuel oil prices have increased 23.9%. Amoco's crude oil costs during this same period have increased 26.7%. Up until the proposed "tilt" regulation, crude cost increases were charged to gasoline at the same rate as distillates or any other refined product including resid, asphalt, or coke. Each product shared equally.

Included in Amoco's crude costs are the entitlements' costs and small refiners' "bias" which have escalated from \$64MM for the year 1975 to an estimated \$330MM for 1978, close to a million dollars per day.

None of the crude costs include non-product costs which are costs associated with refining and marketing. As for the changes in your prices from Amoco since January 1, 1978, and July 1, 1978, they are listed below:

	<u>No. 2 Fuel Oil Aurora, Ohio</u>	<u>No. 2 Fuel Oil River Rouge</u>
January 1, 1978	37.75¢/gal.*	37.25¢/gal.*
July 1, 1978	37.25¢/gal.*	36.75¢/gal.*
November 21, 1978	<u>39.80¢/gal.*</u>	<u>39.95¢/gal.*</u>
Inc. Vs. July 1, 1978	+2.55¢ Inc. 6.8%	+3.20¢ Inc. 8.7%
Inc. Vs. January 1, 1978	+2.05¢ Inc. 5.4%	+2.70¢ Inc. 7.1%

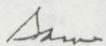
*Prices subject to summer fill discount or normal one per cent term for applicable months.

Note that the River Rouge price was 0.5¢/gallon less on July 1st than Aurora. Now both are essentially the same.

When comparing Amoco's current terminal prices with January 1, 1978, you must admit that these percentage increases have been modest and well within the current inflation rate levels for 1978.

I think that the above data reflects modest increases based on costs which we cannot absorb. As crude price increases continue, as they surely will, considering O.P.E.C. rumors, we will all have to face these realities, including wholesale buyers, such as yourself, and the American public.

Yours truly,



S. G. Van Sickle

Bruce F. McCall
Vice President
North American Marketing

Continental Oil Company
P. O. Box 2197
Houston, Texas 77001

December 4, 1978

Mr. William G. Lyden
National Oil Jobbers Council
1707 H Street NW
Washington, D. C. 20006

Dear Bill:

Please excuse my delay in answering your letter of November 21, 1978, but it wasn't received here in Houston until November 27, 1978 (the Postal Service scores again). I was also gone from the office when it arrived and just returned today.

Your letter deeply concerns me, for it appears there is a tendency to put the finger of blame on Conoco along with other major suppliers as the sole cause of fuel oil price increases. I find this difficult to accept in view of government actions of the past five years. Prices are a reflection of supply and demand in a reasonably free economy. And certainly current prices are a reflection of current supply and government policies, both domestic and foreign.

We have tracked our fuel prices for our Coastal Oil Company (wholesale) and Home Fuel Oil Company (retail) located in Newark, New Jersey, for a period January, 1974 through November, 1978. Using the first quarter of 1974 as an index of 100, we plotted wholesale and retail fuel oil prices, crude oil prices of acquired crude to Conoco, and the Bureau of Labor Standards Consumer Price Index. They look as follows:

FIRST QUARTER 1974 - INDEX OF 100

<u>Date</u>	<u>BLS Consumer Index</u>	<u>Acquired Crude Oil Index</u>	<u>Wholesale Fuel Oil Index</u>	<u>Retail Fuel Oil Index</u>
Jan. 1974	90	83	102.5	101.5
Jan. 1978	132	170	143	140
Sept. 1978	140	164	146	141
Nov. 1978	143	170	154	148

While the BLS Consumer Index climbs in an almost straight-line projection of one point per month, OPEC price increases will drive crude prices up four to five points each month in December, 1978 and January, 1979.

The above data shows that in almost five years, the BLS index is up 53 points and crude oil 87 points, while wholesale fuel oil is up only 51.5 points and retail only 46.5 points. Considering the extraordinary costs of refining, labor and other inflationary costs of manufacturing, the industry hasn't even held its own over the five years.

The increases of the past few months have been caused by some or all of the following supply problems:

1. The extraordinary gasoline demand during all of 1978 has caused maximum gasoline production at the expense of fuel oil.
2. Many refineries have been down this year (e.g., our Denver Refinery fire and several other catastrophes).
3. No major new refineries, either grass root or expansions, have been added because of restrictive, uncertain or unprofitable government policies.
4. The announced OPEC crude increases and the Iranian conflicts affect crude supply and prices.
5. Rising foreign consumption eliminates some of the surplus product formerly available at Rotterdam, Italy and Caribbean refineries or trading points (e.g., recently, gas oil went to almost \$165.00/metric ton at Rotterdam).
6. The use of fuel oils as petrochemical feedstocks has accelerated.
7. A delay in developing a federal policy on natural gas has limited gas usage.
8. Repeated delays in achieving "TILT" have thwarted development of a rational policy which would promote refinery investments.
9. The restrictive shipping policy of using American flag vehicles to ship fuel oil in American waters pushes costs upward. This is further complicated because of Alaskan Crude policies which utilize American flag vehicles to oversupply the West Coast with ANS crude rather than rationally trading it for East Coast supply.
10. EPA rules mandating more unleaded fuel cause refineries to operate on a gasoline economy rather than a fuel oil economy.
11. Increased airline usage of jet fuel impinges on heating fuel oil supplies.

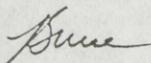
Bill, there are many more pertinent factors, but these are some of them caused mostly by government bureaucracy, red tape and uncertainty of return on investment.

Quite frankly, I believe these problems are neither the fault of the major suppliers, the middlemen distributors, nor the retail operators.

Conoco operates as tight an organization as any company in the business, with continuous reduction of costs. We have reorganized twice in the past three years, reducing over one-third of our personnel in order to reduce costs. We have sold all our landlord properties to jobbers because we believe jobbers can meet local conditions more efficiently and effectively than we can. We are a follower in pricing of fuel oil and not a leader, seldom (if ever) leading the market. Our supplies of fuel oil are limited, but we have bellied up to the bar for years, paying as high as 72¢/gallon for fuel in 1974 to keep our accounts supplied. I can assure you that during several recent years we have lost money on fuel oil and transportation in order to be a good corporate citizen and supply our fair share.

Bill, I implore you and your many fine state NOJC affiliates to join us in the work that needs to be done to develop a rational, economic energy policy for the country. The fruits of years of irrational, aimless wandering are coming home to haunt us now. A unified effort by all of us, working together, is the only way to assure availability of future supplies and the economic viability for us all.

Sincerely,



BRUCE F. MCCALL

jb

**Ashland Petroleum Company**

DIVISION OF ASHLAND OIL, INC.

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

BILLY W. DAVIS
Group Vice President

December 1, 1978

Mr. William G. Lyden, President
National Oil Jobbers Council
1707 H Street, N.W., 11th Floor
Washington, D. C. 20006

Dear Bill:

Your letter of November 21 to Charles Luellen regarding fuel oil prices has been directed to me since Charles and I have traded jobs. The questions you raise regarding cargo postings for No. 2 oil in the New York Harbor seem to have the following answer. When product is long, prices tend to weaken. When product is short, prices tend to strengthen. As you are aware, national distillate inventories are 14% below last year and are even lower than 1976. Our industry was built on this free economy concept and I believe we should be allowed to return to it. This can best be seen from the gasoline control regulations that have helped to create the current shortage of this important product. Current regulations do not allow a refiner to pass through to gasoline all of the increased costs associated with making this product. Consequently, a refiner, in order to try to maintain a reasonable profit margin has an increased incentive to try to pass through these unrecovered costs into his fuel oil prices whenever the competitive market will allow him to do so. I should think that NOJC would be at the forefront demanding gasoline decontrol in order to relieve some of the pricing pressure on No. 2 oil and other decontrolled products.

However, the cargo market in the New York Harbor or on the Gulf Coast is not the measure of competition that influences costs to most of the members of NOJC. Ashland who sells only jobbers throughout the Midwest in addition to large commercial consumer accounts is not a cargo market seller. Rack prices should be the measurement that jobbers use in calculating increased costs.

Our accounting people have put some numbers together for me which tell this story very clearly. Comparing October 1977 to October 1978, our average No. 2 oil rack realizations have increased 1.3¢ per gallon or 3.6%. Over the same time frame our crude oil and manufacturing costs have increased 2.6¢ per gallon or 7.3%. We do not have our November numbers as yet, but the spread will be comparable. We certainly are not proud of the fact that we have not been able to recover these crude oil price increases.

This controversy regarding recent No. 2 oil price increases seems to relate itself specifically to the cargo market where many factors play into spot prices. The day-in-day-out relationships between Ashland and our jobbers does not follow this pattern. Many of your conventional inland jobbers will tell you this. I imagine the experience of your company in Ohio shows that the cargo price relationships are quite dissimilar from your experience as you buy from your multiple suppliers, including Ashland.

We hope you can bring more perspective into this current controversy. We also hope that you and others in NOJC can recognize the need of gasoline decontrol for the many other reasons over and above the influence these controls have on No. 2 oil prices.

It is always good to hear from you.

Sincerely,



Billy W. Davis

gb



A Division of Sun Oil Company of Pennsylvania
P.O. BOX 7368, PHILADELPHIA, PA. 19101/1845 WALNUT STREET, PHILADELPHIA, PA. 19103

HARLAN T. SNIDER
President

December 5, 1978

Mr. William G. Lyden, President
National Oil Jobbers Council
1707 H Street, NW
11th Floor
Washington, DC 20006

Dear Bill:

I have just read your letter of November 21st upon returning from a week's vacation.

Before responding specifically to your concerns relative to recent distillate fuel price increases, I would like to express my own concerns on two counts.

First, I am afraid that the major brand suppliers, as a whole, have not been communicating sufficiently with their jobbers and dealers when implementing price increases. Perhaps Sunmark, for one, needs to do better in this area and attempt to explain why these higher prices are necessary.

Secondly, I am concerned over the attitude that the Department of Energy is taking relative to fuel oil prices. That Department's Office of Hearings and Appeals is getting wide publicity for their allegation of industry "overcharges". To me, it is somewhat absurd for a federal agency to decontrol the price of a product and then have the same agency attempt to restrain the price (and presumably the margin) without determining all of the facts.

It may be true that, here again, the industry has not been aggressive enough in presenting the facts to those who are monitoring and regulating us. However, the result of unsupported allegations is adverse publicity that is not justified and does both the industry and the consumer a disservice.

I believe one very easy way to view distillate prices, which have been decontrolled since July, 1976, is to compare them with gasoline prices, which remain under controls. If we go back to May 15, 1973, and look at our key distillate price indicators such as New York Harbor cargo, Group 3 Northern, etc., we find that our company's increases for distillate are slightly less than the increases that have accrued to gasoline. Remember that both are manufactured from the same crude oil barrel which obviously has the same cost.

This tells me that our distillate prices certainly are cost-justified, without getting into the case for even higher prices in order to encourage investment of capital in refining facilities to insure future quality and quantity requirements of the market place.

We also have looked at these same distillate prices as of December, 1977, and currently. Here, too, increases in crude costs and operating expenses more than justify the price increases. (Incidentally, we reduced distillate contraseasonally in February, 1978 and did not recover that reduction until May in some areas, and until August in others.)

With reference to costs, it is interesting to note that average crude costs have continued to rise this year. Data taken from DOE entitlements reports for December, 1977 and September, 1978, indicate the industry percentage of lower-priced old oil dropped from 23.28% to 17.44%. This decrease had to be offset by an increase in high-cost decontrolled crude, which includes imports. In addition, the price of domestic crude continues to rise. (As you probably know, the decline in the percentage of old oil is expected to continue.) Further, our own operating expenses have increased, influenced to a great degree by higher refinery fuel costs.

The net impact of all these factors has been to increase our costs at a faster rate than our distillate prices have increased since December of last year.

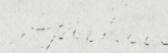
I think it is quite logical to assume that the cost of raw materials and operating expenses will continue to rise. The refining industry will have to pass costs through just to stay in place and will actually require a better rate of return to attract necessary investment capital for refinery expansion in a high capital money market.

Government policy really must recognize these economic facts if the industry is to perform adequately and profitably in the future.

Bill, I hope you will not consider my response to be a political speech, and that you will agree that we certainly have not "profiteered" from the decontrol of distillate fuels.

I will be glad to discuss this subject with you at greater length if you desire.

Sincerely,


Harlan T. Snider

Mr. MOFFETT. Can you be a little more specific about the types of questions you asked those refiners in the letters?

Mr. GREENES. Yes. We asked them specifically to justify the amount of the increase in detail, costs, allocation. We suggested some of the reasons we thought prices were justified and asked them to amplify and detail and specify, if you will, the amounts that they attributed to each of the increments in the price increase.

Mr. MOFFETT. You say responses have trickled in. From the responses you received, are you getting the information that you need?

Mr. GREENES. No, we are not. Responses are general, they are not specific. Incidentally, we did receive a response from our letter to Secretary Schlesinger which was also nonspecific and general.

Mr. MOFFETT. When the subcommittee considered the decontrol of middle distillates, your organization, as I recall, testified that prices would decline with decontrol. It is obvious that did not happen. How can you explain this? Have prices risen faster than you expected? Have you any reason for the increase? Did you miscalculate?

Mr. GREENES. I do not think we miscalculated. When we said decline, I think what we meant was that they would be less than they would have been under control. I think that was the representation we made. Maybe it was a poor choice of words, but we believed that in the free market they would be less than they would have been under controls. We felt, as Mr. Berson has suggested, that the ceiling allowed under DOE regulations really became the floor, the tail end of controls, and were just interfering with the market. I think that was true until August of 1978.

The prices were less than they would have been under control, barring that one area of the country where the theoretical trigger was exceeded in the North Central for 1 month or 2. Then, there again, you have to look at volumes involved in that area as compared to the volumes involved in the Middle Atlantic and Northeast, where most of the heating oil is sold.

Mr. MOFFETT. Wasn't it true they had \$264 million in back costs, for example, which they could not recover under controls? In that case, to say that the ceiling became a floor is not entirely accurate, is it?

Mr. GREENES. I am talking about the refining and marketing levels where the margin actually decreased until August of 1978. While it is true they could not recover as back costs on that day, after decontrol they could recover them in the open market by simply increasing the price, and the fact of the matter is that the refinery increases since decontrol have, as I think Congressman Maguire pointed out, been far in excess of the increase experienced at the wholesaler-retail level. I think the problem has been since August of 1978. I think what has happened since August 1978 until now is the crux of the problem. I think that is the instigation for these hearings, Mr. Chairman.

Mr. MOFFETT. The instigation for the hearings goes beyond events of the last few months. Some of us including the chairman, Mr. Dingell—are very concerned about the whole process and

whether or not we are getting the information we asked for 2 years ago, the same kind of information you seem to be asking for now.

Mr. BERSON, do you want to respond to that question?

Mr. BERSON. Yes. In my prepared testimony on page 7 you will note that under the allowable ceilings, the dealers could have charged according to formula from 6 to 9 cents per gallon. It was obviously the competition at the time that kept them from doing so not going up there. Certainly since that time the costs have gone up considerably.

Mr. MOFFETT. Let me ask a question about the retailers. Why don't we see them advertising their prices?

Mr. BERSON. I am sorry.

Mr. MOFFETT. Why don't we see retailers advertising their prices?

Mr. BERSON. I would believe that the buying public really is buying value rather than price necessarily. While there is a range that competition will keep in, a dealer who charges 5 cents a gallon less than another dealer cannot always produce the kind of value that a dealer who charges more does.

Mr. MOFFETT. What does value mean in this business?

Mr. BERSON. This is a funny business. The commodity you sell is oil but what you are really selling is a service. You are really a service business. We are selling a home comfort or home security service. In that context, people know that they essentially get what they pay for. Most of the fuel oil in the marketing area that we serve—New England—is sold at the retail price rather than discounted price.

I do not want to get into a discussion of discounts except to say that the buyers are getting more sophisticated and they will go to the company that gives them the best value.

Mr. MOFFETT. You are as close to those consumers as I am, if not closer, and I do not hear them talking these days much about value. They are talking prices, prices, prices. They do not discern a great difference in value. I would say, and I would assume you would say, the service is quite good from the small retailers—reliable, friendly, and that is value, it seems to me. I do not see that much of a discrepancy between those people. I think they are looking for price. I just wonder why we do not see advertising. I generally tend to agree there is a great deal of competition at the retail level.

Mr. OURIEL. The reason the dealer cannot advertise is because his wholesale price can fluctuate daily. We have seen from different suppliers, that we may be lucky enough to purchase from; price changes of 5 times in 1 week. I personally do advertise price with a date included. For price protection.

Mr. MOFFETT. You make a good point and it brings up a more important question. How much notice do you receive when your supplier increases prices?

Mr. OURIEL. Generally 12 hours, sometimes retroactively 24 hours.

Mr. MOFFETT. Is that because of the volatility of the market and because the suppliers just simply can't give you any more notice?

Mr. OURIEL. No. That is because they want to drive us right out of business. We have an area in Rochester that is controlled by a

refiner that is getting the small refiner bias; who that just in the last 8 months purchased 50 percent of the marketing divisions from his competitors. They now control 50 percent of our marketplace.

Mr. MOFFETT. Let me ask Mr. Greenes to respond to that. You heard my question?

Mr. GREENES. Yes, I did. I think there were two questions.

Mr. MOFFETT. The important one to me is, how much notice you receive? Do you agree with the 12-hour figure Mr. Ouriel was talking about?

Mr. GREENES. It is usually less than 23 hours. You get a call sometimes at 3 or 4 in the afternoon that the price will change 12:01 a.m. the next day. Historically, for reasons best known to the refiners and suppliers themselves, it always happens Friday afternoon around 4 o'clock that it is effective 12:01 a.m. Saturday morning. Usually no one is around in the refiner's office, so some clerk calls you and there is no one to question. That is traditionally how it happens with each and every supplier. I happen to have four suppliers and that is how it happens to me in each and every case.

As far as the question you asked on advertising, we do advertise, but traditionally we advertise in the summertime. In our homeowners residential business, over half our customers are on budgets. That means we spread their payments out over 10 or 12 months. We budgeted our price in the summertime as 49.9. We budgeted our price over the winter at 52 cents. Our price now is 54.9, so our customers are going to be in a deficit position on their budget payments as we go into spring. We are in the process of informing them we would have to raise the monthly payments, if it is a normal winter, to cover their budget payments.

Mr. MARKEY. If the gentleman would yield.

May I ask Mr. Ouriel, how many independent heating oil dealers there are in your organization?

Mr. OURIEL. Fourteen.

Mr. MARKEY. You said that you are pitted against this sort of "creeping monopoly" in your area?

Mr. OURIEL. I would say that is true in many areas of the country, with the exception of the east coast import areas. Our dealers do not get any semblance of wholesale competitiveness.

Mr. MARKEY. How many counterpart organizations do you have?

Mr. OURIEL. Counterparts in Monroe County?

Mr. MARKEY. No, no; are there counterparts to your organization in other parts of the country or are you one of a kind?

Mr. OURIEL. I believe in all the hearings we have been to—approximately 12, plus 3 Federal, State, municipal—you might find a counterpart to us in gasoline marketing, but not in home-heating oil.

Mr. MARKEY. Why are you unique? Why are there not other similar groups?

Mr. OURIEL. To give you a little bit of history about NOJC and New England Fuel Institute, they represent some very large marketing companies. I am talking in the range of many millions of gallons, with vast storage facilities.

Mr. MARKEY. Do they represent small suppliers?

Mr. OURIEL. Not really. The small man is not being addressed. If you were to poll their membership and get down to the "mom-and-

pop" operation that has two trucks on the road, you will find these groups do not represent that type of reseller. The others have storage. Every time there is a price increase, when, their supplier tells them they are going up on Monday morning, they have 15 million gallons out in the back, which gives them an instant inventory profit to pass through. When we say control retail, you should be talking about large storage marketers. I am sure Mr. Greenes does many millions of gallons in Metropolitan New York, and Mr. Berson likewise in Boston.

I represent dealers that do no more than 2 million gallons a year with no storage whatsoever, they can't play with an inventory profit. We were members of NOJC. My father founded the Oil Heat Institute of Rochester in 1948. Today that Oil Heat Institute is controlled by large refiners.

Mr. MOFFETT. Are there similar groups that exist in other States? Are dealers being hurt because they are not banding together as you have to form a bloc which can represent their interests?

Mr. OURIEL. They are both. They are part of the other organizations and being wiped out. They can belong to the National Oil Jobbers Council, they can belong to the New England Fuel Institute, but they do not have a voice. They are structured so that the largest dealers that contribute the funds for these organizations are able to wield the policy. Dues are based on gallonage and he who pays the most in these marketing organizations determines the policy, as in Rochester right now.

Mr. MOFFETT. The Chair recognizes the gentleman from New Jersey.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. Ouriel, on page 1 of your statement you say, "Our association believes in a free market for middle distillates." On page 2 of your statement you say, "Home-heating oil markets should be price controlled at wholesale-retail."

Mr. OURIEL. That is right.

Mr. MAGUIRE. Could you clarify that?

Mr. OURIEL. We would have had a party on June 30, 1976, had we gotten that free market. We would love a free market, a truly free market like we had prior to 1973, when they painted our trucks and gave us 30 days' credit, when the plant was open 7 days and 7 nights a week; but in 29 months we did not get that free market. As long as we did not get that free market, then we would prefer a controlled market.

Mr. MAGUIRE. It is not a controlled market now, is it?

Mr. OURIEL. It is controlled because we cannot get into all of the major oil companies to supply upstate New York: Texaco, Atlantic Richfield, Cities Service, Exxon, Gulf, ad infinitum. Today there is a viable "gray market" functioning; alive and well in many parts of the United States. A gray market where dealers will swap products, truck to truck, and add on another penny or two margin.

Mr. MAGUIRE. So you are saying that controls that you are experiencing now are not governmental controls?

Mr. OURIEL. No.

Mr. MAGUIRE. They are controls exercised by major companies?

Mr. OURIEL. Definitely.

Mr. MAGUIRE. At the refinery and when they sell to you; is that correct?

Mr. OURIEL. That is absolutely correct.

Mr. MAGUIRE. Mr. Greenes, on page 1 of your statement you refer to a letter to Secretary Schlesinger dated October 20, 1978, from Jack Wade. I wonder if you or Mr. Wade could tell us a little more about what that letter contained and what type of response you received to it.

Mr. WADE. I wrote the letter on October 20, as you stated, pointing out the fact that in my opinion the rapid escalation of prices since the 1st of August was unwarranted and we wanted to know the reasons for the increases.

We offered several observations as to why the price might have gone up such as the exhaustion of the refiners gasoline banks, the higher cost of imported products, the possibility of wage and price controls. I did receive an answer dated November 22, received on December 1, from a Douglas R. Robinson, the Assistant Administrator of the ERA, wherein he acknowledged the receipt of the letter but stated all would be well because the tilt was going to take place on December 1, and have no fear.

In my opinion, the response to my letter was unacceptable. It does not answer the problem.

Mr. MAGUIRE. I wonder, Mr. Chairman, if we might include the text of those two letters in the record?

Mr. WADE. We will submit those for the record.

Mr. MARKEY. Yes, without objection it will be included in the record.

[The following letters and chart were received for the record:]



National Oil Jobbers Council
1707 H Street, N.W., 11th Floor
Washington, D. C. 20006 - 202/331-1198

E-78-476

October 20, 1978

Mr. James R. Schlesinger
Secretary of Energy
Department of Energy
Washington, D.C. 20545

Dear Mr. Schlesinger:

I wish to take this opportunity to call your attention to an alarming incidence of refiner price increases of No. 2 home heating oil (middle distillate) which independent marketers such as myself have been experiencing over the past ten weeks.

Since August 1st of this year the price of heating oils (including residual oil) which we pay to our suppliers has been increasing at a rate far in excess of the rate for the same period last year. You will note from the attached tables taken from U.S. Oil Week, a trade publication, and our own charts based upon this information, that the average price of No. 2 oil has increased, particularly in that part of the country which predominately uses heating oil, by $1\frac{1}{4}$ to $1\frac{1}{2}$ cents per gallon. The rest of the country has experienced slightly less than a one cent per gallon increase. Furthermore, I wish to draw your attention to the increased price of gasoline for the same period of time in the same areas. Such increases are most unusual for gasoline at this time of year. Examination of this information indicates a disproportionate price increase of No. 2 oil to the point that the price difference between gasoline and No. 2 oil is the closest it has been historically.

Several observations could be offered at this point to explain the rationale for this unusual situation. One might be the refiner's exhaustion of their respective gasoline banks. A second might be the higher cost of imported distillate. Since August 1st the price of this product has experienced a 10 percent increase thereby providing a higher umbrella price which permits domestic refiners to raise their prices without fear of losing their markets to replacement imported product. A third observation could be the inability of the refiners to recover their costs incurred in the refining of other products thereby forcing them to unduly load their increased costs onto heating oil or other decontrolled product. A fourth might be the anticipation of the imposition of wage and price controls by the administration and therefore the refiners wish to take advantage of the opportunity to raise their price now before the announcement of any such policy.

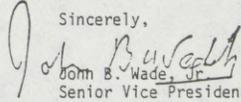
DISTRIBUTION: 1,6,9(s),18

While it is customary during the fall and winter of each year for refiners to raise the price of heating oil the type of situation we are now witnessing is most unique particularly when supply levels are higher than normal. Inordinate price rises will precipitate a negative reaction from our customers. The independent home heating oil marketer is already operating within a tightly constrained margin. Our tighter margins are due to the general reaction against increased prices by our customers thereby forcing us to absorb more increased costs. Tighter margins and the threat of converting our customers to natural gas due to the price differential of gas versus No. 2 oil coupled with an anticipated increase in the supply of gas due to the recently enacted natural gas legislation places us in a doubly precarious and anti-competitive position.

As one who represents heating oil marketers I can say that we are proud to provide the most reliable and efficient form of home heat and if compelled to rely solely on the efficacy of our product could successfully compete with gas and electricity in the open market place. However when we are confronted with an inflationary pricing practice on the part of our suppliers our future and the general well being of our customers is seriously jeopardized.

In light of the price increases continuing to come forth daily from our suppliers I urge you to examine this situation at the earliest opportunity. I am sure you share our desire to avoid sharp increases which will be forced upon our customers this winter as a result of pricing policies established totally and exclusively beyond the control of the heating oil marketer who delivers the fuel to the customer's home.

Sincerely,


John B. Wade, Jr.
Senior Vice President

JW:emw

ATTACHMENTS

bcc: William Lane

PRICE CHANGE
GASOLINE AND NUMBER TWO OIL
AUGUST THROUGH OCTOBER

CITY	AVERAGE* NO. 2		AUGUST-OCTOBER 1978		AUGUST-OCTOBER 1977	
	OIL PRICE 7/31/78	10/16/78	Change in #2 oil price	Change in gasoline price	Change in #2 oil price	Change in gasoline price
Boston	37.79	39.28	1.49	0.95	0.44	(0.56)
Baltimore	37.41	38.85	1.44	1.18	0.43	(0.75)
Newark	37.19	38.53	1.34	0.56	0.50	(0.66)
New York	37.41	38.70	1.29	0.83	0.63	(0.53)
New Orleans	36.13	37.00	0.87	0.70	0.63	(0.45)
Detroit	37.19	38.04	0.85	0.87	0.38	(1.17)
Minn/St. Paul	37.20	38.04	0.84	0.69	0.40	(0.50)
Chicago	36.56	37.39	0.83	0.56	0.46	(0.65)
Cleveland	37.64	38.43	0.79	0.63	0.50	(1.04)
Denver	36.51	37.26	0.75	1.07	0.70	0.08
Seattle	35.61	35.89	0.28	0.70	0.25	0.03

All figures in cents per gallon.
Data has been developed from information reported in U.S. Oil Week.

*"Average" is the sum of all refiner prices divided by the number of refiners.

10/78



Department of Energy
Washington, D.C. 20461

22 NOV 1978

Mr. John B. Wade, Jr.
Senior Vice President
National Oil Jobbers Council
1707 H Street, N.W., 11th Floor
Washington, D.C. 20006

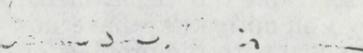
Dear Mr. Wade:

Secretary Schlesinger has asked this office to thank you for and respond to your letter of October 20, 1978, concerning increases in the price of No. 2 heating oil. The information you provided is very helpful.

We have received similar reports of larger than usual price increases for home heating oil both at wholesale and retail, and we are presently analyzing the reasons for these increases. Meanwhile, it is our hope that refiners will take the opportunity to pass through more than a volumetrically proportional share of their total increased costs to gasoline, as will be permitted under the gasoline "tilt" regulation effective December 1, 1978, and restore the historic price differentials between gasoline and No. 2 heating oil prices.

I hope this information has been helpful. If we can be of any additional assistance, please let me know.

Sincerely,


Douglas G. Robinson
Assistant Administrator
Regulations and Emergency Planning
Economic Regulatory Administration

Mr. MAGUIRE. What was alleged to have happened as of December 1 and what actually has been the situation, Mr. Wade?

Mr. WADE. It did not happen. It was postponed supposedly until January, and the last I heard it probably will not take effect at all.

Mr. MAGUIRE. Did you want to comment further?

Mr. WADE. I would like to comment on the statement made by the previous witness here as far as NOJC was concerned, just to clarify the record, if I may.

Mr. MAGUIRE. Surely.

Mr. WADE. NOJC is a federation. The members are either State or regional organizations such as the New England Fuel Institute, which represents a number of States or individual States. There are no individual members of the National Oil Jobbers Council.

No. 2, I am a small heating oil marketer. I am not in gasoline. Our company only sells to the householder. The dues that I pay within the State of New Jersey, where we have over 260 members, big and small, has nothing to do with my vote in NOJC. There is no weight as far as how big you are. Again, there is no direct membership. The fact that they are all big is not true.

I take office as the president on January 1. I am a small heating oil marketer. I am not a big one. I have minimal storage, and that certainly is not the criterion for joining your State association. We do represent all marketers, big and small, and, as I have already pointed out, we were the only ones from any trade association representing marketers that did testify, 100 percent, participated in the evidentiary hearing in August, and the record will bear that out.

Mr. MAGUIRE. I am a little perplexed from the testimony received from the three of us as to what advice you would have for this committee and the Congress at this juncture as to what we should or should not do.

Mr. WADE. One thing is—and I am very much concerned with this—I serve on the Department of Energy Fuel Oil Marketing Advisory Committee. We have now set up a social issues subcommittee to deal with the problem of those people on fixed or limited incomes.

There has been some talk about it here today. Two witnesses stated those who participated last year will not be able to participate this year.

I would ask that the Chair ask for clarification from DOE—I don't believe that is true. There was some money left over from last year which can only be used for those that needed it last year, that is true. The problem is we are now at the 20th day of December and there is no plan in operation.

In this industry, with heating oil, right after Labor Day we are geared up for winter. I don't think it is fair to have a program not fully implemented well before winter starts.

The council has attempted to talk to the CSA on this matter and we have been rebuffed. We have not been able to arrange meetings with them. We feel very strongly that this is a good program, it is a social issue, that it must be addressed, and the hearing in August evidenced that as well.

But we feel it is the bureaucracy here that has to put their house in order to take care of these people.

We did have a plan last year, and as of now we don't have one. To do something of this nature in January I think is totally unfair.

Mr. MAGUIRE. But with respect to pricing issues themselves as opposed to insulating targeted groups from unnecessary hardship, you have no recommendation, with respect to the pricing issues themselves.

Mr. WADE. I have come to the opinion now, after many years in this business, that when prices are pushed as hard as they have been and risen as fast as they have, and as high as they have, that I, as a marketer, am entitled to an answer as to why they are going up.

There is no apparent reason for it that I know of. I would expect to be told that. I am expected to remit my money, if I do get a discount from them, in 10 days or net 30. Some of my compatriots must remit net 15.

I think we are entitled to an answer. The basic reason is we are the ones that have to talk to the consumer. It is fine that they talk to the Congressmen, they talk to the energy offices.

But, we are the ones in the front line that get all the time. We should know what is causing this. We could not blame OPEC up to this point.

Mr. MAGUIRE. I certainly agree with that. I don't think we have a very complete accounting as yet from DOE.

Mr. Berson, what remedies would you suggest the committee consider?

Mr. BERTSON. Certainly, in response to the price question, the tilt is beginning—implementation of the tilt will help some.

If we could get as a country some competition in the refinery area, I think you will then get some of the freedom of the market that Mr. Ouriel was saying does not exist.

Mr. MAGUIRE. If what?

Mr. BERTSON. If you got some competition in the refining area.

Mr. MAGUIRE. How do we get that?

Mr. BERTSON. There are many independents or quasi independents who would like to build refineries around the country. If they have access to stocks, they would probably put some competition into the refinery market.

I mentioned, and Mr. Ouriel mentioned, that we no longer—marketers—have a freedom of choice who to buy from. In effect, we are controlled, for example, in the supply.

Mr. MAGUIRE. Has anybody ever tried, any of your people, or consortium of people, to purchase directly from the import market as a way of increasing your alternatives?

Mr. OURIEL. Only on the east coast where the proximity of the supply would come. Not if you are 400 or 500 miles inland, you cannot spot buy that way. Without a pipeline, and we all know who controls the pipelines.

Mr. GREENES. Yes. It obviously has been tried. People shop for the best price. We are marketers, we are competitors. You must remember, however, all No. 2 oil, distillate oil made in offshore refineries is made from 100 percent OPEC-priced oil as opposed to domestic refinery produced No. 2 oil, which comes in at 4 and 5 cents a gallon less.

Last summer, as you know from your own figures, the incremental increases over the summer were less than they were this winter.

Why was that true? It was true because in February and March of 1977, at the end of a very cold winter, DOE authorized a 5 cent allowance to import No. 2 oil into the east coast under the premise that there was a shortage and you needed this oil to fill the demand.

That brought the imported price down to the price of domestic oil. Fortunately, or unfortunately, the weather turned extremely warm at the end of February and March. So, we went into the summer of 1977 with abnormally high levels.

This year, when you were told the levels were down from last year, that was true. But no one told you that in 1977 the levels were abnormally high.

Well, with abnormally high supply levels competition worked—the price of distillate did not go up as much in 1977. This year, we were back to normal levels.

The premise was we would be short. On the basis of people telling you you were short, they were able to increase the price.

Mr. O'Leary today said we were not short. In September—I have to go back into the record—but there are members of the Department of Energy who said that supply was short in September. They have changed from September to December, and they have blamed it on the warmer weather in December.

Well, in New York City the weather has been normal up to now and the same as last year.

Mr. MAGUIRE. So the best we can expect as consumers when the market is working and when there is a tremendous surplus is not that prices will go down any from their previous levels, but that they will go up less. Is that correct?

Mr. GREENES. Taking into account that the price of domestic crude goes up by the inflation factor, whatever is allowed under the formula, the price of crude is going up.

On the assumption that nonproduct costs at all levels—refiner, wholesaler and retailer—are going up, and interest rates are going up, you should expect incremental increases.

It is not the increase that we are questioning. It is the magnitude and the frequency of the increase that has occurred since August.

We do not see on the surface a justification for the magnitude and the frequency of the increases that we have experienced.

Mr. MAGUIRE. Mr. Ouriel, do you have some comment on this question of revenues?

Mr. OUIEL. Well, the distinguished gentleman on my right, Mr. Berson, mentioned something about working on some new refineries. There has been a proliferation of so-called "teakettle refineries" of 10,000 barrels a day, to get those entitlements. They really don't serve any purpose at all.

Another thing Mr. Greenes has mentioned. Those entitlements which came through in February of 1977 to east coast importers, I don't recall any part of that 5 cents accruing to upstate New York. We didn't see any of it. None of it ever showed up.

I am sure it should have been passed through. When I talk about controls, I am not talking about the old set of controls. Those are outdated. They can be revised.

When Mr. Berson mentioned a floor, that floor only existed for the first 3 weeks of January 1974 when the product was supposedly tight.

Subsequent to that, there was all kinds of price cutting going on by the dealers all over the lot. From the beginning of February 1974 straight through to the end of controls there was price cutting galore, and I have documents to prove that.

So, when we talk about a floor, a floor should only be when there really is an embargo or other shortfall. As to profits everybody dwells on percentages of profits. It should be on incremental units of profits.

That is Dr. Kahn's basic problem. If a reseller buys a product for \$5 and he makes 2 percent on it, and the same product now costs \$10, should he still make that 2 percent on it? Of course not. You have doubled his income.

So, you have got to do away with percentage margins of profits, or percentages of investment. That is just a smokescreen to double and triple your profits.

Mr. MOFFETT. The gentleman's time has expired.

Mr. MARKEY. I would like to followup on a point Mr. Maguire was making.

Mr. Berson, as you look at refining capacity in this country, could you tell us whether you think Government regulation has stifled investment in new refinery capacity, or whether you feel it is a classic case of the refinery industry deliberately constraining supply in order to increase prices and thereby profits.

Mr. BERSON. Mr. Markey, as far as I understand it, the restraints imposed by the environmental departments of our State and Federal Governments have probably stopped it more than anything else I can think of.

In New England several refineries that would have been built—I am sure you are more familiar with this than I am—I think that if those refineries by hook or crook were on stream, that there might be a different competitive situation on the wholesale level—I am talking about the refinery level—than there is today.

But I would like to make, if I might, two comments additional.

One, for the record, the New England Fuel Institute, which I represent, being a federation of local and State associations, charges its membership the same rate. There is an assessment per association for each member.

So, the majority of the members are smaller, the same size as Mr. Ouriel's company and mine. There really is a lot of input from all the people.

But we are really talking here today more than the price of the oil—the cost in dollars to the consumer. I submit to get the most cost effective use of the oil, no matter what the price is, is to implement the conservation ethic.

We have a framework for it. It looks as though the Government in its wisdom decided to give that responsibility to the utility companies. The utility companies are not geared, nor do they want

to be geared, as far as I can see, to implementing the conservation ethic the way it should be.

Now, it does sound strange that someone in the oil industry would say let's conserve and sell less. But in the long run we recognize that that is in our best interests, in the long run.

People have got to be able to afford what they buy. If they use too much, they won't be able to afford it. So, that is a way to become more dollar effective most rapidly.

Mr. MARKEY. I agree with you. Although domestic price increases in home heating oil are greater this heating season than OPEC-caused increases, I would hope that the additional publicity the OPEC increase is being given will precipitate some immediate conservation response. We must begin to come to grips with our energy crisis as we turn down our thermostats, for if we do not, we are eventually, inevitably, going to have a problem we will not be able to deal with.

Thank you, Mr. Chairman.

Mr. MOFFETT. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman. I will be very brief.

Mr. Ouriel, in your testimony you talked about the loss of night and holiday key-lock loading privileges, coupled with curtailed terminal hours. Why do you think this accompanied decontrol?

Mr. OURIEL. What was your last sentence?

Mr. GORE. Why did that happen in the wake of decontrol?

Mr. OURIEL. Because there wasn't a policeman to watch what was going on, so the bandits did whatever they pleased. There was no law against it. You could change your marketing procedures completely, subsequent to decontrol.

In fact, we lost a few of those key-locks within about a week after decontrol.

Mr. GORE. How many dealers do you have to choose between?

Mr. OURIEL. You mean suppliers?

Mr. GORE. Yes.

Mr. OURIEL. Are you talking about our association or my own company?

Mr. GORE. Your own company.

Mr. OURIEL. I would say in major suppliers—that is your refiners or large wholesalers—approximately two. But we utilize all 14 of our dealers in the gray market, where we will swap product with each other.

Mr. GORE. Why does that serve to increase the cost to the consumer?

Mr. OURIEL. Because it follows, that when the terminals are closed on anything from St. Swithin's Day to the birthday of the president of Chevron Oil, and take both Veterans Days off, nights, holidays, Saturdays, at 11 a.m., and it is 5 degrees above zero, our trucks are out swapping product hose to hose, at additional expense.

I can take you back tonight to Rochester, N.Y., and you will find maybe 10 or 20 trucks swapping product.

Mr. GORE. Thank you anyway.

Let me ask Mr. Berson and Mr. Greenes, have both of you gentlemen experienced similar difficulties, losing the key privileges

and facing curtailed hours during which you can load up the product?

Mr. BERSON. I have not had that exact experience, but there are other experiences which we have had, such as—again, mostly an absence from the market of an active sales effort on the part of the major refineries.

Mr. GREENES. In the Metropolitan New York area I don't think any of the dealers or resellers that I know of have experienced those types of problems. What we have experienced is an attrition in the number of suppliers, the number of terminals that exist.

Some of the barge terminals have closed. Some of the majors have pulled out of the market, have pulled out their supplies from the market in the Northeast—one major supplier announced 2½ years ago, Shell, that they were withdrawing from the Middle Atlantic and Northeast distillate market.

Most of the Shell resellers have been able to replace that supply with other suppliers. There has been enough competition so that they have been able to replace that supply.

But there is obviously in the interest of efficiency and cost effectiveness an effort to reduce the amount of costs you incur in overtime hours, in off-time hours, and it is an effort to keep the business profitable in very trying times, when margins are squeezed and prices are going up.

For the record, Mr. Chairman, my Congressman, Mr. Murphy, said if someone ordered 200 gallons of oil he would have to lay out \$106. That is incorrect. He would have to lay out about \$110, plus 8 percent sales tax in New York State, which would be roughly nearly \$119.

Mr. GORE. Mr. Ouriel, you also talk about your largest competitor.

Mr. OUIEL. What page are you on?

Mr. GORE. Well, I am trying to find it. I was reading it earlier. Getting retail customers.

Mr. OUIEL. Yes. You see, our market probably—

Mr. GORE. What page is that on?

Mr. OUIEL. I will find it. It has to do with the United Refining Co. Is it all right if I mention names?

Mr. GORE. Sure.

Mr. OUIEL. The United Refining Co. is a small refiner in Warren, Pa. They have a small refinery in Warren, Pa. and they have a "teakettle operation" somewhere else.

They have been accruing a 6 cents entitlement. In the past 8 months they just purchased the Chevron Oil Division and another large independent. Today they control 50 percent of the retail business in our area.

They don't even reflect their bias in their retail, only about a penny under the other dealers. We felt there should be some sort of a system to pick up that product and pass it through to the consumer.

Mr. GORE. Well, they are dealing directly to the consumer now?

Mr. OUIEL. Yes. They are direct marketers. They run a tremendous amount of direct operation of gasoline stations, and a predominance of direct marketing of fuel oil in three or four states.

Mr. GORE. Is this something that is happening frequently? Is it common in the industry, to see this occur?

Mr. GREENES. It is common to see small refiners who have the small refiner bias use that bias to capture direct retail markets.

Mr. GORE. Rather than expanding their refinery capacity?

Mr. GREENES. Yes, sir.

Mr. GORE. Which perverts the intent of the entitlement program or that portion of the program.

Mr. GREENES. As a matter of fact, the National Oil Jobbers Council has been consistently in this Congress and previous Congress against an extension, or profligation, if you will, of the small refiner bias program. We think it is being misapplied.

Mr. GORE. Mr. Ouriel, tell me more about the teakettle refineries.

Mr. OURIEL. The teakettle refineries are refineries of 10,000 barrels a day or under that are being built just to get under the umbrella of the Federal subsidization program.

This is what I have read in Department of Energy data which I get weekly.

They refer to them as teakettle operations—that they are not contributing to the shortfall of refineries, that there should be expansion of larger refineries.

Mr. GORE. They are just for entitlements?

Mr. OURIEL. Right; \$3 a barrel reflects about 5½ cents a gallon.

Mr. GORE. In the interest of time, I will stop my questions there, Mr. Chairman.

Mr. MOFFETT. The Chair thanks the gentleman from Tennessee.

Gentlemen, thank you. It has been very enlightening. We appreciate your patience.

The Chair now calls Mr. Charles DiBona, executive vice president of the American Petroleum Institute; Mr. George Babikian, vice president, products division, Arco; and Mr. James Feldesman, general counsel, Consumer Energy Council of America.

Gentlemen, if you would, we would thank you for your patience. We know it has been a long day for you, as well as for us. If you would identify yourselves for the record before we begin.

STATEMENTS OF CHARLES J. DiBONA, EXECUTIVE VICE PRESIDENT, AMERICAN PETROLEUM INSTITUTE, ACCOMPANIED BY MICHAEL E. CANES, DIRECTOR, POLICY ANALYSIS DEPARTMENT; GEORGE BABIKIAN, VICE PRESIDENT, PRODUCTS DIVISION, ARCO; AND JAMES FELDESMAN, GENERAL COUNSEL, CONSUMER ENERGY COUNCIL OF AMERICA, ACCOMPANIED BY ELLEN BERMAN, EXECUTIVE DIRECTOR

Mr. DiBONA. My name is Charles J. DiBona, and I am executive vice president of the American Petroleum Institute. I am accompanied by Dr. Michael E. Canes, Director of our Policy Analysis Department.

Mr. BABIKIAN. My name is George Babikian. I am vice president of the products division of Arco, Los Angeles, Calif.

Mr. FELDESMAN. I am James Feldesman, general counsel, Consumer Energy Council of America. Accompanying me is Ellen Berman, executive director, Consumer Energy Council of America.

Mr. MOFFETT. I have heard through one of the staff members that Mr. Babikian had a transportation problem. Have we taken care of that?

Mr. BABIKIAN. We have made other arrangements. We are OK. We will stay until we are finished.

Mr. MOFFETT. Mr. DiBona, would you begin for us, please. As I have told the other witnesses, your entire statement will be part of the record. If you could summarize it, it would be helpful.

Mr. DiBONA. Yes. Thank you very much, Mr. Chairman. I did put it on five pages, as was requested, and I will read through that.

My name is Charles J. DiBona. I am executive vice president of the American Petroleum Institute, a national trade association representing, through its membership, all segments of the petroleum industry.

With me today is Dr. Michael E. Canes, director of our Policy Analysis Department.

We appreciate this opportunity to respond to questions raised by this subcommittee and to comment on the Office of Hearings and Appeals report, Decisions and Recommendations No. 2 (Home) Heating Oil, released on November 20 this year.

At the same time we are submitting for the record written materials and data which summarize statistical information requested by the subcommittee.

Additionally, both my oral comments and our written submission will respond to your question concerning the role of the American Petroleum Institute in the proceeding and will offer comments on the proceeding and the report.

Although the API initially requested to be a participant in the proceeding, we were compelled to withdraw when it became evident that: First, API's participation in the proceeding was significantly constrained by the antitrust laws;

Second, OHA had no intention of adhering to the requirements of the Department of Energy Organization Act and the Administrative Procedure Act; and

Third, OHA's funding of one of the participants in the proceeding indicated the strong possibility of something other than an unbiased hearing.

With regard to the OHA report, it is our judgment that very serious biases underlie the OHA methods and findings. We believe that an extensive review of the practices followed by the OHA on such matters should be considered.

Let me cite at least five of these biases.

Bias One: The OHA negotiated with the Consumer Federation of America weeks before the initial notice of the hearing concerning both the methodology to be followed and the funding of that party's preparation and evidence.

It is my understanding that while at times there were jobber and importer associations at discussions about the system, they did not reach many of the agreements spelled out in CFA's letter to DOE dated December 13, 1977, which is included in my submission.

Moreover, API was never involved in discussions, negotiations, or agreements about the prospective hearing, although we were subsequently named a party. Nor was there significant participation by refiners that turned out to be targets of the hearing.

The advantage given the Consumer Federation of America prior to public notice of the hearing is clear. Such early participation by a party in shaping the proceedings raises an immediate question concerning OHA's objectivity during the proceedings and in the development of the subsequent report.

The committee might wish to consider asking both the DOE and CFA to report on the date and content of all meetings between them on the subject of middle distillates, future middle distillate controls, future hearings, and the funding of CFA that occurred before final notice of this hearing.

Bias Two: The OHA paid the Consumer Federation of America to appear and present testimony. Such funding of a party made it almost impossible, as a practical matter, for the OHA to treat impartially the testimony presented by that party.

In effect, such funding placed the OHA in the position of being both hearing officer and sponsor of the views of that party.

Bias Three: The choice of the Consumer Federation as the party to be favored by financial assistance, a party whose views were publicly known prior to the proceedings and which could have been easily obtained from publicly available documents, resulted in a predictable submission.

The CFA testimony served no purpose save to lend weak support to the conclusions which the OHA selected from conflicting testimony.

Bias Four: The OHA rejected the views of expert and unbiased witnesses on most substantive points. Instead, it accepted the views of the CFA on these points.

It is almost inconceivable that a disinterested report would dismiss the findings of the Justice Department on questions of competition in the oil refining industry and the Office of Fuels Regulation regarding the pricing of an oil product.

Bias Five: The OHA disregarded a vast body of literature concerning competition in the U.S. oil industry and in the refining segment of the industry. An office even minimally concerned with whether competition in fact exists could easily have taken steps to ascertain the extent of such literature and its central content.

In fact, a wide variety of Government, foundation, and academic sources have concluded that the U.S. petroleum industry, and in particularly the refining industry, is openly competitive.

In this brief testimony I cannot speak to all of the flaws and problems in the OHA report. I will, however, comment briefly on one.

The central finding was that "the price for No. 2 heating oil at the refining level subsequent to decontrol had increased at a greater rate than the cost increase refiners have been incurring."

The essence of the position advanced and adopted is that refiner prices for home heating oil rose by more than they would have had controls been in force between July 1976 and August 1978, that this constitutes an "overcharge" and that such "overcharge" reflects anticompetitive behavior.

To begin with, there is no commonly understood sense in which buyers of home heating oil suffered an "overcharge." The very point of the administration and the Congress decontrolling home

heating oil was to allow prices to be set by market forces rather than Government fiat.

The repeated use of the term "overcharge" in OHA's report accordingly reflects either a lack of comprehension of the situation or else constitutes a studied exercise in propaganda.

Moreover, the use of this basic method reflects the agreement as to the rules governing the proceeding apparently struck by OHA with CFA in December of the previous year.

Second, the contention reflects naive notions of "cost" and does not begin to deal with price-cost conditions during the period of controls. But even ignoring these important considerations, and accepting the underlying methodology at face value, it is apparent that the procedures followed by both CFA and OHA are flawed and biased.

By their own calculations, the total so-called overcharge in question was \$193 million. But the OHA report itself notes that over 50 billion gallons of middle distillates were sold during 1977, the great majority of which were home heating oil.

Over the 21 months in question, then, some 80 to 90 billion gallons of heating oil were sold. This would imply an overcharge of about two-tenths of 1 cent per gallon.

There is a distinction between that and the four-tenths of 1 cent per gallon, which I cannot totally explain to you, that Mr. O'Leary was using. But I think I have an explanation as to why that is the case.

In any case, it is not important for this particular argument.

An estimate of this size is without meaning in any statistical sense. Standard errors of measurement in such circumstances are the same size or larger than the purported overcharge.

OHA carried out no statistical tests. The ignoring by OHA of fundamental statistical procedures in reaching its basic finding on alleged overcharges is inexcusably derelict.

Yet, there are other weaknesses. The refiner cost index used by the CFA to determine the alleged "overcharges" is flawed. There has been ample testimony to that in these hearings.

The OHA was made aware of the difficulties with that index by the OFR. Moreover, the OHA itself admitted that the index was flawed and should be dropped.

Finally, it is well known that the index understates the true increase in cost. OHA was advised in a letter submitted by Standard Oil Co. (Indiana) last August that its estimate of price might be biased upward because over a substantial period of time it exceeded Bureau of Labor Statistics estimates of residential home heating oil prices by three-tenths of 1 cent per gallon and refiner prices by one-tenth of 1 cent per gallon.

The former figure is fully one-and-one-half times the alleged average overcharge and the latter one-half of the alleged overcharge.

Despite these considerations, the OHA then adopted CFA's conclusions on the overcharge point as its own conclusions. It is difficult—and in my personal view impossible—to interpret this as anything other than bias on OHA's part.

Mr. Chairman, that concludes my brief statement. I will be happy to respond to your questions.

[Testimony resumes on p. 309.]

[Mr. De Bona's prepared statement and attachments follow:]

Prepared Testimony of

Charles J. DiBona, Executive Vice President
The American Petroleum Institute

Introduction and Summary

This submission responds to questions raised by the Subcommittee on Energy and Power of the U.S. House of Representatives and comments on the recently released Department of Energy, Office of Hearings and Appeals report, Decisions and Recommendations No. 2 (Home) Heating Oil (hereinafter, "Report"). Exhibit A attached to this submission summarizes statistical information requested by the Subcommittee while the main body responds to a question concerning the role of the American Petroleum Institute in the proceeding and offers comments upon the proceeding and the Report.

Although the American Petroleum Institute initially requested to be a participant in the proceeding, it was compelled to withdraw when it became evident that: (1) API's participation in the proceeding was significantly constrained by the antitrust laws; (2) OHA had no intention of adhering to the requirements of the Department of Energy Organization Act and the Administrative Procedure Act; and (3) OHA's funding of one of the participants in the proceeding indicated the strong possibility of something other than an unbiased hearing.

On the matter of the Report, it is the judgment of the Institute that very serious biases underlie its methods and findings, and that an extensive review of the practices followed by the DOE Office of Hearings and Appeals on such matters should be considered.

The biases to which we refer are at least five.

(1) Negotiations with one of the parties, weeks before initial notice of the hearing, concerning methodology to be followed in the proceeding and negotiations for funding for that party in anticipation of the proceeding. Such negotiation in advance of notice to other prospective participants gives reason to believe that the party, the Consumer Federation of America, was given standing concerning the hearing quite different from that of other parties. Such early participation in the shaping of the proceedings and in its own standing by a single participant raises immediate question concerning the evenhandedness of the proceeding and its subsequent report.

(2) The payment by OHA to a party to prepare for and appear in proceedings over which it presided. In our opinion, the relationship spawned by such payment makes it almost impossible as a practical matter for the OHA to treat the testimony and evidence presented by that party in an unbiased manner. In effect, such funding places the OHA in the position of being both the hearing officer and a sponsor of the views of a party to that hearing.

(3) The choice of the Consumer Federation of America as the party paid to appear by the OHA. The positions of the CFA and of its principal witnesses regarding public policy concerning the U.S. oil industry were well established prior to its selection, and could have been freely obtained from publicly available documents. The choice of CFA in the light of these previously established positions is a clear reflection of bias on OHA's

established positions is a clear reflection of bias on OHA's part. Further, that choice resulted in a predictable submission, and payment to CFA to produce its submission served no public purpose.

(4) The rejection by OHA of the views of expert and unbiased parties such as the United States Justice Department and the DOE Office of Fuels Regulation on most substantive points, and the acceptance of the views of CFA on these points. In part, this may reflect the first bias cited above. But in addition, it is almost inconceivable that a disinterested report would dismiss the findings of the Justice Department on questions of competition in the oil refining industry and the Office of Fuels Regulation regarding the pricing of an oil product.

(5) The disregarding by OHA of a vast body of literature concerning competition in the U.S. oil industry and in the refining segment of the industry. A government body even minimally concerned with whether competition in fact exists could easily have taken steps to ascertain the extent of such a literature and its central content. In fact, a wide variety of government, foundation, and academic sources have concluded that the U.S. petroleum industry, and in particular the refining industry, is openly competitive.

Legality of the OHA Proceeding From Which the Report Was Derived

The refusal of OHA to observe the requirements of the Emergency Petroleum Allocation Act as amended (EPAA), the Department of Energy Organization Act (DOE Act), and the Administrative Procedure Act (APA) was one of the reasons for API's decision to

withdraw from the August 21, 1978 "evidentiary hearing". In API's view, the proper manner in which DOE should proceed under the EPAA in considering whether to resume controls on No. 2 heating oil is through a rulemaking proceeding.

However, this was only one aspect of the shortcomings of the hearing. In adopting the procedural rules to be used during the course of the evidentiary hearing, OHA failed to observe the requirements of either the APA or Section 501 of the DOE Act. 43 Fed. Reg. 17393 (April 24, 1978). First, the notice of the interim rules of procedure did not provide interested parties the requisite 30 days for public comment. Second, the notice contained no indication of the legal authority supporting the adoption of the procedural rules nor a statement of the "research, analysis, and other available information in support of the need for, and the probable effect" of the interim rules, as required by Section 501 of the DOE Act. Finally, OHA provided no opportunity for the submission of oral views on the interim rules even though API in its May 15, 1978 comments raised substantial issues of law and fact concerning the failure of the rules to state: (1) the burden of proof in the proceeding; (2) the standard of proof in the proceeding; and (3) the reason for limiting public participation in the proceeding by grouping participants into classes. (See Section 501 of the DOE Act.) API's objections to

these legal deficiencies were summarily dismissed by OHA in a subsequent Federal Register notice, 43 Fed. Reg. 24588 (June 6, 1978).

API pointed out an additional legal deficiency relating to the proceeding in a June 5, 1978 letter to Melvin Goldstein, Director of OHA, questioning the propriety of funding one of the participants. In this connection, it is interesting to note that although OHA notice that the CFA had applied for an increase in its funding first appeared in the Federal Register on May 24, 1978, the application for increase had actually already been granted on May 5.

Despite the numerous legal deficiencies of the proposed hearing, API, in anticipation of its participation, made an effort to prepare a "Statement of Factual Position" which was required to be submitted by June 30, 1978. It soon became apparent, however, that the antitrust laws would preclude API's collection of information pertaining to the pricing of No. 2 heating oil. Since the crux of the proposed hearing was the pricing of No. 2 heating oil and there was growing concern over the objectivity of a proceeding in which one participant was funded by the presiding Office, API withdrew, clearly stating its position in a letter to Melvin Goldstein dated June 29, 1978 (see Exhibit B). In that letter, API restated its antitrust concerns, its question as to the legality of the proceeding and its concern over the funding of one participant in the hearing. It is worth

noting that in discussing API's withdrawal in its Report (pp. 124-125) OHA seems to have misunderstood the first two of these points and did not respond at all to the third.

Biases Reflected in the Report

(1) The Bias From Negotiating With a Participant The Nature of the Proceeding and Intervenor Funding for that Participant in Advance of Initial Public Notice of the Proceeding.

According to the Report, the proceeding was initiated on January 13, 1978, with a directive from the Deputy Secretary of the Department of Energy to conduct an evidentiary hearing. Again according to the Report, public notice appeared in the Federal Register January 20, 1978 (43 Fed. Reg. 2917).

However, on December 13, 1977, fully a month before the directive to conduct a hearing and some five and a half weeks prior to the public notice, the Consumer Federation of America wrote to the Department of Energy concerning its proposed monitoring system regarding middle distillates. The entire letter and an attached proposed DOE middle distillate monitoring system drafted by CFA are appended to this submission (Exhibit C). In the letter, the CFA referred to its ongoing negotiations with the Department of Energy concerning its monitoring system:

"...the Energy Policy Task Force (of the CFA) has been provided with a draft of DOE's proposed rule on middle distillate monitoring for the coming winter and has been afforded the opportunity to make comments.

The DOE draft is the culmination of several meetings and bargaining sessions which the EPTF has had with your staff. These meetings and sessions produced an agreement in principle....

Unfortunately, the draft may be at odds with our agreement in principle....For this reason, we have re-drafted the proposed rule in language we would find both acceptable and in accord with the agreement reached with your staff....Once it is reviewed, we recommend a final meeting with your staff to agree finally on language for the rule."

The CFA draft of the DOE middle distillate monitoring system contained, among other things, a discussion of a prospective summer (August 1978) hearing concerning the effects of decontrol. In that discussion, the CFA proposed both a set of rules to govern the outcome of the proceeding and conditions concerning intervenor financing. Regarding the former, the CFA proposed that:

"In the event the refiner index or wholesale or retail imported price levels are exceeded for any month, the official presiding over the hearing will, for purposes of the hearing, establish a rebuttable presumption that decontrol of the tier which exceeded the index is not achieving the objectives required by applicable legislation, and that remedial action in some form is needed."

For all intents and purposes, this position was adopted by the OHA.

Regarding intervenor financing at the summer hearing the CFA draft proposed that:

"DOE...will provide adequate funding to at least one consumer intervenor organization..."

And in the accompanying letter, the CFA makes clear just which intervenor is to be financed.

"One vital aspect of the agreement in principle we reached... is the question of intervenor funding..."

The summer proceeding will be far more complex than those in which we have participated this past summer and fall. This will mean that a significant increase in funds over the 1977 award to the EPTF must be forthcoming..."

As the letter makes clear, the CFA was in the process of negotiating funding for itself for the coming August hearing well in advance of public notice of any such hearing.

The propriety of negotiating the rules to govern the hearing, including those concerning intervenor financing, with the very participant seeking the financing, is itself open to question. But for present purposes, it suffices to point out that such negotiation with a single participant in advance of public notice of the proceeding raises immediate and serious questions concerning the evenhandedness of the proceeding.

(2) The Bias Imparted by Advance Funding a Party to the Hearing

In April 1978, the Office of Hearings and Appeals of the Department of Energy granted special funding to the Energy Policy Task Force of the Consumer Federation of America for purposes of enabling it to participate in its then planned August hearings. The funding authorized was upwards of \$86,000.

In the opinion of the American Petroleum Institute, the practice of an office of the federal government both holding a hearing on a particular policy matter and financing in advance one of the parties to that hearing produces an inherent conflict of interest which almost certainly will result in a biased outcome to that hearing. By the very choice of the party to be paid, the Office of Hearings and Appeals implicitly indicated its

judgment that that party could offer information of substantial public merit. Thus, the choice itself put the Office in the position of having prejudged the competency of a major participant. Although in theory the Office could choose to reject the views so obtained, in practice this is difficult for it would suggest that the original judgment to fund the party was in error and that taxpayer monies were expended to no purpose. Thus, by its financial sponsorship the Office put itself in poor position to treat its paid party's views in an unbiased manner. In consequence, the Office of Hearings and Appeals was particularly unsuited to conduct the hearing and make policy recommendations. In our view, this situation introduced from the start a substantial source of bias into the proceedings.

(3) The Bias Imparted by Choosing to Fund the Consumer Federation of America Energy Policy Task Force

The choice of CFA as a recipient of public funds is particularly curious if the aim of the OHA had been to obtain unbiased views at its August hearing. The energy policy positions of the CFA were a matter of public record well prior to April 1978, and these positions bore directly on the policy matters the OHA sought to address. Thus, for example, in its "Policy Resolutions" adopted January 21, 1978, the CFA explicitly asserted that the U.S. oil industry is not competitive and that remedial government action should be undertaken. In addition, the CFA took the position that government price controls over petroleum be monitored, a position clearly consistent with a desire that the government rather than market forces determine prices.

In addition, the CFA advocated cost based natural gas price regulation, another indication that it favored regulated rather than market pricing of fuels.

Similar positions were taken in a "Special Report" prepared by the Energy Policy Task Force of the CFA dated June 27, 1977. In addition, this report recommended that all oil in the United States remain under price controls until nationwide cost data could be collected at which time prices would be regulated so as to provide "fair" rates of return to producers while protecting consumers from "monopoly" prices. Here again, the approach of the CFA and of its Energy Policy Task Force towards fuel pricing was clearly indicated.

It is beyond credulity that the policy positions of the CFA could have been unknown to the OHA at the time of its decision to fund CFA's participation at its August hearing. Further, it is extremely unlikely that the OHA did not comprehend the implications of CFA's public policy positions for that group's position concerning the pricing of home heating oil. Hence it seems clear that OHA expected that its funded participant would advocate price controls in the heating oil market and would assert a lack of competition among major oil companies participating there. That the CFA did in fact reach these conclusions attests to its consistency; that the OHA chose to fund its participation given the CFA's previous public positions suggests a complete lack of interest on OHA's part in reaching an unbiased conclusion.

Further bias in the proceeding was ensured by CFA's choice of economic witnesses. While several witnesses appeared on behalf of CFA, the two whose testimony are most extensively quoted in the OHA report are John W. Wilson and George Donkin, both of John W. Wilson Associates, an economic consulting firm. The positions of Messrs. Wilson and Donkin concerning the U.S. oil industry have been a matter of public record for years, both having offered various arguments to the effect that the industry is not competitive and that government control over pricing is warranted. For example, Mr. Wilson's views concerning the industry were entered into the Congressional record at least five times between 1975 and 1976, and Mr. Donkin's three times between 1975 and 1977. While Mr. Wilson and Mr. Donkin had every right to repeat their views on CFA's behalf, it is unclear that the funding of CFA to that purpose represented a productive use of public monies. Indeed, the views of these consultants, as well as those of the Consumer Federation itself, could have been obtained virtually without cost from previously published public documents, raising serious question as to the productivity of the funding.

(4) Biases Reflected in OHA's Rejection of Expert and Unbiased Witnesses and Acceptance of CFA Witnesses on Most Points of Substance

Four major sources are referenced in the OHA Report on home heating oil. These are the Office of Fuels Regulation of the Department of Energy (OFR), the National Oil Jobbers Council (NOJC), the United States Department of Justice (DOJ), and the Consumer Federation of America (CFA).

The OFR offered considerable statistical evidence concerning the recent history of home heating oil pricing, some of which indicated that refiners in the 1977-78 season had charged less than would have been allowed had price controls on home heating oil been in effect. The OFR also concluded from its studies that reimposition of price or allocation controls over home heating oil would be an improper policy course.

The NOJC generally testified as to the competitive nature of the wholesaling and retailing of petroleum products such as home heating oil. That organization also indicated that under free market conditions marketers had been better able to respond to changes in consumer demand.

The DOJ testified that the U.S. oil refining industry is competitive and offered both logic and statistical evidence why this is so. In addition, the DOJ indicated that were competitive problems in the refining industry to exist, antitrust and not price controls would be the proper social remedy.

Finally, the CFA advocated reimposition of price controls over home heating oil and argued that such action is justified because the refinery market is uncompetitive. The CFA also argued that the antitrust laws are not a suitable remedy because in its opinion they had been ineffective in the energy area in the past.

The Office of Fuels Regulation is the designated federal government establishment responsible for monitoring the prices of

petroleum products. In addition, that office has been a close student of the home heating oil market, and is knowledgeable concerning the data in that market. Despite the experience and expertise underlying the positions and advice offered by this office, the OHA instead chose to rely primarily on methodologies and arguments offered by the Consumer Federation of America. For example, the OFR offered several criticisms of methodologies utilized by CFA to determine an alleged "overcharge" by refiners of home heating oil. In its report, however, OHA relegated to footnote these criticisms, most of them important, and brushed them aside in determining that the CFA estimates were valid. Thus, in effect, the OHA largely ignored the views of the DOE Office responsible for monitoring fuel prices while accepting those of its own paid participant.

Were the arguments and methodologies concerning fuel pricing offered by CFA and accepted by OHA even faintly credible, some defense for OHA's action might be possible. But this is not the case. The essence of the position advanced and adopted is that refiner prices for home heating oil rose by more than they would have had controls been in force between July 1976 and August 1978, that this constitutes an "overcharge", and that such "overcharge" reflects anticompetitive behavior.

To begin with, there is no commonly understood sense in which buyers of home heating oil suffered an "overcharge." The very point of the Administration and the Congress decontrolling home heating oil was to allow prices to be set by market forces

rather than by government fiat. The repeated use of the term "overcharge" in OHA's Report (generally without quotation marks) thus either reflects a lack of comprehension of the situation or else constitutes a studied exercise in propaganda.

Second, the contention reflects naive notions of "cost" and does not begin to deal with price-cost conditions during the period of controls. But even ignoring these important considerations and accepting the underlying methodology at face value, it can quickly be seen that the procedures followed are both flawed and biased.

Estimates of what prices would have been had controls remained in effect are gained through construction for each month of an "Index Price" reflecting a base period price plus allowable cost increases. "Overcharges" are calculated as the difference between these monthly index prices and actual prices. By CFA's and OHA's own calculations, the total "overcharge" over the period in question was \$193 million. But according to the OHA Report (p. 3) over 50 billion gallons of middle distillates were sold during 1977, the great majority of these home heating oil. Over the twenty-one months in question, then, some 80-90 billion gallons of home heating oil were sold, implying an "overcharge" of about .2¢/gallon.

An estimate of this order of magnitude is so small as to raise immediate question whether it is meaningful in any statistical sense. To find out whether it is, each month's purported over (or under) charge first should have been analyzed for statistical significance. Estimates of refiner index prices

and actual prices are both subject to measurement error, but under certain assumptions regarding the statistical properties of the data collected, tests of significance could have been conducted. There is no evidence that any such tests were carried out.

Second, the sequence of monthly over or undercharge numbers should have been subjected to statistical test to determine whether in fact the pattern obtained was random or non-random. Various statistical tests are available for this purpose, but again no evidence exists that such tests were performed. Although the API does not have the monthly sample data collected by DOE to construct its refiner index price or its average actual price, we consider it likely that these monthly data contains standard errors at least as large as the purported average "overcharges". But whether or not they do, OHA's ignoring of fundamental statistical procedures in determining whether "overcharges" occurred is inexcusably derelict.

A further weakness in the "overcharge" calculation is that the refiner index price is biased downwards while the actual price series may be biased upwards. The index is biased downwards because it does not allow fully for increases in certain non-product costs, namely certain costs of capital, certain pollution control costs, and certain refinery maintenance costs. The DOE price series may be biased upwards because there is evidence that over a substantial period it exceeded BLS estimates of residential home heating oil prices by .3¢/gallon and refiner prices by

.1¢/gallon. The former figure is fully one and one half times the alleged average overcharge figure and the latter one half of it. This evidence was brought to the attention of OHA in a letter submitted by the Standard Oil Company of Indiana on August 10, 1978 and received on August 15, 1978. Moreover, the OHA was made aware of difficulties with the refiner cost index by the OFR, and itself admitted that the index was flawed and should be dropped:

"...we do not believe that it would be useful for ERA to retain the refiner index which was used in the most recent monitoring system. In general, the parties at the hearing agreed that the refiner index was not an adequate measure of reasonable prices. As OFR pointed out, the limitations in the methodology used to develop the refiner index seriously restrict the use of that mechanism in analyzing prices at the refiner level." (Report, p. 144).

Despite this admission, however, the OHA did not question CFA's use of the index to determine "overcharges" and itself adopted CFA's conclusions on that point as its own. It is difficult to interpret this as anything other than bias on the OHA's part.

The OHA also evidenced bias in its selection of witness views on competition in the refining industry. Both the OFR and the Antitrust Division of the Department of Justice argued that the industry is competitive. The Antitrust Division is perhaps the Federal government's principal source of expertise concerning antitrust matters. For example, it is expected to consider the competitive implications of industry pricing practices as well as those of corporate mergers and acquisitions. In addition, the

Department of Justice has taken a special interest in the energy area, and has issued a number of reports and statements of position concerning the behavior of energy firms.

Despite this expertise, however, the OHA chose to disregard the arguments and criticisms offered by the DOJ witness. Instead, arguments offered by the CFA were accepted at face value. Further, as in its analysis of pricing behavior no case can be made that the CFA's arguments or evidence had merit. The errors of analysis of competition in the CFA presentation are too numerous to here document, but include such fundamental factors as failing to analyze the implications of imported petroleum products in its assessment of competition in the refining market, ignoring the fact that refiners have not been especially profitable despite their alleged monopoly power, and ignoring both economic theory and evidence to the effect that joint ventures in the petroleum industry have pro-competitive, pro-consumer effects. Indeed, it is difficult to treat CFA's submission on this topic as more than mere assertion, a point also raised by both the DOJ and OFR, and OHA's wholesale endorsement of the CFA's arguments must be judged accordingly.

In our opinion, the willingness of OHA to accept relatively inexpert argument and assertion compiled by its sponsored party while rejecting the positions of government officials familiar with the topics under review constitutes particularly strong evidence of bias. We believe this again points out the difficulty of a federal office funding a participant to a hearing over which it presides.

The Bias Reflected in OHA's Ignoring of an Extensive Literature Which Concludes That the Petroleum Refining Industry is Competitive.

The position of the OHA Report on home heating oil is that the petroleum refining industry is not competitive. However, the Report states that the petroleum industry is invited to offer proof to the contrary, and also recommends that studies pertinent to the question be performed. The implication of these findings and recommendations is that the question of competition in the refining industry is largely unstudied, and that what information exists indicates that it is not competitive.

In fact, an extensive literature pertaining to competition in petroleum and in particular in refining does exist. This literature includes such diverse sources as academic papers, foundation studies, and government reports. To sustain this point, a bibliography listing a sample of such studies, as well as testimonies based on such studies, is attached (see Exhibit D). While the methods utilized in the studies vary, generally they examine structure, conduct and performance in the various stages of the U.S. petroleum industry, and focus especially on such things as the level of profitability, entry conditions, concentration, and rate of technical progress.

The central finding of the various studies is that the domestic industry, including its refining component, is competitive. This finding is supported by data indicating that the industry is not particularly concentrated, that its profits are in line with those earned elsewhere in U.S. manufacturing, and that there has been open entry into the industry. Concerning this last point as it pertains to refining, the American Petroleum

Institute has previously submitted for the public record a list of entrants into the U.S. refinery industry between 1950 and 1976 (hearings before the Senate Judiciary Subcommittee on Antitrust and Monopoly, April 19, 1978). These data show that some 130 new refineries were built during that period, of which about two thirds in number and about one quarter in capacity were built by new entrants to the industry. Further, the data showed that the subsequent rate of expansion by the new entrants was somewhat greater than that of other new refineries. Moreover, the API definition of entrant was restricted to firms which neither owned refining capacity prior to 1950 nor bought existing capacity after that time; less restrictive definitions (e.g., to include firms which bought in initially and subsequently expanded) would have increased the measured extent of entry. Finally, data for 1977 and 1978 would show continued entry into the U.S. refining industry. If the Subcommittee wishes to pursue this topic in detail, the API would be pleased to supply the information on refinery entry for the record.

On the subject of the effect on competition of joint activities among petroleum companies, an issue which both the CFA and the OHA treated in extremely superficial manner, there also is a fairly extensive literature. The bibliography here appended also contains samples of this literature. While a thorough discussion of the literature covering joint activities in petroleum is beyond the scope of these comments, this literature generally has concluded that competition and consumer welfare are enhanced, not retarded, by scale economies realized through joint venture petroleum pipelines, production efficiencies realized through

unitization or other joint operation) of oil producing properties, and increased numbers of bids and bidders made possible by joint bidding for OCS leases.

In our view, an office of government such as OHA which seriously considers policy options which it regards as dependent on the extent of competition in an industry has a responsibility to review all readily available information on that topic. This the OHA might have done by requesting its own staff to review the extensive testimony and studies already available, or by inviting academic experts on the topic. That the OHA evidently did not do so yet proceeded to recommend policy as if it were well informed on the competition issue raises questions either as to the competence of the Office or, perhaps, whether it sought to protect its preconceptions on the issue from exposure to pertinent materials.

Exhibit A

Summary of Statistical Material Requested by the
Subcommittee on Energy and Power of the House of
RepresentativesStocks in Relation to Demand

Stocks of distillates on hand and those which will be acquired over the 1978-79 winter heating season should be adequate to meet consumer demand. The relationship of middle distillate stocks needed to meet traditional winter demand was set forth in the National Petroleum Council's report, Petroleum Storage Capacity, issued on November 10, 1974. In that report, NPC stated that the "Estimated minimum operating inventory levels for distillate fuel oil are 100 million barrels, with an additional 120 percent (primarily east of the Rockies) being required to build seasonal inventories by the beginning of the peak season (November 1)." This means that the minimum inventory must be at 220 million barrels on November 1.

Stocks on October 31, 1978, were somewhat below that level at 217.1 million barrels. By November 30, 1978, they had risen to 228.7 million barrels. As a point of comparison, stocks of distillate fuel oil on October 31, 1977, were 250 million barrels, the highest stock for that day of the month on record. These extraordinarily high stocks at the end of October a year ago reflected warm weather and an exceptionally large carryover from the previous winter.

Supplies this winter should be adequate if the following assumptions hold true:

First, that there will be no interference with refinery operations to curtail domestic middle distillate output.

Supplies are sensitive to refining capacity. This has been indicated in the recent shortfalls of premium unleaded fuels experienced by one major oil company. Moreover, contract negotiations between oil industry members and the Oil Chemical and Atomic Workers International Union AFL-CIO will be ongoing during at least part of the 1978-79 heating season. If a shutdown should occur, it could impact on the availability of middle distillate supplies.

Second, that supplies of crude oil and products will be available in sufficient quantities from the oil exporting nations. As you are aware, one supplier -- Iran -- is experiencing a marked decrease in output as a result of internal dissension. While there is adequate production capacity to make up for the Iranian shortfall, there is no guarantee that other nations will increase their production to fill the gap.

And, third, that supplies will be adequate for normal weather conditions in the United States. An extremely severe or prolonged winter, coupled with one or more of the factors I have mentioned, could result in extraordinary drawdowns on stocks. This, in turn, could create spot shortages of middle distillates.

Variations in Middle Distillate Prices

The committee asked that we address the seasonal variations in middle distillate prices before and after decontrol. Although we are constrained from talking about current or future prices by antitrust laws, past prices are a matter of public record.

The U.S. Bureau of Labor Statistics' Retail Prices and Indexes of Fuel and Utilities indicate that the quarterly average retail price of No. 2 heating oil in the U.S. in first quarter 1976 was 41.41 cents per gallon. Middle distillates were decontrolled on June 1, 1976. In the first full quarter under decontrol, the third quarter of 1976, the average U.S. price for No. 2 home heating oil was 41.57 cents per gallon. The historical increase from that point is as follows (based on the Bureau of Labor Statistics report):

Fourth quarter 1976	43.16 cents per gallon
First quarter 1977	46.37 cents per gallon
Second quarter 1977	47.23 cents per gallon
Third quarter 1977	47.50 cents per gallon
Fourth quarter 1977	48.41 cents per gallon
First quarter 1978	49.33 cents per gallon
Second quarter 1978	49.36 cents per gallon

We do not have figures for the period after second quarter 1978. The rise from first quarter 1976 through second quarter 1978 is 7.95 cents per gallon, or 19 percent over the 15-month period.

Exhibit B

Letter from API to Melvin Goldstein, Director of
the Office of Hearings & Appeals

4 American Petroleum Institute
2101 L Street, Northwest
Washington, D.C. 20037
202-457-7370



Stark Ritchie
General Counsel

CERTIFIED MAIL

June 29, 1978

Melvin Goldstein, Director
Office of Hearings & Appeals
Department of Energy
2000 M Street, N.W.
Washington, D.C. 20461

Re: No. 2 (Home) Heating Oil Proceeding;
Case No. DEH--0058

Dear Mr. Goldstein:

For the reasons set forth below, the American Petroleum Institute (API) hereby advises the Office of Hearings and Appeals that it will not participate in the evidentiary hearing on No. 2 (Home) Heating Oil scheduled for August 21, 1978:

Recently, a number of persons, including some members of Congress, expressed their doubts about the propriety of competitive business concerns engaging in proceedings like the proposed hearing in which a discussion of such issues as the reasonableness of prices, profit margins, and costs will occur. The increased sensitivity of the petroleum industry to these expressions is manifest by the results of our own attempts to elicit information pertinent to the hearing from the member companies of API. Notwithstanding a desire to provide relevant data, our companies have been understandably reluctant to supply API with closely guarded propriety information regarding costs and pricing determinations. Such disclosure is contrary to basic concepts and is totally inconsistent with the competitive system in which the petroleum industry operates.

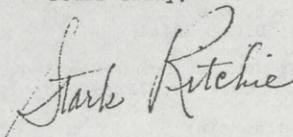
Apart from those anticompetitive considerations, the proposed proceeding itself appears to be an anomalous, extra-legal undertaking which is neither adjudicatory nor rulemaking in nature. The rulemaking requirements of Section 501 of the Department of Energy Organization Act and the Administrative Procedures Act appear to have been disregarded in

developing the proposed Office of Hearings and Appeals' hearing. Fundamental procedural rules continue to be developed in an ad hoc manner, accentuating its questionable nature and purpose.

Also, API is gravely concerned about the Office of Hearings and Appeals' disregard of established legal precedent regarding the use of taxpayer funds to finance the participation of one of the parties in the hearing. See Greene County Planning Board v. Federal Power Commission, 559 F. 2d 1227 (2d Cir. 1976) cert. denied Feb. 21, 1978 (No. 77-481). The subsidization of a particular party's participation raises serious questions concerning the objectivity and propriety of the entire proceeding.

Finally, we hold the firm conviction that no hearing is necessary to demonstrate what history has proven over and over again: government price controls have always failed as a substitute for the market system.

Yours truly,

A handwritten signature in cursive script that reads "Stark Ritchie". The signature is written in dark ink and is positioned below the typed name "Stark Ritchie".

CERTIFICATE OF SERVICE

I certify that in accordance with 10 C.F.R. §205.7 the foregoing letter of withdrawal of the American Petroleum Institute has been served by certified mail or hand delivery on the parties listed below on June 29, 1978:

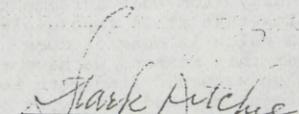
Barton R. House
Assistant Administrator for Fuels
Regulation
Economic Regulatory Administration
Department of Energy
2000 M Street, N.W.
Washington, D.C. 20461

Mr. Joe Sims
Deputy Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C. 20530

S. L. McDonald
Manager, Allocation & Price Div.
Atlantic Richfield Company
515 South Flower Street
Box 2679-T.A.
Los Angeles, CA 70051

James L. Feldman, Esq.
Boasberg, Hewes, Finkelstein,
& Klores
2101 L Street, N.W.
Washington, D.C. 20037

Jane Jachimczyk, Esq.
National Oil Jobbers Council
1707 H Street, N.W.
Washington, D.C. 20036


Stark Ritchie

Our understanding is that there is a DOE commitment to intervenor funding both for the major hearing on middle distillates to be held this summer and also for any monthly or special hearings held under the rule. See #13

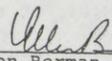
The summer proceeding will be far more complex than those in which we have participated this past summer and fall. This will mean that a significant increase in funds over the 1977 award to the EPTF must be forthcoming. We also expect that the undue limits the 1977 award placed on counsel and consulting fees will be lifted, since those limits caused far more sacrifice and difficulty than needed or appropriate. If this understanding on intervention comports with your own, we would appreciate your confirmation of it.

We look forward to meeting with your staff to conclude negotiations on the middle distillate rule, and to hearing from you on the question of intervention.

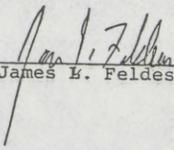
Sincerely,

ENERGY POLICY TASK FORCE

By


Ellen Berman, Director

By


James H. Feldesman, Counsel

P
Enclosure

cc: Mr. Barton House
Mr. Scott Bush

III. SUMMARY OF DOE DECISION

Based on the comments during the hearings, DOE has determined that a program of continued monitoring of middle distillates is needed. DOE also has determined that the middle distillate monitoring program it operated last year must be considerably modified and expanded.

Accordingly, DOE will implement a program designed to monitor each level of the middle distillate distribution system--refiner, wholesaler and retailer. Monitoring will be effectuated through a number of approaches, and it will be supplemented by a series of possible remedial actions. The primary aim of the system is to ensure that prices charged to residential users of No. 2 heating oil and the distribution process through which such prices result do not work to the disadvantage of residential consumers.

These aspects of the program--monitoring mechanisms and remedial actions--are discussed in the following sections of this rule.

IV. MONITORING PROGRAM

There are four aspects of the middle distillate monitoring program DOE will implement. These are: (1)

a refiner index and wholesale and retail imputed price levels; (2) determination of price abusers; (3) a profit and competition study; and (4) a major hearing to be held next summer. Each of these is explained in the sub-sections below.

A. Refiner Index and Wholesale and Retail Imputed Price Levels

1. Purpose

The index for refiners and imputed price levels for wholesalers and retailers represent DOE benchmarks of fair average prices against which average actual prices charged by each of the distribution levels will be compared.

The purpose of such a comparison is to establish whether and, if so, to what extent, prices are within or outside of levels DOE believes to be reasonable.

2. Collection of Data

In order to establish actual prices charged and the ingredients in such prices, DOE will collect and publish data on all three tiers of the distribution system. A description of this collection and publication process follows.

a. Collection of Data

The EIA will collect information with regard to the prices of middle distillates (including No. 1 diesel

fuel and No. 2 heating oil) through the utilization of the following forms: (1) Form P-112-M-1 which surveys a scientifically selected sample of firms which sell No. 2 heating oil to determine the cost of purchased product, the selling price and the amounts of No. 2 heating oil sold to various categories of buyers by the reporting firms; (2) Form P-110-M-1 which surveys all refiners to determine the allocation of monthly costs by the reporting refiners; and (3) Form P-302-M-1 which surveys all refiners and all resellers and retailers who derive \$50 million or more in annual sales or revenues from the retailing or reselling of covered products to determine the amounts sold and the weighted average selling prices for various middle distillates, including No. 2 heating oil, sold at the wholesale and retail level by the reporting firms. Form P-302-M-1 is being revised to require disclosure of the percent of the volume of total refinery output accounted for by No. 2 heating oil.

B. Publication of Data

DOE believes that both industry and consumers will find the information reported to DOE valuable in evaluating the performance of market forces in establishing the prices charged for residential sales of No. 2 heating

oil. Therefore, after EIA has compiled this data, it will publish a summary of its findings with regard to average sale prices and average gross margins at the refiner, wholesale and retail levels. This will provide the necessary data for consumers to determine the degree to which any increases in price are caused by changes in product costs or by increases in gross margins. Publication will occur two months after the month to which the findings pertain. This delay is necessary to allow for the reporting, verification and compilation of the data.

For residential sales of No. 2 heating oil, DOE will publish for the nation, each DOE region and those states with significant sales of residential heating oil (a list of which appears in Appendix V) (1) the actual average prices, (2) the highest, lowest and mean prices, and (3) the average gross margin for firms selling to residential users (i.e., the average selling price for all residential sales minus the average costs of purchased product. Appendix I contains a more detailed explanation of the calculation of this gross margin).

DOE recognizes the value of information of a more current and localized nature regarding actual average prices for residential sales of No. 2 heating oil than that which

DOE will publish. Therefore, DOE is developing a pilot quick-response system which will provide information on the actual average prices within selected states. DOE will financially assist these states to institute such a system.

For sales of No. 2 heating oil to non-ultimate consumers (i.e., resellers, retailers, and reseller/retailers) by wholesalers, DOE will publish for the nation and each DOE region (1) actual average prices, (2) the highest, lowest and mean prices, and (3) the average gross margin (i.e., the average selling price for all sales to non-ultimate consumers by wholesalers minus the average costs of purchased product. Appendix II contains a more detailed explanation of the calculation of this gross margin).

For sales of No. 2 heating oil to non-ultimate consumers by refiners, DOE will publish for the nation and each DOE region (1) the actual average price, (2) the highest, lowest and mean prices, and (3) the average gross margin (i.e., the weighted average selling price for all sales to non-ultimate consumers minus the average costs of crude oil and purchased product. Appendix III contains a more detailed explanation of the calculation of this gross margin).

3. Index and Imputed Price Levels

The actual price information collected under sub-section 2 above will be compared with a refiner index and wholesale and retail imputed price levels. The computation of each is described as follows.

a. Refinery Level Index

DOE will establish an index for the nation and each DOE region which will represent an estimation of what price levels would have been allowed under the provisions of 10 CFR 212.83 if controls had been continued. DOE will treat these indices as benchmarks against which it will compare the corresponding actual average price for sales of No. 2 heating oil to non-ultimate consumers by refiners. The index will be based on the June, 1977 (instead of May, 1973) prices adjusted to reflect changes in crude, non-product, and purchased product costs, computed as in 10 CFR 212.83. Appendix IV contains a more detailed explanation of this index.

DOE believes that these indices for price levels will assist the industry and consumer groups in their evaluation of the published information on refiner prices. Therefore, these indices will be published concurrently with

the publication of actual average prices and gross margins for refiners' sales of No. 2 heating oil, as described in 2.b. above.

b. Wholesale and Retail Levels

Although there is difficulty in constructing a predictive benchmark for the price of No. 2 heating oil at wholesale and retail levels, DOE believes that a fair price benchmark is necessary. Therefore, DOE will establish a working group of consultants including representatives of industry, consumer groups, state energy offices and DOE, which will construct an imputed price level at the wholesale and retail levels for the nation and each DOE region for each month of the heating season (November, 1977 through March, 1978). Members of the group from public and non-profit organizations will be paid for their efforts. Staff or other support as deemed necessary or appropriate by the committee will be provided by DOE.

The imputed price level will be designed so as to simulate the average prices that could have been charged under controls, with allowance for the fact that since the real value of money has depreciated since the base year under controls, some increment of profit margin

to reflect that depreciation should be allowed. The committee will utilize the most currently available information in formulating the imputed price level for each month.

The consulting group shall determine the basis for formulation of the imputed price level for November, 1977 by February 1, 1978. Thereafter, the working group will meet no less frequently than monthly to formulate imputed price levels for each successive month of the heating season as well as to evaluate the results of the previous month's level. In so doing, the group will be guided by the evidence, information and results of the hearings described in the following sub-section 4.

4. Hearings

To assure consumers of prompt action and also to ensure against unfair judgments of industry performance, DOE will hold monthly hearings during the winter heating season. These hearings, to begin on February 15 and to be held on the 15th of each successive month throughout the heating season, will examine the index, imputed price levels and price performance of each of the three distribution tiers being monitored. The hearings will be presided over by an Administrative Law Judge or other neutral

party, who will hear evidence on: (1) compliance with the underlying purposes of applicable statutory authority; (2) the accuracy and fairness of the index, imputed price level, or DOE price data; and (3) if the refiner index or wholesale or retail price levels are exceeded, what, if any, remedial action is needed. The presiding official will make a prompt finding and recommendation to the Administrator of ERA.

B. Price Abusers

One of DOE's concerns during the 1977-78 heating season is that while price benchmarks may not be exceeded, there may be individual firms with little or no competition which are charging excessive prices. In order to ensure against this possibility, DOE will institute an auditing and hearing program designed to identify publicly such firms or entities. The program, as described in detail below, consists of four stages: (1) audit; (2) conciliation; (3) public due process hearings; and (4) publication of price offenders.

1. Audit

Audits for excessive prices will be routinely conducted by DOE against individual refiners, wholesalers and retailers. DOE also will conduct audits in

response to a specific complaint of excessive prices by a State Energy Office or other credible person or party. Complaint procedures will be developed and made public by no later than December 31, 1977.

Each audit of an individual entity will be conducted and findings issued within a maximum period of three weeks. If a reasonable probability of excessive pricing is found to exist, DOE will proceed promptly to the next stage--conciliation.

2. Conciliation

DOE will provide the entity in question with its audit report and invite officials and representatives of the entity to a meeting to discuss the report and appropriate remedial steps the entity might take. The conciliation stage may have one of three possible outcomes. First, DOE may conclude, after review of the situation, that excessive prices are not being charged. Second, DOE may, by written agreement with the entity, approve a remedial course of action the entity will take. Or, third, DOE may decide to hold a hearing on the matter.

3. Hearing

The hearing will be a public due process proceeding and will be conducted in accordance with the procedures and safeguards of 5 U.S.C. §554 and §556, and if possible, it will be held in the area or region served by the entity.

The determination of the hearing will be that the prices charged by the entity during the period in question were or were not excessive, and, if they were, appropriate remedial actions which the entity should and could take will be described.

4. Publication

If, at the point of a decision that an entity has charged excessive prices, the entity refuses to follow the remedial action or actions described in the decision, DOE will publish the names of such an entity along with a copy of the hearing decision as to appropriate remedial actions.

C. Profit and Competition Study and Analysis of Wholesale and Retail Levels

In order to establish more clearly whether the objectives of statutes governing petroleum prices and allocation are being achieved, DOE will undertake a profit and competition study of all middle distillate distribution levels, the results of which will be available to the summer hearing described in D. below.

1. Study Objectives

The study and analyses to be conducted will be designed to answer the following questions: (1) What is the margin of profit made by each distribution tier on

middle distillates, individual middle distillate products, and types of sales (e.g., residential and commercial); (2) to what extent is that margin of profit necessary to provide the entities charging it with a reasonable rate of return; (3) is there a desirable degree of competition at each distribution level, and, for entities which compete regionally or locally, at such regional or local levels; and (4) to what degree are controls (full or partial) needed to achieve equitable prices or a desirable degree of competition.

2. Refinery Level - Method

On the refinery level, DOE will make available data from its present refinery audit program, and will ensure that the program is targeted on middle distillate products in such a manner as to achieve the objectives of the study described above.

3. Wholesale and Retail Levels - Method

On the wholesale and retail levels, DOE will, undertake a major study. The study will be designed and supervised by the group described in A.3.b. above. DOE will ensure adequate staff resources and funding to accomplish the study's objectives prior to the summer hearing.

D. Summer Hearing

To achieve fairness to consumers and the industry

and to determine fully the effects of decontrol of middle distillates, DOE will, in August, 1978, hold a major nationwide public hearing. The hearing will be conducted under the standards and procedures in 5 U.S.C. §554 and §556, and will be designed to determine what, if any, continuing regulatory action is appropriate with respect to middle distillates.

The hearing will consider all data developed by DOE during this coming winter, evidence presented during and the outcome of the monthly hearings described in A.4. above, the profit and competition studies of the middle distillate distribution tiers described in C. above, actions taken concerning price abusers and the results of such actions (described in B. above), and any other evidence offered at the hearing by interested or affected parties which concerns whether and how middle distillate decontrol is or is not achieving statutory or other sound policy objectives. DOE will be represented in those hearings by its General Counsel and will provide adequate funding to at least one consumer intervenor organization to present the consumer's side of the matter. Such an intervenor or intervenors will become a full party to the proceeding, with all the attendant rights and privileges of a party.

In the event the refiner index or wholesale or retail imputed price levels are exceeded for any month, the official presiding over the hearing will, for purposes of the hearing, establish a rebuttable presumption that decontrol of the tier which exceeded the index is not achieving the objectives required by applicable legislation, and that remedial action in some form is needed.

The official presiding over the hearing will make a decision in the form of a recommendation to the Secretary of DOE. That decision will include findings of fact, conclusions of law, and the official's opinion as to what, if any, further regulatory or remedial actions are needed or appropriate.

V. REMEDIAL ACTIONS

Depending on the performance of the industry during the heating season and the outcome of the summer hearing, DOE shall institute remedial actions. Although such actions likely will be predicated on recommendations of presiding officials in hearings described in IV.A.4. and IV.D. above, DOE will be free to take remedial actions it deems appropriate at any time it views such actions as necessary. The actions described below are not intended

to be exclusive, but are generally descriptive of the alternatives from which DOE might select.

A. Reimposition of Controls

Although DOE would require a strong showing that immediate reimposition of partial or complete controls is required during the current heating season, DOE will consider immediate reimposition of controls as a remedy during the heating season in the event prices reach levels in substantial excess of the refiner index or wholesale or retail imputed price levels. Reimposition of controls also will be an alternative remedy to be considered during the summer hearing described in IV.D. In ordering a reimposition of controls, DOE may reimpose controls on the entire industry, on a particular market level or region, on a part of the market (such as No. 2 heating oil or residential sales), or certain controls such as price or allocation, or activities mandated by controls, such as prior business practices.

B. Voluntary Price Restraint Measures

DOE recognizes that there are intermediate actions which may be effective to reduce prices. If

there are significant price increases at any market or regional level, DOE may suggest price restraints on a voluntary basis for the appropriate segments of the industry concerned. If it appears that the degree of voluntary price restraint is insufficient, DOE will consider reimposition of controls.

C. Continued Monitoring and Accompanying
Regulatory Actions

The kind of monitoring program described in this rule also may be extended or modified by DOE. At this time it is too early to say with precision how such a program might be shaped, but some examples of changes in whole or part, from this rule might include: (1) a self-executing "trigger" for reimposition of controls; (2) new methods for computing price benchmarks, or; (3) an extended or intensified excessive pricing audit and hearing program. DOE will, if it concludes continued monitoring is needed, not be limited by past approaches and hold itself open to any new approach or technique which might be fruitful in achieving the objectives it seeks.

Exhibit D

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Mr. MOFFETT. Thank you, Mr. DiBona.

STATEMENT OF GEORGE BABIKIAN

Mr. BABIKIAN. Mr. Chairman, I have summarized my comments. I will go through them as fast as I can.

Let me talk about three major areas—supplies, prices, and then I would like to make some comments about OHA's findings concerning middle distillate.

The Atlantic Richfield Co. is a very substantial marketer of heating oils in the area of the United States where most of the heating oil is consumed.

Mr. Chairman, we believe our heating oil supplies are sufficient to satisfy the demands of our customers this winter. We also feel that the supplies of the industry are sufficient to supply the needs of its customers this winter, barring unforeseen circumstances. They are tight, but they are sufficient.

Although inventory levels in Pads 1 through 4 are lower than the same time last year, this is because last year was really an anomaly. Industry inventory levels at this same time last year were about 33 percent higher than the average inventory levels of the previous 5 years.

So, I think it is appropriate to say the inventory levels of last year were not indicative.

I think a point that is significant is that this year's stocks, the stocks this heating season, are actually higher than the stocks that were available in this country prior to the winter of 1976-77, which if you recall was one of the coldest winters on record.

Atlantic Richfield has taken a number of steps to build our distillate inventory, build it to levels that we think are necessary to satisfy the needs of our customers. Let me enumerate some of these. I might add I believe that industry has done similar types of things.

First of all, we have leased approximately 168 million gallons of storage in strategically located places in our marketing territory, so that we can hold more inventory. This storage costs us 1½ to 2 cents per gallon.

Second, we have moved approximately 50 million gallons of distillate from the west coast to the east coast. We have done this to bolster our east coast inventories. This is a very, very expensive, protective step. To move this product from the west coast to the east coast, cost us 3 to 5 cents per gallon.

Third, we have made purchases of distillate in the open market amounting to some 155 million gallons this season. We have done that, at very, very high prices, again as a step to bolster our inventories.

Fourth, one of the other steps that we have taken, we have worked with our sister division, ARCO Chemical, and gotten an agreement from them to lower the amount of distillate feed stocks they use in their olefins plants. This has the net effect of freeing up supplies for our own customers.

Finally, perhaps by far—not perhaps by far—the most important action of all, we have been running our refineries full out for most of the past 6 months.

We have been running them at just about 100 percent capacity. When that happens, every unit in a refinery is straining.

Our units are showing no signs of fatigue at this point in time, and it is our intention to run every unit in every one of our refineries at full capacity as long as the demand for our product is there.

These are the reasons why I say that we, Atlantic Richfield, feel that we are in a position to take care of the needs of our customers this season.

Working in a decontrolled distillate environment, we have had the necessary flexibility to move quickly to satisfy unprecedented demand. Gentlemen, we have satisfied that demand, Atlantic Richfield and the industry, despite the obstacles of two very, very severe cold winters, very significant natural gas curtailment, back in the 1976-77 season, and a prolonged coal strike earlier this year.

If we had been under distillate controls during this very difficult period, there is no question in my mind that chaos would have prevailed, and perhaps our industry would not have been able to satisfy this unprecedented demand.

Congress was indeed wise to exempt middle distillates from controls back in 1976.

Just a couple of more comments on supply, and some reaction to some comments made earlier this morning.

The industry does indeed have the flexibility to shift yield patterns in our refineries to make more heating oil. In the advent of extremely cold weather, this is precisely what would happen.

As a matter of fact, it is exactly what we did in the winter of 1976-77. It is what we did in January, February, March of this year, when we had abnormally cold weather. But it must be kept in mind that when a refinery yield is shifted to heating oil, it is done so at the expense of gasoline production.

Distillate production cannot be looked at in isolation. Classic proof of this statement can be found in what happened in 1978, what we think is going to happen in 1979.

Demand for gasoline has been exceptionally strong since last spring, and demand has increased at about twice the rate everyone expected. As a result, our flexibility, Atlantic Richfield's flexibility, and the flexibility of the industry is at a bare bones minimum.

If we were to switch our refineries right now to maximum distillate—and we are not producing maximum distillate—if we were to switch to maximum distillate, we would do so at the expense of gasoline production and would seriously affect our ability to supply gasoline needs of this country in 1979.

We plan our refinery yield patterns to serve the total market. We are able to satisfy our distillate demand, and we are building gasoline inventories in anticipation of the 1979 driving season.

I should be quick to add that arbitrary preset dictates that yields be mandated would be disastrous. Such rules never seem to change in harmony with day-to-day realities.

Let me come back to our refineries a little later on because I really think this is the crux of the problem. Let me talk a minute about price.

All petroleum products were placed under price controls in 1971. In 1976, 5 years later, as you know, distillate was decontrolled. For

all practical purposes, margins for distillate remained frozen from mid-1971 until mid-1976.

Thus, when distillate was decontrolled, there was a pent-up need for increased margin. When original price controls for the entire economy were removed in 1974, the result within 1 year was a rise in the inflation rate over twice that during the control periods.

The point is controls build up pressure for price increases, and when they are removed, the inevitable happens.

Congressman Collins in a recent article in *Business Week* stated that during the first month of President Nixon's phase 3, if you recall, that was the initial period of relaxed controls, the consumer price index experienced the sharpest month-to-month gain in 22 years.

The pent-up need for margin increases in distillate was caused by several factors with, of course, inflation very, very high on the list.

I believe you are all aware of the inflation rates in the last 5 years, so I am not going to dwell on them. Let me simply state, though, that frozen margins in an inflationary period have the net effect of lowering real profit levels.

In addition, due to the record cold winters demand has increased 20 percent in distillate in just the last 3 years—20 percent. That is an unprecedented demand level, and yet our industry has satisfied this demand, a fact that seems to be overlooked.

Another significant reason for the upward pressure on distillate prices is because very little refining capacity has been added during the last 5 years. I am talking about meaningful refinery capacity.

The reason very little refining capacity has been added is that because after 7 years approximately 50 percent of the barrel is still controlled. Its highest volume product, gasoline, is under stringent price controls, and as such these controls have the effect of limiting refinery expansion and modernization.

Under gasoline controls it does not pay a company to invest money in increasing refinery capacity. The investment simply cannot be justified.

Yet, additional refining capacity—and again I repeat I think this is the crux of the problem—additional refining capacity would bring supply and demand into better balance, and thus help to check energy costs.

The excess capacity of this industry during the last 5 years has been pretty much eliminated. Because of controls investment in refining capacity cannot be justified, new capacity has not been added, and as such we are an industry now that is operating pretty much at capacity.

There just isn't excess capacity. As demands continue to increase, the problem becomes aggravated.

Mr. Chairman, if I may take just one more moment to comment on the OHA findings. We just received the report a couple of weeks ago. We haven't had a chance to thoroughly analyze it, but we do feel compelled to challenge the findings of this report.

Let me start by stating, first of all, that Atlantic Richfield Co.'s distillate prices today are less than the maximum that would be allowed under the controls that existed in 1976. By today, I am

talking about right now, not April of 1978 or the fall of 1978—right now.

The findings of the Goldstein report do not apply to Atlantic Richfield Co. I repeat, Atlantic Richfield Co.'s distillate prices today are less than the maximum that would be allowed under the controls that existed in 1976.

Mr. MOFFETT. Mr. Babikian, could you supply us with data?

Mr. BABIKIAN. I certainly can.

Mr. MOFFETT. We will leave the record open at this point, without objection.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. BABIKIAN. I will have our people that do this kind of thing get in touch with you. In the area of cost justification, Mr. Goldstein's report does not consider storage costs—the 1½ to 2 cents per gallon costs we incur leasing the 168 million gallons of storage that we have leased.

The Goldstein report does not consider transportation costs as a legitimate cost, the costs we incur moving 50 million gallons of distillate from the west coast to the east coast.

Both of these costs would have been allowed to be passed through under the controls that existed in 1976. Had these costs been included in the study, I don't know if overcharge claims could be made.

The report also talks about the lack of competition in the oil industry. Incredibly, this comment is made in the face of testimony offered by the Department of Justice. Mr. Goldstein's report disregards these findings.

It has been stated that there are a number of studies that indicate concentration in the oil industry is in the middle range of all industry in the United States.

In my written statement, Mr. Chairman, I deal specifically with shares of market, the number of customers we have, the percentage of those customers that are split buyers, and what happens to our shares of the market when we are off the market in our price.

I know from my own personal point of view there is a great deal of competition at the refiners level. One of the comments that was made by the Department of Energy when distillate was decontrolled in 1976 was that decontrol would enable customers to shop around for other suppliers.

That is exactly what happened. In the 1976-77 season some 6 percent of our resellers, our customers, our distributors, if you will, left us and switched suppliers. In the heating season just ended, 17 percent of our customers left us and went with other suppliers.

They did so because abundant supply was available and in most cases—and by most cases I am talking about 90 percent of the cases—supplies were available at prices lower than the prices we were charging these people. That was the reason they left.

Now, that says to me there are alternate suppliers around, and it says to me there is price competition.

I also know that serious competition exists in the marketplace by virtue of what happens to our volumes when we are off the market as little as half a cent a gallon. If we are on the high side of the

market, we lose enormous, enormous volumes. We cannot afford to lose those kinds of volumes.

These rules, I would say, without equivocation, apply to all oil companies marketing distillate. So I guess there is a tendency for prices to be huddled pretty much together. It isn't because there isn't competition. It is because there is a great deal of competition and the product that we sell is very sensitive to price.

Mr. Chairman, in the interest of time that will be my oral statement.

Thank you.

[Testimony resumes on p. 336.]

[Mr. Babikian's prepared statement and attachment follow:]

WRITTEN STATEMENT OF ATLANTIC RICHFIELD COMPANY
SUBCOMMITTEE ON ENERGY AND POWER
WASHINGTON, D. C.
DECEMBER 20, 1978

ATLANTIC RICHFIELD'S WRITTEN STATEMENT WILL DEAL WITH THREE SUBJECTS IN RESPONSE TO THE SUBCOMMITTEE'S INVITATION TO PARTICIPATE IN THE HEARING:

1. HEATING OIL SUPPLIES FOR THE 1978-79 HEATING SEASON.
2. THE REASONS WHY HEATING OIL PRICES HAVE INCREASED.
3. COMMENTS ON "DECISION AND RECOMMENDATIONS - NO. 2 (HOME) HEATING OIL" PUBLISHED ON NOVEMBER 20, 1978 BY THE UNITED STATES DEPARTMENT OF ENERGY, OFFICE OF HEARINGS AND APPEALS. ATTACHMENT A PROVIDES RESPONSES TO THE SPECIFIC QUESTIONS POSED BY CHAIRMAN DINGELL'S LETTER OF DECEMBER 8, 1978 THAT ARE NOT INCORPORATED IN THE BODY OF THIS WRITTEN STATEMENT.

SUPPLY

ATLANTIC RICHFIELD COMPANY IS A VERY SUBSTANTIAL MARKETER OF HEATING OILS IN THAT AREA OF THE UNITED STATES WHERE MOST HEATING OIL IS CONSUMED. WE BELIEVE THAT ATLANTIC RICHFIELD'S SUPPLIES WILL BE SUFFICIENT TO MEET OUR DEMAND THIS WINTER. WE ALSO BELIEVE THAT THE INDUSTRY INVENTORY LEVELS ARE ADEQUATE TO MEET HEATING OIL DEMAND FOR THE 1978-79 SEASON.

ALTHOUGH INVENTORY LEVELS IN PADS I THROUGH IV ARE LOWER THAN WHAT THEY WERE AT THIS TIME LAST YEAR, THIS IS BECAUSE LAST YEAR WAS AN ANOMALY. INDUSTRY INVENTORY LEVELS AT THIS TIME LAST YEAR WERE 33% ABOVE THE AVERAGE INVENTORY LEVELS OF THE PRIOR FIVE YEARS, SO RECORD STOCKS LAST YEAR SHOULD BE DISCOUNTED AS NOT BEING INDICATIVE OF NORMAL INVENTORY LEVELS. ACTUALLY, THIS YEAR'S INDUSTRY STOCKS ARE HIGHER THAN THE STOCKS THAT WERE ON HAND PRIOR TO THE WINTER SEASON OF TWO YEARS AGO WHICH WAS ONE OF THE COLDEST WINTERS ON RECORD.

IN OUR CASE, WE HAVE TAKEN THE FOLLOWING STEPS TO BUILD OUR DISTILLATE INVENTORY LEVEL TO OBJECTIVE:

1. MOST IMPORTANT OF ALL, WE HAVE BEEN RUNNING OUR REFINERIES FULL OUT SINCE LATE LAST SPRING. AS A MATTER OF FACT, SINCE AUGUST, OUR REFINERIES HAVE BEEN RUNNING, ON AVERAGE, AT 100% OF CRUDE INPUT CAPACITY. IT IS OUR INTENTION TO RUN EVERY UNIT IN EVERY ONE OF OUR REFINERIES AT MAXIMUM CAPACITY AS LONG AS THE DEMAND FOR OUR PRODUCTS IS THERE.
2. WE HAVE LEASED APPROXIMATELY 168 MILLION GALLONS OF STORAGE TO CONTAIN ADDITIONAL INVENTORY LEVELS. THIS STORAGE IS STRATEGICALLY LOCATED SO AS TO SERVE OUR CUSTOMERS. LEASING COSTS ARE ABOUT 1-1/2¢ TO 2¢ PER GALLON.

3. WE HAVE MOVED APPROXIMATELY 50 MILLION GALLONS OF DISTILLATE FROM THE WEST COAST TO THE EAST TO BOLSTER EASTERN INVENTORIES. THIS WAS AN EXPENSIVE PROTECTIVE STEP COSTING IN THE RANGE OF 3¢ TO 5¢ A GALLON TO TRANSPORT THE FUEL.
4. WE HAVE MADE PURCHASES OF DISTILLATE IN 1978 AMOUNTING TO 155 MILLION GALLONS AND AT VERY HIGH PRICES.
5. WORKING WITH OUR SISTER DIVISION, ARCO CHEMICAL, WE HAVE BEEN SUCCESSFUL IN REDUCING THE AMOUNT OF DISTILLATE FEEDSTOCKS THAT ARE USED IN OUR OLEFINS PLANTS. THIS HAS HAD THE NET EFFECT OF FREEING UP ADDITIONAL SUPPLIES OF DISTILLATE FOR OUR CUSTOMERS.

THESE ARE THE REASONS WHY ATLANTIC RICHFIELD FEELS IT IS IN A POSITION TO TAKE CARE OF ITS CUSTOMERS THIS WINTER. WORKING IN A DECONTROLLED DISTILLATE ENVIRONMENT, WE HAVE BEEN GIVEN THE NECESSARY FLEXIBILITY TO MOVE QUICKLY TO SATISFY CUSTOMER DEMAND OVER THE PAST TWO AND A HALF YEARS DESPITE THE OBSTACLES OF TWO VERY COLD WINTERS, NATURAL GAS CURTAILMENT AND A PROLONGED COAL STRIKE EARLIER THIS YEAR.

IF THE INDUSTRY HAD BEEN UNDER DISTILLATE CONTROLS DURING THIS VERY DIFFICULT PERIOD, OUR COMPANY BELIEVES CHAOS WOULD HAVE PREVAILED. WE WOULD LIKE TO CITE JUST ONE EXAMPLE TO ILLUSTRATE

THIS POINT. UNDER THE GOVERNMENT'S RULES GOVERNING ALLOCATION, CUSTOMERS WOULD HAVE BEEN HELD TO THE SAME VOLUME AS THAT WHICH THEY PURCHASED IN 1972. UNDER SOME CIRCUMSTANCES, THEY WOULD HAVE BEEN HELD TO A FRACTION OF THAT AMOUNT. OBVIOUSLY, THAT VOLUME WOULD HAVE BEEN TOTALLY INADEQUATE IN THE FACE OF EXTENDED FREEZING WEATHER AND THE CHANGES IN INDIVIDUAL CUSTOMER NEEDS THAT HAVE TAKEN PLACE SINCE 1972.

UNDER CONTROLS, THE INDUSTRY MIGHT NOT HAVE BEEN ABLE TO SATISFY THE UNPRECEDENTED DEMAND FOR HEATING OIL THAT HAS OCCURRED IN THE LAST THREE YEARS. CONGRESS WAS INDEED WISE TO EXEMPT MIDDLE DISTILLATES FROM CONTROLS BACK IN 1976.

IN THE EVENT THAT DEMAND EXCEEDS PROJECTIONS IN THE SEASON AHEAD, THE INDUSTRY DOES INDEED HAVE THE FLEXIBILITY TO SHIFT YIELD PATTERNS IN OUR REFINERIES TO MAKE MORE HEATING OIL. IN THE ADVENT OF EXTREMELY COLD WEATHER, THIS IS PRECISELY WHAT WE WOULD DO. HOWEVER, IT MUST BE KEPT IN MIND THAT WHEN REFINERY YIELD IS SHIFTED TO HEATING OIL, IT IS DONE SO AT THE EXPENSE OF GASOLINE PRODUCTION. DISTILLATE PRODUCTION CANNOT BE LOOKED AT IN ISOLATION.

CLASSIC PROOF OF THIS STATEMENT CAN BE FOUND IN WHAT'S HAPPENED IN 1978 AND WHAT IS EXPECTED TO HAPPEN IN 1979. DEMAND FOR GASOLINE HAS BEEN EXCEPTIONALLY STRONG SINCE LAST SPRING. DEMAND

INCREASED AT NEARLY DOUBLE THE ANTICIPATED RATE AND, AS A RESULT, REFINERY CAPACITY WAS PUSHED TO THE LIMIT. IN SPITE OF RECORD GASOLINE PRODUCTION, GASOLINE INVENTORIES HAVE BEEN DIMINISHED.

GASOLINE INVENTORIES ARE MUCH LOWER THAN THEY HAVE BEEN IN THE PAST AT THIS TIME OF YEAR AND OUR FLEXIBILITY, AS WELL AS THE FLEXIBILITY OF THE INDUSTRY, IS AT A MINIMUM.

IF WE WERE TO SWITCH OUR REFINERIES TO MAXIMUM DISTILLATE PRODUCTION RIGHT NOW, WE WOULD DO SO AT THE EXPENSE OF GASOLINE PRODUCTION. AS A RESULT, WE WOULD SERIOUSLY AFFECT OUR ABILITY TO SUPPLY THE GASOLINE NEEDS OF OUR CUSTOMERS IN 1979. WE PLAN OUR REFINERY YIELD PATTERNS TO SERVE THE TOTAL MARKET. WE ARE ABLE TO SATISFY DISTILLATE DEMAND AS WELL AS BUILD INVENTORIES IN ANTICIPATION OF THE 1979 DRIVING SEASON.

PRICE

IN DISCUSSING DISTILLATE PRICE INCREASES, SOME BACKGROUND INFORMATION IS IN ORDER.

ALL PETROLEUM PRODUCTS WERE PLACED UNDER PRICE CONTROLS BACK IN 1971. IN 1976, CERTAIN PRODUCTS SUCH AS DISTILLATE AND RESIDUAL FUEL OIL WERE EXEMPTED FROM BOTH ALLOCATION AND PRICE CONTROLS.

FOR ALL PRACTICAL PURPOSES, MARGINS FOR DISTILLATE REMAINED FROZEN FROM MID-1971 UNTIL MID-1976. THUS, WHEN DISTILLATE DECONTROLLED,

THERE WAS A PENT-UP NEED FOR INCREASED MARGINS SINCE FROZEN MARGINS HAD BEEN ERODED BY INFLATION DURING THE PERIOD OF REGULATION.

HISTORY ALSO SHOWS US THAT PRICES FOR OTHER COMMODITIES INCREASE WHEN CONTROLS ARE LIFTED SUCH AS THEY WERE FOR DISTILLATE. WHEN PRESIDENT NIXON INSTALLED PRICE CONTROLS IN 1971, THEY REMAINED IN EFFECT FOR NON-PETROLEUM COMMODITIES UNTIL APRIL 1974. ALL PRICE CONTROLS ON THE U. S. ECONOMY AT THAT TIME WERE ENDED EXCEPT FOR THE PETROLEUM INDUSTRY AND, WITHIN ONE YEAR, THE RATE OF INFLATION WAS OVER TWICE THAT DURING THE CONTROL YEARS.

THE POINT IS CONTROLS BUILD UP PRESSURE FOR MARGIN INCREASES AND WHEN THEY ARE REMOVED, THE INEVITABLE HAPPENS. REPRESENTATIVE COLLINS IN A RECENT ARTICLE IN BUSINESS WEEK STATED THAT DURING THE FIRST MONTH OF PRESIDENT NIXON'S PHASE III, THE INITIAL PERIOD OF RELAXED CONTROLS, THE CONSUMER PRICE INDEX EXPERIENCED THE SHARPEST MONTH-TO-MONTH GAIN IN 22 YEARS.

IN ADDITION, HIGH DEMAND DUE TO RECORD COLD WEATHER, NATURAL GAS CURTAILMENT AND THE COAL STRIKE HAVE CONTRIBUTED TO HIGHER PRICES AND INCREASED MARGINS. DEMAND HAS INCREASED 20% IN JUST THE LAST THREE YEARS.

PERHAPS THE MOST SIGNIFICANT REASON FOR THE NEED FOR MARGIN INCREASES IS THAT VERY LITTLE REFINING CAPACITY HAS BEEN ADDED IN THE SEVENTIES. AS A RESULT, THE DOMESTIC PETROLEUM INDUSTRY HAS

REACHED THE POINT WHERE THERE IS VERY LITTLE EXTRA CAPACITY TO BRING FORTH ADDITIONAL SUPPLIES TO MEET UNPRECEDENTED DEMAND. THE REASON VERY LITTLE NEW REFINING CAPACITY HAS BEEN ADDED IS BECAUSE APPROXIMATELY 50% OF THE BARREL IS STILL CONTROLLED. AS A MATTER OF FACT, ITS HIGHEST VOLUME PRODUCT GASOLINE IS UNDER STRINGENT PRICE CONTROLS. CONTROLS ACT AS A DISINCENTIVE TO INVEST IN REFINERY EXPANSION OR MODERNIZATION, YET ADDITIONAL REFINING CAPACITY WOULD BRING SUPPLY AND DEMAND INTO BETTER BALANCE AND, THUS, HELP CHECK ENERGY COSTS.

THEREFORE, HIGH DEMAND FOR DISTILLATES COUPLED WITH THE CONTROLS THAT CONSTRAINED MARGINS UNTIL JULY 1976 ARE MAJOR FACTORS CAUSING PRICES TO RISE.

THE OTHER MAJOR FACTOR EXERTING UPWARD PRESSURE ON PRICES IS THE INCREASE IN THE COST OF DOING BUSINESS COUPLED WITH THE INCREASE IN THE PRICE OF RAW MATERIALS. THE SUBSTANTIAL LEVEL OF INFLATION FACED BY ALL SEGMENTS OF THE ECONOMY CONFRONTS THE OIL INDUSTRY AS WELL. AS COSTS OF CRUDE OIL RISE AND THE COSTS OF OPERATION INCREASE, HIGHER PRODUCT COSTS ARE INEVITABLE.

COMMENTS ON THE OFFICE OF HEARINGS AND APPEALS FINDINGS

ATLANTIC RICHFIELD HAS ONLY HAD A FEW DAYS TO STUDY THIS REPORT. HOWEVER, WE FEEL COMPELLED TO MAKE A NUMBER OF COMMENTS AND WISH TO RESPOND TO CHAIRMAN DINGELL'S QUESTIONS DIRECTED TO US

PERTAINING TO THE FINDINGS.

FIRST OF ALL, CHAIRMAN DINGELL HAS ASKED FOR "THE AMOUNT BY WHICH REFINER MIDDLE DISTILLATE PRICES HAVE EXCEEDED PRICES WHICH WOULD HAVE BEEN PERMITTED UNDER CONTROLS SINCE THE CONTROLS WERE LIFTED, AND YOUR PROJECTIONS FOR THIS WINTER", 1. (a) (i).

ATLANTIC RICHFIELD CAN ONLY SPEAK FOR ITSELF. BASED ON AN ANALYSIS THAT WE HAVE JUST COMPLETED, ATLANTIC RICHFIELD COMPANY'S DISTILLATE PRICES TODAY ARE LESS THAN THE MAXIMUM THAT WOULD BE ALLOWED UNDER THE CONTROLS THAT EXISTED IN 1976.

BECAUSE OF UNKNOWN VARIABLES SUCH AS PROTRACTED FRIGID WEATHER, THE ACTIONS OF FOREIGN GOVERNMENTS, REFINERY BREAKDOWNS OR LABOR UNREST, WE FIND IT IMPOSSIBLE TO OFFER MEANINGFUL PROJECTIONS FOR THIS WINTER. (EVEN IF WE COULD, FOR COMPETITIVE AND ANTI-TRUST LAW REASONS, WE WOULD BE RELUCTANT TO DO SO.)

IN THE FINDINGS, THE REPORT SPEAKS OF "OVERCHARGES" BY REFINERS OF SOME 193 MILLION DOLLARS FOR THE PERIOD JULY 1976 UNTIL APRIL 1978. INCREDIBLE AS IT MAY SEEM, AN OVERCHARGE WAS DEFINED AS ANY PRICE IN EXCESS OF WHAT WOULD HAVE BEEN ALLOWED UNDER CONTINUED CONTROLS.

FIRST OF ALL, THE CALCULATION OF ALLEGED OVERCHARGES DOES NOT CONSIDER STORAGE COSTS, TRANSPORTATION COSTS OF TRANSFERRING PRODUCTS FROM ONE PLACE TO ANOTHER, AND SO ON. THESE COSTS WOULD

HAVE BEEN ALLOWED TO BE PASSED THROUGH UNDER CONTROLS.

SECONDLY, IT IS LUDICROUS TO CLAIM THAT PRICE INCREASES OVER COSTS REPRESENT "OVERCHARGES". THE REGULATIONS MAKE NO PROVISION FOR A DECLINE IN THE PURCHASING POWER OF A DOLLAR. (A ONE DOLLAR PROFIT TODAY IS WORTH IN REAL TERMS ABOUT 50% OF WHAT IT WAS IN 1973.) THE SIMPLE FACT IS THAT PRICES REQUIRED BY CONTROLS ARE INADEQUATE AND SHOULD NOT BE USED AS A BASIS FOR COMPARISON.

FINALLY, THE ISSUE OF SO-CALLED OVERCHARGES HAS BLOWN UP OUT OF ALL PROPORTION. IF THE INDUSTRY DID RAISE PRICES MORE THAN CONTROLS WOULD HAVE ALLOWED, AND IF THE ADDITIONAL REVENUE COLLECTED DID AMOUNT TO 193 MILLION DOLLARS, THE ACTUAL INCREASE IN PRICE OVER THE PERIOD WOULD AMOUNT TO LESS THAN ONE-HALF CENT PER GALLON.

CHAIRMAN DINGELL HAS ALSO ASKED FOR OUR REASONS FOR OUR WITHDRAWAL FROM THE EVIDENTIARY HEARING, 1.(b):

OUR COMPANY APPLIED TO PARTICIPATE IN THE PROCEEDINGS AND WAS GRANTED THAT RIGHT BY THE OFFICE OF HEARINGS AND APPEALS. THE OFFICE OF FUELS REGULATION, ON JUNE 30, 1978, PUBLISHED A REPORT ENTITLED, "ANALYSIS OF NO. 2 HEATING OIL PRICES FOR THE 1977-78 HEATING SEASON". AFTER STUDYING THAT REPORT, WE WITHDREW FROM THE EVIDENTIARY HEARING ON JULY 7, 1978. OUR REASON FOR WITHDRAWAL WAS DUE TO THE FACT THAT THE OFR REPORT PROVIDED MUCH MORE

EXTENSIVE DATA THAN WAS AVAILABLE TO ATLANTIC RICHFIELD. IN ADDITION, WE FELT THAT THE DATA PRESENTED BY OFR INDICATED THAT THERE HAD BEEN MINIMAL PRICE OR MARGIN INCREASES ON THE PART OF RETAILERS, WHOLESALERS AND REFINERS. THUS, WE BELIEVED THAT THE DATA IN THE REPORT SPOKE FOR THEMSELVES AND THERE WOULD BE NO PRODUCTIVE PURPOSE IN OUR PARTICIPATION.

CHAIRMAN DINGELL HAS ALSO REQUESTED COMMENTS RELATIVE TO THE COMPETITIVE WORKABILITY OF THE REFINING SECTOR WITH RESPECT TO MIDDLE DISTILLATES, 1. (a) (iii):

THE FINDINGS STATE, "SIGNIFICANT DOUBTS HAVE BEEN RAISED BY THE EVIDENCE IN THIS PROCEEDING THAT WORKABLE COMPETITION EXISTS IN THE REFINING SECTOR OF THE INDUSTRY."

THE ABOVE STATEMENT IS MADE IN THE FACE OF TESTIMONY OFFERED BY THE DEPARTMENT OF JUSTICE AT THE EVIDENTIARY HEARING THIS SUMMER IN WHICH THE DEPARTMENT OF JUSTICE CONCLUDED THAT THERE WAS WORKABLE COMPETITION AT THE REFINER LEVEL.

THE OFFICE OF HEARINGS AND APPEALS ALSO CLAIMED THAT SINCE API AND ATLANTIC RICHFIELD DID NOT TESTIFY AT THE HEARING, "IT WOULD NOT BE UNREASONABLE TO INFER THAT NEITHER THE API NOR ARCO WOULD HAVE BEEN ABLE TO OFFER ADDITIONAL EVIDENCE TO SUPPORT THE PROPOSITION THAT WORKABLE COMPETITION DOES EXIST AMONG REFINER."

ON THE CONTRARY, WE BELIEVE IT IS TOTALLY UNREASONABLE TO MAKE SUCH AN INFERENCE.

THERE IS INTENSE COMPETITION AT THE REFINER LEVEL TODAY JUST AS THERE HAS BEEN IN THE PAST. OUR BUSINESS IS TO PRODUCE AND SELL PETROLEUM PRODUCTS. THERE IS A HUGE INVESTMENT INVOLVED IN MANUFACTURING AND MARKETING HEATING OIL. SINCE THE SALE OF HEATING OIL IS SEASONAL IN NATURE, A VERY SUBSTANTIAL INVESTMENT IS REQUIRED TO BUILD AND STORE INVENTORIES FOR THE HEATING OIL SEASON. THUS, THERE IS A TREMENDOUS ECONOMIC DRIVE TO MOVE PRODUCT. OUR PROFITS DEPEND ON THESE SALES.

THE TYPE OF COMPETITION THAT EXISTS IN THE HEATING OIL BUSINESS IS NOT GOING TO ALLOW ANYONE TO UNREASONABLY INFLATE HIS PRICES OR PROFITS BECAUSE COMPETITORS WILLING TO ACCEPT A REASONABLE RETURN WILL CAPTURE HIS MARKET.

SOME ILLUSTRATIONS ARE IN ORDER. ONE OF THE FINDINGS OF THE DOE IN PROPOSING DECONTROL WAS THAT COMPETITION WOULD BE ENHANCED SINCE RESELLERS WOULD BE ABLE TO SHOP FOR AND SELECT NEW SUPPLIERS IF THEY SO DESIRED.

OUR EXPERIENCE HAS BEEN THAT THIS SITUATION HAS INDEED OCCURRED.

ATLANTIC RICHFIELD SELLS APPROXIMATELY 1.4 BILLION GALLONS OF HEATING OIL ANNUALLY IN 21 STATES AND THE DISTRICT OF COLUMBIA.

ABOUT 93% OF THIS VOLUME IS SOLD THROUGH 1,036 RESELLERS OF WHICH AT LEAST 870 BUY FROM OTHER SUPPLIERS AS WELL AS ATLANTIC RICHFIELD. THE INDUSTRY IS CHARACTERIZED BY SPLIT BUYERS. MANY CUSTOMERS WILL STOP BUYING IF A SUPPLIER IS EVEN OFF THE MARKET BY A MINOR AMOUNT.

REGARDING CHANGING SUPPLIERS, APPROXIMATELY 6% OF OUR RESELLERS CHANGED SUPPLIERS AT THE END OF THE 1976-77 SEASON AND 17% SELECTED NEW SUPPLIERS AT THE END OF LAST SEASON. THIS WAS DUE TO THE AVAILABILITY OF PRODUCT FROM OTHER SOURCES AND MANY TIMES AT PRICES UNDER ARCO'S POSTING. THIS IS CERTAINLY EVIDENCE THAT THERE WERE ALTERNATE SUPPLIERS WITH LOWER PRICES AVAILABLE.

CONVERSELY, WE HAVE ACQUIRED SOME 300 NEW RESELLERS SINCE CONTROLS ENDED TO NOT ONLY REPLACE THE LOST CUSTOMERS NOTED ABOVE, BUT ALSO TO ADD TO OUR OVERALL DECK OF DISTILLATE CUSTOMERS.

A FURTHER INDICATION OF COMPETITION AT THE REFINER LEVEL IS DEMONSTRATED BY AN ANALYSIS OF OUR OWN MARKET SHARE RELATIVE TO THE COMPETITIVENESS OF OUR POSTED PRICE DURING THE 1976-77 AND 1977-78 HEATING SEASONS.

EXHIBIT A ILLUSTRATES FOR THE NEW ENGLAND AREA THE RELATIONSHIP OF THE DIFFERENTIAL BETWEEN ARCO'S POSTED PRICES TO RESELLERS AS COMPARED TO THE COMPOSITE OF OTHER REFINERS' POSTED PRICES TO THEIR RESELLERS AS REPORTED TO THE BUREAU OF LABOR STATISTICS AND THE RESULTANT IMPACT UPON ARCO'S MARKET SHARE. THE CHART CLEARLY SHOWS

THAT WE HAVE A HIGHER SHARE OF MARKET WHEN OUR PRICES ARE LOWER THAN THE COMPOSITE OF OTHER REFINERS IN THE NEW ENGLAND AREA AND, CONVERSELY, OUR MARKET SHARE DROPS DRAMATICALLY WHEN OUR PRICES ARE HIGHER THAN OTHER REFINER POSTINGS.

THERE HAVE ALSO BEEN A NUMBER OF PUBLISHED STUDIES THAT INDICATE CONCENTRATION IN THE OIL INDUSTRY IS IN THE MIDDLE RANGE FOR ALL INDUSTRY IN THE UNITED STATES WHICH ALSO REFUTE THE ALLEGATION THAT THERE IS NOT WORKABLE COMPETITION AT THE REFINER LEVEL.

AS A FURTHER INDICATION OF LACK OF CONCENTRATION, ATTACHED IS EXHIBIT B WHICH SHOWS THE LATEST GASOLINE MARKET SHARES FOR THOSE FIRMS SELLING GASOLINE IN NEW ENGLAND. THE SOURCE IS LUNDBERG. THIS DATA INDICATES THAT THERE ARE 14 MAJOR REFINERS MARKETING GASOLINE IN NEW ENGLAND. IT IS CLEAR THAT NO SINGLE REFINER HAS A DOMINANT POSITION IN THIS GEOGRAPHIC AREA. NONE OF THE 14 COMPETITORS HAVE REFINERIES LOCATED WITHIN THIS MARKETING AREA. THIS IS A FURTHER INDICATION OF SIGNIFICANT REFINER COMPETITION. MARKET SHARE DATA IS NOT PUBLISHED FOR DISTILLATE. HOWEVER, WE BELIEVE THAT A SIMILAR PATTERN WOULD PREVAIL.

THE FOLLOWING ADDITIONAL COMMENTS ARE OFFERED REGARDING THE ISSUES RAISED IN THE FINDINGS:

THE FINDINGS INDICATE THAT THERE ARE HIGH BARRIERS TO ENTRY. FORTUNE MAGAZINE IN ITS AUGUST 14, 1978 ISSUE STATES, "SINCE 1976,

THE NUMBER OF REFINING COMPANIES IN THE U. S. HAS GROWN BY FORTY-ONE, OR MORE THAN 31 PERCENT, AND THE PACE SEEMS TO BE ACCELERATING." IN VIEW OF THESE STATISTICS, THE BARRIER PROBLEM APPEARS TO BE NEGLIGIBLE.

THE REPORT ALSO SUGGESTS (p. 101) THAT SINCE RETAILERS EARNED A PRE-TAX RATE OF RETURN OF 3.3% AND WHOLESALERS EARNED A PRE-TAX RATE OF RETURN OF 5.2% IN 1976, IT CAN BE CONCLUDED THAT WORKABLE COMPETITION EXISTS AT THE RETAIL AND WHOLESALE LEVELS.

IT IS TO BE DEVOUTLY HOPED THAT THE FIGURES QUOTED IN THE REPORT ARE WRONG. IF NOT, THERE WILL BE NO RETAILERS OR WHOLESALERS SHORTLY SINCE THERE IS ALMOST NO INVESTMENT THAT CAN BE MADE TODAY THAT WILL PRODUCE SUCH POOR RETURNS. IT IS INCONCEIVABLE THAT ANYONE WOULD ACCEPT THE RISKS OF RUNNING A BUSINESS WHEN HE COULD EARN MORE MONEY SIMPLY BY PUTTING HIS FUNDS IN A SAVINGS BANK.

FINALLY, THE FINDINGS SEEM TO IGNORE THE SIGNIFICANCE OF DOE'S OWN MONITORING PROGRAMS FOR THE TWO WINTERS IN QUESTION. THE DOE'S MONITORING PROGRAM FOR THE 1976-77 SEASON INVOLVED A RETAIL PRICE TRIGGER. FROM THE STANDPOINT OF THE OVERALL UNITED STATES MARKET, THE TRIGGER WAS NOT EXCEEDED. FROM THE REGIONAL STANDPOINT, THE TRIGGER WAS ONLY EXCEEDED FOR A SHORT PERIOD OF TIME IN THE NORTH CENTRAL AREA AND, EVEN IN THAT AREA, THE AMOUNT OF OVERAGE REPRESENTED ONLY 1% OF THE COMPOSITE SELLING PRICE.

FOR THE 1977-78 SEASON, THE DOE MONITORING PROGRAM INVOLVED COMPARING REFINERS' PRICES TO WHOLESALERS WITH AN INDEX CONSTRUCTED FOR REFINERS. THE OFFICE OF FUELS REGULATION FOUND THAT:

1. THE REFINER INDEX WAS MARGINALLY EXCEEDED TWICE DURING THE HEATING SEASON AND, ON AVERAGE, REFINER PRICES TO WHOLESALERS WERE BELOW THE GUIDELINE.
2. ON A NATIONAL BASIS, REFINERS' AVERAGE GROSS MARGINS REMAINED STABLE, SHOWING A SLIGHT DECLINE FROM JUNE 1977 THROUGH MARCH 1978.
3. REFINER PRICES FOR SALES OF HEATING OIL TO WHOLESALERS INCREASED NATIONWIDE BY 0.5 CENTS PER GALLON FROM JUNE 1977 TO MARCH 1978. THIS IS LESS THAN A 1.4 PERCENT INCREASE NATIONWIDE.

THE ONLY LOGICAL CONCLUSION THAT CAN BE DRAWN FROM THE TWO MONITORING PROGRAMS IS THAT PRICES FOR HEATING OIL WERE REASONABLE, AND THAT COMPETITION ESTABLISHED THE LEVEL OF PRICES.

CONCLUSION

IN CONCLUSION, DEREGULATION OF DISTILLATES WAS AN IMPORTANT STEP FORWARD IN PROVIDING THE INDUSTRY WITH THE FLEXIBILITY TO MEET UNPRECEDENTED CUSTOMER DEMAND UNDER VERY DIFFICULT CONDITIONS

OVER THE LAST TWO AND A HALF YEARS. IN ADDITION, THE CONCLUSIONS DRAWN FROM TWO YEARS OF MONITORING PROGRAMS DEMONSTRATES THAT DISTILLATE PRICES WERE REASONABLE AND THAT WORKABLE COMPETITION EXISTS.

NEVERTHELESS, BECAUSE OF CONTINUED CONTROLS ON GASOLINE, THE DOMESTIC PETROLEUM INDUSTRY HAS REACHED THE POINT WHERE THERE IS VERY LITTLE EXTRA REFINING CAPACITY TO BRING FORTH ADDITIONAL SUPPLIES TO MEET THE INCREASING DEMAND FOR PETROLEUM PRODUCTS. CONGRESS CAN PROVIDE A MAJOR CONTRIBUTION TO SOLVING THIS PROBLEM BY DEREGULATION OF GASOLINE, THUS REMOVING THE DISINCENTIVES TO INVESTING IN ADDED REFINERY CAPACITY.

THIS NATION IS GOING TO BE FACED WITH CONTINUED INCREASED COSTS WITH OR WITHOUT CONTROLS. BUT A MARKETPLACE FREE OF CONTROLS WHERE PRICES ARE ESTABLISHED BY COMPETITION IS UNQUESTIONABLY THE MOST EFFECTIVE MEANS OF ASSURING ADEQUATE SUPPLIES AT THE MOST REASONABLE PRICES.

GHB/SLM:d1
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ATTACHMENT A

2. (a) PROVIDE INFORMATION CONCERNING STOCK LEVELS OF MIDDLE DISTILLATES:

PLEASE SEE EXHIBIT C WHICH PROVIDES A FIVE-YEAR PICTURE OF INDUSTRY DISTILLATE STOCKS.

3. (a) PLEASE COMPARE THE SEASONAL VARIATIONS IN MIDDLE DISTILLATE PRICES BEFORE AND AFTER DECONTROL:

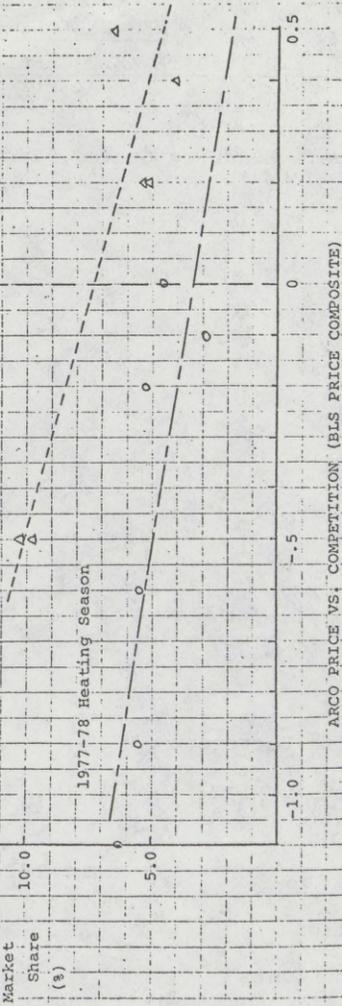
EXHIBIT D IS FROM THE U. S. DEPARTMENT OF ENERGY'S OCTOBER 1978 "MONTHLY ENERGY REVIEW" AND SHOWS REFINERS' AVERAGE SELLING PRICES TO RESELLERS AND RETAILERS. EXHIBIT E SHOWS THE HIGHEST OF THE MONTHLY LOWS FOR NO. 2 HEATING OIL AT THE GULF COAST AND NEW YORK HARBOR. THE PERIOD COVERED IS FROM JANUARY 1974 THROUGH NOVEMBER 1978. THE SOURCE IS "PLATT'S OILGRAM".

3. (b) PROVIDE ANY ANALYSES WHICH RELATE DISTILLATE PRICES TO STOCK LEVELS:

WE CANNOT ANSWER THIS QUESTION AS ATLANTIC RICHFIELD COMPANY HAS NOT CONDUCTED STUDIES OF THE RELATIONSHIP OF DISTILLATE PRICES TO STOCK LEVELS.

Exhibit A

NO. 2 HEATING OIL SALES ANALYSIS--CONN., MASS., R. I.



ARCO PRICE VS. COMPETITION (BLS PRICE COMPOSITE)

NEW ENGLAND9 MOS. YTD 1978 TAXABLE GASOLINE MARKET SHARE

Source: Lundberg Survey, Inc.

	<u>Estimated Market Share</u>
Mobil	12.7%
Texaco	9.4
Shell	8.9
Exxon	8.5
Gulf	6.8
Amoco	6.1
Sun	6.0
ARCO	4.9
Getty	4.8
British Petroleum	4.1
Cities Service	3.5
Chevron	2.6
Hess	2.0
Phillips	0.7
Independents	19.0
Total	100.0%

Note: Based upon taxable gasoline gallonage from Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

TCB:jm
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5 YEAR PICTURE OF
INDUSTRY DISTILLATE STOCKS
END OF MONTH

M BBLs

	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>
1978/79 *	217	228				
1977/78	252	263	245	214	171	140
1976/77	236	224	186	143	136	142
1975/76	226	236	209	165	150	139
1974/75	210	213	200	200	177	161

API DISTILLATE STOCKS INCLUDES NOS. 1 & 2 HEATING OILS,
DIESEL FUELS, & NO. 4 FUEL OIL.

* ESTIMATE OF API DATA

Refiners' Average Selling Prices
to Resellers and Retailers

1976	January	31.1
	February	30.9
	March	30.4
	April	30.1
	May	30.3
	June	30.5
	July	30.9
	August	31.0
	September	31.2
	October	31.7
	November	32.5
	December	33.6
	ANNUAL	31.4
1977	January	34.7
	February	35.4
	March	35.9
	April	35.8
	May	35.7
	June	35.7
	July	35.8
	August	35.7
	September	35.5
	October	36.0
	November	36.3
	December	36.6
	ANNUAL	35.7
1978	January	36.8
	February	36.4
	March	36.2
	April	36.0
	May	36.2
	June	35.8
	July***	35.9

SOURCE: U.S. DEPARTMENT OF ENERGY'S OCTOBER, 1978
MONTHLY ENERGY REVIEW.

#2 HEATING OIL
HIGHEST OF MONTHLY LOWS

Exhibit E

	<u>GULF COAST</u>				
	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
JANUARY	53.00	30.50	31.00	35.25	33.125
FEBRUARY	36.00	25.00	30.50	37.00	32.00
MARCH	34.00	25.00	29.75	36.00	32.75
APRIL	27.00	25.25	28.00	34.00	33.25
MAY	26.00	25.50	29.00	32.50	33.50
JUNE	28.00	27.25	29.75	33.00	33.00
JULY	28.00	28.50	30.00	33.125	33.00
AUGUST	27.75	30.50	29.25	33.125	34.00
SEPTEMBER	27.50	32.00	30.00	33.375	36.25
OCTOBER	29.00	32.125	30.00	33.375	38.50
NOVEMBER	29.50	31.75	32.25	33.625	39.75
DECEMBER	29.50	30.50	34.00	33.375	

	<u>NEW YORK HARBOR</u>				
	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
JANUARY	53.00	29.00	32.50	39.75	36.25
FEBRUARY	37.00	27.00	33.75	42.50	35.50
MARCH	28.00	27.00	31.25	37.00	35.625
APRIL	28.00	27.25	30.00	35.25	35.50
MAY	27.50	27.50	30.00	34.875	35.375
JUNE	28.00	28.50	30.50	34.25	35.25
JULY	28.00	29.50	30.75	34.25	35.75
AUGUST	27.50	31.50	30.50	34.375	37.00
SEPTEMBER	28.00	33.00	30.75	34.875	38.50
OCTOBER	30.00	33.00	31.00	34.875	40.375
NOVEMBER	31.00	33.00	33.00	35.50	42.25
DECEMBER	30.50	32.25	36.25	36.125	

SOURCE: PLATT'S OILGRAMJCW:bjjs
12/15/78

Mr. MOFFETT. Thank you.
Mr. Feldesman.

STATEMENT OF JAMES L. FELDESMAN

Mr. FELDESMAN. Thank you, Mr. Chairman.

If I may, I would like to take the liberty, before I summarize my testimony, which I will do, to respond briefly to the nonsensical charges that were levelled at us by API. Perhaps charges is not the correct phrase. It seems to me what they are doing is complimenting us by suggesting that our efforts—by the way, we were not CFA; it was the energy policy task force at the time, it is now a new name—that we were as successful as their emissary. Suffice to say, we were not.

These meetings that Mr. DiBona alluded to were first not held with OHA, and second were held in conjunction with meetings with other industry members. And if Mr. DiBona's group wasn't represented, perhaps that is his problem, but it certainly was not ours.

There was no secret deal cut. And to suggest that this in some way biases the Department of Energy's decision is nothing short of ludicrous.

I might add based on the testimony you received earlier today from Mr. O'Leary, and the fact that an entity of DOE entered the hearing and was very much against the positions that we took, if that is bias in our favor, I would hate to think what would happen if DOE were not biased in our favor.

Let me go on to my prepared testimony and summarize it briefly.

There has been a long and tortuous hearing surrounding decontrols in the first roughly 2½ years subsequent to it, and I won't repeat it. It is in my testimony, and it is on the record in a plethora of hearings before DOE in other proceedings.

The point I think to be made is that in the midst of the problems, DOE last year consented to an adversarial type hearing in which all parties—consumers, the Energy Department, all members of the industry—could participate. The idea of the hearing was to put people under the scrutiny of cross-examination and to let them in effect give their versions of what happened since decontrol.

Suffice to say that we are not entirely satisfied with the Goldstein report. But we think that by and large it is a reasonable decision. And we are very disappointed, in fact shocked, that it seems to have been disregarded in the cavalier way I think Mr. O'Leary indicated it would be disregarded this morning.

It is useful to point out a few findings in that report, just to highlight it.

First, what the report found was that the prediction made by the Energy Department, or FEA, at the time of decontrol, was that prices in the first 2 years would go up only a penny. That is in the report. Now, we think that Mr. Goldstein may actually have been unfair to his own department. We think that you could read the submissions of FEA at the time of control to get costs, anticipated cost increases, as high as the equivalent cost of crude oil. Crude oil increases over the first 2 years of decontrol—this was the period, by the way, that the hearing covered—were 3 cents. Yet the price increase was 9.3 cents.

So what you got is you have got 6.3 cents more than what was predicted. And suffice to say, it is a devil of a lot of money.

The overcharge figures discussed this morning, and that were discussed in the Goldstein decision, related to the refinery level alone and related only to home heating oil. I think it is useful to point out that DOE documented data in the hearing could not match cost—let me put it another way. There was a discrepancy of 1.1 cent between the increase in price that DOE could justify at the wholesale and retail levels and the actual price that was charged.

In other words, according to DOE's best estimates, at the wholesale and retail level prices had exceeded legitimate increases under controls by 1.1 cent.

So when you look at your 9.3 cents, you have to add on 1.1 cents to the total if you are relying on DOE figures.

It is also important to remember that when decontrol was first bandied about, testimony was received by this subcommittee from none other than Gorman Smith as to how the market would respond and how majestically the price would rise, exactly what the dynamics would be of the rise in price. What Mr. Smith said in essence was that the marketing share would probably wind up increasing margins slightly, but that the increased competition would in effect reduce the margins at the refinery level.

Well, as we know, the margins have not been reduced; they have been expanded. And if you look at Mr. Smith's test you have to count in the \$267 million worth of distillate banks under controls or if you are talking heating oil, the \$104 million which existed attributable solely to heating oil.

So if you go back to the prediction, the figure of increase in the first 2 years over predicted behavior has not been merely \$193 million; it has been more like \$300 million.

The figures do translate into something significant on a per household basis. If you add the total cost of overcharges at refining, wholesale and retail levels, based on DOE data, you get something on the order of \$50 per household. And if you figure that cold climates probably account for more, you may be talking \$50 to \$100 per household for the first 2 years of decontrol. This ignores the recent exorbitant increases. That is a lot of money to be transferred from needy families into the hands of some of the richest companies in the world.

Rather than go on with my testimony, I made a few notes which my testimony in some instances responds to and in some instances does not. And it may save the time of the committee if I could go through these. These are notes predicated on prior testimony. I think it is useful.

First, the half-cent figure out of the 9.3 cents, or the 13.5 cents that Mr. O'Leary uses, is really deceptive. It is deceptive as the devil, in fact.

In the first place, that half a cent, as I mentioned earlier, is attributable only to the refinery level, not the wholesale and retail levels. At the refinery level the price rose cumulatively a nickle. So you are talking about a half a cent out of a 5-cent increase or 10-percent increase.

More than that, the half a cent is an average. And if you average out the increase at the refinery level, you get something on the

order of 3.8 cents over the period. So it is really half a cent to 3.8 cents that we are talking about, rather than half a cent to 9.3 cents as Mr. O'Leary suggests.

I would submit that a better way of looking at it would be to get from DOE, which unfortunately the subcommittee did not, what the spread is right now. And by the spread, I mean the figure that you, Mr. Chairman, were alluding to in the Goldstein report. And that is the difference between the prices charged by refiners currently and the price that could be charged under controls. That is to say, what DOE simulates as the price that could be charged under controls. It was 1.3 cents at the time of the hearing. It is our understanding that right now that price is fairly similar. And it would seem that that would be really the operable figure and that one one would want to play with, rather than the 5 cents which is an average, an average, by the way, which includes 6 months after decontrol when the market rose, when prices hardly rose at all, and when people were just getting accustomed to the fact that they could charge pretty much what they wanted to, and FEA would not do anything about it.

I also want to comment on the fact that apparently this January proceeding, which we feel is unnecessary to begin with, won't be a trial type hearing but instead be something else. What it means is in essence refiners who were welcome to an adversarial hearing this summer stonewalled and stonewalled it effectively. Now they will only have to go in front of some DOE officials, who, if they mirror Mr. O'Leary, won't be particularly enthusiastic about determining that there may be competitive problems at the refinery level or that overcharges of half a cent or whatever may be significant.

In effect, we feel, I must say, really done in by the whole process. Not only are the refiners being given a second chance for not coming in, but the rules of the game have changed and changed considerably in their favor.

I wonder when the first DOE proceeding will be held in which they find that consumer representation was inadequate because for some reason we were not there, or given a chance, and they then give us a legislative type hearing to respond to some sort of proceeding, leave it to us on our own to correct and improve the record. When that occurs, I think we can say that fair play was in order, but I don't expect it to occur ever.

Finally, I would like to comment briefly on the half a cent again, and put it in another perspective.

The New York State Legislature held hearings this summer on heating oil prices. There was some interesting evidence adduced at that hearing. One thing was that Mobil Oil, at least Mobil—and that is a rather significant company—says that it gets four-tenths-of-a-cent profit per gallon on all of its products. If that is really true, and that is indicative of the industry as a whole, what we have seen in heating oil is that in the first 2 years of decontrol the profit per gallon on all of the products, crude oil products, has been essentially more than doubled. That is significant.

Second, if this is really within a standard statistical error, as Mr. DiBona suggests, in other words if DOE cannot track within this level, then in effect it cannot track profit levels of the petroleum

industry and it better get its data system in order. Otherwise we are all in deep trouble.

Let me see if I can make any more comments before I quit, and simplify matters. No, I think that will do for my testimony.

[Testimony resumes on p. 347.]

[Mr. Feldesman's prepared statement and attachment follow:]

STATEMENT OF JAMES L. FELDESMAN

I am here today as General Counsel for the Consumer Energy Council of America. The last time we testified before this Committee you knew us as the Energy Policy Task Force of the Consumer Federation of America. We have now become an independent organization.

The Consumer Energy Council is the broadest based consumer energy policy organization in the nation. Our membership (see Appendix A) includes over fifty major national consumer, labor, farm, public power and urban organizations, including the United Steelworkers of America, the United Auto Workers, the Machinists Union, the National Farmers Union, the U. S. Conference of Mayors, and the American Public Power Association. Our purpose is to present and advocate the consumer point of view in the energy policy debates before Congress, the Administration, the Courts and in other public forums.

This hearing will be the first held by the House on the issue of middle distillate decontrol since distillates were officially freed from price and allocation controls. From the standpoint of consumerism, I must report that decontrol has been not only a failure, but a disaster.

In order to comprehend fully the nature and extent of this disaster, the history surrounding decontrol and its two and one-half years of existence needs to be recited and understood.

Middle distillates, which include home heating oil and diesel fuel, were effectively decontrolled in June, 1976. Congress, which had veto power over the proposed decontrol action, was persuaded against using this power.

The persuasion came in several forms from the then Federal Energy Administration (FEA) and a number of its key officials. First there was "Findings and Views" of the FEA, in which decontrol was analyzed and, not unsurprisingly, found not only to be consistent with the objectives of the Emergency Petroleum Allocation Act but also no more

costly to consumers than continued controls. And, second, there were promises and commitments from FEA officials to Congress that distillate prices would be carefully monitored and regulatory action taken, including imposition of controls, if unwarranted or unjustified price increases occurred. The specific findings in "Findings and Views" as well as the promises and commitments, (if one takes time to read the record) were vague, inconsistent and confusing.

What did come through loud and clear was this: prices to consumers for heating oil would not be more than the cost of crude oil, and, if for some reason, they were more, FEA would take action to reduce them.

As the Subcommittee knows, the FEA and later the Department of Energy instituted monitoring systems during the first two years of decontrol, presumably to fulfill their promises regarding increased consumer costs. The systems differed somewhat but the purpose was essentially the same: to keep track of prices charged and compare them to those that could be charged under a system of controls. Note that these systems differed slightly from the predictions regarding consumer price increases. Rather than monitor against the projected increases of no more than crude oil prices, FEA and DOE chose to match actual prices with those that could be charged under controls. Prices under controls are not necessarily the same as crude oil increases; and, as it turned out, they were very different. The first year's system of monitoring was, from our point of view, an entirely unsatisfactory one. Prices rose very rapidly and, yet, the monitoring system failed to indicate that they had risen enough to "trigger" FEA regulatory action. In major part the reason was that they system tracked and permitted far more than crude oil costs. After a hearing in the summer of 1977, the Department of Energy committed itself to one more winter of monitoring followed by an adversarial hearing in which all parties -- the Energy Department, the industry, and consumers -- could participate and present evidence on what had happened during decontrol.

That hearing was held by the Office of Hearings and Appeals last August. The result of that hearing and the

evidence presented in it indicated that the original decontrol decision was based on projections which have gone entirely awry, findings which were incorrect, and marketplace assumptions which cannot be documented.

What the hearing showed with respect to FEA's projections were as follows: In the first two years of decontrol, consumer prices rose 9.3 cents while the cost of crude oil rose only 3 cents. In other words, FEA's predicted increase--i.e., that of the cost of crude oil--was exceeded by 6.3 cents. FEA was off by over 200 percent and \$2.7 billion in its estimate.^{1/} Additionally, and perhaps more importantly, the 9.3 cents increase was significantly in excess of the price levels that could have been charged under controls. For the first two years, this excess was \$193 million at the refinery level alone. The Office of Hearings and Appeals projected an additional \$138 million "overcharges" by refiners for the present heating season. This figure, it might be noted, is a very modest one. Recent heating oil price increases of 5 to 6 cents per gallon suggest that the projection should have been much much more. Even if one assumes that refiners will raise prices no more than their costs in this coming season, the projection would be about \$50 million more than the Office of Hearings and Appeals finding.

These figures are for the refinery level alone and for home heating oil only. Home heating oil represents only 40 percent of all distillate products, and since diesel fuel and other middle distillates are priced the same as home heating oil, the excess of charges over control levels as a consequence of the decontrol system has been more than double the figures just discussed.

It is noteworthy that under controls, refinery prices remained well under control ceilings. Indeed, there were \$267 million worth of distillate banks at the time of the decontrol, of which \$104 were attributable to heating oil. Accordingly, since decontrol, not only have prices risen

^{1/} Annual residential heating oil consumption is a little more than 22 billion gallons.

indicated that refiner prices were exceeding control levels by 1.3 cents. Our understanding is that the refiner "overcharge" as recently as October has remained close to this figure.

Putting this together with the 1.1 cents of wholesaler and retailer level consumer overcharges, reimposition of controls could reduce prices by about 2.5 cents per gallon, and save consumers over one-half billion dollars a year!

So far, on a household basis, overcharges of all tiers (which amount to about \$700 million) translate into something on the order of \$47 per household. In the northeast and other severely cold climates, it is probably double this amount. Putting it simply, the decontrol action has allowed the oil industry to suck up between \$50 and \$100 (or more) from families in need of a necessity fuel and unable to afford alternatives.

The hearing also revealed that there may be competitive problems among refiners. Indeed, the hearing found that

"significant doubts have been raised by the evidence in this proceeding that workable competition exists in the refining sector of the industry; and antitrust remedies are not likely to be successful in resolving competitive problems in the refining industry."

As the Subcommittee knows, "competition . . . adequate to protect consumers" is a criterion for decontrol not only of distillates but of other crude oil products, including over control ceilings but the pricing behavior of refiners has also changed dramatically. They have effectively eliminated over \$200 million worth of banked costs in addition to the overcharges found by the Office of Hearings and Appeals.

The wholesale and retail levels cannot and should not be exempted from blame. The monitoring system established by FEA and DOE for wholesalers and retailers shows that of the increased prices charged by wholesalers and retailers since decontrol, 1.1 cents per gallon has been charged to consumers in excess of the price that would have been charged if controls had remained in effect.

The latest figures available at the time of the hearing gasoline. With this substantial doubt hanging over the question of competition at the refinery level, it is inconceivable that further decontrol actions could be taken

or approved until or unless that doubt is fully resolved.

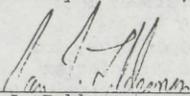
Lest anyone on the Subcommittee think that consumers are not hurting as a consequence of decontrol, the hearing should successfully terminate all such doubts. The hearing revealed, for example, that as a consequence of heating oil prices, low-income heating oil users in Milwaukee, Wisconsin paid 90 percent of their income in housing costs. A recent report from Milwaukee that we have received indicates that as of right now, 20 percent of all households have had their fuel oil or utility service cut off and are unable to get it turned back on. Clearly, if prices are to go along in this fashion, a massive aid program will become an immediate necessity. Weatherization is no answer. Weatherizing all low-income homes in need could cost as much as \$10 billion. Fuel subsidies could be as much or more. Apparently, the middle class will be forced to pay not only for the increased cost of fuel, but in order to keep poor people from freezing, will have to shoulder a significant tax burden as well.

The question before this Subcommittee is what will the Energy Department do in light of the Office of Hearings and Appeals decision? After meeting with senior DOE officials just yesterday, it appears that the decision's recommendations will not be adopted. Instead, DOE, through a process, which as yet has not been fully described, will get additional refiner data. The data will be proprietary and, hence, not disclosable to consumers. What will be done with it is not clear. And, apparently, the problem with competition found in the heating oil hearing will be disregarded, as DOE will continue to press for gasoline decontrol. Finally, unless DOE finds substantial overcharges by refiners (presumably more than the \$193 million so far documented), it will take no action anyway. This, in the face of the January 20, 1978 commitment by DOE that:

"To the extent that firms are found to have charged prices that reflect excessive margins, [DOE] may (following the reimposition of controls) require such firms to make adjustments to prices to reflect revenues received during the period of decontrol, which are found to have resulted from prices unreasonably in excess of those sufficient to insure the survival of the firm as an economically viable and competitive entity, and reflective of a competitive market place."

Obviously, it is distressing to us that DOE has not adopted the Office of Hearings and Appeals decision. It is also distressing that the threshold of price "overcharges" which DOE is prepared to endure is, as yet, unstated. And, finally, it is terribly disturbing that a clear plan of action to continue to monitor--publicly--prices is not yet drawn up or, to our understanding, necessarily to be initiated. It is, therefore, important for the Subcommittee to continue to press for a clear-cut policy statement by DOE as to what it will do to protect consumers from unwarranted and unfair price increases.

Respectfully submitted, -



James L. Feldesman
General Counsel
Consumer Energy Council of America

Appendix A

CONSUMER ENERGY COUNCIL OF AMERICA MEMBER ORGANIZATIONS

Adams Electric Cooperative, Inc.
 AFL-CIO
 Allegheny Electric Cooperative, Inc.
 Amalgamated Clothing & Textile Workers Union, AFL-CIO
 American Federation of State, County & Municipal Employees, AFL-CIO
 American Federation of Teachers, AFL-CIO
 American Public Gas Association
 American Public Power Association
 Association of Illinois Electric Cooperatives
 Association of Texas Electric Cooperatives Inc.
 Basin Electric Power Cooperative
 Central Power Electric Cooperative, Inc.
 Cooperative League of the USA
 East River Electric Power Cooperative, Inc.
 Florida Electric Cooperatives Association
 Hoosier Energy Division, Indiana Statewide Rural Electric Cooperative
 Industrial Union Department, AFL-CIO
 International Association of Machinists and Aerospace Workers, AFL-CIO
 Kansas Electric Cooperatives, Inc.
 Kansas Municipal Utilities
 Lincoln (Nebraska) Electric System
 Marine Engineers Beneficial Association
 Maritime Trades Department, AFL-CIO
 Minnesota Farmers Union
 National Farmers Organization
 National Farmers Union
 National Rural Electric Cooperative Association
 North Carolina Electric Membership Corporation
 North Dakota Farmers Union
 Northeast Missouri Electric Power Cooperative
 Northeast Public Power Association
 Northwest Iowa Power Cooperative
 Northwest Public Power Association
 Oil, Chemical and Atomic Workers International Union, AFL-CIO
 Pennsylvania Rural Electric Association
 Rocky Mountain Farmers Union
 Service Employees International Union, AFL-CIO
 South Dakota Farmers Union
 Southside Electric Cooperative Inc.
 Tennessee Valley Public Power Association
 Texas AFL-CIO
 Tillamook Peoples Utility District
 United Auto Workers
 United States Conference of Mayors
 United Steelworkers of America, AFL-CIO
 Valley Electric Cooperative
 Washington Public Utility Districts' Association
 Wisconsin State AFL-CIO

Mr. BABIKIAN. Mr. Chairman, may I make a comment, in connection with the 2 cents that has been referred to a number of times today. If my memory serves me right, what the DOE said was that prices of distillate would go up 1 to 2 cents more than they would have gone up had controls remained in effect. My memory is a little hazy, but I think that is what they said. And it might be worth the trouble to check that out. I don't think they said they were just going up 1 to 2 cents. They said 1 to 2 cents more than they would go up under controls.

Mr. MOFFETT. We will come back to that. Thank you.

The Chair now recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Mr. Chairman, it has been a long day. I don't know how much we want to go back over this.

I was intrigued by a couple of statements that were made by several of the witnesses.

First of all, Mr. DiBona, you say that the Procedures Act—you raised objections—I have lost your testimony here—

Mr. DiBONA. Are you talking about the legal question under the Administrative Procedures Act?

Mr. GORE. Yes. That doesn't apply to this kind of proceeding, does it?

Mr. DiBONA. We believe it does and we so stated. We provided letters to OHA at the time. We would be happy to provide you with those letters. We have led it out a little bit more in my written testimony. But we can provide the letters that we provided OHA at the time expressing our concern about it.

I am not a lawyer. But I can I out to you two or three of the things that I understand were not carried out.

One, the period to respond to the rules of operation was not 30 days. These were regarded by us to be of major concern to the prosecution of the hearings. And there is supposed to be an opportunity for oral argument up the line. And there were a few other complaints of that sort.

Essentially the final basic rule guiding this hearing turned out to be the rule essentially that was in the Energy Policy Task Force—excuse me; Mr. Feldesman said that they were not part of the Consumer Federation of America at that time. But the EPTF letter that was sent by Mr. Feldesman and Miss Berman to John O'Leary on December 13, 1977, spelling out the detailed results of the bargaining session and agreement about this hearing does have Consumer Federation of America on it, and therefore I assume they were part of the Consumer Federation of America.

One of the basic rules on pages 14 and 15 here of the attachment which led out their detailed understanding about how this proceeding would be handled was put together in agreements and discussions between them prior to December 13, , a hearing which was not formally announced until April of the following year.

Mr. GORE. Page 14 of what? Of your prepared statement?

Mr. DiBONA. Yes, my statement incorporates exhibit C a document which was an attachment to the letter. Pages 14 and 15 state that:

In the event the refiner indexes are exceeded for any month the official presiding over the hearing will for purposes of this hearing establish a rebuttable presump-

tion that decontrol of the tier which exceeded the index is not achieving the objective required by applicable legislation and the remedial action in some form is needed.

That is the thing that bothered us about this whole proceeding. We were not invited to come to that. We were regarded by CFA or the Energy Policy Task Force as so important a witness that they petitioned OHA to force our participation after we withdrew.

Mr. GORE. Let me come back to what I asked you about, and that is the administrative procedures and judicial review that you say were not followed with respect to this proceeding. I have section 501 of title V of this right here, the Department of Energy Organization Act. It clearly applies to rulemaking procedures, which this was not. "This shall apply in accordance with its term to any rule or regulation." This is not a rulemaking procedure.

Mr. DiBONA. That depends on how you read the definition of rulemaking or rule; API concluded that it is a rulemaking proceeding.

Mr. GORE. It is a factfinding procedure, not a rulemaking procedure.

Mr. DiBONA. I understand that, but you have—

Mr. GORE. Was there a proposed rule that was at the foundation of this proceeding? Was there a proposed rule under discussion?

Mr. DiBONA. Our concern was that the procedures had to go through a proper rulemaking.

Mr. GORE. Was there a proposed rule? Was there a rule that was under consideration?

Mr. DiBONA. Yes. The rule was the procedures. This is a legal point. I am not a lawyer. We would be happy to provide you with the submission we made which raises these points and I think adequately deals with them.

Mr. GORE. I am not a lawyer, either. I was hoping you and I could just talk about it in plain English.

Mr. DiBONA. What really concerned us as much as the formality of that—that was an important concern—but it was the basis and essentially the rules for conducting this proceeding were led out in advance.

Mr. GORE. Let me come to your other objection. I think that OHA was correct from my point of view in their appendix footnote No. 24 when they said in their opinion this was essentially groundless, that it did not apply because the law clearly on its face does not apply to this kind of proceeding.

Then you come to the question of intervenor funding.

Mr. DiBONA. We gave three reasons in that.

Mr. GORE. I know.

Mr. DiBONA. Only two are reported.

Mr. GORE. What was the third, then?

Mr. DiBONA. The third was that we regarded the proceedings as biased because of this funding.

Mr. GORE. Let me come directly to that question. The American Petroleum Institute was very strongly opposed to the creation of this Agency for Consumer Protection. Right?

Mr. DiBONA. That is my recollection. I am not positive on that.

Mr. GORE. The alternative suggested to the Agency for Consumer Protection was some form of intervenor funding on an action-by-

action basis so that consumers would have their interest and voice heard during proceedings before Government agencies. Do you think that consumers should not be heard in proceedings before Government agencies?

Mr. DiBONA. I have no objection obviously to consumers being heard. I think they ought to be heard.

Mr. GORE. Are you opposed to the concept of intervenor funding completely across the board?

Mr. DiBONA. I am not necessarily opposed to it. I have not looked at every possible way in which this may be done. What I do object to is the idea that the agency which conducts the hearing should go out and find the consumer group to put forth a view, and I particularly question whether there ought to be selection of a group whose biases are known and position is known very, very clearly in advance and whose evidence will be extremely predictable.

Mr. GORE. Your positions were certainly predictable.

Mr. DiBONA. We were not asking for a funding.

Mr. MOFFETT. Would the gentleman yield?

Mr. GORE. Yes.

I would hope to get someone to represent the consumer point of view.

Mr. MOFFETT. Would the gentleman yield?

It really galls me, Mr. DiBona, to hear your paranoia; you can discuss it in technical points if you want—your paranoia about this very small group. I think they are a competent group, but compared to the power your industry has they have very little influence. As one who worked in a public interest group for 3 years and came up against the immense power of the industry, let me say that you have every right to exert that power. You have every right to have as many people in Washington as you want and as many floors or office buildings as you want. That is right under the first amendment.

But when you come in here and complain to us about how this group had some sort of advantage and suggest that the Department of Energy has a responsibility to try to find an unbiased group, it is amazing.

If the industry really wonders why it has such low credibility, and I think all of us who are in institutions including Congress, that have low credibility have a responsibility to think about that, it may result from an attempt to restrict the other side's ability to express views. How many proceedings has this industry dominated in the last 10 or 20 years in this town? Again, you are doing that in accordance with your rights, but I have to believe you have enough of a perception and a sense that the consumer movement in this country involves, very little in the way of organized groups. Certainly, there are very few groups that can be in Washington and appear in proceedings. The imbalance between your power, financial and otherwise, and theirs is immense. You cannot even put it on the same chart.

Again, that is fine, you are right under the first amendment. But then to come in here and spend the bulk of your testimony discussing how the poor API was at a disadvantage in this proceeding instead of the issues at hand is really almost too much to take.

Mr. DiBONA. There are three reasons, Mr. Chairman, why we withdrew. The first of the reasons that we gave was that we were unable because of the antitrust laws, to bring forth much of the relevant information. We made that very clear. We were concerned about these other points.

Mr. MOFFETT. Were you not familiar with the antitrust laws when you first decided to participate?

Mr. DiBONA. We made it clear in our petition to participate that we might have the problem, that we had not been able to collect the information and that may be a basis for our withdrawal, that we had yet to do that. When we proceeded, we found out that we were unable to collect that information without violating the antitrust laws because it was detailed cost data of member companies, which is something we are simply not permitted to get into. That is one of the reasons. There were three reasons. We were concerned about the way in which the concerns we had about the way the proceedings were being handled by OHA. We are still concerned that was badly handled but that was only one of the other reasons.

Quite frankly, as far as the relative influence of the American Petroleum Institute and the Consumer Federation of America or the Energy Policy Task Force is concerned, I will stand on the December 13 letter as ample evidence of who, in fact, had an inside track in this hearing.

Ms. BERMAN. May I respond, Mr. Chairman, for a second?

Mr. MOFFETT. Yes.

Ms. BERMAN. The December 13 letter that Mr. DiBona is referring to came as a result of a series of negotiations held at the instigation of the Department of Energy. It is the first time they have ever tried to bring together consumers and industry into a single forum to talk about the issues that were ahead of them. At this particular instance we had complained that heating oil prices had gone far in excess of the controlled prices and we had asked the agency to do something. In response to that they called together consumers, representatives of NOJC and of the New England Fuel Institute, the retailers and wholesalers. I do not know whether the refiners were invited. If they were invited they did not participate.

The meetings were on the record. The recorders were present to provide transcripts of the meetings. They were all held in a very exemplary fashion. We complimented DOE for trying to bring together various points of views.

As a result of these negotiating sessions with the industry with the wholesalers and the retailers they did come up with a series of guidelines that they expected to follow. When they came out with their draft regulations they talked to us about them, all the groups together, the wholesalers, the retailers, the consumers, and they invited comment from us.

They had led us to believe there would be other things in the regulations than were in them and when they provided the draft regulations to the three parties for comment we did have some complaints. It did not conform with what we understood the agreement to be. We then wrote the letter. As you say in your testimony where they met only with one party and our letter was written as a result of that it is absolutely correct. They made a totally new

effort to bring in all elements of the industry, all affected parties, and I would like Mr. DiBona to go back and look at the records of DOE and see who was present at these hearings.

Mr. DiBONA. I did not say there was only one party at these hearings. I understand there were wholesalers and retailers at those meetings. The target of this report is the refiners. They were not in the meeting. API was asked to be a party. When we withdrew the Consumer Federation of America or the Energy Policy Task Force tried to get the OHA to force our continued participation. We were not a party to those agreements.

Ms. BERMAN. We wanted you there. We wanted to see your evidence.

Mr. DiBONA. We are talking about the meetings that preceded December 13.

Mr. MOFFETT. When did you withdraw?

Mr. DiBONA. June 29. That is after we had submitted comments about the way in which the proceedings were being held and that is after we had met and tried to assemble this data from the refiners and found out that we simply could not do it and meet the antitrust laws.

Mr. MOFFETT. You did not know about the earlier meetings?

Mr. DiBONA. We were not aware of this earlier meeting at all. We only found out about this meeting because I understand there is a suit now by the Chamber of Commerce against DOE, and this was the result of a Freedom of Information Act request, I believe.

Mr. MOFFETT. Let us put a little bit of this history aside and talk about the January conference. I am sorry we did not clear this up for the record this morning. It seemed to me as though Mr. O'Leary said at first in response to my question that he was recommending the same type of proceeding for this January conference. Then he seemed to back off on that later on. I do not know if that is your understanding or not.

Mr. DiBONA. I thought what he backed off of was the precise way in which the proceeding would be conducted.

Mr. MOFFETT. That was my impression. But we will clarify that with him. For now let me ask how you view the January proceeding? Are you planning to participate?

Mr. DiBONA. I do not know until I know something about the rules and what kind of evidence will be relevant whether we can according to the antitrust laws participate in those hearings.

Mr. MOFFETT. Is Arco planning to participate?

Mr. BABIKIAN. Mr. Chairman, I think it is appropriate that I make a comment on why Arco did not appear at the hearings this summer that we were invited to and we agreed to appear. We were preparing to do so because we were not afraid of talking about heating oil costs, so to speak. But in the course of the proceedings we saw the outline of what was going to be covered and we thought it went far beyond the purview of looking into the heating oil price—divestiture, competition in the oil industry—and that whole bag was going to be discussed at these hearings. We felt for one thing that we were already a defendant in a case by the Federal Government, the FTC, and for us to go to an evidentiary type of hearing and make comments about competition in the oil industry we felt was not appropriate.

Mr. MOFFETT. I can understand that. But please also understand that we can go a number of different ways. The Government can say we will take you at your word, which you might think is all right, and I do not have any reason to question your word, but I think our constituents will demand that we get more information than that. You should be sensitive to that. How could we or the Department of Energy ever say we investigated skyrocketing home-heating oil costs without looking at the competition issue by using objective data? I am a little bit surprised over your suggestion that this issue would not be on the agenda.

Mr. BABIKIAN. We again were prepared to discuss heating oil kinds of items. That is what they thought this hearing was going to be about. In addition to that the Office of Fuels Regulation came out with a report that was presented to this committee that we felt pretty well covered the heating oil part of it, and perhaps we were wrong but we felt that this hearing could very well have turned into a witch hunt, and that is the reason or one of the reasons we did not go, plus the fact that this kind of charge had been made so many times against our industry that it seemed as if we were fighting a big dragon once again.

Mr. MOFFETT. In retrospect, do you believe it was a witch hunt?

Mr. BABIKIAN. I do not agree with the findings of the report.

Mr. MOFFETT. Witch hunt has other connotations than just findings with which you may disagree. Perhaps you chose a bad phrase to use.

Mr. BABIKIAN. My personal feeling was when we saw the outline perhaps this committee was not quite as interested in getting to the specific facts as they could have been and we felt that the OFR report covered the industry actions in distillate pretty well, but to broaden the whole range of this committee to talk about divestiture and competition we felt was not really in the purview of this committee.

To answer your specific question about whether Arco will appear in January hearings, it is certainly our intention to appear, yes.

Mr. MOFFETT. Do you have any objection if those January conferences Mr. O'Leary described require cross-examination?

Mr. BABIKIAN. I do not really know what the final format is going to be but if it is a hearing that pertains to heating oils and our actions in heating oils I would certainly have no objection.

Mr. MOFFETT. How would you write the agenda differently? It is to talk about competition in the industry, is it not?

Mr. BABIKIAN. Because I think it is almost an unbelievable subject. It has been looked at in this country so many times by so many departments over so many years, and the findings we have do not indicate there is any lack of competition in our industry. If you look at the bare-bones numbers—I jotted them down—in terms of concentration there are 131 companies in the United States that refine products, 15,000 wholesalers of products, approximately 200,000 retailers, 10,000 producers. These are numbers that do not suggest lack of competition to me. I know from my own point of view in the marketplace I have never seen an industry that is as competitive as this.

Mr. MOFFETT. With all due respect, it is not what the figures suggest to you as an industry representative, that govern but what

the figures suggest to the regulators. We have responsibility to try to obtain data to support or not support the various contentions. Without having any information or competition on the refinery level, I do not see how you can say this is a ridiculous subject to look at in terms of home heating oil. I cannot conceive of leaving it off the agenda.

Mr. BABIKIAN. Mr. Chairman, I guess there are other branches of government that are charged with looking at this kind of thing almost as their full-time job. The Department of Justice did appear at this hearing and made testimony to the effect that they thought there was a workable competition at the refinery level.

Mr. MOFFETT. You may not be aware they appeared before the Udall committee not long after. At that time they said one cannot look only at market shares, but that joint ventures also have to be considered. Their subsequent testimony was quite different, as does happen with government agencies.

Mr. BABIKIAN. I think that is their job. I think they should look at it. And if they are fulfilling their responsibilities they will do it much more thoroughly, much more effectively than a Department of Energy hearing looking at distillate prices.

Mr. MOFFETT. I understand, but can the Department of Justice look at it without disaggregated information on costs of heating oil or on profits?

Mr. BABIKIAN. I would imagine that is certainly a relative part of any kind of study.

Mr. MOFFETT. But they cannot get the information, and we in Congress cannot get it. Even DOE does not have it.

Mr. BABIKIAN. I guess I do not know specifically what the question is. The cost of heating oil?

Mr. MOFFETT. We are talking about costs and revenues attributable to heating oil. We are talking about heavily integrated companies. In some cases we are hearing not only from lay persons like myself but from retailers and wholesalers, people who rely upon majors for supply, that they have real problems. They suspect there is not enough competition. They suspect there is a domination by integrated firms which perpetrates a situation in which they are in a very disadvantageous position.

Mr. BABIKIAN. Mr. Chairman, we have a little over 1,000 retailers, customers that buy heating oil from us, and resell that heating oil. Ninety-three percent of our customers are split buyers. They do not buy just from us. They buy from other people. Generally they buy where the price is the most favorable. That does represent to me that there are options available to our resellers, to our wholesalers and the customers that buy furnace oil from us and resell it. I guess I am not qualified to talk about what effect joint ventures have on oligopoly but I know from a marketing point of view it is a pretty competitive business.

Mr. MOFFETT. Could you provide us with information on refinery cost breakdowns by specific products?

Mr. BABIKIAN. No; I cannot. I doubt very much if anyone in this country can. This is an extremely complex subject—I know you have heard this before, I am sure it must turn you off when you hear it, but it really is so. For instance, I do not know how to describe this best. I was trying to work this out in my own mind

the other day. If a refiner were to buy Arabian crude because he wanted to make more distillate from that kind of crude, it costs \$1.50 to \$2 a barrel more to buy that kind of crude and you can get additional distillate from this crude. What charge would you levy against distillate? Would you levy a 50-cent-a-gallon charge for the extra gallons that you would get out of it? Would you charge every product in the barrel for the additional cost of that \$1.50 or \$2 a barrel for Arabian crude? We can determine the overall costs of refining a barrel of crude, but when it comes to allocating charges to specific products to crude in the barrel you have to make assumptions. Anyone can argue with the assumptions as not being right at any time. It depends on whether you are running your refinery at full or 80 percent capacity.

We can look at incremental numbers much more meaningfully, talking about running another 1,000 barrels. We can pretty well determine those numbers, but against all products. We can look at the economics of running the last barrel and the next barrel. But to be able to say we can definitively cost products out of a barrel, specific costs, really it cannot be done. No one has been able to do it yet.

Mr. MOFFETT. You make your decisions on how to set prices and what constitutes a profitable investment for your company without that information?

Mr. BABIKIAN. We look at the overall barrel, the whole refining and marketing operations, and that is pretty much it. First of all our prices are dictated by the marketplace. They are not dictated by our own costs as such except for costs that are controlled in gasoline where we do have to keep track of buildup costs. But our gasoline prices and our distillate prices are determined by the marketplace. If we are good enough to operate in that marketplace and come out at the end of the year with a profit, that is because of our efficiency. But we do not set the price of gasoline or distillate. The marketplace does that.

Mr. MOFFETT. Let me recognize the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Mr. DiBona, Mr. Babikian has testified he would have no objection to appearing in the proceeding early next year under conditions that would require testimony under oath and cross-examination and discovery. Does the API have any problem with those conditions?

Mr. DiBONA. You mean for testimony by API in matters of pricing of member companies?

Mr. GORE. Those matters upon which you can testify.

Mr. DiBONA. In matters upon which we can testify, I have no problem with that, no.

Mr. GORE. Thank you very much. Mr. Chairman, it has been such a long day.

Mr. DiBONA. I am not entirely sure that the subject matter would be permissible under the antitrust laws, but anything that we could say I would have no problem with.

Mr. GORE. I will accept that caveat. Of course there is the distinction between current price information and past price information.

Mr. DiBONA. There can even be a problem with past price information if you get in on the details of how it is put together. We do have troubles with the antitrust laws is my understanding.

Mr. GORE. I will accept your caveat. I am pleased that both of you are willing to testify under conditions such as those I have outlined. And I hope the Department of Energy will structure the discussion or whatever it is to be called under those conditions so that we can have at least some semblance of an adversary proceeding.

I have heard lots of things that I would like to respond to, but frankly I think I will just call it a day right there, Mr. Chairman.

Mr. MOFFETT. The gentleman from Tennessee sounds very tired. I have a few more questions, one of which is on the OPEC price increase. Mr. DiBona, I saw the front page of our evening newspaper today that you characterized the drive for oil decontrol in the wake of the OPEC decision as an industrywide effort. I think it is probably fair for us to assume therefore, that you are greatly involved in the effort for crude decontrol.

Mr. DiBONA. I think I am misquoted there.

Mr. MOFFETT. Would you like to correct that?

Mr. DiBONA. I would be happy to. Although one must be careful when trying to set forth an industry position, even a very broad one, I do believe that it would be safe to say that the petroleum industry as a whole would associate itself with the following statements: There is a long-range problem of trying to do something to bring about decontrol so that domestic production can be increased. This would make it more difficult for OPEC to do in the future what it has done this past weekend.

We recognize at the same time that there is a problem right now with inflation, so how does one move from today's problems to an eventual situation in which there is a current domestic production, discouragement of consumption, a reduction in imports, and pressure put on the OPEC cartel rather than the present policy that subsidizes it. To achieve that we would recommend that there be a phasing out over the remaining 33 months or so of controls of the existing crude oil prices. That would have some impact initially upon the average price of crude oil. During the first year we think it would average something on the order of a penny, penny and a half per gallon. Then it would continue on up over this 3-year period.

We think that could have some substantial effects upon production, not immediately, but in the fairly near future. And we also make note of the point that if this process is followed, about 58 cents on the dollar of increase in revenues would go back to the Government either in the form of royalty payments or taxes. Part of the rest would go to private royalty owners. And we would assume and expect to see a reinvestment of the remaining 28 to 36 cents. That is essentially the position of the petroleum industry. There is no such thing as a drive. And I think that is a misstatement. That is simply not true. We are saying to people that is our position. And we did meet with some people from the newspaper, one of which was the reporter for the Washington Star.

Mr. MOFFETT. I am not suggesting that your position has changed. The public, as you know, is very upset about the recent OPEC price increase.

Mr. DiBONA. I think this thing cuts two ways. It is a problem because it is going to increase inflation in the United States. It is going to have an impact on the GNP. It is going to affect the dollar. All of those things are happening because of this OPEC increase.

The other side of that is it just demonstrates again awfully clearly how foolish our present policy is and how much better it would be if we decontrolled, if we had not had the policy which subsidizes the OPEC. That is they can raise their price twice as much because of our present policy than they could if we didn't have this policy.

Had we not had these controls over the last 4 or 5 years, the impact on the dollar would have been very, very significant in that there would have been a substantially lower balance-of-payments deficit. I can't give you an exact figure for that. But the numbers that we have tried to calculate, using drilling rates, rough estimates of that, would have meant up to half of the balance-of-payments problem would have disappeared. That would have a major impact on the dollar. It would have been very difficult for OPEC to do what they are presently doing. And that is the sense in which this thing cuts two ways.

It is very bad now, but if we continue we are going to be asking for that in the future.

Mr. MOFFETT. Isn't there a greater vulnerability when we allow our ceiling to go to their ceiling and let OPEC determine ceilings? At what point does the industry say,

They keep increasing the price. We think it is now at point where we cannot afford to let our prices go that high because of the devastation it is going to put on the doorsteps of a lot of people.

Mr. DiBONA. My mother lives up in Massachusetts and she is living on a telephone company pension. I am as sympathetic to that problem as anyone else. But screwing up an industry and subsidizing OPEC is not going to solve the problem of people on low and fixed incomes. We have got to deal with that problem. And we should deal with that problem. But we should do it by trying to deal with that problem directly, rather than by taking one industry or two or three industries and twisting all of the incentives associated with that industry to force a solution to a problem that ought to be handled separately. And that problem ought to be handled, and it ought to be handled in full recognition that the cost of fuel has gone up and the cost of food has gone up and the cost of housing has gone up. And that ought to be directly handled.

I personally would be happy to try to participate in any way in doing that, including the payment of taxes, personal taxes.

Mr. MOFFETT. Yes. You should understand that it is true for most of the members of this subcommittee, particularly those who are critical and very, very upset about the prices, for real essentials such as home heating oil. I don't think we blame the industry; rather we blame our own Government. We think our Government should be doing more. You would not agree with some our prescriptions, I understand.

The problem is, for example, our relationship to OPEC. What was the industry position on the proposed increases? Isn't it true that the cartel cannot exist without the majors?

Mr. DiBONA. That argument has been made. It is absolute nonsense. They have very substantial economic power. That power was certainly—

Mr. MOFFETT. Do they have refineries?

Mr. DiBONA. No. But they supply a very important commodity. You saw what happened in this country during the embargo. They just cut off a little bit of it. It was 10 percent of the fuel we used. And if you allow for the fact that we actually cut down in consumption during that period, about 5 percent. That 5 percent gave you some feeling of the power that that group has. It was made much more serious recently by the problems in Iran.

But the principal problem is that we are not following policies that will minimize it. That doesn't mean there won't be future price rises, because as long as the industrialized world continues to use and consume and demand as much fuel, we are going to have some problems. The producing countries are going to be in the driver's seat.

All I am saying is that if we chose the course of encouraging domestic production, we would put some downward pressure on that upward pressure. The American policy right now makes it possible each time they raise the price to raise it twice as much.

Mr. MOFFETT. If the domestic oil price, were set according to OPEC determinations, then I would be much more unhappy. At that point, we would have a domestic force for raising the OPEC price.

Mr. DiBONA. You might get so much of it that you would start to see the price go down. You don't want to give up on the market entirely.

Mr. MOFFETT. Any other comments by the panel?

I want to provide minority counsel an opportunity, if he wishes, to ask some questions.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Babikian, in your testimony you mentioned that existing DOE regulations make it very difficult for refiners to expand capacity. Could you briefly explain how this situation exists?

Mr. BABIKIAN. Yes. Let me do it in very simple language, because I am not capable of anything other than that.

We can pass through nonproduct costs on decontrolled products, such as increased wages, additional rents, depreciation, and so on. But you cannot pass through as a nonproduct cost return on investment. You cannot make any profit, if you will, on that investment.

Mr. DAVIS. So what you are saying, then, is that your refinery is held at the existing May 1973 profit margin, and that even though you may invest several millions of dollars more in increasing your refining capacity, the only thing you receive in return is your appreciation on that investment.

Mr. BABIKIAN. That is correct.

Mr. DAVIS. You do not receive return on that invested capital.

Mr. BABIKIAN. That is correct.

Mr. DAVIS. Has that had a negative impact both on fuel oil and gasoline?

Mr. BABIKIAN. Yes, it has, because refinery capacity has not been increased in a meaningful way. There have been a number of refineries added in the last 2 or 3 years. I think there are 40 or 41 refineries added in the last 2 to 3 years. But they are all, except one, very, very small refiners, and the major reason these refining units went on stream is because of the small refiner bias that was referred to a little earlier this afternoon. These refiners are not capable of making big quantities of gasoline or furnace oil. They don't have the cracking capability of taking a cheaper component in the barrel and upgrading it into gasoline. So they make straight cut gasolines. They don't have the capability of cleaning up sour crudes, the more abundant cheap sour crudes.

So although those refiners have been added, the capacity has not been added in a meaningful way. And most of these small refineries don't have the capability of making unleaded gasoline, either, or have limited capability.

So as far as I'm concerned, the fastest way to increase refinery capacity in this country is to decontrol gasoline and refinery capacity would be increased, or provide some incentive, such as a gasoline tilt in the meantime for oil companies to add to refining capacity. And once refining capacity is increased, then we don't get this tight situation of the industry operating at capacity. You get more of a play between supply and demand that several people today said is kind of a one-way street. If it is, it is because of controls.

Mr. DAVIS. So what you are saying, then, is increased investment in refineries would be likely to increase competition in the industry as well.

Mr. BABIKIAN. I think there is plenty of competition. What it would do is it would increase supply, and there would be more of a favorable balance in terms of supply and demand.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. MOFFETT. Thank you all for your testimony and your patience today.

The subcommittee will stand adjourned.

[Whereupon at 4:35 p.m. the subcommittee was adjourned.]



