RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY

(110–124)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 6, 2008

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

42–306 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
JOHN T. SALAZAR, Colorado
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
DORIS O. MATSUI, California
NICK LAMPSON, Texas
ZACHARY T. SPACE, Ohio
MAZIE K. HIRONO, Hawaii
BRUCE L. BRALEY, Iowa
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
JERRY MCNERNEY, California
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
VERNON J. EHLERS, Michigan
STEVEN C. LATOURETTE, Ohio
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
LYNN A WESTMORELAND, Georgia
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

PETER A. DeFAZIO, Oregon, *Chairman*

NICK J. RAHALL II, West Virginia
JERROLD NADLER, New York
ELLEN O. TAUSCHER, California
TIM HOLDEN, Pennsylvania
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
BRIAN HIGGINS, New York
GRACE F. NAPOLITANO, California
MAZIE K. HIRONO, Hawaii
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
CHRISTOPHER P. CARNEY, Pennsylvania
JERRY McNERNEY, California
BOB FILNER, California
ELIJAH E. CUMMINGS, Maryland
BRIAN BAIRD, Washington
DANIEL LIPINSKI, Illinois
DORIS O. MATSUI, California
STEVE COHEN, Tennessee
ZACHARY T. SPACE, Ohio
BRUCE L. BRALEY, Iowa, *Vice Chair*
HARRY E. MITCHELL, Arizona
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
JAMES L. OBERSTAR, Minnesota
(Ex Officio)

JOHN J. DUNCAN, Jr., Tennessee
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, Jr., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CHARLES W. BOUSTANY, Jr., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio
JOHN L. MICA, Florida
(Ex Officio)

CONTENTS

U.S. House of Representatives

Committee on Transportation and Infrastructure

Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

May 5, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Rising Diesel Fuel Costs in the Trucking Industry"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Tuesday, May 6, 2008, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building to receive testimony on the causes of rising diesel fuel costs and the impact of this trend on the trucking industry. The Subcommittee will also examine the relationship among motor carriers, brokers, shippers, and independent drivers with respect to setting and collecting fuel surcharges.

BACKGROUND

The Rising Cost of Fuel

On April 30, 2008, the Energy Information Administration ("EIA") released its weekly petroleum review, which reported that the average retail price for regular gasoline rose for the fifth consecutive week, to an all-time high price of 360.3 cents per gallon. Similarly, the average diesel price reached a record high of 417.7 cents per gallon.[1] The rise in gasoline and diesel prices has been a steady trend. EIA statistics show that the retail price of a gallon of gasoline has increased 25 percent between March 2007 and March of this year; 41 percent over the last three years; and 102 percent since 2003.[2] By comparison, a gallon of diesel fuel rose 48 percent in the past year; 78 percent in the last three years; and 166 percent since 2003.[3]

---

[1] Energy Information Administration, "This Week in Petroleum", published April 30, 2008 at www.eia.doe.gov.
[2] Energy Information Administration, Monthly Energy Review, April 2008; www.eia.doe.gov.
[3] Energy Information Administration, Weekly Retail Gasoline and Diesel prices, updated on 4/28/2008.

The price of gasoline and diesel are composed of a number of costs, including the price of a barrel of crude oil, refining costs, distribution costs, and Federal, State, and local taxes. According to the EIA, the "relative share of these cost components to the retail price varies over time and among regions of the country."[4] The most often cited reasons for rise in gas prices since 2005 are the sharp increase in the price of a barrel of crude oil, which was $47 in January of 2005 compared to $118 the week of April 25, 2008,[5] and the damage to U.S. production and refining capacity as a result of Hurricane Katrina. In addition, growing global demand for oil and a weak U.S. dollar have been contributing factors.

The national average price of diesel has historically been lower than the price of gasoline, apart from seasonal increases in the price of diesel. In the last few years, diesel has trended higher than gasoline due to growing demand for diesel around the world, particularly in China and an increase in the use of diesel cars in Europe. Further, U.S. demand for diesel has grown at a higher rate (three percent) than gasoline (one percent) per year,[6] while refining capacity has remained tight. The transition to low-sulfur diesel since 2006 in the U.S. has also affected production and distribution costs.[7]

Both gasoline and diesel are also subject to Federal, State, and local government taxes. The Federal excise tax for gasoline is 18.4 cents per gallon and 24.4 cents per gallon for diesel. State excise taxes for gasoline average 21 cents per gallon and 22 cents per gallon for diesel. Federal gas tax revenues are deposited into the Highway Trust Fund for exclusive use for surface transportation programs and improvements to the nation's highway, transit, and intermodal transportation infrastructure[8]. When the 18.4 cent gas tax rate was established in 1993, the average gallon of gasoline cost $1.05. Therefore, although the Federal gas tax has not changed in 15 years, the price of gasoline has nonetheless tripled.

Impacts on the Trucking Industry and Consumers

Rising fuel costs have had a significant impact on the trucking industry and drivers. The American Trucking Associations estimates that the trucking industry spent more than $112 billion on diesel fuel in 2007, and predicts that this figure will rise to over $140 billion in 2008. Further, every one-cent increase in the price of diesel fuel translates to an annual additional cost of $391 million to the trucking industry. It costs nearly $800 more for a driver to fill a standard tractor-trailer than five years ago.[9] Higher fuel costs have also contributed to changes in equipment sales and repossessions. Tractor-trailer repossessions and liquidations increased 110 percent between 2006 and 2007.[10] Truck manufacturers and dealers reported a 40 percent drop in sales the first quarter of 2008.[11]

---

[4] Energy Information Administration, "A Primer of Diesel Fuel Prices", April 2007.
[5] Figures for the price of crude oil are based on the Cushing, OK WTI spot price, available at www.eia.doe.gov
[6] American Petroleum Institute, Why Recent Retail Diesel Prices Have Been Higher Than Gasoline Prices, 4/3/2008.
[7] Energy Information Administration, "A Primer of Diesel Fuel Prices", April 2007.
[8] Of the Federal fuel tax, 18.3 cents and 24.3 cents for gasoline and diesel, respectively ,are deposited into the Highway Trust Fund. The additional $0.01 tax is deposited into the Leaking Underground Storage Tank fund.
[9] American Trucking Associations, "Fuel Facts", updated April 22, 2008; www.truckline.com.
[10] Nassau Asset Management data; www.nasset.com
[11] Transport Topics, "March Truck Sales Fall by 35% but Orders Rise for Sixth Month", April 21, 2008.

In addition to impacts on trucking firms and drivers, the increased cost of transporting goods to market has had a significant effect on the price of many consumer goods. For example, recent media reports have highlighted that retail food prices rose four percent in 2007, which represents the largest increase in almost two decades.[12] While the rising cost of fuel is not exclusively responsible for these price increases, it is a significant contributing factor. The Consumer Confidence Index, issued by the Conference Board, is reported to have hit a five year low this month, with rising gasoline prices cited as one reason for heightened consumer concerns.[13]

Property Brokers

Brokers are transportation intermediaries who arrange for the transportation of individual shipments of property for compensation, by securing the services of motor carriers. A broker is defined in the Federal statute as "a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation" (49 U.S.C. §13102). FMCSA data shows that there were 20,268 active property brokers registered with the agency as of April 2008, 813 of which were household goods brokers. The number of registered property brokers increased 15 percent over the last two years.

Until 1995, brokers of transportation of property in interstate commerce were required to obtain operating authority from the Interstate Commerce Commission ("ICC") and meet financial responsibility and other requirements. When the ICC was terminated in 1995 (by P.L. 104-88), Congress retained these requirements for brokers, but transferred the responsibility to the U.S. Department of Transportation. The Federal Motor Carrier Safety Administration ("FMCSA") was created in 1999 by the Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159), and in this Act jurisdiction over brokers was conferred to FMCSA.

Currently, in accordance with 49 U.S.C. 13904, FMCSA grants operating authority to a broker to provide interstate transportation provided a broker is "fit, willing and able" to be a broker and comply with applicable regulatory requirements. FMCSA requires, pursuant to 49 CFR §387.307, a property broker to have a surety bond or trust fund in effect for $10,000. FMCSA regulations also require brokers to keep records for three years of each transaction, including consignors and the address and registration number of each carrier; the bill of lading or freight bill number; the amount of compensation received by the broker for the brokerage service performed; and the amount of any freight charges collected by the broker and the date of payment to the carrier (see 49 CFR §371.3). These record keeping regulations provide the ability for each party to the transaction to access information on how much the broker charges a shipper to haul a load.

The effectiveness of these regulations is difficult to gauge, as FMCSA does not have an active program in place to monitor whether brokers comply with these requirements as it does for monitoring motor carrier compliance with safety requirements. Additionally, FMCSA does not have authority to resolve routine commercial disputes. The former ICC, in its discretion, chose to engage

[12] "Pizza and beer now cost an arm and a leg", MSNBC, February 29, 2008.
[13] "Consumer Confidence Hits 5-Year Low: Gas Prices, Weak Job Prospects Dim Shoppers' View Of U.S. Economy", April 29, 2008, www.cbsnews.com

in dispute resolution between consumers and carriers, but the ICC Termination Act eliminated this function, per the explicit direction of Congress.[14] Specifically, the ICC Termination Act provided for private parties to resolve disputes through the courts, just as other disputes among private parties are resolved. According to FMCSA, the agency has the ability to investigate a complaint of a violation of regulations, but has only investigated a small number of brokers, the majority of which have been household goods brokers, to ensure they have met registration and insurance requirements. Within the industry, the Transportation Intermediaries Association ("TIA") has established a "Watchdog" website, on which TIA members may report incidents involving fraudulent third party logistics transportation companies.

Fuel Surcharges

Given the sharp rise in the cost of transporting goods by truck, many motor carriers, brokers, and independent drivers are assessing fuel surcharges on shippers in order to haul their goods. A fuel surcharge is an additional charge above the standard rate to haul freight that is meant to cover the cost of an increase in the price of fuel. Fuel surcharges became prevalent in the trucking industry during the period of fuel price spikes in the 1970s, and have generally continued since then when fuel prices rise.

Trucking fuel surcharges are not fixed and are not regulated by any Federal entity.[15] The amount of the fuel surcharge is determined by formulas set by an individual motor carrier or other entity arranging for or providing the transportation. Typically, a carrier or other entity will peg the fuel surcharge to a national or regional average fuel price as published by the U.S. Department of Energy. The surcharge becomes applicable once diesel exceeds a pre-determined threshold. A common way to calculate the fuel surcharge is on a per-mile basis, and the amount charged per mile can rise as the price of diesel gets further above the threshold.[16]

Independent owner-operators have raised concerns over the lack of transparency and imperfect information in transactions with motor carriers, and particularly with freight brokers, with respect to fuel surcharges. Independent truck drivers contend that they do not control whether a broker is charging for the rising cost of fuel; the amount of the surcharge; or whether the surcharge is specifically itemized in the rate agreed to with a shipper (as opposed to just a flat increase in the charge for the load). These drivers argue that lack of disclosure requirements makes it difficult to verify whether the fuel surcharge is actually being passed on to those paying the higher price at the pump.

The Interstate Commerce Commission attempted to administratively address the impacts of high fuel prices in the late 1970s on independent owner-operators. After issuing a number of special exemptions to allow for surcharges and fuel rate increases by carriers, in 1981, the ICC issued a regulation requiring carriers to reimburse owner-operators for fuel cost increases at an initial rate of reimbursement set at 14 cents per mile. This regulation was set aside by the U.S. Court of Appeals

[14] P.L. 104-88; see House Report 104-311, page 87.

[15] By contrast, the Surface Transportation Board determines the reasonableness of fuel surcharges assessed in the rail industry.

[16] Several websites explain and provide guidance on how to calculate a fuel surcharge. See for example American Truck Business Service, www.attrucktax.com and the Owner Operator Independent Drivers Association, www.ooida.com

in 1983 on the grounds that the ICC exceeded its statutory authority.[17] Since the authority of the ICC was transferred to FMCSA, the agency does not have existing statutory authority to take action with respect to fuel surcharges.

Several bills have been introduced in the 110th and previous Congresses regarding fuel surcharges. In the 110th Congress, on April 24, 2008, Senators Snowe and Brown introduced S. 2910 the "Trust in Reliable Understanding of Consumer Costs Act" (TRUCC Act) to require that fuel surcharges collected by a motor carrier or broker be passed through to the drivers bearing the cost of fuel. Representative Petri introduced a similar bill, H.R. 5934, in the House on April 30, 2008. In the 109th Congress, Section 4139 of H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as passed by the House, required motor carriers, brokers, and freight forwarders to institute a fuel surcharge, and required any fuel surcharge to be passed through to persons providing the transportation. This provision was based on H.R. 2161, the "Motor Carrier Fuel Cost Equity Act of 2001", as introduced by Representative Rahall in the 107th Congress.

[17] *Central Forwarding Inc. v. I.C.C.*, 628 F.2d (5th Cir. 1983).

AGENDA
HIGHWAYS AND TRANSIT
SUBCOMMITTEE HEARING

****

Tuesday, May 6, 2008
2167 Rayburn House Office Building – 10:00a.m.

Rising Diesel Fuel Costs in the Trucking Industry

WITNESS LIST

PANEL I

Mr. Tyson Slocum
Director
Public Citizen's Energy Program
Washington, DC

Mr. Ryan Todd
Integrated Oils Analyst
Deutsche Bank AG
New York, NY

Mr. John Felmy
Economist
API
Washington, DC

PANEL II

Ms. Suzanne TeBeau
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
Washington, DC

Mr. Todd Spencer
Executive Vice President
Owner-Operator Independent Drivers Association
Washington, DC

Mr. Mike Card
President
Combined Transport
Central Point, Oregon

Mr. Robert A. Voltmann
President and CEO
Transportation Intermediaries Association
Alexandria, VA

Mr. Wayne Johnson
Director of Logistics
American Gypsum Company
Dallas, TX

HEARING ON RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY

Tuesday, May 6, 2008

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:04 a.m., in Room 2167, Rayburn House Office Building, the Honorable Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFAZIO. The hearing will come to order. The Subcommittee on Highways and Transit is in session today for a hearing on rising diesel fuel costs, the impact on the trucking industry, and the spill-over into other aspects of the economy.

We will hear from two panels, the first will delve into the murky question of high gas prices. We will hear some interesting and, I think, very contrasting testimony there. And then the second panel, where we will look at the impacts of the high fuel prices, where and how they may be charged to shippers, and where and how the money that shippers might pay for additional fuel costs are either distributed to those who actually provide the transportation or not.

There are some interesting submissions in the testimony and there is a lot of talk about free markets and those sorts of things, but I think we are going to find today that we aren't looking totally at just supply and demand and free markets that are transparent in Adam Smith's traditional view of the world.

I did study economics and I will be interested to see people defend having essentially what I see in the brokerage companies as an oligopsony, where there are a few brokers that dominate the industry dealing with a large diversity of small providers who really have very little or no market power, and they have no information. So how can it be a free market when they lack information? And I hope that that is addressed here today.

And then in terms of pure supply and demand in terms of high diesels prices, I think that some of the testimony received today will point to some of the issues that have been raised here in Congress, the issue of the speculative market that was created at the behest of Enron, which, according to the former CEO of ExxonMobil—and he should know, he had a nice little $400 million retirement he is buying oil fields with—but he said, when oil was $60 a barrel, that $20 a barrel was purely speculative, and he thought that was good thing because ExxonMobil was engaged in making money not only with supply but in speculating on supply, and the conventional wisdom is this provides liquidity in the market.

But when you have a huge entry by those who have absolutely no intention of ever taking delivery and those who do not utilize the product but merely are engaged in the market, in a totally opaque, unregulated market, and speculating and self-dealing and/or dealing in ways that would violate other laws if they were dealing in other commodities, driving up the price unnecessarily, I would hope that we can address that a bit too.

The bottom line is we are seeing a huge number of small and independent trucking companies go out of business. The records, unfortunately, cut off at five or more, but we do know that we are seeing a dramatic number of people lose their trucks, lose their livelihoods, and go out of business. We are also seeing a large run-up in the cost of shipping. And we have got to do what we can to mitigate these things here in Congress and I don't believe we should just throw up our hands and say everything is the way it is, and that is the way it is going to be. I think we are going to find that there are some places where an appropriate action by Congress might help mitigate these problems.

We need to change our ways in this Country. We need to become more fuel efficient. We need to become more energy independent. We need to develop new technologies, new fuels. But on the way to that future, which, unfortunately, is some time yet off, we don't need to be price-gouged on the way there. We don't need to see unnecessary loss of people's livelihoods on the way there, and I think we can take some steps to prevent that.

With that, I turn to my colleague, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman, for holding this hearing on rising diesel fuel costs in the trucking industry. I would also like to thank the witnesses for attending this important hearing.

We have all seen the headlines about escalating fuel prices and their impact on our economy. Specifically, diesel fuel has set record highs over the past year, hitting more than $4.00 per gallon. These prices have been rising steadily, as everyone knows, over the past couple of years. Statistics from the Energy Information Administration show the retail price of a gallon of diesel fuel rose 48 percent in the last year and 166 percent in the last five years.

Rising fuel costs have had a major impact on the trucking industry. The trucking industry spent more than $112 billion on fuel in 2007 and forecasts a record high of more than $140 billion for 2008. The trucking industry is facing unparalleled operating cost increases due to rising fuel costs. Just a one cent increase in diesel prices costs the trucking industry an additional $391 million per year. Because 84 percent of all the goods we use and consume get to us on goods, they are essential to our economy and daily life. Rising fuel costs have the potential to increase the cost of everything Americans consume that travels by truck.

What to do about oil? Robert Samuelson, a Washington Post columnist, a few days said this. He said, What to do about oil? First, it went from $60 to $80 a barrel, then from $80 to $100, and now to $120. Perhaps we can persuade OPEC to raise production as some senders suggest, but this seems unlikely.

The truth is that we are almost powerless to influence today's prices. We are because we didn't take sensible actions 10 or 20 years ago. If we persist, we will be even worse off in a decade or two. The first thing to do, start drilling.

Robert Samuelson is no conservative saying that.

Years ago we heard people say, well, we don't need to increase our domestic energy production because it won't help the problem immediately. Some of us said then it might not help it immediately, but it would help a few years down the road. Unfortunately, we didn't do that. We put 85 percent of our offshore oil resources off limits. We refused to drill in ANWR, in a 19.8 million acre reserve, which is 36 or 37 times the size of the Great Smokey Mountains National Park. And we want to drill on about 2,000 or 3,000 acres more up there, but we won't do that. No country in the history of this world has put as much of its natural resources off limits to production.

We don't have to produce all of our domestic energy needs, but we must produce a little more, or we are going to become even more vulnerable to OPEC and foreign energy producers. That is the only hope that we have. If we don't do that, then we are going to see these prices escalate even more.

There are some groups that are primarily made up of very wealthy people who want gas prices to go even higher, but a lot of poor and lower income and working people in this Country are being hurt even at the prices that prices are at now. So we can do these things in environmentally safe ways that we couldn't do back in the 1920s or even the 1950s or 1960s. I think some people have the idea still in the 1920s, where they have to put oil wells up every 25 or 50 yards. But today you can put one oil well up and go down several miles or out several miles and the footprint above ground is negligible. So we don't need to be afraid to produce more, and if we don't, then we are going to see these prices go even higher, and even more poorer and lower income and working people will be hurt.

Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentleman.

Chairman Oberstar wanted me to convey his regrets. He is in the process of returning from Europe, where he was addressing the EU on transportation issues. He, in particular, in his statement wanted to be certain to point out that although some—notably Senator McCain and Senator Clinton—had proposed suspending the gas tax, albeit in slightly different ways—one theoretically to be paid for, the other just suspended—and this is something I have said a number of times: in 1993, the gas tax was 18.3 cents yet gas was a buck a gallon; diesel was less. Today, Federal gas tax is 18.3 cents; gas in my home State is about $3.75 a gallon and diesel is well over $4.00, and the Federal tax hasn't gone up. So, he, in particular, wanted to make that point. He had other concerns that he wanted to raise, and we will place his statement in the record.

With that, we will proceed.

Oh, sorry. Mr. Mica.

Mr. MICA. Thank you, Chairman DeFazio. Thank you also for holding this very topical hearing on the rising fuel costs in the trucking industry.

Truckers across the Nation are absolutely struggling. This is not only a personal disaster for independent truckers, but a disaster right now for the trucking industry and for all Americans. Most of our goods are delivered and our foodstuffs by truck. If you haven't been to the grocery store lately, you need to get there, because you join American families in seeing sticker shock and a lot of the cost that is now incurred by our truckers is being passed on in the cost of higher food.

You know, it is nice to talk about windmills and solar panels and alternative energy sources, but, in reality—and you have to face reality—it is going to be a decade and a half before any of that makes a substantial impact. In the meantime, we have got to find a solution to bring costs under control. And if you are facing double-digit increases in fuel costs, percentage increased just over a matter of months, and you are in the trucking industry, you have got a very critical situation on your hands.

You need a long-term policy, but we also need a short-term policy. The short-term policy can only evolve around increasing the supply. You don't need to be a Harvard PhD in economics to figure this out, but we need an increase in supply of diesel and gasoline fuel in the short-term, and to do that we are going to have to tap some of our domestic resources wherever they be. I don't know if it is going to take $4.50, $5.00, $5.50, $6.00.

I don't know what the magic price per gallon is going to be for those driving a car or a truck, but at some point the people are going to come up the steps of the Capitol and shake Members of Congress, physically shake them, I think, and say that we have got to do something about these staggering increases in costs; and the only solution, period, is going to be to increase some of the domestic supply, rather than make it more difficult to access, more costly to obtain and prohibitive to get on the market. Those are not the solutions.

This is a good opportunity to hear from some of those that have been affected in a disastrous fashion by this situation. Appreciate your calling this timely hearing. But we have got to look at increasing the supply period if we are going to see any decrease in cost or any relief to these truckers.

Thank you and I yield back.

Mr. DEFAZIO. Thank you, Chairman—Mr. Ranking Member. Sorry.

Mr. MICA. I like Chairman.

Mr. DEFAZIO. Well, with the Chairman in absentia, if you can do that speech in four different languages, we will make you Chairman for the day.

With that, we would turn to Mr. Tyson Slocum, Director of the Public Citizen's Energy Program.

Mr. Slocum. Five minutes.

TESTIMONY OF TYSON SLOCUM, DIRECTOR, PUBLIC CITIZEN'S ENERGY PROGRAM; RYAN TODD, INTEGRATED OILS ANALYST, DEUTSCHE BANK AG; AND JOHN FELMY, ECONOMIST, API

Mr. SLOCUM. Thank you very much, Mr. Chairman, Members of the Committee. On behalf of Public Citizen's 100,000 members nationwide, I thank you for this opportunity to testify here today. Public Citizen is one of America's largest consumer advocacy organizations, and, as Director of the Energy Program, we have been dedicated to solving problems in America's energy markets and make sure that consumers have access to affordable, reliable, and clean sources of energy.

Now, there is no question that the American economy has slowed, possibly in a recession, partly due to rising energy prices. Now, there are some segments of the economy, however, that remain immune from this slowdown, and that would be the energy sector, particularly oil and gas companies, and many of the financial companies that are wreaking havoc on under-regulated futures markets. And it is those two issues that I would like to focus on in my five minutes today, because while there are several variables that influence energy prices—supply and demand and things like that—there is no question that Congress can take some easy action to address these two variables: investment decisions by the oil industry, increase market concentration among oil companies, and under-regulation of futures markets that encourage harmful speculation. Addressing these issues, I believe, would provide consumers with better access to adequately competitive markets and fair energy prices.

Now, everyone talks about oil company profits. ExxonMobil, as the industry leader, just since January of 2007, $51.5 billion in profits. But that is not all. In addition, by far, their largest expenditure was buying back their stock—$40 billion in stock repurchases since January 2007, compared to only $4.3 billion of capital and exploration investment in the United States.

What this indicates to me is that large, vertically integrated oil companies are not reinvesting these record earnings, fueled by high market prices, back into the kinds of investments that are going to provide consumers with the kind of long-term relief that they need. In all, the largest five oil companies operating in America have spent $170 billion buying back stock since 2005, and that is more than they have spent investing in U.S. oil infrastructure.

And the profit margins on their operations have been very robust. The return on capital employed, which is the measurement that the oil industry uses, have been very healthy. Exxon, the industry leader, a 32 percent return on capital employed for its global operations and a 65 percent return on capital employed on its U.S. refining business. And that is why they are not building new refineries. Because their profit margins are so high with tight refining capacity helped by a number of mergers in the last few years that reduced competition in this sector, they don't want this gravy train to end.

Now, consumers have been doing their part. Gasoline consumption slowed last year. We have got excess supplies of crude oil. But, yet, the speculators on Wall Street continue to drive the price up. And most analysts, including us at Public Citizen, believe that there is a huge disconnect between supply-demand fundamentals and the current record-high market prices for oil, and that has to do with the rise of harmful speculation driven mainly by relatively new players, such as hedge funds and some old standbys such as large investment banks like Goldman Sachs and a few of the large oil companies.

Because Congress de-regulated these energy trading exchanges in the year 2000, much of the operations of these energy traders are below the radar screen of an effective police force of Federal regulators. Lacking that kind of transparency, lacking the kind of basic disclosure, these players are potentially engaging in harmful anti-competitive practices on these futures markets that are driving prices up. Re-regulating these exchanges is key to restoring sanity to our futures markets and to reduce the level of harmful speculation.

Additionally, the rise of these financial players in acquiring and controlling physical energy infrastructure assets, such as Goldman Sachs' acquisition in 2006 of 40,000 miles of petroleum product pipeline in their acquisition of Kinder Morgan, has clearly given them an insider's peek to allow them better access to push prices up.

So restoring some sanity to these futures markets would bring prices down to consumers.

Thank you very much for your time.

Mr. DEFAZIO. Thank you, and thanks for sticking close to your appointed time.

Mr. Ryan Todd, Integrated Oils Analyst, Deutsche Bank AG will be next.

And you can depart from your prepared testimony if you wish. I always like it if members of the panel begin to enter into a little bit more of an interaction where they disagree, but go right ahead with however you wish to proceed with your five minutes, Mr. Todd.

Mr. TODD. Thank you, Mr. Chairman.

I would like to begin by touching on crude oil prices, as that is really at the root of the comments here today and the root of high gasoline and high diesel prices. As a little preface to that, I would like to say that in a previous life, prior to working at Deutsche Bank, I was actually an upstream engineer involved in the exploration and production of oil and gas supplies. So I have sat on both sides of the table, and one thing I can say from sitting on both sides of the table——

Mr. DEFAZIO. For clarification, what is an upstream engineer? I assume that means you are not working on getting it out of the ground, you are somewhere further up in the process?

Mr. TODD. No, it is exploration and production activities, as opposed to refining activities, which would be downstream.

Mr. DEFAZIO. Okay. All right, so upstream. Okay, good. Thank you. We will credit you that 15 seconds. Go ahead.

Mr. TODD. Thank you.

As I was saying, one thing that I think is clear from my time on both sides of the table is that both the oil industry and Wall Street has done a terrible job at forecasting oil prices for various reasons, and one of the things—with an economics background, Mr. Chairman, one of the things that I think has been very interesting—outside of the straightforward supply-demand issues involved—is the fact that we have seen that higher prices have actually lowered supply in many ways and actually increased demand.

Now, when I say that, it seems a little backward economically, but what we have seen is that as prices have risen globally, the international oil companies—due to resource nationalism, increasing government fiscal takes abroad and sometimes here at home, and an incredibly tight service and construction industry—have provided incredible constraints on the industry's ability to ramp up supply. At the same time, demand has been surprisingly robust here in the United States up until just recently, and certainly demand growth internationally has been very, very strong. Demand growth in oil producing nations especially, we have seen that higher oil prices have actually driven rapid demographic and GDP growth in oil producing nations who are flushed with cash and can afford to subsidize energy prices, which actually make demand even stronger as prices go higher.

So the markets look at this, they see that spare capacity is incredibly tight globally, and even though they see that potentially on forecasts there could be a loosening in the balance in coming months, they look ahead and they worry that geologic constraints and the constraints in growing supply that I mentioned above will limit the industry's ability to generate enough supply to meet growing demand.

Now, economically speaking, the one way to get around this is to drive up prices to a high enough level that there is a demand destruction, restoring balance to the supply-demand balance globally.

With this in mind, we look at gasoline prices. The number one prices with gasoline prices is crude oil prices. A year ago we testified before the Senate that higher gasoline prices would eventually create higher gasoline prices. Not a very pleasant thing to say, but certainly we have seen that to a certain extent. A year ago, if you were to look, crude oil prices in terms of dollars per gallon, were essentially $1.60 a gallon. If you were to throw on refining the marketing margin on top of that, maybe an additional $0.80. Some retail and tax on top of that and you basically get to your $3.00 a gallon. Today we see that just in terms of crude cost per gallon it stands at about $2.85 a gallon. If you put that close to $0.60 of retail and tax margin on top of that, you are approaching a price of almost $3.50 a gallon, assuming you can make gasoline for free, assuming refining makes no profit whatsoever. Now, this we have actually seen in the first quarter of this year. Most refiners are actually losing money. Refining margins have actually been negative for many weeks in the first quarter of this year, partially due to the fact, again, of high crude prices and falling demand here in the United States.

So that brings us to diesel. Now, diesel prices have risen more quickly than gasoline prices. There is no surprise there. Historically, diesel was at a discount to gasoline. Essentially what we have seen is a demand or a premium in the market. The dieselization of the European auto fleets has European demand up 2.5 percent year-on-year on average over the past few years versus gasoline demand that was down 2 percent a year over that same time frame. International demand has been strong, both transportation and industry-oriented, and U.S. diesel demand in the last three months is up almost 10 percent year-on-year versus gasoline demand, which is down almost 1 percent year-on-year over the same time period. Again, I think some of this will probably come out. The diesel demand is probably less discretionary; it is very industrial-oriented. So strong demand and tight U.S. refining capacity, which has been built to maximize gasoline production, not diesel production, has driven diesel prices to record levels.

Now, the best thing, from our recommendation, is to allow the markets to allocate capital to the places which are tight, in this case diesel capacity, which is happening here in the United States as it is expanding, but it is something that does take time and capital.

Mr. DEFAZIO. Thank you. Very good.

We now turn to Mr. John Felmy, Economist for the American Petroleum Institute. Mr. Felmy.

Mr. FELMY. Thank you, Mr. Chairman and Ranking Member Duncan.

I am John Felmy, Chief Economist of API, the national trade association of U.S. oil and natural gas industry. API represents nearly 400 companies involved in all aspects of oil and natural gas industry, including exploration and production, refining, marketing, transportation, as well as service companies that support our industry.

I would like to talk about petroleum markets today and why prices have been rising. Higher prices are a burden on families and businesses, particularly those in the transportation sector such as trucking and the airlines. Being able to understand why the increases have happened is the first step to being able to do something about them.

The biggest factor in the price increases? It is higher crude prices, as mentioned earlier. Throughout the first four months of the year, average crude oil prices were up about $1.00 per gallon, $42.00 per barrel higher than the same period a year ago. A similar comparison shows that gasoline prices are up $0.71 a gallon and diesel up $1.03. Gasoline prices have risen more slowly because of weakening demand, record production, strong imports, and ample inventories.

Crude oil, the raw material for all petroleum fuels, is the biggest cost component of gasoline and diesel. Crude oil is bought and sold on international markets, and most of what we need we import.

This week, refiners were paying as much as $2.86 per gallon of crude oil they need to make a gallon of gasoline or diesel and other products. That is most of the price at the pump. When you add about $0.47 in gasoline taxes (or almost $0.54 cents in diesel taxes) to each gallon, you have accounted for the vast majority of what people are paying.

Crude oil prices have been rising because of strong worldwide demand, even as U.S. overall petroleum demand, including demand for gasoline, has flattened. However, in the U.S., demand for diesel has remained strong. This follows a long-term trend here and around the world. Over the past five years, U.S. demand for highway diesel has been rising at triple the rate of gasoline. In Europe, demand has also been rising, reflecting growth in diesel vehicles, spurred in part by lower taxes on diesel.

Continuing strong U.S. demand for diesel versus weakening demand for gasoline is a key factor why diesel prices have been higher here than gasoline prices. Demand for diesel has remained strong in the face of higher prices at the pump in large part because its use is less discretionary. Consumption is mostly business-related. Fuel is an indispensable cost component and just one of the costs in the manufacturing-distribution chain. Also, keep in mind that, unlike Europe, taxes on diesel in the U.S. are higher than on gasoline, and the new ultra-low sulfur diesel formulations cost more to produce, too.

U.S. refiners have been working hard to meet demand, churning out record amounts of both gasoline and distillate, which includes heating oil and gasoline, nearly 9 million barrels of gasoline and more than 4 million barrels per day of distillate during the first four months of this year. At the same time, they continue to invest heavily in environmental improvements, including billions of dollars for cleaner burning gasolines and diesel fuels. Recently, despite healthy industry earnings, refiner and retail margins have tightened.

Industry earnings are strong, but don't be deceived by the big numbers. The size of gross earnings is largely a function of the size of the industry, which is massive because of the magnitude of the job the industry has to do. Both taxes paid and investments made to keep supplies coming in years ahead are also massive, which is why earnings on each dollar of sales last year aren't as remarkable as the rhetoric and accusations might suggest. In 2007, earnings per dollar of sales were just over $0.08, about a penny above the all-industry manufacturing average and a good bit lower than the rates of some other prominent industries. And I might add that for the companies that reported so far for the first quarter, the profit rate of the industry was 7.5 cents on a dollar, and for refiners it was about one-half a cent, with some refining companies losing money.

Siphoning away earnings from the industry through new tax schemes won't help address the current market situation. It won't increase investments, it won't produce more supply, and it won't help consumers. It will hurt oil and natural gas company owners, 98.5 percent of which have no connection with the oil industry other than through pensions they receive invested in oil company stock or through their 401(k)s, IRAs, and other stock holdings. Price gouging laws, another term for price controls, also won't work. They would discourage investment in new supplies and could lead to allocation controls and gasoline lines.

There is no magic wand to fix this situation, nor is there a silver bullet. It comes down to increasing supply and reducing demand. There are a lot of ways to work on both ends of that equation, including developing other forms of energy and conserving. However, one strategy we can't overlook is expanding access to more of the Nation's petroleum reserves, much of which government policies have put off limits. Energy independence is a slogan, not good policy, but we can produce more and ease global market tightness. That, along with more conservation, is how to put downward pressure on crude oil prices.

That concludes my remarks. I would be happy to answer your questions.

Mr. DEFAZIO. Thank you, Mr. Felmy.

I thank all the witnesses for being so succinct. We will now proceed to the questioning.

Mr. Slocum, you touched on something which neither of the second two witnesses mentioned, and I am going to ask them about that, which is the issue of what is commonly called the Enron loophole, which dealt with commodities trading, the commodities modernization act, and regulation of derivatives and over-the-counter trade blossoming in energy. What would you say is the premium for those speculative activities on a gallon of gas?

Mr. SLOCUM. Roughly $0.70 per gallon of regular gasoline, which is about $30.00 per barrel of crude oil. And that is a fairly conservative estimate of the role of pure speculation in these futures markets.

Mr. DEFAZIO. But don't economists say, well, it is not just speculative, that creates liquidity and it is guarding against risk? I mean, surely, it is the producers and/or the consumers in these markets, right?

Mr. SLOCUM. No, not necessarily. It is absolutely true that a certain amount of speculation or hedging is essential, but we have got a type of financial bubble that is being created, much like we just went through in a very painful way, and will continue to go through in a painful way, in the housing market, where the lack of adequate regulation over this market has encouraged a high level of speculative activity by financial firms, many of whom have no direct connection to the physical delivery or production of the product. The vast majority of trades, more than 95 percent, on these markets do not result in the physical delivery of crude oil or other petroleum products, and it is that level of speculation that has been driving these prices up.

Mr. DEFAZIO. So your position is a return to at least the status quo in terms of regulation? I understand they have established an exchange in London now. How can you control speculation in worldwide markets? But, anyway, your position is about $0.70 of what people are paying at the pump today is a windfall for speculators one way or another.

Mr. SLOCUM. That is correct.

Mr. DEFAZIO. And, by the way, Goldman Sachs did predict today that oil would go to $200 a barrel within the next two years.

Mr. SLOCUM. And that itself has created a feeding frenzy, because speculators have been driving the price up this morning because now the ceiling has been set far higher. So it isn't necessarily unrest in Nigeria or other issues, but, rather, predictions by large commodity dealers that the sky is the limit.

Mr. DEFAZIO. Okay, so, Mr. Todd, Mr. Felmy, do you think there is any credibility to the idea that some of this is speculative fluff; we are paying more than we need to because people are trading off the books in a very opaque way, may well be self-dealing, but none of that violates any laws because the laws don't apply? Should we take some steps to reimpose at least what existed previously in terms of the level of regulation of these markets? Since Enron no longer exists, we know they are not going to come to the Hill and lobby. Well, they exist, but in a different form, shall we say.

Mr. Todd?

Mr. TODD. I would disagree. Certainly, I am not a commodities trader, so——

Mr. DEFAZIO. So you don't think there is any impact by speculators on the market?

Mr. TODD. I certainly think that the speculation can—it does not create trends; it can exaggerate trends sometimes. It can create short-term volatility at times.

Mr. DEFAZIO. Would you say $200 would be an exaggerated trend, if we are headed there, and Goldman, who deals in these kinds of exchanges, is predicting that? And maybe before they predicted that, yesterday they went long?

Mr. TODD. I think, in general, the effects of speculation on the market is speculation. Most of the serious studies that I have seen on the effects of speculation have generally disagreed with Mr. Slocum's analysis. I believe——

Mr. DEFAZIO. What about what Lee Raymond said, it was $20 on a $60 barrel? I mean, he was a pretty smart guy, wasn't he? Didn't you work for them, ExxonMobil?

Mr. TODD. I did previously work for ExxonMobil.

Mr. DEFAZIO. Was he exaggerating?

Mr. TODD. He was a pretty smart guy.

There is a certain amount of fear volatility in premium which is built into the market, and I certainly would agree with that, and I think Mr. Raymond and——

Mr. DEFAZIO. Okay, so you don't think we should re-regulate; everything is just fine the way it is and it is all just being driven by pure market forces, except for some——

Mr. TODD. I think that increased visibility in the futures trading market probably would not do undue damage. At the same time, I think that with increased visibility and increased transparency you would see that essentially the supply-demand fundamentals, which are incredibly tight when the market looks ahead and they say, you know what, we don't believe—every year we forecast——

Mr. DEFAZIO. That was a good answer. So you are saying it wouldn't cause undue harm; i.e., we could try it and then we would see that really there isn't a lot of speculation. That would be great. Then you wouldn't be here and I wouldn't be here next year saying, well, we can take care of part of this problem, at least, in the short-term by reigning in the speculation. So that would be great.

Mr. Felmy?

Mr. FELMY. Mr. Chairman, the whole area of speculation is highly complex, and I have been to conferences where I have seen very thoughtful, very intelligent people come down on both sides of it. What I see internationally is tight market conditions, as Mr. Todd mentioned. We see strong continued demand growth in China, even though the U.S. has slowed——

Mr. DEFAZIO. Right. We have covered this ground. But the question is do you believe, as Mr. Todd just said, that if we were just to—you know, since Enron caused my part of the Country to pay about 30 percent more for electricity because of a bankrupt company that was manipulating the market. And we can say there was a deal of speculation going on there, so if we changed the rules to accommodate them. They are gone. Could we just do away with the Enron loophole, go back to the way things were and not cause undue harm, would you agree? And then we could get to the bottom of this, whether speculation is or is not a culprit in the big run-up?

Mr. FELMY. Well, I personally——

Mr. DEFAZIO. I mean, what would it hurt to have these trades at least no longer opaque and no longer off the books? What would it hurt to have the trading in just—we are not going to set prices, we are just going to say we want to know what is going on here with the trading and who——

Mr. FELMY. Well, I would rely on the views of the Commodities Futures Trading Commission, which is the regulator, in terms of what they feel they need in terms of regulation. But I think in terms——

Mr. DEFAZIO. Well, come on, in the Bush Administration? They don't believe in regulation. They have contempt for government and they hate regulation. So do you——

Mr. FELMY. Mr. Chairman, I think it comes down to fundamentals.

Mr. DEFAZIO. Do you, Mr. Felmy, do you or do you not support what Mr. Todd said? I mean, you disagree, but would it hurt if we just provided that information in some modicum of regulation of the market? Would that hurt your——

Mr. FELMY. Well, I would have to see the nature of the regulation.

Mr. DEFAZIO. Okay, thank you.

Mr. FELMY. But I would also share that——

Mr. DEFAZIO. Thank you. Mr. Felmy, thank you. I don't want to take up so much time, so I want to ask another question. Let's go to the profits. It is interesting that you report profits one way when you talk to us, both Mr. Todd and Mr. Felmy—they are really not making much money if you look at the profits versus their gross, and it is really pretty small compared to other industries—but the funny thing is, in the ExxonMobil financial and operating review, they don't use that measure. So if that is the most appropriate measure, why don't they report it that way to their stockholders? To their stockholders, they talk about fabulous returns, great rate of return on the share, you know, all those sorts of things they talk about here. They don't say, aw, gee, we are really not doing too good. In fact, I did see the head of ExxonMobil bemoaning the fact that they only had the second largest quarterly profit in the history of the world, slightly less than the first largest, which was theirs last year, in the first quarter of this year.

So I guess why is it you come to us and say they are really not making much money, and they report to the world and their stockholders that they are making bucket loads of money? Why do you use this measure that they don't use in their own report?

Mr. FELMY. Because, Mr. Chairman, we are asked to explain how much of that price is earnings, and that is the only way you can do it, to basically take net income divided by sales to get 7.5 cents for the first quarter.

Mr. DEFAZIO. Why is it not in their financial report?

Mr. FELMY. But in terms of their financials, Mr. Chairman, it is a case that they are explaining the return on the capital that they used, the return on the equity, and that is their business function, so that is their appropriate way.

Mr. DEFAZIO. Good. Okay, one last question. Now, Mr. Todd said that we should let the markets determine where the capital would go and maybe we could deal with our diesel refining shortage or other refinery shortages or exploration, you know, sort of a paucity of investment there, although he mentioned other constraints, to be fair. But last year, when ExxonMobil bought back $40 billion worth of stock and their capital investment was 10 percent of that, that is market forces, right? Because they were driving up their stock value; they were buying back their stock. So when are they going to start using some of these fabulous profits for diesel refining capacity? My understanding is they say they have no intention of building a new refinery or they are going to use it more robustly for exploration or, God forbid, maybe looking at alternative fuels or technologies.

Mr. FELMY. Mr. Chairman, the companies are working for the benefit of their shareholders, which are the millions of retirees and other Americans that have invested in these oil companies.

Mr. DEFAZIO. Yes, yes, I have heard that before.

Mr. FELMY. It is a difficult challenge to be able to decide how much you are going to be able to invest, which, incidentally, the industry invested $175 billion last year, compared to $155 billion of net income. They also make decisions in terms of things like share buy-backs, which I am stunned that people criticize that because they are supporting their shareholders; they pay dividends and they keep money for a rainy day.

Mr. DEFAZIO. Okay, thank you.

Mr. FELMY. These are all decisions they need to make.

Mr. DEFAZIO. Mr. Slocum, would you like to respond to that?

Mr. SLOCUM. I would.

Mr. DEFAZIO. And this will be the last.

Mr. SLOCUM. Absolutely, a CEO of an oil company that did not do things to return value to shareholders should be fired, and it is true that I don't think any of the CEOs of any of the major oil companies are going to be fired any time soon. The question is, though, what government policies are promoting this. It is not the job of the government to look after the shareholders all the time of these corporations; that is the job of the energy company CEOs. And when I see billions of dollars in subsidies that are provided courtesy of the American taxpayer, when I see below market or nonpayment of royalties for the privilege of extracting valuable energy commodities from land owned by the American people, I see an opportunity for reform. I think that oil companies should have slightly higher tax liability by revoking all of these valuable subsidies so that we can increase investments where the oil companies are unwilling to do, in things that will actually get us off of our addiction to oil by heavily investing in mass transit, providing bigger financial incentives to American families, to buy more super-fuel efficient vehicles and install solar panels on their home——

Mr. DEFAZIO. Okay, we are getting a little off the subject here, but——

Mr. SLOCUM. Sorry.

Mr. DEFAZIO. Appreciate your global view of how we might do it, but thank you. With that, I will turn to Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman. I expressed my views in my statement, so I want to yield my time at this time to Mr. Coble.

Mr. COBLE. I thank you, Mr. Duncan.

Thank you, Mr. Chairman.

The gentleman from Tennessee, in his opening statement, indicated that this issue is essential to our economy and our daily lives. Mr. Chairman, if anybody doubts that, you check with truckers and farmers and nurses and teachers who have to use their automobiles in their daily work. It clearly does, Mr. Duncan, impact us negatively, the soaring price, that is.

Mr. Chairman, pardon my modesty, but two decades ago I indicated that we needed to explore, drill, refine, and it could be done, I am confident, without damaging the environment, and many others joined me when I said that; and those words were prophetic at the time I think prophetic now.

Gentlemen, good to have you all with us. Let me put this question to either of you. It may have been touched on, but I want to revisit it. Diesel prices have traditionally been lower than gasoline prices. In recent times, however, diesel has consistently been higher than gasoline. What has caused the reversal, A, and is this likely to change in the foreseeable future? Either of you. Fire away, Mr. Todd.

Mr. TODD. I will speak to that. In general, there are a few things at play, which I touched on briefly in my testimony. Primarily, diesel demand is growing much more quickly, both here in the United States and internationally, versus gasoline demand. That stretching of the diesel production capacity is what has driven up prices. It can't be ignored, as well, that diesel is more expensive to produce now due to additional regulation, ultra-low sulfur diesel. There is additional cost of supply, but it is primarily demand driven.

Mr. COBLE. Anybody want to weigh in further?

Mr. FELMY. Well, I would add, Congressman, that, in addition, the industry has been doing a lot in terms of producing record amounts of distillate product. We have also seen imports decline as continued demand worldwide for diesel limits available supply. So it is a combination of those factors too.

Mr. COBLE. Well, when I indicated that I called, two decades ago, for exploring, I am sure that we could explore without exploiting. I am not promoting dirty air or dirty water; it can be done safely, I am convinced of that. Now, having said that, new refineries have not been built in America, I am thinking, for two, perhaps in excess of two decades. Has there been any increase in refining capacity in the United States? And, if so, how much has capacity grown and how has this been accomplished without building new refineries?

Mr. FELMY. Congressman, if you look back over the lasts 10 to 12 years, we have seen capacity of the refineries within the existing fences expand by roughly around 200,000 barrels a day. That is within the existing fences and that is the equivalent of a new 200,000 barrel a day refinery every year for that same period.

Mr. COBLE. Yes, you want to weigh in, Mr. Slocum?

Mr. SLOCUM. Yes. It is true that the industry has been conducting recent refining expansions and does have plans for more, but it is not at a rate that is going to keep up with projected demand; and we have seen that the industry lagged behind on providing excess capacity for diesel. And I don't have access to the latest numbers, probably my esteemed colleague at Deutsche Bank may, but I believe that refining margins for diesel have probably been far stronger in recent months and recent years compared to in the past. So the profit incentive is there but, again, I haven't seen the corresponding level of financial commitment by the industry to reinvest those record earnings and take those price signals and invest it in the infrastructure that our economy desperately needs.

Mr. COBLE. Thank you.

Mr. Felmy, in your written testimony you indicate that crude oil is the biggest component of diesel. You furthermore state that the United States imports most of what we need. How much of an impact does the weak dollar have on the price of diesel and would increasing the domestic supply of oil potentially reduce costs of diesel?

Mr. FELMY. Well, first, there is no question that increasing supply and reducing demand can help the prices of oil commodities, including crude oil, which then can be manufactured to diesel. In terms of the share, what we have seen is a continued increase in the cost of crude oil such as it has gone up by $1.00 a gallon and diesel has been up $1.03. So it is very easy to see how much of the cost increases have been going up due to the higher crude costs.

Mr. COBLE. Mr. Todd, your body language tells me you want to say something.

Mr. TODD. Regarding the question on the dollar, I would say that it is very clear that the Federal policy, which is—and slowing economy, which has contributed to weaken our dollar to record levels, has had a very strong impact on crude oil prices and, thus, gasoline and diesel prices. The two have marched, since January of 2007, more or less hand-in-hand, crude price and the devaluation of the dollar. Many people look at buying crude as a hedge against the dollar devaluation, so very strong correlation.

Mr. COBLE. Thank you, gentlemen, for being with us.

Mr. Slocum?

Mr. SLOCUM. Yes. And I do think there is a certain chick and egg phenomenon with the weakening dollar and rising crude oil prices that it is unclear at this point which variable is chasing the other; and it could be a situation where the speculators that are driving up the price of a barrel of crude are helping contribute to the further erosion of the value of the dollar.

Mr. COBLE. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you, Mr. Coble.

We will go in the order in which Members appeared. Mr. Sires?

Mr. SIRES. Thank you, Mr. Chairman. And I want to thank you for being here today, trying to make sense of all this that is happening.

I just have a couple of questions. As you know, there are a number of proposals before Congress that would require fuel surcharges to be collected by the motor carrier or the broker and to be passed through to the drivers bearing the cost of the fuel. How do you see this regulation affecting the trucking industry, this surcharge pass-through? Anyone. Because I am very concerned about the transparency of it, how it affects, you know, just the entire industry.

Mr. FELMY. Congressman, we don't have a position on that issue at this point, so I am afraid I can't help you in that regard.

Mr. SIRES. Do you see a better way? Can you think of a better way than passing on a surcharge? Do you have a position on that?

Mr. FELMY. We have not addressed this issue.

Mr. SIRES. No. Anybody else? Mr. Slocum?

Mr. SLOCUM. No, this isn't an issue that Public Citizen has been intimately involved with, unfortunately. I am happy to get back to you in some written statement on Public Citizen's analysis of the situation.

Mr. SIRES. That would be great, because there are a number of proposals floating around here.

Maybe you can help me understand this, because I am not as knowledgeable as some people. It seems to me that the crude oil jumps from one day to the next, and it seems to me there are already people hiding behind the pump, ready to raise the price as soon as it jumps. What about all those purchases before that, the supply that was bought before that? How does that work? How does it seem to me that oil prices jump from one day to the next and it is already on the pumps the next day, it seems to me? How does that work? Mr. Slocum, can you help me with that?

Mr. SLOCUM. Right. There have been some investigations, particularly by some State attorney generals, into potentially anti-competitive practices in so-called zonal pricing and other financial and contractual arrangements between refiners and other large wholesale suppliers and some of the regional distributors and retailers. There is no question that there has been—just as we have seen a rise in the market concentration within the refining industry, we have also seen it in some of these other wholesale distributional systems. So I think that Congress conducting an investigation that would complement what some attorney generals have been doing at the State level to determine whether or not these markets and these financial arrangements are adequately competitive and whether or not they are resulting in higher prices to consumers at the pump than there otherwise would be if we had a little more competition or transparency in these contractual arrangements.

Mr. FELMY. If I could respond. I think that you either believe in conspiracy or markets, and what we have here is a very rapid transmission of price information throughout the system. Whereas, in the past, a dealer or a wholesaler would not know what the prices are; now, within seconds, they know what is going on in the futures exchange, they know what is happening in wholesale markets, they have got price signals. So things move very quickly.

In terms of the product that they have purchased before, remember, this is not a cost-plus business and, as explained to me or explained publicly by the association that deals with that, this is a cash flow concern by retailers. Ninety percent of the retailers are not owned by the integrated oil companies and they have a real cash flow challenge when you have price change. So if they are looking over their shoulder, wondering what is going to be the cost of the next delivery, then they may not have the cash flow without responding in advance.

That is just simply from presentations I have heard from the retailer side of the business.

Mr. SIRES. Thank you very much.

Mr. DEFAZIO. Thank you. We now turn to Mr. Latta.

Mr. LATTA. Thank you very much, Mr. Chairman. Appreciate it. Good morning and, again, thank you and Ranking Member Duncan. I too want to thank you very much for holding these hearings and welcome to the witnesses.

Just briefly, as has already been pointed out by the Ranking Member, we do have a crisis in this Country on continuing our reliance on foreign oil, and the rising cost of the diesel fuel is another indicators of the disaster that is going to occur in this Country if we don't change our course now and stop that over-reliance on that oil from other countries. As has been pointed out again by the Ranking Member, Mr. Duncan, the United States is at a crucial point in terms of our own domestic energy production.

With estimates that China and India, combined, will consume more energy than the United States by 2015, we have to seriously take a look at our own domestic energy production and continue to reduce our dependence and reliance on Middle Eastern oil. China's increasing offshore energy production to reduce its own dependence on foreign oil, growing their own production at an average of 15.3 percent per year, with plans to make offshore production of China's largest source of oil by doubling production by 2010.

I hear daily from my constituents in Northwest Ohio regarding the rising diesel prices, as well as gas prices. It hits the automobile driver, the truck driver, looking at their own personal pocketbooks, and this rise in the diesel fuel is having a dramatic increase on the effect of businesses in our area. Consequently, it is not only directing the impact of paying more for that diesel fuel, but the higher costs are being passed down to the consumer through the rising cost of consumer goods.

Where I am from, in Northwest Ohio, I live just south of the Ohio Turnpike, along I-75, and within a day's drive I am within 60 percent of the United States population, so we are heavily into trucking and shipping in my area. Trucks transport freight to 19,346 manufacturing companies in Ohio, supply goods to 59,660 retail stores, and stock 24,466 wholesale trade companies. In addition, trucks supply goods to 5,414 agricultural businesses and deliver the produce and products to markets to nearly 80 percent of the communities in Ohio that are only exclusively served by trucks. So the rise in the diesel fuel cost in the trucking industry is a major crisis in the Country.

Talking about China and its energy usage and where they are going to be in next few years, really, I guess the question is going to be on diesel usage, where you see diesel usage in China and where it is going to be in the near future, and what is that doing to do to the overall market, not only across the world, but here in the United States; and how much is that going to drive the cost in the near future, because that is one of the questions. You drive by the stations and you see the diesel cost continuing to go up. But as we are in daily competition for that same barrel of oil across the world, and with China using as much energy as it is going to use in the near future, where do you see the oil or oil with diesel in the near future with the amount that China is going to be consuming?

Mr. TODD. I will touch briefly on that. We would see that diesel will remain at a premium to gasoline, probably, structurally going forward. Diesel growth globally, partly driven by diesel growth in China, India, and developing nations, but also driven by diesel growth in Europe and here at home, will grow faster than gasoline and will probably keep diesel at a premium to gasoline going forward.

Mr. LATTA. Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you.

Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman. I realize that this market, this industry is very, very complicated and regulators, State as well as Federal, are very hard-pressed to figure out what is going on. The State of Hawaii had also filed a lawsuit a number of years ago regarding pricing in this industry, and we had to settle because it is really hard to prove anything.

Now, Mr. Todd and Mr. Felmy, if I read your testimony, the gist of your testimony, basically, you wouldn't want the Federal Government to step back in to re-regulate; you pretty much would like to have the marketplace set prices. I think that was the gist of your testimony. Is that accurate? Okay, I am going somewhere with this.

You would like the free marketplace to do what a free market is supposed to do. However, we know that we provide billions and billions of dollars in subsidies to this industry, so, on the one hand you are saying let the free market dictate and set the prices; on the other this is an industry that enjoys billions of dollars in subsidies. So what I can't see as a consumer is why we should continue to do this. I mean, really, can you think of a really good reason why you should have both sides, you know, have Government support you as well as arguing that Government should leave you alone?

Mr. FELMY. Well, I think, Congresswoman, it is, first, very helpful to look at what the real subsidies are there. The Department of Energy just released a study last week that indicated that the total subsidies for all aspects of the oil and gas industry were about $2 billion. And when you convert that to million Btu, they were very nearly the bottom of energy industries in terms of those provisions.

Mr. Slocum's testimony came up with a number of $9 billion. I honestly can't find that anywhere in the report. But if you look at it in terms of the actual subsidies, they are very low. But, more importantly, to the extent that you have subsidies or anything that lowers the cost to the industry, it can benefit consumers.

Ms. HIRONO. I don't know how you can say that when the prices keep going up. As a consumer, I don't see how these subsidies are particularly helping to keep the prices of gasoline and diesel low.

Mr. FELMY. Because it lowers the cost of operations. The primary reason why we are seeing gasoline prices go up is the increase in the cost of manufacturing the product via crude oil.

Ms. HIRONO. Well, okay. We can sit here and have all kinds of arguments, but I think if we look at the bottom line for consumers, it is very difficult to figure out what we should do in order to create alternative energy to wean ourselves away from imported oil and not having to drill in pristine areas of our Country. My point is this is a very complicated industry and we are hard pressed, but it seems to me that we should start with just getting rid of these subsidies that I don't think can be justified. Thank you.

Mr. FELMY. Then you are raising the cost of the operation of the industry, and there is no way you can argue that helps consumers.

Ms. HIRONO. Thank you, Mr. Chairman.

Mr. SLOCUM. Congresswoman, if I may respond to your questions about subsidies.

Ms. HIRONO. Go ahead.

Mr. SLOCUM. It is true that the U.S. Energy Information Administration, which is the research arm of the Department of Energy, recently came out with a much needed report looking at overall energy subsidies. And it is true that their number for the oil industry was just over $2 billion a year annually, which is a huge number. But the Department of Energy did not include several very large tax breaks that are enjoyed by the petroleum industry in that analysis, and that is the primary difference between our two calculations.

The first large tax break that the Department of Energy's analysis did not include was the manufacturing tax deduction which Congress provided many different industries in the fall of 2004, but it classified oil extraction and oil refining as a manufacturing activity. The Department of Energy did not include that, and that is a highly lucrative tax break, over $700 million a year. In addition, the last in-first out accounting method, so called LIFO, which some Members of Congress have targeted for repeal, that would constitute a one-time value of between $4 billion and $5 billion.

So those tax breaks were not included in the Department of Energy analysis and Public Citizen thought it prudent to include those.

Mr. FELMY. If I may, those are provisions that are available to all industries, and there is no justification for singling out the oil industry. And raising those will not help consumers; it raises the cost of operation.

Mr. DEFAZIO. Okay, thank you, Ms. Hirono.

Mr. Felmy, if I may, so you are saying the $2 billion a year subsidy from the taxpayers to the industry, if the industry didn't receive that subsidy from the taxpayers, you would be charging them even more at the pump?

Mr. FELMY. Mr. Chairman, I am not——

Mr. DEFAZIO. That $2 billion would translate to higher prices?

Mr. FELMY. I am not going into prices, Mr. Chairman. I am simply saying it would be a higher cost for the industry, and there is no way you could make that argument that it would benefit the consumers.

Mr. DEFAZIO. But maybe it would come out of their profits, or maybe it would come out of their stock buy-back program, or maybe it would come out of the CEO's retirement pension—$400 million, not bad for Mr. Raymond. But okay, thank you.

We would turn now to Mr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman.

I think, first, we should start off with a little bit of a dose of reality in looking at the oil and gas markets, and the complexity of it. There is significant risk—geopolitical risk, geologic risk—and that hasn't really come up in this discussion. I think, secondly, we have to accept the fact that we are dependent on fossil fuels and will be for the foreseeable future. So we need to strategically manage that dependence. We have had 40 years of energy policies that really have not been much of energy policy in this Country, and this 110th Congress is no exception. In fact, some of the policies being advocated are entirely detrimental. We lack a long-term, a mid-term, and a short-term policy, particularly just looking at the fossil fuel industry, with regard to upstream and downstream development, and these are critical issues.

I know Mr. Slocum mentioned the issue about refining capacity and why profits aren't being used for refining capacity. But if you look at refining capacity and the barriers to building out refining capacity in this Country, they are enormous. I have spoken to the Kuwaitis and tried to entice them to come down in Louisiana in my State to build a new refinery, and they said no, absolutely not, unless we find a U.S. partner; it is entirely too expensive; we would rather build in North Africa or we will build another refinery in the Mid-East.

So what are we doing? We are sitting here and we are making our U.S. companies less competitive. We are looking at taking away important manufacturing breaks that all of our manufacturing sector has at this time, and we complain that we are chasing manufacturing out of this Country. Give me a break.

And then to demonize the U.S. oil and gas companies, let's look at what happened in the Gulf of Mexico after Hurricanes Rita and Katrina. In record time, when 80 percent of all the production was down, in record time they got this back up and running to deal with the problems we had in this Country. It was a remarkable turnaround.

So I think we need a little balance in this discussion, first and foremost. We have to recognize we must strategically manage this dependence as we then transition into investment into alternative fuels and other energy options.

But let me get to a couple of questions. One, we have talked about the profits; we have talked a little bit about subsidies. Could you gentlemen talk about what U.S. oil companies currently pay in taxes?

Mr. FELMY. If I could. If you look at the last year of available data, Department of Energy indicated that if you take a share of taxes as a share of net income before taxes, the oil and gas industry, under their financial reporting system, paid 40.7 cents on the dollar in taxes, compared to all manufacturing of 22.1 cents. So it is a heavily taxed industry in terms of the share of their net income.

Mr. BOUSTANY. Thank you.

Any of you other gentlemen want to comment on this?

Mr. SLOCUM. I think it is probably accurate that the oil industry is paying more in taxes than they have in the past, and that is primarily because they are awash in so much money. It is a very lucrative business.

Mr. BOUSTANY. Mr. Slocum, do you understand the cyclical nature of the oil and gas industry, and the fact that oil was down at $10.00 a barrel, less than $10.00 a barrel in the late 1990s and that it is a multi-year planning process and that you have got significant geopolitical and geologic risk? So to simply look at this in one-year terms is really an inaccurate depiction of the reality.

Mr. SLOCUM. Well, I absolutely agree that historically the industry has been very cyclical, but I think some elements of that cyclical history are being repealed. I think that the industry responded to that first by engaging in an unprecedented wave of mergers to address some of the problems that occurred——

Mr. BOUSTANY. So the U.S. oil industry is remarkably resilient and flexible. We should be proud of that and we shouldn't be advocating policies by singling out the oil and gas industry to make them less competitive when they have to fight against national oil companies and all the geopolitical risks that are attendant with that.

Secondly, I would say that all the discussion about speculation, while interesting, is really merely diversionary in many respects because we do have very accurate, very timely pricing information throughout the oil and gas industry. But it basically ignores the fact that we have a fundamental, very tight supply and demand equation, and when almost 1 million barrels a day are taken off the Nigerian market because of pipeline disruptions and terrorist activity, when you have the U.K., a strike which took some 500,000 or so barrels off per day, and then the Saudis are dealing with a situation whereby they do not have the reserve capacity now to ramp up production to meet extra demand, we need to focus on the fundamentals in this industry and do everything that we can to make this a more competitive industry and promote U.S. interest to strategically manage our oil dependence at this time.

So I challenge my colleagues on both sides of the aisle. Let's look at some reasonable policies, a real energy policy that looks at the entire spectrum and looks at drilling in this Country. It can be done in environmentally sound ways and with a light footprint; we have seen it in Louisiana. The oil and gas companies have made tremendous strides in this area. I think we need to look at a real energy policy and not just simply try to point fingers and pick out demons.

With that, Mr. Chairman, I think my time has expired and I yield back.

Mr. DEFAZIO. I thank the gentleman. Just one clarification to the answer to one point. Mr. Felmy, you said the industry paid 40 percent in taxes. So ExxonMobil—I am staggered by this. So they had a $40 billion profit last year and they paid 40 percent in taxes? Would I find that if I go through their report?

Mr. FELMY. I am not familiar with the Exxon financials to be able to give you an answer to that, Mr. Chairman.

Mr. DEFAZIO. Well, but where did the 40 percent number come from?

Mr. FELMY. The 40 percent number comes from Table 1 of the financial reporting system of the U.S. Department of Energy that tabulates the financial information on the major oil companies of the United States, and it is basically just taking income taxes as a share of net income before taxes, and it works out to 40.7.

Mr. DEFAZIO. So income taxes as a share of——

Mr. FELMY. Net income before taxes.

Mr. DEFAZIO.—net income before taxes. Okay. So they are paying over the highest corporate rate in America, then. There is no 40 percent bracket for corporations. So they are overpaying their tax. I guess we will see. Okay. We will have to look at that. Thank you.

Mr. SLOCUM. Mr. Chairman, may I add something to that, sir? Any estimate that is being provided by the Department of Energy or other entity is just that, it is an estimate. The only way that we will find out exactly how much they are paying in taxes is to consult with the Internal Revenue Service. We are not necessarily saying to make those public——

Mr. DEFAZIO. Okay, thank you.

Ms. Richardson.

Ms. RICHARDSON. Yes. Thank you, Mr. Chairman.

I have a question for you, Mr. Felmy. I am kind of a new Member on the block, and before I get into my question, I am a new Member here, but I wasn't very comfortable with, I felt, how you were cutting off our Chairman, and I would really appreciate it, in the future, a little more respect. I worked very hard to get here, and I think the American people sent us here for a purpose, and I felt it was crossing the line. And I feel very comfortable in making that statement to you.

So, Mr. Felmy, my question is in which piece of the oil pipeline can Congress, in your opinion, do the most to promote lower diesel prices? What do you recommend regarding distribution prices, taxation, etc.? And how do you blame the weak dollar for our current prices?

Mr. FELMY. Well, the most important thing that Congress can do is to increase supplies or reduce demand. Now, in the case of diesel, that is an enormous challenge because diesel is not discretionary; the trucking community is very much tied to operations on that. We can, however, do things that increase supply. We can improve the infrastructure. We can aid things that could lead to overall improvement in the market, which would reduce the cost of manufacturing diesel. So there a host of things that can be done to be able to improve supply or reduce demand.

Ms. RICHARDSON. I thought I read, though, that the supply, in fact, we do have adequate supply. Would you say that that is not true?

Mr. FELMY. Well, if you look at the worldwide situation, which is what you have to look at, for example, in 2007 we saw that production worldwide for oil was virtually flat, at the same time that demand went up by 1.1 million barrels a day, according to the International Energy Agency. So there is no question to me that what we see is a tighter market. Going forward, we will have to see what happens with worldwide demand. IEA is forecasting about a percent and a half increase in world demand, and we have these struggles, as was mentioned earlier, in terms of Nigeria, the blip that happened in Scotland, and a host of other places around the globe for producing oil, not to mention which Venezuelan production, what will happen with President Chavez's plans, Mexican oil production. So we have an enormous struggle in terms of a tight market with only a small amount of excess capacity to be able to respond to shocks.

Ms. RICHARDSON. So are you saying to me that we can do nothing to reduce our costs except for to increase our supply or reduce our demand, that there are no other things within the industry that can be done to help with this issue? I am not saying completely resolve the issue, but you mean to tell me there is absolutely nothing within the industry that can be done besides us addressing those two issues, increasing supply or reducing demand?

Mr. FELMY. Well, as an economist, those are the things that we look at first and primarily. To increase supply is to both produce more oil, perhaps more refinery capacity for diesel because of the tightening market for diesel worldwide, in Europe, potentially in the U.S., and so on. So it is something that we need to look at. Some of our companies are expanding in that regard, looking at more opportunities in diesel, which appear to be something they are considering. So, yes, at a lower level, that is really what, ultimately, the supply and demand factors come into play.

Ms. RICHARDSON. Okay, but we have heard the Chairman and several other Members mention some other areas that could be considered. You don't equally feel that those are valuable, besides increasing supply and reducing demand?

Mr. FELMY. Well, I think that it is the market fundamentals that are driving the situation. If you look at how much crude oil costs are up, they are up $1.00 a gallon year over year; diesel is up $1.03; gasoline is up $0.71. So that tells me very clearly what we see is, at least in my opinion, market fundamentals that are the situation

Ms. RICHARDSON. Okay.

My last comment. Mr. Chairman, I understand that currently we have had a little discussion about the Enron loop, and I guess it is Mr. Welch who I think currently has a piece of legislation that would deal specifically with this. I would be willing to follow your lead on what you recommend as we, as a Committee, could help to bring that forward, if you feel it is appropriate after this discussion.

Mr. DEFAZIO. I thank the gentlelady. In fact, the issue is also in discussion as part of the farm bill. It may get resolved there. If it doesn't get resolved there, Mr. Welch has legislation and I believe Mr. Stupak has legislation on the same subject, as do I. So we have some choices out there and I think it would be prudent to at least deal with that.

We now turn to the former Chairman from the great State of Alaska, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman. This is an interesting presentation. I am, of course, one who has been through this war over the years. Deja vu. I can remember when we had the embargo in 1973 and we immediately acted to increase the supply by building the Trans Alaska Pipeline. That is the last action we have done in this Congress to increase the supply of fossil fuels to the United States and American citizens, the last act; and I think it is long overdue. I do not believe that we can ever drill our way into total independence, but we can drill our way into some stability, Mr. Chairman, in the sense that we have ANWR, 74 miles from an existing pipeline. We could deliver a million and a half barrels of oil and supply the United States in three years. That doesn't solve the problem.

If we want to solve the problem and quit pandering to the general public—and that is what this Congress is doing, is pandering now—we are not looking at a solution to a problem—if we would like to solve this problem, being as you are the Chairman of the Subcommittee, I suggest we raise the taxes to $1.00 a gallon. That makes you put your money where your mouth is. Because if we can stabilize the cost of fossil fuels, then there would be the incentive and the stability to use and develop the alternate sources of energy, other than ethanol, which I am strongly opposed to. But no one wants to touch that. You don't even mention it. I tried it in a highway bill. I wanted to raise it $0.05 a gallon and, my God, the world came to an end.

Now we have the question on diesel fuel, which is actually a different program. I can't see why we can't—because diesel plays a major role in delivering products through the trucks and the locomotives to our consumers—why we can't set up a different strata. If we don't want to raise diesel fuel taxes, then raise it on gasoline. So people would have the knowledge that, yes, it is not going to go down—and, by the way, I don't think it will because we have built no refineries—and we are still dependent. And we just watched what happened in Nigeria yesterday, and it put up the price of oil $3.00 because we don't have any reserve, Mr. Chairman. We don't have the refinery capability and supply is not there, and what has occurred is we are really in shortage of storage and shortage of reserves now, and foreign countries are consuming what we do not have availability to. That is our problem.

We can talk about the environment all you want. I know Mr. Slocum is down there. If you want to solve the environment, back a tax for $1.00 a gallon so people will stop driving like a bunch of idiots, which they are doing right now. Did anybody watch anybody drive here today when you came to work? They are driving cars 100 miles an hour. I drive 60 miles an hour and they pass me like I am standing, and they honk the horn at me and wondering why they are spending fuel. Yet, they are complaining about $4.00 gasoline.

I worry about the truckers. I worry about those that deliver product to consumers. But I am not worried about the general public when it comes down to how they misuse the fossil fuels we have left. So we have a lot of oil in this Nation. We have not developed it. Not one development other than the Gulf of Mexico other than the Trans Alaska Pipeline. Approximately 36 million barrels of oil in ANWR can't be open. Chukchi Sea, $2.6 billion we bid on that last week, the oil industry did. I don't know whether they are going to be able to develop it or not. Beaufort Sea, Lucian Chain, off the

Coast of California, off the coast of Florida, off the coast of North Carolina, coast of Virginia, all oil. Rocky Mountains. We just haven't done it.

So we have a choice, Mr. Chairman, and this hearing and everybody else need to understand it, and this Congress, to get off the duff and either do something or quit pandering to the general public and look for a real solution. It is easy to blame the major oil companies. Absolutely, let's blame them. Let's tax them. But when you do that, you are not going to hurt Exxon, you are not going to hurt BP, you are not going to hurt Shell. You are going to hurt the domestic production. Those are international companies. And then we do not have any production in this Nation.

So, Mr. Chairman, I think these hearings are good. I don't have any questions. I like to make statements on this type of matter because I have been doing it for years. We have got to start doing something instead of talking. We have to start doing something with result. And I will promote a tax so the general public will slow down, will change their driving habits, will have a different vehicle, and we will save fuel. I am not for trucks for doing that because they are delivering the products we consume.

We did this in World War II. If you go back to the history, we had a 35 mile an hour speed limit. I am not advocating that; my God, everybody gum and glue it. We did have gas ration. I am not advocating that. But we also had preferential use of fossil fuels. The farmer had use of fossil fuels at a more reasonable rate and no rationing, because he was producing food for the war effort. Maybe we ought to look at that. Maybe we ought to give a break to the truckers and the locomotives and the people that are delivering products. Maybe we ought to do that. But we better do something instead of just talking.

I have been in this business long enough to watch nothing happen in this Congress when it comes to fossil fuels that we are dependent upon the foreign countries today. China is consuming more barrels of oil today than we are. Not per capita, per day. And they are going to triple that in the next two years. So the sellers, they don't have to sell it to us anymore; they sell it to another country with a heartbeat. So we have got to start developing our own sources. And it is here, we have the Btus. I haven't even talked about coal, because under this Speaker we can't talk about coal because we contaminate the air; in the meantime, we all can break ourselves economically in this Country.

So, Mr. Chairman, I hope everybody just starts thinking about the solutions. Solutions, I have them: raise a tax on a gas so the public starts being aware it is going to be high for the rest of the time and the rest of their lives, and they will drive differently and have a different automobile; make an exemption for trucks and locomotives and ships that deliver products to and from this Nation to the consumer; instigate an idea that maybe there is a better way than ethanol, which is the dumbest thing we ever did when you think about it—a food for a fuel, when we have starving people in this Country and in this world?

So, Mr. Chairman, I thank you for having this hearing and thank you for putting up with me and thank you for recognizing me. I yield back the balance.

Mr. DEFAZIO. I thank the former Chairman for his provocative statement.

Mr. Baird.

Mr. BAIRD. I thank the Chair. I actually thank the former Chair as well. He didn't give you a chance to answer his statement, but I would like to. I think he raises some pretty good points, both about the issue of what the impact of a gas tax might be and also about the idea of distinguishing between the delivery and cargo sector of our economy versus the personal vehicle sector. And the reason I am interested in that is because passenger vehicle use has options: you can carpool, you can take buses; not always, but many options. But it seems to me the delivery sector, the cargo sector doesn't. So take a few minutes and respond, if you would, to Mr. Young's provocative thoughts and share your thoughts on that, if you would.

Mr. SLOCUM. Sure, please. I will start. First, they were indeed very important comments, and in response to opening up new areas of domestic production, which a number of Members have raised today, well, Congress did just that in December of 2006. Congress voted to open up 8.3 million acres of new development in the Gulf of Mexico, and the markets responded by sending the price of crude oil skywards. So increasing domestic levels of production when there is no shortage of crude oil is not a solution to energy independence or to lower prices.

Consumers are doing their part. I believe that motorists are not gluttons for punishment; they have reduced demand by over a percent, which is fairly remarkable in an economy our size and a population of over 300 million people.

Mr. BAIRD. Talk a little less on the production side and more about the impact of the $1.00 a gallon gas tax in terms of anticipated impact on consumption and also the differential notion that I think is intriguing between taxing gasoline versus diesel.

Mr. SLOCUM. First of all, Public Citizen opposes efforts to temporarily repeal the Federal gas tax. We do not believe that a Federal gas tax, which has remained the same since the mid-1990s, at 18.4 cents a gallon and 24.4 cents a gallon for diesel, is a culprit behind high prices. Right now, those represent——

Mr. BAIRD. I will stipulate to that. Go ahead with his proposal.

Mr. SLOCUM. Well, I agree with the sentiment of what the Congressman is saying, that an increased gas tax may result in less demand. The problem, from Public Citizen's point of view, is the punitive action that that has. We have already seen people with rising crude and gasoline prices pay what essentially amounts to a tax, and I believe that our President——

Mr. BAIRD. I am going to ask Mr. Todd and Mr. Felmy to comment on this.

Mr. TODD. In general, I think that we have typically tried to do a policy here in the United States which says we want to protect the environment, we want to increase supply, we want to have cheap gasoline. We want to do all these things that are kind of mutually exclusive. With that being said, I think that a higher gasoline tax in order to destroy demand is probably a—it is tough to get through here in Washington, but it is probably not a bad policy.

Mr. BAIRD. What about this differential between gasoline tax versus diesel tax to spare the cargo transportation sector from the personal vehicle use?

Mr. TODD. We haven't looked at it and I would have a tough time commenting on it. Certainly, in Europe, they have favored diesel versus gasoline, which is why they drive diesels; and we have favored gasoline, which is why we drive gasoline cars. So it would seem like——

Mr. BAIRD. I am not——

Mr. TODD.—but you would have to have a corresponding increase certainly in diesel production capacity to make it work; otherwise, you would artificially inflate diesel demand without——

Mr. BAIRD. That is a good point. I am not sure the distinction between the type of fuel versus—I think it is better to distinguish between the usage of the fuel. And if there is a manner in which you could—you know, I don't care if a truck delivering groceries is a diesel powered truck or a gas powered truck. That use, in my mind, should have preference, as Mr. Young seemed to suggest, over passenger vehicle because there is less flexibility.

Mr. Felmy?

Mr. FELMY. In general, we don't have a perspective on the level of taxation as it is used for road construction, things along that line. We do object to general taxation of that type that is used for overall goals such as deficit reduction and things like that.

The differential in terms of diesel versus gasoline is fairly complex; there are a lot of things that you need to look into. Diesel car technology presents a tremendous opportunity going forward in terms of efficiency improvements with now the introduction of ultra low sulfur diesel. So one could see, if you were trying to move toward more efficiency, that would be one technique to do it.

Mr. BAIRD. Mr. Slocum, one final question, which I actually can't resist. Was Ralph Nader the founder of Public Citizen?

Mr. SLOCUM. Yes, he was, in 1971, and he ceased being president in 1980. So it has been a while.

Mr. BAIRD. I will spare you my thoughts on the impact of Mr. Nader on the environment with the result of the election of 2000.

Mr. SLOCUM. I appreciate that.

Mr. DEFAZIO. We now turn to Mrs. Capito.

Mrs. CAPITO. Thank you, Mr. Chairman.

I want to thank the panel, too. This is an extremely important issue and very complex, as we have heard. I have two questions. First, I represent the State of West Virginia. It has abundant resources of coal. Former Chairman Young alluded to coal, but there is technology there where coal can be liquified and used for diesel or for other fuels. They do it in South Africa, I believe, for almost all of their fuel. With the price of oil going up so excruciatingly high, the reason that we don't have these coal liquification plants, among other reasons, is the absolute cost of them; and there is a lot of technology on carbon catcher aspect of this. Do you all have any comments on coal liquification as a way to ease the situation around the high price of diesel and gas in general?

Mr. SLOCUM. Sure. Given the extremely high capital costs involved with these coal-to-liquid projects, and given some of the environmental concerns, it still is not competitive, even in an era of record-high crude oil prices. The coal-to-liquid industry has addressed that by entering into or proposing to enter into long-term purchase agreements with the Air Force. I would not see broader application other than in select segments of the economy, just because of the enormous costs involved, capital costs, for those projects.

Mrs. CAPITO. Mr. Felmy?

Mr. FELMY. I think the National Petroleum Council said very clearly that, going forward, we are going to need all forms of energy; we are going to need energy efficiency improvements; we are going to need alternatives; we are going to need renewables. Coal to liquids is one of that suite of things that we are going to need. Yes, it is high-cost right now, but technology improves. This is a demonstrated technology that has been around for a very long time. And if memory serves me, I think the Department of Energy has a forecast for coal to liquids somewhere around 700,000 barrels a day, going forward, by 2030. That is dependent, of course, on capital costs and so on, but it is one of the things we need to look at.

Mrs. CAPITO. Thank you.

Did you have a comment?

Mr. TODD. I would agree with the fact that, in general, based on the comments that I have said on the challenges to increase oil supply sufficiently, to keep up with demand, we do need everything; we need coal, we need nuclear, we need biofuels, we need conservation, we need wind energy. We need the whole range of the spectrum. It is very difficult, from a cost perspective, with coal; it is difficult from an environmental perspective barring carbon sequestration and capture; and, in general, again, I think subsidies get very difficult, but the markets will allocate capital to those things which can be economically competitive and beneficial.

Mrs. CAPITO. Right. That is what I would like to see. I would like to see this Congress and future Congresses take this technology, take this natural resource that we have abundantly in this Country and use it to help every single individual buying gas at the gas pump. And I particularly like the diversification aspect of coal to liquid. It is not going to solve everything, but it is going to be a small part, and can be a small part, of solution of the problem. So I appreciate all your comments and I will keep pushing for that.

My second question is we have a lot of individual truckers and we have a big timbering industry; a lot of them are private contractors that really are on a needle's eye, really, balancing their budget. And I guess the most difficult thing for people right now, consumers at all levels, but particularly people who are making their living on transportation, is the total uncertainty of what you are going to wake up to the next day. And this is a difficult question, but what—can you prognosticate? Are we in the middle, are we at the bottom, are we at the top? You know, I really think that if we can get some certainty back into the market, some certainty back into stabilization of our prices, I think people would then begin to make some of the adjustments that we have talked about here today.

So do you all have a comment on where are we on a scale? Are we on a run-up, a rundown? And I know it is hard to predict, but I would like to hear your comments on that. Thank you.

Mr. SLOCUM. Well, I think Goldman Sachs answered that for us last night when they released a report saying that they were predicting $200 for a barrel of oil in a short period of time. So it is clear that the largest energy commodity trader on the planet is extremely bullish about where oil is going to go. So, unfortunately for the American economy and the American driver, we ain't seen nothing yet. I think prices are going to continue to escalate until we restore some transparency to these energy trading markets to clamp down on some of this harmful speculation that we have been experiencing.

Mr. TODD. In general, I do the same thing that Arjun Murti at Goldman Sachs, who created that report this morning, I do the same thing and, in general, I wouldn't place too much weight in the forecast. We have been wrong before; we will be wrong again. The fact that Goldman Sachs says it doesn't mean oil is going to $200 a barrel. We do have a supply problem. We do need higher prices in order to—higher prices are, as we speak, rationing back demand, again, as we speak, which is good, and it is promoting alternative energies, which is also good. But, in general, where we are is going to depend to a large degree on international growth and where that goes. If we continue to see growing demand——

Mrs. CAPITO. So basically the uncertainty still exists.

Mr. TODD. The uncertainty is——

Mrs. CAPITO. And will for a while. Thank you.

Mr. DEFAZIO. I thank the gentlelady. I would be happy to share the Goldman Sachs report with her. They have their own idea about where it is headed.

Mr. Arcuri.

Mr. ARCURI. Thank you, Mr. Chairman, and thank you, gentlemen, for being here.

You know, I was thinking while you were speaking. I remember one time they used to say that what was good for General Motors is good for America, and some people believed it; some people didn't. But I don't imagine anyone is ever saying what is good for ExxonMobil is good for America. And, you know, it troubles me that we sit here and I listen to you talk about supply problems, and then in the next breath they are talking about building new refineries, and it seems to me it is missing the real problem here or the real issue, and that is that the amount of oil is finite. Whether we are at peak oil now or whether we passed it a couple years ago or whether we are going to pass it in a couple years, it is going to be more and more expensive to get more oil out. And I guess the reason I said that at the beginning is my question is what are the oil companies doing to develop alternative energy? I mean, what we are trying to do is make it cheaper for us to get goods to/from where they are produced to where they are consumed, and that is what the cost of diesel is all about. So are they going to do anything? I mean, I know what they know how to do is drill for oil and refine it and pump it. Does Government have to do all of that? Do we have to be the ones that are giving subsidies to oil companies to promote it or is there any responsibility on the part of oil companies to develop alternative energy?

Mr. FELMY. Congressman, the oil industry is first and foremost involved in keeping oil flowing 24/7, because that is what you are here asking us questions on.

Mr. ARCURI. Well, is it energy or oil? What is it?

Mr. FELMY. Well, first and foremost it is gasoline and diesel, because that is what everybody is talking about right now. But looking forward, the companies are major investors in emerging energy. Between 2000 and 2005 they invested $98 billion in total emerging energy, which included a host of new things, such as oil sands, oil shale, L&G, gas liquids, and so on. And then they also invested in non-hydrocarbons and in energy efficiency improvements. So they are looking forward, but it is a delicate, very challenging question to be where do you put your bets in the future and keeping fuel flowing.

Mr. ARCURI. Well, I have been hearing that since the 1970s when I was in grammar school and we were talking about what are we going to do to lower the price of oil, what are we going to do to make America independent; and the oil companies continue to say the kind of things that I am hearing, unfortunately, today. Thirty years we have been hearing this and still there has been either no development or certainly that we haven't heard about yet because the oil companies are too busy pumping the oil that is out there. So at what point do they say we are more concerned with getting energy and keeping cars and diesel trucks moving, or are they just going to continue to pump oil and continue to watch the prices go up?

Mr. FELMY. Well, they are continuing to invest heavily across the board in all types of projects. As I mentioned earlier, $175 billion, as documented by Oil & Gas Journal. They have a delicate challenge in terms of where do you make an investment so that, after all, you have a fair return to your shareholders.

Mr. ARCURI. Well, but why do they keep investing in finite resources like coal and oil? Why are they not investing in other renewable sources of energy that are not finite?

Mr. FELMY. I just pointed out they are investing in other non-finite energy sources, such as energy efficiency and non-hydrocarbons. So they are making those investments, but it is a difficult challenge when you have got to, first of all, satisfy your customers today and then look forward to the energy future. You also have to satisfy your owners, which are the millions of Americans who are retirees and other owners of the companies that you simply not——

Mr. ARCURI. But those are also the people that are paying a lot of money at the pump and they are also the people who are going to benefit from the developing of alternative energy in the future, which is actually going to drive up, probably, the cost of stock, effects on Mobil were to come up with alternative energy that isn't finite in its nature.

Thank you, Mr. Chairman. I have nothing further.

Mr. DEFAZIO. Ms. Fallin.

Ms. FALLIN. Thank you, Mr. Chairman, and thank you, gentlemen, for joining us today to visit with us about a very important issue.

I have just a couple of points I would like to make and then just ask your opinion about a couple of things. Congress, in past legislation, has voted on drilling in ANWR, in opening up Alaska and even some of the Gulf areas. In 1991, the Senate blocked it, and in 1995 President Clinton vetoed ANWR and drilling there, and then, as you have heard in testimony, we haven't had a new refinery in 25 years in the United States. And I also know from just talking to the people in the industry that it takes about 10 years to even go through the permitting process, the environmental rules and regulations, just to even talk about a refinery because it is so complicated to build one.

But my question is if, in 1995, 1991, if we would have allowed more drilling—allowed drilling, I should say, in ANWR, and more off-coast drilling in the United States, what would have been the effect upon our supply and the cost of gasoline today if the United States policy had been different, and if we had had the refineries being built during that time period?

Mr. FELMY. Well, I think if you look at the Deepwater Royalty Relief Act, which was passed in 1995, on the impact of production in the Gulf, it is truly stunning. They have gone from a very small estimate of resources to finding, I believe it is, something on the order of 10 billion barrels equivalent. That is added supply; it is an increasing share of the Gulf's production, and it is an important additional supply.

If you look at the time lines for developing ANWR in terms of everything you would have to do to be able to go through the whole process of permitting, finding, and so on, we would probably be producing right now. How much is of course uncertain until you are actually producing, but the USGS estimates are for a mean estimate of 10 billion barrels, which, if you produced it over 30 years, would 1 million barrels a day. So those could be some substantial—first of all, they are substantial improvement in resources and could be additional.

And in terms of refinery, we haven't built a new refinery, but we have expanded existing capacity. We may need more capacity going forward, and that is on the drawing boards right now according to the Department of Energy.

Ms. FALLIN. Would it have had an effect upon the price of gasoline today if we had those supplies online?

Mr. FELMY. Well, I can't speculate about price because of antitrust law, but it is fundamental to an economist core existence that if you increase supply, all other things equal, it can help the market.

Ms. FALLIN. Okay.

Mr. Todd, do you have a comment?

Mr. TODD. I would agree that, in economic terms, the prices would probably be lower, but we have no idea how much lower they would be. Again, in general, I think it is good policy for us to, if we, as consumers, want to use oil, to produce as much as we can, just as we ask other countries to produce as much as they can. So, yes, we would probably be lower, but no idea how much.

Ms. FALLIN. Don't know for sure?

Mr. TODD. And in terms of refining capacity, again, there seems to be a lot of discussion about how much refining capacity we are building. We are adding significant refining capacity and we have every year for probably the last 20 years. There is major investment going on as we speak, a major investment in Texas, a major one in Louisiana, adding additional capacity, adding additional capacity that is actually focused on producing as much diesel as possible. Again, that is where the higher margins are and that is where the capital is going. But, again, it is a global balance as well. Refineries are being built internationally. Refiners in general are not making any money right now, or very little money, so it is a delicate balance. When you look on an investment time frame that is 10 years down the road, as to if we ramp up ethanol production, if we all drive more fuel-efficient cars, if we do these things, what are the incentives for me to build a refinery now that is going to come online five years from now, when we might have an entirely different environment?

Ms. FALLIN. My time is about ran out, but let me ask you another question. Some Members of Congress have been advocating putting a windfall profits tax back in place. What would that do to the marketplace and supply and demand and the cost?

Mr. TODD. It would lower supply.

Ms. FALLIN. And——

Mr. TODD. Higher taxes have never increased supply, so I have a very difficult time envisioning that it would do anything other than increase prices.

Ms. FALLIN. And if yo lower supply, what happens?

Mr. TODD. Prices go up.

Ms. FALLIN. Okay.

Sir?

Mr. FELMY. I think it is instructive from the studies of the Congressional Research Service that we affirm that, that the windfall profits tax of the early 1980s led to reduced supply, increased imports, and that is not good for consumers.

Ms. FALLIN. So you are telling me that gasoline prices could go up even further?

Mr. FELMY. Once again, I don't speculate on gasoline prices because of antitrust, but I see a tighter market.

Ms. FALLIN. Let me ask the economist.

Mr. TODD. Yes.

Ms. FALLIN. Okay.

Did you have something you wanted to say?

Mr. SLOCUM. Yes, please. First, the primary decisions in the oil and gas industry affecting production is the market price of that underlying commodity. And unless you price a windfall profits tax at a punitive Swedish style rate, it is not going to discourage production as long as oil is over $100 a barrel. And the proposals that I have seen from Congress thus far are not punitive tax rates, they are tax rates that would reduce somewhat returns to shareholders, to the owners of publicly held companies. But, typically, economists do not believe that corporate income taxes are paid by end consumers; they are paid by the shareholders of the company in the form of slightly lower stock value or lower dividends, things like that. So I would disagree that enactment of a reasonable windfall profits tax would hamper domestic oil production.

And getting back at some of the other questions you were asking, about whether or not bringing on new sources of production, such as the Arctic National Wildlife Refuge, would reduce prices, we have already seen that basic supply-demand fundamentals are not being followed in the crude oil markets. U.S. gasoline demand is down over a percent from a year ago, and that is significant because the United States is far and away the largest gasoline consumer on the planet, and the markets have responded by increasing the market price, which is exactly the inverse of what you would expect. So even if we were bringing on massive new supplies, as long as we have dysfunctional, non-transparent futures markets where prices are actually set, it will probably be irrelevant what is going on in supply and demand.

Ms. FALLIN. I appreciate your answer to that, but I think my question was more towards if we increase the U.S. supply—since now we buy over 62 percent of our energy needs from foreign countries—what would that do to our own market and supply and the cost of gasoline.

Mr. DEFAZIO. I thank the gentlelady for the question, and I think it was responsive.

Mr. Braley.

Mr. BRALEY. Thank you, Mr. Chairman. I first want to comment that I certainly agree with your characterization of the former Chairman's testimony as provocative. There were things that he said that I agreed with; there were things he said that I found intriguing; and there were things that I blatantly disagreed with. And as a big fan of the TV show Ice Road Truckers, which is filmed in his State, and as a former trucker, I take a very serious interest in the topic we are here to discuss today.

I got my driver's license on October 30th of 1974, right in the wake of the oil embargo and the aftermath, and there were a lot of things that happened that the oil and gas industry didn't have much to do with. One of the things we saw was we saw incredible change in innovation in the U.S. auto industry, which produced vehicles like the Chevy Vega, the Ford Pinto, the AMC Gremlin, and a host of other vehicles whose sole purpose was to try to get better fuel mileage and to preserve the precious resources that we had available in this Country.

Setting aside for the moment some of the safety implications of those vehicles, one of the things we know is, if we look back through history, we can see various spurts of innovation to try to address things that affect both supply and demand in the marketplace we are talking about. For example, if you go back and look at some of the documentation from Renault, a French auto maker, in the early part of this century you will see that they were producing an internal combustion engine that was capable of getting 70 miles per gallon, almost 100 years ago.

So one of the concerns I have on this Committee is that we are looking at this problem in a global viewpoint, not just a narrow focus viewpoint. And I want to start with you, Mr. Felmy, because you are an economist by training, is that correct?

Mr. FELMY. Yes.

Mr. BRALEY. And I think you would agree that one of the things economists have to do is have an understanding of history.

Mr. FELMY. Yes.

Mr. BRALEY. Because market trends and things economists study are based upon an assessment of how things evolve historically and how we can predict future economic trends based on things we have learned from the past. Is that a fair statement?

Mr. FELMY. Yes..

Mr. BRALEY. One of the things that students of history know is that there was a little thing called the whiskey rebellion in this Country. Do you remember that?

Mr. FELMY. I would say yes, barely.

Mr. BRALEY. All right.

Mr. FELMY. I couldn't give you any details on it, but I do remember the title of the history.

Mr. BRALEY. One of the things that former Chairman Young was talking about was that his opinion that ethanol was an incredibly poor idea as part of this equation we are talking about. Do you remember him saying that?

Mr. FELMY. Yes.

Mr. BRALEY. Do you agree with that statement?

Mr. FELMY. Well, the oil industry has been committed to adding more ethanol into the fuel supply. We were originally agreed to the renewable fuel standard, and the industry has a requirement this year of using 9 billion gallons, and the industry is working very hard to meet those requirements for ethanol. It is the law.

Mr. BRALEY. Well, I brought up the whiskey rebellion for a very specific purpose, because the truth is we have been refining corn a lot longer in this Country than we have been refining petroleum, isn't that true?

Mr. FELMY. Oh, absolutely. There is no question. Worldwide we have been refining ethanol without gasoline additives for a long time.

Mr. BRALEY. And, in fact, frontier farmers, which caused the whiskey rebellion, were converting corn into grain alcohol and selling it because it was easier to transport it in that fashion than in a food commodity fashion.

Mr. FELMY. No question. In fact, if history reminds me, I think Abraham Lincoln was involved in shipping whiskey across the rivers at that point, and I think it is also a case that Henry Ford, one of his original vehicles was designed to run on ethanol, if memory serves me.

Mr. BRALEY. That is correct.

Now, one of the things that has happened here in Washington lately is ethanol is being blamed for a lot of things. It is being blamed for the rise in rice prices worldwide; it is being blamed for the rise in food cost and in energy cost. One of the questions I have for you is do you like to eat corn?

Mr. FELMY. Absolutely. It is one of my favorite vegetables.

Mr. BRALEY. Good. Well, I had some great——

Mr. FELMY. I love it every summer.

Mr. BRALEY. Do you understand, Mr. Felmy, that there is a big difference between the corn you buy in a store and the corn that is grown in cornfields in Iowa and Illinois and Indiana that is used to produce ethanol?

Mr. FELMY. Having grown up in central Pennsylvania, I know the problems you have when you eat the wrong type.

Mr. BRALEY. It is not a very tasty——

Mr. FELMY. It is not a pretty sight.

Mr. BRALEY. Exactly right.

Mr. Slocum, one of the things that we have been talking about here today is how supply and demand affect the actual price that people at the pump, especially as it relates to the trucking industry, and I would like you to comment on one of Mr. Felmy's earlier statements, where he said you either believe in conspiracy or markets, as explanation of what is happening right now in the oil market. One of the things that I have learned from studying history is that usually conspiracies develop in the absence of appropriate market regulation and intervention, and I would like you to comment on that as you see it relating to the problems that bring us here today.

Mr. SLOCUM. Right. I don't know if I would use the word conspiracy to talk about some of the anti-competitive issues that Public Citizen believes exists in America's energy markets; it is more, as the Federal Trade Commission has termed them, profit maximization strategies. And there is nothing wrong with that as long as they are being conducted in a competitive fashion.

But when you have got an industry like petroleum and oil and gas that is inelastic in its supply, and you have demand that is largely inelastic, and you have high levels of market concentration of producers and refiners, and you have got unregulated energy trade markets where the prices of these commodities are set, that opens the door very wide to collusive and other anti-competitive practices by the industry. And all Public Citizen is seeking is increased Government oversight over these important markets. It is bad policy, from our perspective, to allow energy markets that determine the prices we all pay in our economy and what we pay at the pump and to heat and cool our homes, to be set in an unregulated fashion. We are not talking about Hugo Chavez style intervention here in the marketplace; we are talking about basic Government oversight over critical commodities essential to the health of the U.S. economy.

And when you approve the number of vertically integrated mergers in the U.S. petroleum industry that we have over the last decade, thereby reducing the level of effective competition in key industries like refining, I believe that you are setting the stage for profits and prices that would be much higher than if consumers had access to adequately competitive markets.

Mr. DEFAZIO. I thank the gentleman for his questions.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. This has been an interesting discussion, and I hope I am not going to be redundant in some of my questions, but it has been pretty interesting, the dialogue that we have been exchanging between the Members and the panel.

My concern is that as we talk about the demand and we talk about the supply and we talk about how we are going to do the markets and how we are going to generate the price, what concerns me is the vulnerability we find ourselves in, our economy in the

United States, where we are using some 21 million barrels of oil a day and some 62 percent of that comes from someplace else. And I know we talked about subsidizing oil companies, and I don't think we do that; that is based on the research that we must find additional energy, and we are doing the same thing, I guess, in the other alternative fuels, be it wind or be it ethanol or whatever else we find out there. So I think we must look at it as a total picture, not just isolate one item against the other.

I was impressed when my good friend from Louisiana really brought some calm and reality to the process by saying that we have got to get off of the oil glut or whatever we call ourselves today. So we must find an alternative energy solution, but we can't do it unless we have cooperation across the whole spectrum. We cannot reduce our demand for 13 million barrels of oil a day that we get from outside the continental United States, a lot of places that don't particularly like who we are and a lot of it is not stable, like the Nigerian problem we find ourselves in today. And everything that happens impacts the oil price, so the consumer has to deal with it.

And I was just doing a little quick calculation, and maybe some of you guys have got a quicker pencil than mine, but at the price of oil of $120 a barrel, and we are using 13 million barrels coming from offshore, we are generating over half a trillion dollars worth of trade imbalance every year, which is a major concern as we deal with the price of the dollar and we are buying oil with the dollar and the Euro is being bought, which is now $1.57 or something compared to the dollar. So all of those factors injected in, we have got to become energy independent in the United States. We not only have to deal with lack of our own energy supply, but now we have got to compete in some kind of a monetary market that the dollar is pretty weak.

So with that being said, Mr. Felmy, do you know whether we could convert those trucks from diesel to natural gas? Would that be a major cost to do that?

Mr. FELMY. I would think that it would be a major cost. It is quite a bit of different combustive thing. I am not an engineer to give you any specifics, but it would strike me as being fairly high cost. And then the challenge in terms of natural gas is that we don't have a lot of excess natural gas. Our production has been relatively flat; we are relying more and more on imports, including liquified natural gas imports. So that would present some other challenges.

Mr. BROWN. Well, but you know, just like we do in our petroleum explorations, we have plenty of natural gas. I know off the coast of South Carolina. We are not talking about the beaches. We are talking about 50 miles, even 100 miles off the coast. There is a tremendous reserve of natural gas, but there again we are not dealing with that issue.

We need to be proactive in trying to find alternative energy supplies. We have particular potential for nuclear power which we are using about 20 percent in the United States, 80 percent of France. We have a lot of catching up to do if we have the will to do it, and sometimes our energy policy is no and no is not the answer.

Mr. FELMY. I think the National Petroleum Council clearly said exactly that, that we are going to need all forms of energy. We are going to need energy efficiency, and all too often things are taken off the table before you have a real opportunity.

There is an excess of 600 trillion feet of natural gas that is estimated that you could produce, much of which is off limits. The Marcellus Gas Shale Play in my area of Pennsylvania is an exciting opportunity. There is a host of resources we could develop.

Mr. BROWN. Right. Well, Mr. Chairman, thank you for holding this hearing and thank you for this exchange.

Mr. DEFAZIO. I thank you, Mr. Brown.

Mr. Space.

Mr. SPACE. I yield, Mr. Chairman. Thank you.

Mr. DEFAZIO. Okay. Mr. Duncan.

Mr. DUNCAN. We need to get on to the second panel, so I thank the witnesses for being with us. Thank you.

Mr. DEFAZIO. Okay. I will just ask one last question. I am just curious. We visited the refinery issue, and we heard that last year refineries were very profitable. This year, refineries are theoretically losing money.

But I guess the question is if Exxon Mobil is a fairly major refinery, if they almost beat their quarterly record profit for the largest corporate quarterly profit in the history of the world, and they are losing money on refining, where does the money come from?

Mr. TODD. From the oil and gas production side of the business.

Mr. DEFAZIO. Okay. So, basically, if you are vertically integrated, maybe in certain years you can make the money over here with squeezed refinery capacity and the concentration in refining and, in other years, you are going to make the money over here in the production side. Vertical integration is a great thing that way, right?

Mr. TODD. Yes. To a certain extent, it provides a type of natural hedge.

Mr. DEFAZIO. Not to the particular source maybe.

Mr. TODD. It provides a type of a natural hedge for a company, correct, but it doesn't always work out that way. In the late nineties, nobody was making very much money on anything, upstream or downstream.

Mr. DEFAZIO. Right. Well, I doubt we are headed back to the nineties, particularly looking at Goldman Sachs, but I can agree with you. I hope they are wrong, but I am sure they did very well today because if they are going to put the report out today. I would love to see what their positions in the market were yesterday.

I thank all the members of the panel for your forbearance. This went on longer than we expected, but we will go to the next panel. Thank you very much.

I am going to take a one minute break. The next panel can get set up.

[Recess.]

Mr. DEFAZIO. All right. We are going to move on now to our second panel.

I guess referring back to the first panel, when we talked about upstream-downstream, you folks are the downstream portion of this issue. You are getting to deal with the high prices. I am not certain we convinced anybody or illuminated too much, but I thought it would be useful just to have some discussion of some of the causes of high prices and some potential ways to address it.

We are going to go now to panel two. We will go first to Ms. Suzanne Te Beau from the Federal Motor Carrier Safety Administration, Department of Transportation.

Ms. Te Beau.

TESTIMONY OF SUZANNE M. TE BEAU, CHIEF COUNSEL FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION; MIKE CARD, PRESIDENT, COMBINED TRANSPORT; ROBERT A. VOLTMANN, PRESIDENT AND CEO, TRANSPORTATION INTERMEDIARIES ASSOCIATION; AND WAYNE JOHNSON, DIRECTOR OF LOGISTICS, AMERICAN GYPSUM COMPANY

Ms. TE BEAU. Thank you. Good afternoon, Mr. Chairman, Ranking Member Duncan.

I am the Chief Counsel for the Federal Motor Carrier Safety Administration and am here today on behalf of Administrator John Hill who was not able to attend. I have been asked to provide background on the agency's jurisdiction over interstate property brokers.

For FMCSA's purposes, a broker is defined as a person other than a motor carrier or an employee or agent of a motor carrier that sells, offers for sale, negotiates for or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for transportation by motor carrier for compensation. Generally, brokers are transportation intermediaries who procure the services of motor carriers to transport property.

Historically, Federal oversight of brokers has been limited primarily to ensuring that brokers register for authority, provide evidence of financial responsibility, and designate process agents for service.

Brokers arranging for transportation of property in interstate commerce were first regulated by the Interstate Commerce Commission in 1935. Brokers were required to obtain operating authority from the ICC and meet financial responsibility and other regulatory requirements.

The ICC Termination Act of 1995 continued the registration requirement if the broker is fit, willing, and able to provide the service, comply with applicable regulations, and continued the financial responsibility requirement. The brokers must file evidence of financial responsibility such as a surety bond or trust fund agreement.

However, ICCTA transferred oversight of these requirements to the Department of Transportation where they were delegated to the Federal Highway Administration.

With the enactment of the Motor Carrier Safety Improvement Act of 1999, which established FMCSA, oversight of this authority was then transferred to our agency. MCSIA, however, did not amend any of the broker statutory or regulatory requirements, but did reemphasize that the primary mission of FMCSA was safety.

In 2005, Congress enacted SAFETEA-LU, which addressed broker requirements. Specifically Section 4142(c) of SAFETEA-LU continued the registration requirement for brokers of household goods. However, it amended the law to provide the Secretary discretion to continue to register brokers of non-household goods if the Secretary finds that such registration is needed for the protection of shippers.

FMCSA believed it was in the best interest of shippers to continue registering all brokers. In August 2006, the Agency published a notice in the Federal Register finding that continued registration of non-household goods brokers is needed for the protection of shippers. As a result, property brokers remain subject to both registration and bond requirements.

SAFETEA-LU added requirements specific to households goods brokers designed to better educate shippers who use the services of such brokers by requiring the distribution of key information regarding the moving transaction. The statute increased existing penalties or created new penalties for certain household goods broker infractions.

In addition to these statutory requirements, property brokers are subject to a number of regulations found in Title 49 of the Code of Federal Regulations. Regulations primarily found in Parts 371 and 387 contain record-keeping and accounting requirements and prohibit misrepresentation and rebating, impose broker financial responsibility requirements, require brokers to preserve records, and establish procedures for designating process agents.

Under the Household Goods Consumer Protection Regulations, a broker of household goods is prohibited from providing an estimate before it has an agreement in place with a carrier evidencing that the carrier has adopted the broker's estimate.

To implement Section 4212 of SAFETEA-LU and provide additional protections to individual household goods shippers, in February 2007, the agency published a notice of proposed rulemaking proposing a separate sub-part of Part 371 regulations applicable only to household goods brokers. The NPRM proposes to raise the minimum surety bond or trust fund for household goods brokers to $25,000. We anticipate publishing of this final rule in 2009.

In order to obtain authority to operate as a broker, applicants must register and be granted operating authority. A prospective broker is required to file an application to request authority to become a broker.

Upon completion of the filing, as is the case with motor carrier applicants, notice of the application is published in the FMCSA Register and there is a 10-day period to allow for protests.

Before broker authority is issued, the applicant must also file evidence of a surety bond or trust fund to meet the financial responsibility requirements and a form designating its process agents. The purpose of the surety bond or trust fund agreement is to ensure that the transportation the broker arranges is provided. In other words, it is designed to protect shippers who pay brokers who do not meet their obligation to arrange for transportation service or to pay the motor carrier who does not receive payment.

As to enforcement, FMCSA's oversight efforts are integrated with other aspects of the agency's enforcement program. Following a grant of authority, FMCSA monitors the status of the brokers' surety bond or trust fund agreement through its licensing and insurance data system, which is also accessible to law enforcement and the general public from the FMCSA web site.

As with other areas of commercial regulations, FMCSA field investigations are complaint-driven. Many of the complaints we receive regarding brokers are outside the scope of our jurisdiction. These types of complaints usually concern contractual disputes for which a private right of action is available to the complainants.

When we receive complaints that do fall within the scope of our authority, we generally respond with a field investigation.

Mr. Chairman, this concludes my brief summary of FMCSA's statutory and regulatory authority over interstate property brokers. I would be pleased to answer any questions.

Mr. DEFAZIO. Thank you, Ms. Te Beau.

We would now turn to our next witness. I want to make sure—they gave me a different order here—I have the order right, yes. It would be Mr. Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association.

Mr. Spencer.

Mr. SPENCER. Good morning, Chairman DeFazio, Ranking Member Duncan, distinguished Members of the Subcommittee. I am very pleased to be here to testify today on this extremely important issue to small business trucking and the nation.

As you know, the trucking industry plays a vital role in our Nation's economic well-being. Small businesses comprise a vast majority of this industry in the United States. Approximately 96 percent of motor carriers have fleets of 20 or fewer trucks and 87 percent operate just 6 or fewer trucks.

This is very much a small business industry, and the cost of fuel is very often the largest operating expense with which small business truckers must contend. For them, fuel costs can easily be 50 percent or more of their total operating expenses.

To say the least, small business truckers are severely impacted by current prices at the pump. They are experiencing unprecedented operating cost increases and are being forced to make tough decisions in the name of saving their businesses and providing for their families. Thousands have parked their trucks or gone out of business in the past year alone.

Without the services small business truckers provide the price of goods will dramatically increase and undoubtedly add to our Nation's economic woes. That is precisely what happened prior to the last recession in the year 2000 when more than 250,000 trucks were repossessed due to business failures.

A recent report estimated that 935 American trucking companies went out of business in the first quarter of this year. The report estimates those businesses operated approximately 42,000 trucks and accounted for roughly 2.1 percent of the Nation's over-the-road heavy-duty truck capacity. While this data was shocking, it wasn't even the complete picture since this data doesn't include the numbers for those with five or fewer trucks that also failed.

Every day at our headquarters in Missouri, we hear from truckers who have recently lost their businesses, and the overwhelming majority cite the inability to recoup increased fuel costs as a primary contributing factor to their failures.

This morning, the AAA calculated the national average retail price of diesel at an astonishing $4.24 per gallon which is actually down a penny from its historic high just last week. That is more than $1.30 higher than last year at this time.

Unfortunately, the Department of Energy predicts that diesel prices will continue to rise. To put this into perspective, each time the price of fuel increases by 5 cents, a trucker's annual costs increase by roughly $1,000. This is an enormous burden on the small business trucker whose average annual income is around $38,000.

Throughout the history of the trucking industry, the only viable marketplace solution to erratic and rising fuel prices has been the application of a fuel surcharge. With diesel prices consistently going up, shippers are paying more now in fuel surcharges to get their freight moved than ever before.

But due to the dynamics of the industry and the lack of regulatory oversight, middle men often hold all the cards and are able to exploit shippers as well as truckers particularly when it comes to surcharges. Most shippers do not realize that the surcharges they are paying aren't necessarily going through to the trucker who is paying for the fuel to move their freight.

Collecting fuel surcharges and not passing them through to whoever is paying the associated fuel cost is simple fraud. It is a common practice in the trucking industry, and it has a devastating impact on small businesses.

To hide their tracks, unscrupulous brokers and their representatives make outrageous claims about massive litigation and economic re-regulation whenever sunlight gets close to being shown upon some of the trucking industry's normal practices and realities that have been created.

Unfortunately, FMCSA as the only Federal agency with jurisdiction over the registration and oversight of freight brokers does little, if anything, to rein in unscrupulous brokers or their activities. FMCSA seldom responds to complaints about brokers and, to my knowledge, never takes any action against them.

Small businesses are truly the backbone of our Nation's economy. Their economic health is necessary if a stable trucking industry is to be available in good times and in bad to move freight across the Country. If we do not find ways to help them soon, I have no doubt that we will see greater disruptions in the movement of our Nation's commerce and a further worsening of our Nation's economy.

Thank you for the opportunity to share our views today. I will be happy to answer questions.

Mr. DUNCAN. I asked the Chairman if I could get one quick clarification. You said 935 companies went out of business in the first quarter and 87 percent of the companies had 6 or fewer trucks, but the 935 did not count the companies that had 5 or fewer trucks. So there could have been hundreds of more?

Mr. SPENCER. I am confident there were. You know the other figure.

The actual numbers between 2000 and 2002 when we saw the last run-up in fuel prices were that a quarter of a million trucks actually ended up being repossessed. I mean that is how many that went back on the market. The economics of that and the economics overall is what precipitated the recession then.

Mr. DUNCAN. Well, I didn't want to go into that.

Mr. SPENCER. Sure.

Mr. DUNCAN. Those are shocking figures. I wanted to make sure I had it straight. Thank you.

Mr. DEFAZIO. I thank the gentleman for his clarification.

We would now turn to the next witness. Mr. Mike Card, President, Combined Transport, Central Point, Oregon, welcome. We appreciate your being here today and the long trip. I know how long it is.

Mr. CARD. Thank you, Chairman DeFazio and Members of the Subcommittee.

My name is Mike Card. I am the President of Combined Transport, a family owned and operated trucking company located in Central Point, Oregon.

Today, I appear before you not just for my company but also the American Trucking Association who has 37,000 members, trucking companies and affiliates.

Each year, the trucking industry consumes over 39 billion gallons of diesel fuel. This means that a 1 cent increase in the average price of diesel costs the trucking industry an additional $391 million in fuel expenses. Today, it costs me approximately $1,200 to fill one truck.

The dramatic increase in the price of diesel combined with the downturn in the economy jeopardizes the survival of many trucking companies. In the first quarter, as was just mentioned, over 1,000 trucking companies failed, and this was the largest number since 2001.

My family built and grew Combined Transport over the past 30 years, and today we operate more than 400 trucks and employ over 500 individuals. My company purchases approximately 25,000 gallons of diesel fuel daily, and this recent escalation in the price of fuel costs me an additional $4 million a year. It is harmful to my company, the trucking industry and the U.S. economy.

I am a specialized carrier. We haul specialized commodities, building materials, heavy equipment, windmill towers, transformers.

Thirty-five percent of my miles that my fleet travels are empty miles. We are not hauling a load. We are returning empty, and I do not have a customer to pay for the fuel on those miles or my costs. While this is often built into the rates we charge, the rapid escalation in the price of diesel fuel has turned profitable contracts that I negotiated in October to unprofitable obligations in May because I don't have enough money built in for my costs.

Against this backdrop, we greatly appreciate the opportunity to discuss actions that Congress can take to help address the soaring price of diesel fuel. So there are three initiatives that I would like to discuss that will help reduce the trucking industry's consumption of diesel fuel. First is auxiliary power units, APUs, which will reduce idling; the second is speed limits; and the third is the EPA's SmartWay program.

The first issue, idle reduction, is a very important part because our drivers live in the trucks when they are away from home. They don't idle because they want to. They idle out of necessity, and the idling is necessary to maintain the sleeper compartment's comfortable temperatures and other uses.

APUs can save up to one gallon of fuel per hour and substantially reduce emissions and greenhouse gases.

There are three major barriers that stand in the way of trucking companies purchasing APUs for their daily use. First is the actual cost of the devices themselves. They cost about $10,000. It is really unaffordable today to put that much money out for every truck when the economy is tough.

There is also the weight problem that we have. These units weigh about 400 pounds, and it takes away from our cargo carrying capacity. Congress passed an exception to the additional weight, but not all States have taken that exception, and there is only about seven of them that have.

Finally, there is a 12 percent Federal excise tax on purchasing APUs. It shouldn't be there. It shouldn't be part of the transportation usage for idling.

The other big thing that we should do is we should control speed. Congressman Young mentioned the embargo problems we had in the seventies. We reduced the speed limit to 55 miles an hour back then.

We think that we need to reduce speed to 65 miles an hour for all vehicles because there is a direct correlation to speed and fuel use. For example, a truck traveling at 65 miles an hour can achieve about 6 miles per gallon. A truck traveling at 75 miles per hour only achieves 5 miles a gallon.

So, in addition to the fuel conservation benefits, we are confident that this measure will reduce truck-related accidents on our Nation's highways as well.

The third issue is the EPA's SmartWay program. EPA's SmartWay program of which my company is an authorized member is a voluntary program patterned after the highly successful Energy Star program. It encourages trucking companies to improve their fuel efficiency by creating market-based incentives to reduce fuel consumption through the use of super single tires, better aerodynamics, APUs and other technologies.

It looks like Congress might be trying to cut the cost of that program. We think that is an important program.

So, even though I am not here to physically shake up Congress, like Congressman Mica mentioned, I am here to ask for help. Thank you for allowing me to come before you and thank you.

Mr. DEFAZIO. Thank you, Mr. Card.

We would now turn to Mr. Robert Voltmann, President and CEO, Transportation Intermediaries Association.

Mr. VOLTMANN. Thank you, Mr. Chairman.

TIA is the professional organization of the $162 billion U.S. third party logistics industry. All TIA members adhere to the only mandatory code of ethics in the transportation industry. Transportation intermediaries 3PLs act as travel agents for freight.

They serve tens of thousands of shippers and carriers, bringing together the transportation needs of those shippers with the corresponding capacity and special equipment offered by motor, rail, air and ocean carriers. ThreePLs get to know the shipper's business and tailor a package of transportation services to meet those needs.

ThreePLs have two customers in every transaction:

For their shipper customer, the 3PL brings expertise, significant and sophisticated software resources, relationships with thousands of carriers, insurance coverage, claims management, carrier screening and carrier payments.

For their carrier customers, 3PLs bring equilibrium to equipment imbalances, provide small carriers with access to big shippers, provide carriers with an active sales force in every market, manage the relationship with the shipper and even assume the shipper's credit risk for the carrier.

It is a total fabrication to state that 3PLs are profiting from fuel surcharges. In truth, due to the dynamic nature of the 3PL carrier contracts and the more static nature of the 3PL shipper contracts, 3PLs are paying trucking companies more money when fuel spikes occur than the fuel surcharges they actually receive from shippers. As fuel costs increase, 3PLs have to pay more or the carrier will not haul the load.

TIA members report that their profit margins have declined 10 percent since early 2007 versus 2008 because of the rising fuel costs and weak economy. This is the direct result of 3PLs paying their carriers more for fuel than the 3PLs receive from the shipper.

The trucker alone decides how much money they need to profitably handle a specific shipment on a specific day, and they are never forced to take a shipment. Regulation is not necessary.

As I stated earlier and is detailed in our written submission, shippers and 3PLs are paying fuel surcharges to carriers, sometimes at a loss to the 3PL. All carriers are free to accept or reject any load. If the shippers and 3PLs were not paying fuel surcharges the carriers wouldn't take the freight.

We believe that the Truck Act will essentially return the industry to tariffs and, if enacted, every broker, forwarder and carrier would have to detail their income on every load. In no other American business has Congress so repudiated deregulation and private enterprise.

Disclosure requirements would return the industry to the nightmare of lawsuits not seen since the undercharge crisis of the 1990s. If enacted, we believe that the Truck Act would also give shippers and 3PLs a strong incentive to avoid disclosure of their margins and the exposure to lawsuits under the Act by avoiding altogether the use of carriers that utilize owner-operators, and such a result would have a devastating effect on the very people this proposal is supposed to help.

Mr. Chairman, the members of TIA urge this Committee to maintain a free and open market in transportation.

Thank you.

Mr. DEFAZIO. Thank you.

Now, we would turn to the last witness, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, Members of the Subcommittee.

I am Wayne Johnson, Director of Logistics for the American Gypsum Company in Dallas, Texas. I am representing today, though, the National Industrial Transportation League with more than 600 members that ship their products by all modes of transportation including motor carriers. I am also the Chairman of the League's Highway Transportation Committee.

League members are well aware that diesel fuel prices have increased significantly. According to the EIA, the national average diesel price of fuel this last week was $4.14 a gallon, an increase of $1.33 since a year ago and more 62 cents in the last two months.

Obviously, this rapid increase represents a challenge to all sectors of the freight transportation community. Fortunately, the transportation industry has the tools to meet this challenge.

Over 25 years ago, Congress deregulated the motor carrier industry in order to free the industry from outdated, unnecessary government regulations. That policy has been a spectacular success and has resulted in a strong, innovative, efficient and highly responsive motor carrier industry.

The system depends upon a complex set of individually negotiated, market-driven confidential contracts. This system is flexible, efficient and, because these agreements are negotiated in a highly competitive and dynamic environment, these agreements are extremely responsive to changes in market conditions, including the price of fuel.

For years, the shippers have created fuel surcharge programs within their confidential agreements with their carriers. They reflect the differing conditions under which each shipper operates.

Some shippers have a specific fuel surcharge provision in their agreements often based on national indexes. Others prefer to roll changes in fuel prices into the rate so that they pay a flat rate for all inclusive charges. Thus, there is no right answer to the question of what a fuel surcharge should be or even whether a separate fuel charge should be included in a confidential motor transportation agreement.

For many shippers, fuel costs are the responsibility of the trucking company. It is protected by the fuel surcharge mechanism which it negotiates with its shippers.

In other cases, the trucking company employs the services of an independent operator which typically is responsible for the cost of fuel. The independent operator has the same opportunity and responsibility to negotiate fair compensation from the trucking companies with which they do business as trucking companies have when they enter into agreements with shippers.

This is a competitive system. Shippers, brokers, carriers can enter into and exit this market freely, participating on terms that they can negotiate in light of market conditions. Competition is made possible by the fact that these agreements are confidential and no party is forced to disclose its economic interest to the other.

Legislation has been introduced, S. 2910 and H.R. 5934, that would require a motor carrier, broker or freight forwarder to provide to a person who bears the cost of fuel a payment in the amount equal to the charges invoiced which relate to the cost of fuel. That person would also have to provide a written list that specifically identifies any freight charge, broker's fee or commission, fuel surcharge or adjustment or other charges.

Finally, the proposed legislation would forbid a person to cause a motor carrier, broker or freight forwarder to present false or misleading information in an oral representation about a rate, charge, or allowance.

The League strongly opposes this proposed legislation. This bill would substantially undermine the current competitive system by forcing one party to reveal to the other its confidential business information. This would be an unprecedented, unnecessary, unwarranted intrusion into the workings of a competitive market and would likely harm competition.

The proposed legislation would also be likely to spawn substantial litigation as one party tries to prove whether another caused false or misleading information in an oral representation. This type of ''he said, she said'' litigation would be almost impossible to resolve and would do nothing more than provide a windfall to the litigation bar.

At bottom, this proposed legislation would undo the highly successful competitive market that the Congress has successfully created in the motor carrier industry.

In sum, the League is strongly opposed to these two bills and believes that the current system of confidential contracts appropriately provides for the needs of all sectors of the transportation marketplace.

I would be pleased to answer any questions you may have.

Mr. DEFAZIO. Thank you.

We are going to try. The Republicans are in a bad mood today, so we are having some procedural votes. We will see how far we can get with the first round of questions.

To Ms. Te Beau, I just want to clarify the law a little bit here when it talks about parties. Each party to a broker transaction has the right to review the record of the transaction required to be kept by these rules.

In the logistics journal of TIA, they have a statement that says nothing in the statute or regulation requires you to send the information. You only have to make them available, make the information available in your office during normal business hours. That is part of the question.

They also say that if the carrier shares the information from the accounting, you may have an action against them, i.e., a carrier who employs independent truck drivers, the TIA is saying they may have an action against them.

Then the third part of the question is what is a party, because if the independent trucker working for the carrier is a party, then I don't believe TIA would be accurate in their assertion.

Could you address those?

Ms. TE BEAU. I can try, sir.

With regard to the first part, I assume that you are referring to our regulations under Part 371 for the record-keeping requirements.

Mr. DEFAZIO. Yes.

Ms. TE BEAU. With regard to whether they have the right to only come and see the information onsite, the regulations do not address that specifically. I would have to look at that. I do not think we have had any complaints specifically on that.

Mr. DEFAZIO. Okay. There is nothing that would preclude a rulemaking that would say that they have to transmit the information as opposed to making someone travel to their place of business during those working hours in order to get information which they are lawfully entitled to.

Ms. TE BEAU. Are you asking if the regulations preclude an interpretation that way or preclude a regulation that way?

Mr. DEFAZIO. Preclude a regulation, there is nothing that would preclude your enhancing the regulation.

Ms. TE BEAU. Not that I am aware of.

Mr. DEFAZIO. Okay. Then how about party? What is a party in the case that we refer to here?

Ms. TE BEAU. It is not defined under the regulation, but I would think that would be a party to the agreement that is made. So it would be, I guess, a broker and the motor carrier or, if it is an owner-operator contracting with the broker.

Mr. DEFAZIO. So you are saying that if a carrier contracts with the broker and then I enter into an agreement with the carrier, I am not entitled to any transparency about the transaction between those two?

Ms. TE BEAU. I am saying our regulation says party, and you are asking the definition of a party. That is the way I am reading it on its face.

Mr. DEFAZIO. Right. Okay. How about cause of action if a carrier is good enough to share its information?

Since we are talking about market forces and free markets. I don't know how many people have read Adam Smith. I did. I had to struggle through it. You know he talks about the amount of information that has to be made available.

In this case, we have total opacity. We determine the charges in a very complicated way to the shippers, and then we pay the carriers in a different way, particularly the independent carriers. My question is if a carrier shared that information, what would be the cause of action?

Ms. TE BEAU. I do not understand there to be a cause of action. I am not clear what the cause of action would be.

Mr. DEFAZIO. Okay. Well, because they were so concerned about lawsuits, I was just concerned about them filing lawsuits against people who actually obtain market information. I was just kind of curious about that.

Mr. Spencer, you look like you want to say something there.

Mr. SPENCER. I just find it really, really curious that the organization that says all of their members have a mandatory code of ethics and their memos that they send out to their members are basically an instruction on how to circumvent what has been the law since the 1960s. This is current law, and this is how we circumvent it because, for God's sake, we don't want to comply because this might screw up a free market.

Mr. DEFAZIO. To Mr. Voltmann, I guess I question what is the problem with transparency?

Did you ever read Adam Smith? Do you understand how markets are supposed to work? People are supposed to have some information.

Mr. VOLTMANN. I do understand Adam Smith. In a transparent and free market, transparency comes not from privity of contract but from public information.

There are 20,000 licensed property brokers in the United States. The largest single company in the United States represents less than 5 percent of the market. It is the most diverse industry, I think, you can find in the United States.

The privity of contract—and the ICC never challenged this—these are regulations that go back, as Mr. Spencer said, to the 1960s. We don't believe that it does anyone any good to know what the broker has negotiated its margin with the shipper.

Mr. DEFAZIO. Doesn't that create a more competitive market?

I mean suddenly people say: Gee, it is all on the internet. I can figure out. Gee, I see what they paid. I am going to try to negotiate a better deal over here.

Gee, I see what they paid. I know now, gee, I can maybe raise my price a little as an independent trucker who is going broke and can't afford the fuel on the run that they have been assigned.

They are told, oh, they can choose. They can pick and choose. They have to pay for the truck. They have to keep moving.

Wouldn't everybody benefit? Wouldn't this be great to have a totally transparent market so both the truckers could be more competitive and the shippers could be more competitive and the brokers could be more competitive?

Mr. VOLTMANN. Again, Mr. Chairman, transparency in a free market comes from public information.

Mr. DEFAZIO. Right, and this could be posted on the internet. It could be public.

Mr. VOLTMANN. It is posted. It is public, what rates are being offered by brokers, what rates are being sought by carriers on publicly open exchange boards, hundreds of thousands of loads and transactions. This is a very crazy and diverse market without any equilibrium.

Mr. DEFAZIO. But how are the charges established?

Mr. VOLTMANN. The charges are out there, what people actually pay.

Mr. DEFAZIO. Established, how they are established, including the fuel charges, that sort of thing?

Mr. VOLTMANN. It really depends on what the carrier asks for.

Mr. DEFAZIO. Okay. So then what is the reference in the TIA newsletter to cause of action if a carrier shares the information from the accounting? What is that about?

Mr. VOLTMANN. We believe that the regulations provide for that carrier to see an accounting on its load but not to share privity of contract or in violation.

Mr. DEFAZIO. The load isn't actually up on the internet? People don't actually see what is paid for the load? It is a confidential contract?

Mr. VOLTMANN. It is confidential.

Mr. DEFAZIO. So there is all this stuff up there, but it is not what was really paid for particular loads.

Mr. VOLTMANN. There are.

Mr. DEFAZIO. How do we establish that baseline? How do you know?

Mr. VOLTMANN. In a competitive market, Mr. Chairman, it is established, one, by the market and, two, by companies and organizations that track pricing and post average price per load, average loads available in a particular market.

Mr. DEFAZIO. So, basically, you are just saying that the independent truck drivers are just not conversant enough with the internet and they should have laptops in the cab and be tracking all this stuff.

Mr. Spencer, can you comment on that?

Mr. SPENCER. Well, certainly that would be ideal, but still we haven't got to the disclosure that really is the core of the issue. I actually brought an example that is illustrative of how unbalanced the field is and how the lack of information can really get exploited to the Nth Degree, and it shows off the difference where the parties are, the disparity of the difference in the parties.

I notice in the comments regarding how well brokers are doing that the economic end result has been their margins have been squeezed a little bit.

In my comments, it was in essence there were roughly 1,000 trucking companies with 45 or more trucks that went out of business. I mean this is real. This is a real economic squeeze.

Getting to the core of the question here, one specific example where a shipper paid $1,425 to have their goods moved. In addition to that, they paid $342 in a fuel surcharge for that, assuming that that surcharge was going to the person who paid for the fuel, that actually expended for the fuel.

The trucker that moved the load got 600 bucks. That was an all inclusive rate, 600 bucks, which basically means the broker didn't spend a dime on fuel, took the $1,767 total, paid $600. They netted $1,167. Our trucker grossed $600 and had all of the expenses out of that.

So it is not a surprise to me why these folks aren't having their margins squeezed; they are going out of business. That will continue to happen until there is a disclosure that is an actual practice, not just simply required in the laws from the sixties and hopefully required again when Congress is done.

Mr. DEFAZIO. Okay. I hate to do this because we have been here a long time today already. Mr. Duncan, Ms. Hirono, I am not quite done, and we do have these three votes. They should go relatively quickly.

The first one is a motion to adjourn, and then I don't know what the second is. Then the third vote is actually substantive. But it should all be done, hopefully, unless they have other procedural votes. Well, within five minutes of the last vote, I will be back here and would urge other Members to be back here.

I can't quite predict when that will be. Hopefully, just to give everybody a little break, let's say five after 1:00. That way, you can go grab a soda or something like that.

Thank you. I thank you for your forbearance.

[Recess.]

Mr. DEFAZIO. We will come back to order.

We are kind of between votes here, and they are going to swear in a new Member, et cetera. So we are going to try and at least move through my part of the questions. When Mr. Duncan is able to return—Ms. Hirono and Mr. Michaud said they have questions—we will be able to get you out of here.

Again, I regret this is not an efficient institution here.

I guess I would like to ask for the shipper witness, Mr. Johnson, we heard a good deal from Mr. Voltmann about how everything has been. Can shippers go online and see how much other shippers are paying to move their product?

Mr. JOHNSON. No, we cannot.

Mr. DEFAZIO. No. Okay.

Mr. JOHNSON. You cannot. You don't know exactly what they are paying, no.

Mr. DEFAZIO. Okay. Then as a shipper, would it disturb you that a part of the rate that is being charged includes, as we heard from Mr. Spencer, a significant fuel surcharge?

Would shippers feel concerned that they are paying a higher rate ostensibly to defray the high cost of fuel, but that isn't being passed through?

Mr. JOHNSON. No.

Mr. DEFAZIO. That wouldn't concern shippers?

Mr. JOHNSON. We are just interested in the competitive rates that we need at the time. As long as we feel the rate is competitive, that is what we are looking for depending on the circumstances.

Mr. DEFAZIO. Right, competitive, but you don't know what other people are paying, and you don't know whether the fuel surcharge is an excuse to charge you a higher rate or whether it is actually being passed through to the carrier. But that doesn't matter?

Just competitive means you set a price that you think you can pay and you try and find someone?

Mr. JOHNSON. The circumstance of the shipment will determine what price we need to pay for that shipment. It may change from day to day.

Mr. DEFAZIO. Now, Mr. Spencer, that information you gave to us, how did that particular trucker get that information?

Mr. SPENCER. He was able to get the information after the fact. The curious thing that I didn't mention about this load previously is this is a government shipment that he moved that, again, the disparity in what he received as opposed to what the broker collected.

The characteristic of every government shipment is there will be a government bill of lading that will clearly list that information on there, that will also clearly list the fuel surcharge. I mean to not share that with the trucker is a conscious decision absolutely not to do it, but if you pursue, you can find it out after the fact.

Mr. DEFAZIO. If you can what?

Mr. SPENCER. If you can pursue, many times you can find out what a government bill of lading was after the fact.

Mr. DEFAZIO. So that is why this shipper was able to find out through the Freedom of Information Act or somehow what the government contracted for or is this a case where the independent trucker directly contracted with the broker and therefore was entitled?

Of course, they aren't entitled to information on the other end, are they? They are never entitled to that information

Mr. SPENCER. Well, actually, the regulations, again the current regulations do say that this information is to be provided to any party to the transaction, any party. I think that is clear. They should have been entitled to that information, but they won't get that information from the broker because that is a regulation they don't comply with.

With a government load, if you persist hard enough, you can generally find somebody that will give you the information, and I think that is what happened in this instance.

Mr. DEFAZIO. So, party, once I asked Ms. Te Beau about party. Do you have an opinion on what a party is?

If an independent trucker contracts with a carrier who has contracted with a broker, is the trucker a party or are they just excluded from any of it?

Mr. SPENCER. Oh, in my opinion, clearly they are a party. Actually, from a real perspective, they are the key party in that if they don't perform, if they don't deliver the goods, if they can't pay for the fuel, obviously no transportation service actually takes place.

Mr. DEFAZIO. But we have heard they are free to reject loads, et cetera. I mean those arguments. Is there a reality out there?

Mr. SPENCER. The reality is you may very well be in a truck stop in Portland, Oregon, and you have been there for three days and various brokers post loads on load boards. Maybe they are calling you because they have your phone number, offering these various loads, and it is early.

It is early in the week, and the loads are, for example, typical of the one that I mentioned. The load actually paid $1,767. They offered the trucker $600. As long as there is no urgency on the part of the broker to actually get this load covered, they have all the latitude in the world to actually shop this load downward.

As the load gets later in the week, then the urgency may rise just a little bit. Well, we will give this guy another couple hundreds bucks to get the load moved.

Now, bear in mind, the way this situation works not only disadvantages the trucker from an economic standpoint but also has impacts on other things as well. Here, we have a shipment that has a whole week to move, but it doesn't move until the very last minute because they haven't been able to find somebody to haul it cheap enough.

Well, this impacts all kinds of other safety regulations that are directly related to how quickly a load can move. It affects speed limits. It affects hours of service compliance. These things, no matter what you may say, are always going to be intertwined. Economics impacts highway safety, and pressure impacts highway safety.

To say that hey, look, we benefit greatly from this free market approach and that is the way it ought to be sort of ignores reality.

Mr. DEFAZIO. Mr. Voltmann, just sort of a housekeeping thing because I am a bit confused by your testimony, on page three, you say, the 3PL pays a carrier within hours of delivery even though the cargo shipper may take up to 30 days after delivery to pay the 3PL. That is because credit agencies are tracking and they track on days to pay, nonpayment complaints, et cetera. No one wants to have a negative credit rating.

But then on page eight of your testimony, you say typically the carrier pays its fuel surcharges to the date the load is booked, say, $3.00 on April 1st. The load might actually move, however, on April 10th when fuel costs $3.25. The carrier will receive the money for that load on May 8th when he is paying $3.75 for the fuel.

I had a little trouble. At the front there, we are saying they are paid within hours, and here that would seem to be several weeks.

Mr. VOLTMANN. Mr. Chairman, it is a dynamic market.

Mr. DEFAZIO. But I mean the original assertion is, say, overly global. Would you admit that they do not pay the carrier within hours because in some cases it is more than three weeks since you used that example?

Mr. VOLTMANN. No, Mr. Chairman.

Mr. DEFAZIO. No? Okay.

Mr. VOLTMANN. What I said was that the 3PL can pay the carrier within hours. They do pay.

Mr. DEFAZIO. It says this is because the 3PL pays the carrier within hours. You left out, I guess, the word, can. I will add it right there, "can" pay the carrier within hours. Would that be correct?

Mr. VOLTMANN. Yes.

Mr. DEFAZIO. Okay. They can pay, but they can take up to a month or so.

Mr. VOLTMANN. Right, and the average days of pay for shippers to brokers is about 65 days after the cargo is delivered. So the carrier is not waiting those 65 days for payment. They can receive within hours if that is what they want or within 30 days.

Mr. DEFAZIO. Right. I just was puzzled at the contrast there.

Mr. VOLTMANN. Okay.

Mr. DEFAZIO. Now, you are talking about the tough times for the 3PLs and that some are losing money. It is kind of like the discussion we had with the fellow representing the Petroleum Institute where he talked about, well, if you look sales, their percentage on sales is down.

Of course, Exxon Mobil just had the second largest quarterly profit in the history of the world, but you can say their profitability is down too. They didn't have the most profitable quarter in the history of the world.

But you are saying the margin declined 10 percent during the first quarter compared to the first quarter of 2007: "C.H. Robinson Worldwide, the largest 3PL in the United States, reported that its margin declined 10 percent during the first quarter compared to the first quarter of 2007. The reduction in margin is a direct result of their receiving less revenue from shippers while paying carriers more for fuel."

I just would like to know how we are going to substantiate that because I do note that C.H. Robinson Worldwide's earnings per share was up by 19 percent, gross revenues were up by 22.6 percent, gross profits were up 13.8 percent, net income was up 18.3 percent, and gross margin was up 18.3 percent.

So they are passing on all this fuel surcharge, and they are making more money. That is pretty good.

Mr. VOLTMANN. Mr. Chairman, it is good.

Mr. DEFAZIO. Yes.

Mr. VOLTMANN. And it shows a dynamic, growing market.

Mr. DEFAZIO. But are they passing on a fuel surcharge? We don't know that, do we? We can't know that. We are not allowed to know that.

Mr. VOLTMANN. We do know that, Mr. Chairman.

Mr. DEFAZIO. We do? How do we know it?

Mr. VOLTMANN. C.H. Robinson is a publicly traded company. They have to report to the SEC. They have to report to the Wall Street analysts.

Mr. DEFAZIO. So do they report what their fuel surcharge proceeds were and then the disbursements of that particular line item in their budget?

Mr. VOLTMANN. They don't break it out as clearly as you are intimating.

Mr. DEFAZIO. Right.

Mr. VOLTMANN. What they have said in their reports and to the analysts is that fuel has decreased. The rising cost of fuel has decreased their margin because they are passing more on to the carrier than they are collecting from the shipper. Our other publicly traded companies have also reported similarly.

Mr. DEFAZIO. Margins are down. Profits are up. Not bad, right?

Mr. VOLTMANN. Margins are down, nor does this take into effect, Mr. Chairman, the thousands of small brokers that have gone out of business. Fifty percent of this industry, of the 20,000 companies that are in this industry, have revenues of under a million dollars gross.

Mr. DEFAZIO. Mr. Spencer or Mr. Card, you are in the business. How do you know that fuel surcharges are being passed on to your members?

Mr. SPENCER. Clearly, we have been inundated with comments from members about no, we are not getting any. We are only getting a portion of it, and this includes broker loads but also includes loads that come through motor carriers as well that do collect surcharges or presumably.

I would think, clearly, it is something that brokers could easily report because they are required to capture that information, again by the current regulations.

So is it a chronic problem? Darn right, it is, unless there is some regulation.

Mr. DEFAZIO. How do you know? How do you know it is a chronic problem if these are proprietary agreements and the fuel surcharges are proprietary between the shippers and the brokers?

Mr. SPENCER. Well, you know I mentioned a while ago what would be a anecdotal example.

Mr. DEFAZIO. Right, we have one. Until we have more transparency, we won't know for sure.

Mr. VOLTMANN. Mr. Chairman?

Mr. DEFAZIO. Yes.

Mr. VOLTMANN. What the members are reporting to me is that 70 percent of carriers ask for an all-in rate per mile. They don't ask to have fuel broken out. If they did, the members would price it that way, but the carriers aren't asking for that.

Mr. DEFAZIO. Fuel broken out doesn't mean the amount of money that the broker received for fuel. It just means we will break out what we are paying you for fuel. We aren't going to say to you how much we received for fuel.

Mr. VOLTMANN. Well, Mr. Chairman, the way this market works is the broker buys freight from the shipper at a price he believes he can resell to a motor carrier and make money. It is not a real estate transaction. It is much more of a commodity transaction where the broker is deciding whether or not they can make money on the transaction.

Mr. DEFAZIO. Right, but do shippers ask for all-in rates?

Mr. VOLTMANN. Yes, they do.

Mr. DEFAZIO. Okay. Do they get them?

Mr. VOLTMANN. Yes, they do.

Mr. DEFAZIO. Whenever they ask for them?

Mr. VOLTMANN. And so do the motor carriers when they ask for them, which is what I am telling you 70 percent of our members report.

Mr. DEFAZIO. Okay.

Mr. VOLTMANN. Our members report that 70 percent of motor carriers only ask for a rate per mile.

Mr. DEFAZIO. Okay. I received bad information. So I regret to inform the panel. They told me this would be a 15-minute vote, and it was a 5-minute vote, and I have 2 minutes and 20 seconds left to get there.

I am trying to expedite things here as much as I can and I will urge other Members. I don't know what is happening now since we are off the program, but hopefully this will not take long. I will call the staff, and they can let you know.

Thank you for your forbearance.

[Recess.]

Mr. DEFAZIO. Again, thank you for your forbearance. You are getting a little insight into how legislation is or is not made around here.

Mr. Michaud, question?

Mr. MICHAUD. Thank you very much, Mr. Chairman, for having this hearing. It is very important when you look at the cost of diesel fuel and the cost of trucking all across this Country. So I appreciate your hearing this morning.

I just have one question that is related to the cost of trucking and the use of diesel fuel, and my question will be for Mr. Spencer and Mr. Card, if you both could answer it. I would like to actually hear your thoughts on the current patchwork of truck weights all across the Country, with 100,000 pounds versus 80,000 pounds which relates to the cost of how much truckers can consume with diesel.

So I would like each of you just to comment on the truck weight issue and the disparity across the Country.

Mr. CARD. Well, there is not only a disparity across the Country but across North America. There is a great new study out by the American Transportation Research Institute that talks about how more productive vehicles can really save fuel per pound of freight that is hauled.

So we believe that even though the economy is slow now, as we get busy again or busier, the congestion problems that we have in this Country are going to get worse. We burn fuel sitting in traffic. It would be better to have a free flow of traffic. If we can haul larger, more productive vehicles safely, we should do it.

Mr. SPENCER. Our organization has always taken a position that no one is well served by a patchwork of varying State regulations on size and weight. We have always been adamant proponents of uniform sizes and uniform weights simply because to do anything different doesn't make economic sense. It works out to, quite often, a discriminatory economic move to small business because relatively only a handful of big carriers can set up for certain elements.

We have also noticed the other curious element is that it is quite often not truckers that are even proponents of bigger and heavier. It is often the shipping community.

Of course, I understand where they are coming from. They don't see any overriding sense of responsibility to address the highway safety issues that come along or, for that matter, the highway cost responsibility. If they think they can save a buck by moving more, they certainly will.

This is an issue that begs for a broader discussion. I am certain it is going to get one as part of this highway bill.

Mr. MICHAUD. Thank you.

My next question is to Ms. Te Beau. In Maine, actually part of the interstate system has 80,000 pounds. The other part has 100,000 pounds.

The Maine Department of Transportation did an analysis on safety issues to get the trucks off the secondary roads. I believe they came back and said you actually could help reduce the number of fatal accidents by as much as 10 percent by increasing the weight limit on the interstate.

So my question to you is on the safety issue. Do you feel that the 100,000 pounds is an unsafe issue?

Ms. TE BEAU. First of all, FMCSA doesn't regulate the size and weight issues. I know that sounds a little strange. It is actually a Federal Highway Administration issue.

Naturally, we are interested in safety interests and things that address that, but I am not in a position to provide an answer to your question.

Mr. MICHAUD. So you never looked at the safety issue at all or have done any studies on that then?

Ms. TE BEAU. It would be the other administration that would have.

Mr. MICHAUD. Okay, thank you.

Thank you very much, Mr. Chairman.

Mr. DEFAZIO. Thank you.

Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman.

Just to get your position straight, Mr. Card, do you support H.R. 5934? Does your organization support that?

Mr. CARD. I don't know what H.R. 5934 is?

Ms. HIRONO. It is the one relating to making sure that truckers know how much the surcharge is. It is the one that Mr. Voltmann and Mr. Johnson do not support. If you haven't taken a position on it, that is okay.

Mr. CARD. I haven't taken a position on it.

Ms. HIRONO. Mr. Spencer, what about your organization?

Mr. SPENCER. Oh, clearly, we are supporters of the two key elements of that legislation.

I think it is really important that we understand just how simple this is. One, it simply says if a shipper pays a fuel surcharge, if. It doesn't require them to or any particular amount, but if they do, it should go for its intended purpose to the trucker.

The other element of that is simply transparency in the transaction which has been required since the sixties, just simply never been complied with. Obviously, it won't, left up to the market because it benefits the other not to comply.

Ms. HIRONO. Another question: This is an industry where, for example, the sum of the barriers to entry for trucking companies is far lower than for brokers, et cetera. There was some testimony—I believe it was from both Mr. Voltmann and Mr. Johnson—that indicated that this is an industry where the truckers should be able to negotiate their contracts.

But this is for Mr. Card and Mr. Spencer. Since you both testified that the trucking side of the equation is made up of many small trucking companies, when you look at the negotiation power of the brokers vis-a-vis the truckers, I would say that there is an unequal negotiation power. Would you agree with that?

Mr. SPENCER. I clearly would agree with that and understand. I can't understand how it serves any other purpose.

It doesn't serve the interest of the shipper. It certainly doesn't serve the interest of the consumer. It doesn't serve the interest of the trucker because he is discriminated against or disadvantaged by it. It simply serves the interest of the broker.

Looking beyond this, we have heard the specter of litigation and lawsuits and things like that raised by this issue. I am fully aware right now that at least 40 LTL shippers are suing trucking companies over overcharging and over-collecting on fuel surcharges.

I mean this appears to me that this is not a system that the market is handling very well at all. It is disadvantaging shippers. It is disadvantaging some big carriers. It is certainly shortchanging the small guys. So we ought to be looking into this issue and, again, transparency benefits everyone.

Ms. HIRONO. You would agree with the statement that for a lot of trucking companies, which are really smaller companies, their bargaining position vis-a-vis the brokers is really that they have limited ability to say to heck with you, I am not going to enter into a contract with you?

Mr. SPENCER. They don't really have any bargaining position.

Ms. HIRONO. I guess that is a loaded question, but you agree with that.

Mr. SPENCER. About like somebody at a payday loan shop has bargaining.

Ms. HIRONO. Thank you.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you, Ms. Hirono.

I just want to follow up on the issue which was just raised again about fuel surcharges. As Ms. Hirono, I believe, said or I think it was actually Mr. Spencer said if there is a surcharge, it would have to be passed on to the actual provider of the transportation service.

Now, Mr. Voltmann says they are passing on the fuel surcharges, but we can't know that because it is proprietary.

I guess my question would be if they are passing the fuel charges, how come 42,000 truckers or trucks? What was the total number of trucks? It was 42,000 larger than 5?

Mr. SPENCER. It was 985 motor carriers that operate in excess of 42,000 trucks. Now that is a number that can be documented, looking at government data. There would be additional numbers in that. Those in the fire below five, no one will know about those.

Mr. DEFAZIO. So I haven't noticed that labor costs have gone up. I haven't noticed. I don't know what the other factors might be. Is this a larger than normal number for that time period?

Mr. SPENCER. Oh, certainly. These numbers actually parallel what we saw in 2000 when there were ultimately a quarter of a million large trucks repossessed.

Mr. DEFAZIO. So, if all the fuel surcharges are being passed on, why would so many people be going broke?

I guess, Mr. Voltmann, you would just say they are bad business people?

Mr. VOLTMANN. No, Mr. Chairman. In fact, I have that slide if you will permit it to be put up: Trucking Failures to Fuel Price.

Mr. DEFAZIO. Maybe the brokers aren't extracting enough out of the shippers, is that what you are saying, or there is resistance or they are not capable of getting a fuel charge that really reflects the market?

Mr. VOLTMANN. Mr. Chairman, shippers negotiate in an open market. The shippers are negotiating a rate that they believe with which they can make money selling their product. The brokers are buying that freight and reselling it and making a profit, and the carriers are accepting it with the hopes or to make a profit.

The point of this fuel surcharge or of this chart, if you look, is in the 2000 to 2003 period that Mr. Spencer is talking about, when fuel was a $1.50 a gallon. Who wouldn't want to go back to a $1.50 right now? Trucking failures were at their highest.

When we moved to the period of 2003 to 2006, fuel is increasing at a much more precipitous rate, yet trucking failures are at their lowest point in history because freight. We were not in a freight recession at that time, and there were 11 brokered loads per truck posted on the public exchanges.

So what you have, even today, look at the price of fuel. Yes, trucking failures are beginning to increase but not nearly to the rate they did in 2000 to 2002, when fuel is now three times what it was in that time period. That is the reason.

There is not a one-to-one ratio of fuel pricing to trucking failures. The ratio is between the amount of freight being offered and the amount of trucks in the marketplace.

Mr. DEFAZIO. Okay. This is all sort of like talking to the first panel, the oil industry, because Exxon Mobil is complaining.

The shippers have a lot of leverage here. You are not exacting full costs, the additional cost for fuel surcharges. There is sort of freight recession, the way you are describing it.

Mr. VOLTMANN. There is a freight recession.

Mr. DEFAZIO. There is a freight recession.

Then how does C.H. Robinson see all of their factors, first quarter, up, earnings up, gross revenues up, gross profits up, net income up, gross margin up?

I mean if there is such a squeeze on here, they just must be astounding business people, and I guess everybody else is not very good or something.

Mr. VOLTMANN. Mr. Chairman, first of all, it is a huge company in economics.

Mr. DEFAZIO. Well, how big is huge, because I thought you said no one controls more than 5 percent of the market?

Mr. VOLTMANN. They don't.

Mr. DEFAZIO. Okay.

Mr. VOLTMANN. They are a $7.3 billion publicly traded company, and that is less than 5 percent of the market.

Mr. DEFAZIO. Five percent of the loads?

Mr. VOLTMANN. No. Five percent of the value of the market.

Mr. DEFAZIO. No, I am not talking about value. What percent of the loads do they control? You don't know?

Mr. VOLTMANN. I don't know.

Mr. DEFAZIO. All right.

Mr. Spencer, you seem anxious to say something.

Mr. SPENCER. Well, I think it is kind of interesting because the economic reality that Mr. Voltmann points out is kind of this boom-bust cycle frenzy that, to a large extent, they contribute to. In essence, they help wipe truckers out, and then they come back even when fuel prices are high, and they can prosper. They feed right into this boom-bust mentality.

But I can tell you I know the experience of our members dealing with shippers is 70 percent don't say we don't want a surcharge, we want a flat rate. They virtually all say we would like to have a surcharge.

Our experience in dealing with shippers is that they generally do believe surcharges are fair, and they are fully in the camp right now of remembering those figures he looks at. They don't want to be gooned to death two years, three years from now when the economy starts moving back again, and all of these 20-year veteran small business people have been wiped out. They don't want to be gooned. So they are much more sympathetic to the truckers' dilemma.

Not so with the people that Mr. Voltmann represents. They basically profit whether times are good, whether times are bad. I mean the data shows that.

We are not against them profiting, not at all. Again, what we are talking about is the need for a mandatory pass-through and simple disclosure. That will go a long way to resolving the problem.

Mr. DEFAZIO. Only mandatory if it was charged as fuel surcharge? Only mandatory if it was charged or represented as a fuel surcharge?

Mr. SPENCER. Absolutely.

Mr. DEFAZIO. Yes, okay.

I guess then back to Mr. Voltmann. We have this disconnect because we have no information, and you would say that is a free market functioning. I would say it is not, but we can disagree over that.

But you are saying for the most part or almost universally the fuel surcharges are being passed on except perhaps in the instance of the government contract we heard about. Is there anything illegal about not passing on the fuel surcharge in its entirety?

Say you were going to charge $1,000 for a load, but you add on a $300 surcharge. You just keep the whole surcharge, and you were going to pay the trucker out of the $1,000, say the $600, kind of the example we heard about. Anything illegal about that?

Mr. VOLTMANN. It doesn't happen.

Mr. DEFAZIO. It doesn't happen. Okay, well, then I guess it would be wonderful if we could open up the books here and see if it really doesn't happen because this is kind of like Rashomon.

I mean profits are up for the largest broker, but they are being squeezed, and they are passing on all the fuel surcharge to the truckers. We have a huge and growing number of truckers going broke, but nothing is going on here except pure market forces in a totally opaque market.

Mr. VOLTMANN. Mr. Chairman, let me because we started having this discussion before votes.

In your State, in Oregon, the first exchange was created by Al Jubitz at the Jubitz Truck Stop. It operates much the same way as the New York Stock Exchange operates. Brokers put in their buy truck rates.

Mr. DEFAZIO. That scares me if that is the way it works.

Mr. VOLTMANN. Carriers put in their sell truck rates.

Mr. DEFAZIO. Right. We have a well-organized casino like on Wall Street.

Mr. VOLTMANN. Well, I disagree with your characterization of it.

DAT and the others, there are several of these. Hundreds of thousands of loads are posted on these systems every day. You can see the buy rate. You can see the sell rate. This is how you get transparency in an open market.

I can see what a company is offering to sell their stock for, I can see what people are willing to buy stock for, but I don't get to see what you actually buy your stock for.

Mr. DEFAZIO. The key point is the representation to the shippers and the opacity, but in any case we are going to disagree over that.

Just one last question: You say that the TRUCC Act would subject your members to more lawsuits. I am puzzled by that because there is no new rights of action in here. In fact, there are contract disputes that are settled through litigation now. So that would continue.

This, in my opinion, if your members actually followed the new requirements, that would give them more defense for following the regulations against this flood. How many lawsuits have been filed?

All I know it was flood, we heard. Twenty-seven, was that the flood?

Mr. SPENCER. Oh, I don't know, maybe 20, 22 over a span.

Mr. DEFAZIO. Against the flood of lawsuits that are out there and/or would result from this.

I am just curious. If there is no new right of action, why do you come to that conclusion?

Mr. VOLTMANN. Except, Mr. Chairman, it is a right. It is a new right of private action. It is a new right.

Mr. DEFAZIO. Because the pass-through? Is that the concern about passing through the fuel surcharge which is done routinely anyway?

Mr. VOLTMANN. No.

Mr. DEFAZIO. Is that the concern?

Mr. VOLTMANN. No, Mr. Chairman.

Mr. DEFAZIO. Okay. Which part of it then, the billing and collection practices?

Mr. VOLTMANN. Mr. Chairman.

Mr. DEFAZIO. The false, misleading information?

I mean those are the two major parts of the bill: disclosure pass-through and false and misleading information. So which of those two is going to trigger a flood of lawsuits?

Mr. VOLTMANN. First of all, Mr. Chairman, this is not a new right. The Interstate Commerce Commission from the 1960s allowed this between the parties.

Mr. DEFAZIO. You are criticizing this very brief piece of legislation.

I am asking which of those two provisions is it that would bring about the flood of lawsuits, a disclosure and a pass-through.

Mr. VOLTMANN. I was trying.

Mr. DEFAZIO. Well, it is a simple question. Is it because fuel surcharges would be required to be passed through or is it because of the amending the false and misleading information section? Which one of those two are you particularly concerned about?

Mr. VOLTMANN. It is the other provision, Mr. Chairman, in which all margins must be posted by both the broker and the motor carrier.

Mr. DEFAZIO. So, if we took out all margins, you would support the legislation?

Mr. VOLTMANN. No. We don't believe that the government.

Mr. DEFAZIO. Oh, you would still oppose the legislation.

Mr. VOLTMANN. We would still oppose it because we don't.

Mr. DEFAZIO. Well, I thought maybe we could get to agreement there for a second. Thank you.

I want to say in response to the testimony of the ATA. The APU thing, I mean we ended up with a discretionary word in SAFETEA-LU instead of a mandatory word. That should be dealt with.

You have several other provisions in there. One, in particular, I will ask everybody if they would agree with this. You said, in agreement with a point raised during the first panel, that there should be some re-regulation of energy commodities in your testimony, Mr. Card. That was point six in your testimony.

Mr. Spencer, would you agree with that?

Mr. SPENCER. We think the opportunities that currently exist for manipulating the petroleum markets are extreme.

Mr. DEFAZIO. Okay. So you answer is yes?

Mr. SPENCER. Yes.

Mr. DEFAZIO. All right.

Mr. Voltmann, your folks ought to be concerned about fuel costs. Would you agree with that?

Mr. VOLTMANN. Not our issue, Mr. Chairman.

Mr. DEFAZIO. What?

Mr. VOLTMANN. Not our issue, Mr. Chairman.

Mr. DEFAZIO. You would say no opinion?

Mr. VOLTMANN. No opinion.

Mr. DEFAZIO. No opinion, okay.

Mr. Johnson, as representing shippers?

Mr. JOHNSON. As a shipper, we like capitalism the way it stands, and the open market is fine. So we have pretty much no objection to it.

Mr. DEFAZIO. I couldn't quite follow. You have no objection to regulating or you think everything is just fine the way it is?

Mr. JOHNSON. Keep the open market the way it is.

Mr. DEFAZIO. Okay. Well, it is an interesting response from the shipper point of view.

Oh, Mr. Platts, do you have questions?

Mr. PLATTS. Thank you, Mr. Chairman.

No question, just want to thank the witnesses in the prior panel. I could make it but for the written testimony to give the Committee and all of us Members, great insights to the issue and the challenges the industry is facing.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you for coming, Mr. Platts. I appreciate it.

Ms. Hirono, do you have any further questions?

Okay, with that, the Committee will stand adjourned. Thank you very much for your testimony.

[Whereupon, at 2:09 p.m., the Subcommittee was adjourned.]

Subcommittee on Highways and Transit

Hearing on "Rising Diesel Fuel Costs in the Trucking Industry"
Tuesday, May 6, 2008

Statement – Congressman Jason Altmire (PA-04)

Thank you, Chairman DeFazio, for calling today's hearing to discuss the effects of rising diesel fuel costs on our nation's trucking industry. This is by far the most important issue facing our nation's trucking industry today.

Last week, the Energy Information Administration reported that the average cost of diesel fuel had reached a record high of $4.17 per gallon, which is 48 percent above last year's costs and over a 125 percent higher than in 2003. It is critical for Congress to fully understand what this means to the trucking industry. As the chairman stated in his opening remarks, every five cent per gallon increase in diesel fuel results in a trucker's annual costs rising by $1,000. This means that over the past year, truckers have seen their annual costs rise by well over $30,000. From these statistics, it is easy to see why our nation's trucking industry is struggling and why some have even been forced to shut down their operations.

I look forward to hearing the testimony of our witnesses today. Each of them brings a wealth of experience on this issue. I look forward to hearing their thoughts on what Congress can do to reduce the cost of diesel.

Chairman DeFazio, thank you again for holding this hearing today. I yield back my time.

###

Rep. Tim Bishop
Committee on Transportation & Infrastructure
Subcommittee on Highways & Transit
Opening Statement
May 6, 2008

Mr. Chairman, I'd like to thank you for holding this hearing on the detrimental effects that record high gas and diesel prices are having on America's trucking industry.

Diesel price have risen an astonishing 48 percent in the past year and 166 percent since 2003. Yesterday, a barrel of crude oil rose to a record of $120.36 in morning trading in New York. At the beginning of 2005, that same barrel of oil would have sold for only $47.

According to the American Trucking Association's website, the trucking industry spent more than $112 billion on fuel in 2007 and are on pace to spend $141.5 billion in 2008. The trucking industry's diesel expenditures last year were equivalent to the entire New Zealand economy and nine percent larger than the entire Kuwaiti economy, the 6th largest oil exporter in the world.

The high price of diesel and its effects on the trucking industry has caused a ripple effect across our economy starting with truckers and property brokers and has reached consumers who are paying increased prices for the goods they purchase. For example, if the cost of grain rises, there is a good chance that a portion of that increased cost can be attributed to the higher expense of transporting that grain to the marketplace. No industry that I'm aware of can claim that rising transportation costs does not affect them in some way.

Suspending our deposits into the Strategic Petroleum Reserve is a start that could reduce fuel prices anywhere from five to twenty four cents a gallon. However, we must separate positive solutions from negative solutions and those of political expediency.

The trucking industry is an early indicator of more problems to come in our ailing economy. It is my hope that the discussions we have here today will foster solutions to rising diesel costs and help alleviate the burden of an industry that all other Americans rely upon.

Again, I thank the Chairman for his attention to this important matter, and I look forward to hearing from our panelists.

Good Morning Mr. Chairman. I want to thank you for holding this hearing. The vitality of the U.S. economy depends upon the nation's transportation infrastructure. The national economy benefits tremendously from the great strides in product delivery and logistics that have lowered the cost of consumer goods, ensuring an improved standard of living for millions of Americans. However, the rising cost of diesel fuel is beginning to threaten the vitality of the nation's economy.

Mr. Chairman, independent owner-operators in my district as well as truckers across the country are suffering mightily as the price of a barrel of crude oil nears $120 per barrel. Many of these businesses are wondering if they can even remain in business. It is my hope that Members of this Committee, Mr. Chairman, under your leadership, will begin to address this problem squarely. Otherwise, the damage of doing nothing goes far beyond the trucking industry; it affects the lives of millions of middle class families.

I look forward to the testimony of the two witnesses you've assembled, Mr. Chairman, and I am eager to hear their testimony.

QUESTION: It has been suggested during testimony today (by Tyson Slocum) that a "strategic refining reserve" might help alleviate the rising cost of fuel prices. Given the very tight capacity for production (*Oil experts are fairly certain that known world oil reserves are around 1.2 trillion barrels of oil, including the oil sands of Canada*) and that it takes, on average, five years to bring a new refinery on line, how will a "strategic refining reserve" help in the immediate term as families and businesses continue to suffer from escalating fuel prices?

Question: Exactly how far can the industry push itself with respect to conservation and efficiency efforts and will this actually help truckers adjust to these higher fuel prices?

Question: Is there anything that you feel Congress should/can do to alleviate the suffering in the immediate term? In the long term?

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
Subcommittee on Highways & Transit

Rising Diesel Fuel Costs in the Trucking Industry

May 6, 2008 – 10:00 a.m.
2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Mr. Chairman:

Thank you for calling this hearing today to consider the challenge that rising fuel prices present to truckers – and indeed to our entire economy, which depends on a transportation system that runs largely on oil.

I know that for truck drivers – and particularly for our nation's independent operators – high fuel prices constitute a crisis that is literally consuming income out of their pockets.

This rise in diesel prices is being caused by many of the same factors that are driving all fuel prices higher, including increased demand across the world and limited extraction and refining capacity.

However, even though the run-up in prices has been rapid over the past year, this is not a crisis created overnight. Rather, it is the result of decades of failure on the part of our nation to create a sustainable energy policy that could reduce our dependence on foreign oil sources – particularly oil from nations that are literally trying to destroy us – and that could create viable sources of alternative and renewable fuels.

In 2005, for example, 86 percent of the energy we consumed was still generated through the use of non-renewable fossil fuels. Further, the Congressional Research Service reports that from the time the Department of Energy was created in fiscal year 1978 through 2007, only

16 percent of the total research and development budget of the department was expended on research and development of renewable fuels.

Proposed "gas tax holidays" will not solve these problems so long in the making, and I join many of my colleagues on this Subcommittee and on the Transportation Committee in opposing such short-sighted policy proposals.

The gas tax is the money that we set aside to invest in the infrastructure that is essential to keeping our nation – including trucks – moving.

Further, while truckers pay significantly more in fuel taxes than other drivers – and I understand that even a one cent increase in fuel prices raises costs to truckers by hundreds of millions of dollars – trucks also cause significant damage to the roadway. An oft-cited government study has found that a single semi-truck can cause as much damage to roadway surfaces as 9,600 cars.

There is no guarantee that suspension of the gas tax will result in any savings at the pump – but elimination of this revenue into the federal Highway Trust Fund is guaranteed to slow national investments in infrastructure, which have too long been inadequate.

Our hearing today will give us the chance to take a comprehensive look at this issue – including the extent to which rising fuel prices are passed on to customers through the application of fuel surcharges by the many actors involved in the trucking business.

Finally, before I close, as Chairman of the Subcommittee on Coast Guard and Maritime Transportation, I note that together with developing long-term energy policies, one of the other critical policy steps that our nation must take is to develop a truly intermodal transportation network that can better meet our nation's mobility needs.

This network must include our railroads and water modes like short sea shipping – both of which can help to get trucks off our congested roadways and reduce emissions.

I commend Chairman Oberstar for the steps he is already taking to begin the long over-due development of a national intermodal system; I again thank Chairman DeFazio for calling today's hearing; and I yield back.

Congressman Robert Latta
Highways & Transit Subcommittee
May 6, 2008

Good morning. Chairman DeFazio and Ranking Member Duncan:

As we all are aware, there is an impending crisis in this country as we continue to rely on foreign oil. The rising cost of diesel fuel is another indicator of the disaster that is going to occur if the United States does not change course now and stop over-relying on oil from other countries.

The United States is at a crucial point in terms of domestic energy production. With estimates that China and India combined will consume more energy than the United States by 2015, we must take a serious look at our domestic energy production and continue to reduce our dependence on Middle Eastern oil.

China is increasing offshore energy production to reduce its own dependence on foreign oil, growing their production at an average of 15.3 percent per year with plans to make offshore production China's largest source of oil by doubling production by 2010.

I hear daily from my constituents in Northwest Ohio regarding the rising gas prices. In addition to the hit that automobile drivers and truck drivers are taking on their personal pocketbooks, this rise in diesel fuel is having a dramatic effect on business. Consequently, this not only directly impacting paying more for diesel fuel, but the higher costs are being passed along to the consumer through the rise in cost of consumer goods.

There is a direct impact on Ohio, as according to the Ohio Truckers Association, trucking directly impacts every goods-moving industry in Ohio. Trucks transport freight for 19,346 manufacturing companies, supply goods to 59,660 retail stores, and stock 24,466 wholesale trade companies. In addition, trucks supply goods to 5,414 agriculture businesses and deliver the produce and products to market and nearly 80% of Ohio communities are served exclusively by trucks. The rise in diesel fuel costs in the trucking industry is a major issue for this country.

Now is the time for Congress to get serious about domestic energy production. Thank you and I yield back my time.

Harry E. Mitchell

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
5/6/08

Thank you, Mr. Chairman.

Arizona is a key trucking corridor, which facilitates the movement of goods between the east and west coasts, so as you can imagine, we are very concerned about the price truckers have to pay for gasoline.

Gas prices have reached record high prices over the last few weeks.

According to the AAA, my constituents in Arizona are paying an average of $3.446 to fill up.

The only thing more staggering than the rising price for gas is the rising price for diesel—now $4.148 in Arizona.

These rising fuel costs have significantly impacted the trucking industry and drivers.

In response to these rising costs, many motor carriers, brokers, and independent drivers are now charging fuel surcharges to shippers for the transport of goods.

I look forward to hearing more about what is causing the rising price of fuel and how this impacts the trucking industry.

I yield back.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
HEARING ON "RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY"
MAY 6, 2008

I am pleased that the Subcommittee on Highways and Transit is holding this important hearing today to shed light on the reasons behind ever-escalating prices for gasoline and diesel fuel, and the tremendous impact this continues to have on the trucking industry, its drivers, consumers, and our national economy.

The price of both gasoline and diesel are currently at an all-time high. Consumers, who are squeezed by having to pay $3.61 per gallon at the pump, are hit again with escalating costs for food and other basic consumer goods, in part due to the rising costs of getting these goods to market.

The men and women in the trucking industry who bring these goods to market are also facing situations that were unimaginable just a few years ago. The cost of a gallon of diesel fuel has risen 48 percent in the past year; 78 percent in the last three years; and 166 percent since 2003. Every one-cent increase in the price of diesel fuel translates to an annual additional cost of $391 million to the trucking industry. It costs nearly $800 more for a driver to fill a standard tractor-trailer than five years ago.

As hard-working Americans struggle to adjust to the harsh realities of record fuel prices, oil companies continue to report record profits. ExxonMobil, which earned over 25 percent of the $155 billion profit enjoyed by the oil industry in 2007, reported a quarterly profit last week of $10.9 billion dollars – the second biggest quarterly profit in the history of this nation. The record for the largest quarterly profit in U.S. history is held, perhaps not surprisingly, by ExxonMobil.

Without a doubt, the gross imbalance between enriched oil companies and captive consumers must be addressed. Yet some have called for a myopic, short-term "solution" to this complex and pervasive problem by proposing to suspend the Federal gas tax for the summer months.

Leading economists have confirmed that this proposal would provide little relief to consumers while providing another multi-billion dollar windfall profit for the oil companies. This irrational proposal will bring the Highway Trust Fund to the edge of insolvency; will eliminate approximately 300,000 family-wage, highway construction jobs; will cut highway safety funding; and increase the cost of congestion.

The problem of high fuel prices is unrelated to the Federal gas tax. The 18.3-cent gas tax rate was established in 1993, when the average retail price of a gallon of gasoline was $1.05. The Federal gas tax has not changed in the last 15 years, yet the average price of a gallon of gasoline has more than tripled.

High diesel prices have also brought into sharp focus fuel surcharges in the motor carrier industry. Today's hearing will examine the relationship among motor carriers, brokers, shippers, and independent drivers with respect to setting and collecting fuel surcharges. Currently, fuel surcharges are left to the discretion of an individual motor carrier or broker arranging for transportation, with few disclosure requirements and without any government oversight.

This lack of transparency affects independent owner-operators and drivers who often do not control if, and what amount, a broker or motor carrier charges a shipper for the rising cost of fuel. This makes it very difficult for drivers to verify whether the fuel surcharge is being passed through. When it is not, drivers are nonetheless the ones stuck paying the higher price at the pump.

I commend Chairman DeFazio for holding this hearing, and for his strong leadership on this important issue.

OK w/ 2 edits

Congresswoman Laura Richardson
Statement at Transportation and Infrastructure
Subcommittee on Highways and Transit Hearing on
"Rising Diesel Fuel Costs in the Trucking Industry"
Tuesday, May 6, 2008
2167 Rayburn House Office Building-10:00 A.M.

Mr. Chairman, I want to thank you and Ranking Member Duncan for holding this hearing on the issue of skyrocketing diesel fuel prices and its impact on the American economy.

As my colleagues on this Committee know, I proudly represent California's 37th District. Perhaps our most defining characteristic is the presence of the Ports of Los Angeles and Long Beach and their impact on our communities.

The Port Complex is the largest in the nation and moves 45% of the nation's imports into the United States. Much of the cargo moves through my District on trucks and I therefore have no shortage of constituents concerned about the trucking industry and diesel gas prices, which currently run about $4.18, which is up about 50%.

I understand the squeeze that record gas prices are putting on every American. The trucking industry undoubtedly feels this when they purchase diesel at the pump. The California Trucking Association estimates that the industry will spend $135 billion on gas this year alone and that one fill-up will cost over $1200 dollars.

PER DRIVER

Gas is a significant portion of the industry's overhead and a 50% increase in one year is enough to reverberate many sectors of the economy that rely on goods delivered on trucks. In fact, 70% of all freight tonnage is hauled by trucks.

DIESEL

I look forward to working with my colleagues in the House in the coming weeks and months to address the gas price issue from a number of angles, including examining the Strategic Petroleum Reserve and price gouging.

In addition, I look forward to working with Chairman Oberstar and Chairman DeFazio on reforms to halt the escalation of gas prices for truckers and all Americans.

Thank you, Mr. Chairman.

AMERICAN TRUCKING ASSOCIATIONS

Before the
U.S. House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Highways and Transit

Statement of Michael S. Card
on behalf of the
American Trucking Associations, Inc. (ATA)

Rising Diesel Fuel Costs in the Trucking Industry
May 6, 2008

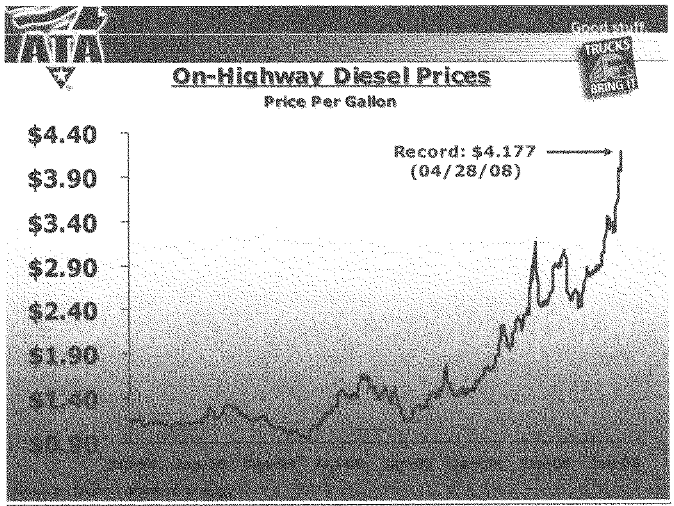
Mr. Chairman and Members of the Subcommittee:

My name is Mike Card; I am the President of Combined Transport, a family-owned and operated trucking company headquartered in Central Point, Oregon. My family built and grew this business over the past 50 years and today we operate more than 400 trucks and employ over 500 individuals. As a trucking company, we are dependent on a plentiful supply of diesel fuel. In fact, our company purchases approximately 25,000 gallons of diesel fuel daily to ensure that our trucks are able to deliver freight to our customers. Last year, Combined Transport spent approximately \$ 17.3 million on diesel fuel and this year we expect to spend more than \$ 21.7 million on diesel. This dramatic 26% year-over-year increase in the cost of diesel fuel is harmful to the trucking industry and the U.S. economy.

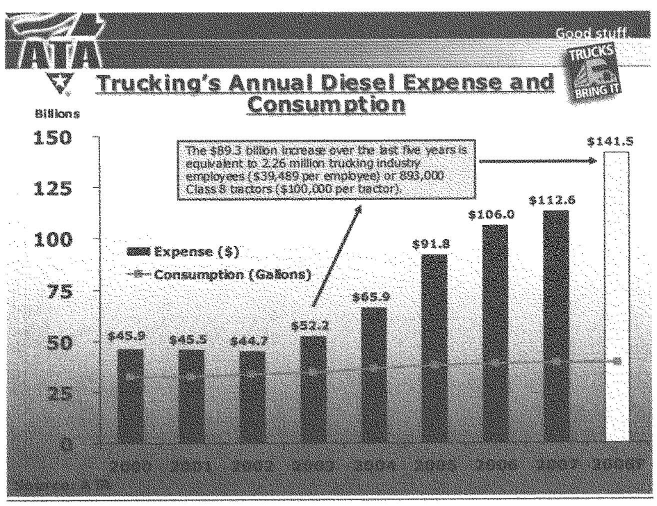
Today, I appear before you representing not just my company, but also the American Trucking Associations (ATA). I am proud to serve as a State Vice President of the ATA and a member of its Executive Committee and Board of Directors. ATA is the national trade association of the trucking industry. Through its affiliated state trucking associations, affiliated conferences and other organizations, ATA represents more than 37,000 trucking companies throughout the United States.

The trucking industry is the backbone of this nation's economy accounting for more than 80% of the nation's freight bill with nearly 9 million hard-working Americans working in trucking-related jobs. The trucking industry delivers virtually all of the consumer goods in the United States. We are an extremely competitive industry comprised largely of small businesses. Roughly 96% of all interstate motor carriers operate 20 or fewer trucks.

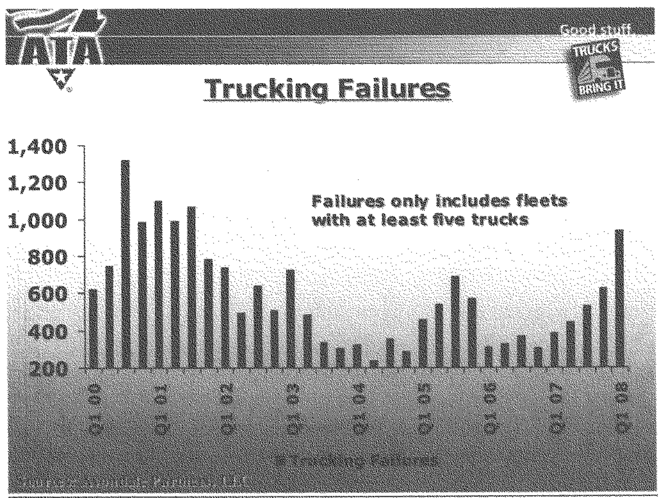
Diesel fuel is the lifeblood of the trucking industry. Each year, the trucking industry consumes over 39 billion gallons of diesel fuel. This means that a one-cent increase in the average price of diesel costs the trucking industry an additional \$391 million in fuel expenses. The average national price of diesel fuel is now over \$4.17 per gallon, which is nearly \$1.40 more than just one year ago.



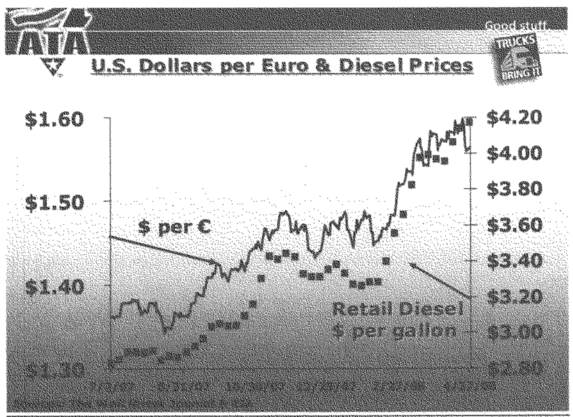
The trucking industry is on pace to spend an incredible $141.5 billion on fuel this year. This is $29 billion more than we spent in 2007, and more than double the amount we spent just four years ago.



Today it costs approximately $1,200 to refuel a truck. As a result of this dramatic increase in the price of diesel, which has coincided with a downturn in the economy and a softening of the demand for freight transportation services, many trucking companies are struggling to survive. In the first quarter of 2008, 935 trucking companies with at least five trucks failed. This was the largest number of trucking related failures since the third quarter of 2001. It is very likely that a large number of companies that operate fewer than 5 trucks also have turned in their keys during the first quarter of this year.



This hardship surprises few in the industry. For most truckers, fuel has surpassed labor as their largest operating expense. Over the past five years, total industry consumption of diesel fuel has gone up 15 percent, while the price of diesel has nearly tripled during the same time period. There is no single cause for the spike in crude oil and diesel prices; however, one of the major factors is the weakness in the U.S. dollar. Since roughly 60 percent of the price of diesel fuel is the price of crude oil, as the dollar has weakened, crude prices have jumped translating into higher diesel prices as well.



Trucking is a highly competitive industry with very low profit margins. This explains why many trucking companies are reporting that higher fuel prices have greatly suppressed profits, if they are making a profit at all. Our industry can't simply absorb this rapid increase in fuel costs. We must pass some of these costs through to our customers, which ultimately translate into higher prices on the store shelves. So not only do high fuel prices devastate truckers, but their customers as well, many of which are mom-and-pop stores. Ultimately, the consumer is forced to pay higher prices for food, clothing and other basic necessities.

Against this backdrop, we greatly appreciate the opportunity to discuss actions that Congress can take to help address the soaring price of diesel fuel.

A. Recommendations to Reduce Demand

Reducing the nation's consumption of diesel fuel will reduce the overall demand for petroleum and should result in lower prices for petroleum products.

1. Control Speed. The typical heavy-duty diesel truck travels between 5 and 7 miles on a gallon of diesel, depending upon load, route, equipment and drivers' skill. Speed has a direct correlation to fuel consumption. In fact, for each mile per hour that a truck travels in excess of 65 mph, its fuel economy decreases by 1/10 of a mile per gallon. Thus, a truck traveling at 65 mph that is capable of achieving 6 miles per gallon, will achieve only 5 miles per gallon when traveling at 75 mph. For this reason, ATA recommends that Congress establish a national speed limit of 65 mph for all vehicles. Of course, to achieve the maximum benefit of this policy, the federal government will need to partner with States to ensure strict enforcement of the 65 mph speed limit.

ATA also has petitioned the Administration to require that all new trucks be equipped with factory-installed devices that electronically limit the truck's maximum speed to 68 mph. In addition to the fuel conservation benefit from ensuring that trucks do not exceed this speed, we are confident that this measure will further reduce the number of truck-related fatalities that occur on our nation's roadways.

2. Reduce Main Engine Idling. Truck drivers idle their trucks out of necessity. The Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) *Hours-of-Service* regulations require mandatory rest periods. As the driver rests in the truck's sleeper compartment, he/she will often need to cool or heat the cab to rest comfortably. In extremely cold weather, truck drivers also will idle their engines to prevent the engine block from freezing. Argonne National Laboratory estimates that the average long-haul truck idles for 1,830 hours per year. With hundreds of thousands of these trucks on the road, idling has a significant impact on fuel consumption and the environment. The U.S. Environmental Protection Agency (EPA) estimates that idling trucks consume approximately 1.1 billion gallons of diesel fuel annually.

Many options are currently available to reduce engine idling. Auxiliary power units (APUs) are among the most popular choices in anti-idling equipment providing climate control (heating and cooling), engine preheating, battery charging, and power for household accessories without use of the truck's main engine. APUs have been proven by the Federal Highway Administration to save up to one gallon of fuel per hour of idling and to substantially reduce emissions and greenhouse gases.

More than 30 states, counties, or cities have adopted regulations limiting the amount of time a commercial vehicle can idle. While reducing main engine idling is a laudable goal, three major barriers stand in the way of trucking companies purchasing such equipment for their daily use: (1) the failure to grant exceptions for the additional weight associated with anti-idling equipment, (2) the imposition of a federal excise tax on the purchase of such devices, and (3) the actual cost of the devices themselves.

Since idling reduction equipment can add weight to a truck, many fleets do not want to reduce their cargo capacity to compensate for the installation of idle reduction equipment on a truck. To address this concern, Congress authorized a 400-pound weight exemption for trucks equipped with idle reduction equipment under Section 756 of the *Energy Policy Act of 2005*. While Congress' intent was to mandate this exemption, the Federal Highway Administration (FHWA) has determined that states "may" adopt the exemption on a voluntary basis. FHWA's interpretation of the weight exemption gives states the option of whether to allow the exemption or not. To date, seven states have passed legislation recognizing the 400-pound weight tolerance and a handful of states are exercising enforcement discretion. ATA asks Congress to clarify the 400-pound weight exemption as being applicable to idling reduction equipment nationwide.

A recent IRS interpretation applies the Federal Excise Tax (FET) to the purchase of idle reduction equipment, which has increased the cost of this equipment and consequently reduced consumer demand for these proven anti-idling solutions. The 12 percent tax acts as a disincentive to truckers looking to reduce main engine idling. FET makes the acquisition of APUs financially less attractive and beyond the reach of potential buyers. The tax alone for a large fleet looking to buy 1,000 APUs at a typical retail price of $9,000 is over $1 million. Taxing devices that offer truckers a solution to reduce fuel consumption and diesel emissions clearly sends the wrong message to the nation. By taxing APUs, we are doing a great disservice to both our economy and the environment. To address these disincentives, ATA asks congress to amend Section 4051 of Internal Revenue Code to make idling reduction equipment purchases exempt from FET. This action will increase demand for the introduction of idling reduction equipment, thereby ensuring greater anti-idling compliance, higher fuel savings, and a cleaner environment.

While APUs are a proven alternative to main engine idling, most trucking companies just cannot afford purchasing devices that can cost up to $10,000 per unit. ATA is seeking financial incentives from Congress in the way of tax credits or grants to expedite the introduction of idling reduction equipment across the Nation.

3. Address Congestion and Highway Infrastructure. Americans waste a tremendous amount of fuel sitting in traffic. According to the most recent report on congestion from the Texas Transportation Institute, in 2005, drivers in metropolitan areas wasted 4.2 billion hours sitting in traffic. These congestion delays consumed 2.9 billion gallons of fuel. ATA estimates that if congestion in these areas was ended, 32.2 million tons of carbon would be eliminated and, over a 10-year period, nearly 32 billion gallons of fuel would be saved, reducing carbon emissions by 314 million tons. ATA recommends that Congress invest in a new congestion reduction program to eliminate major traffic bottlenecks, with a specific focus on bottlenecks that have the greatest impact on truck traffic.

4. Fully Fund EPA's SmartWay^{sm} Program. In February 2004, the freight industry and EPA jointly unveiled the SmartWay^{sm} Transport Partnership, a collaborative voluntary program designed to increase the energy efficiency and energy security of our country while significantly reducing air pollution and greenhouse gases. The program, patterned after the highly-successful Energy Star program developed by EPA and DOE, creates strong market-based incentives that challenge companies shipping products and freight operations to improve their environmental performance and improve their fuel efficiencies. To become a partner a fleet must commit to reduce fuel consumption through the use of EPA-verified equipment, additives, or programs. By 2012, the SmartWay^{sm} program aims to save between 3.3 and 6.6 billion gallons of diesel fuel per year. EPA predicts SmartWay^{sm} participants will also reduce their annual greenhouse gas emissions by 48 million tons of CO_2 equivalents. SmartWay^{sm} is one voluntary greenhouse gas program that not only works, but exceeds expectations.

The trucking industry has fully embraced SmartWay^{sm} and relies upon the innovativeness of this cutting edge program. However, while the program is growing by leaps and bounds, future funding remains uncertain. While ATA and other freight and shipping sectors continue to work towards ensuring a separate line item in future EPA appropriations for SmartWay[sm], we are troubled with the FY08 funding cuts to the program. More specifically, total monies allocated to the program this year dropped from roughly $3 million in FY07 to $2 million in FY08. Funding cuts to grants, contracting, marketing, technology development, and other program expenses have severely undermined the mission of the program. It is our hope that EPA will redirect an additional $1 million from the Climate Protection Program under the FY08 budget to ensure the continued growth and success of this remarkable program. Given that the Energy Star program's annual operating budget is $50 million, we also ask that Congress provide a line item appropriation to ensure that SmartWay[sm] is adequately funded in the future.

5. Enhance Truck Productivity. By reducing the number of trucks needed to move the nation's freight, the trucking industry can lower our fuel consumption, which would produce significant environmental benefits. More productive equipment - where it is consistent with highway and bridge design and maintenance of safety standards - is an additional tool that should be available to states. A recent study by the American Transportation Research Institute found that use of these vehicles could reduce fuel usage by up to 39%, with similar reductions in criteria and greenhouse gas emissions. The reduction in truck vehicle miles traveled on highways such as the New York Thruway, Massachusetts Turnpike, Florida Turnpike, and on roads throughout the Western United States, has lowered the amount of fuel burned in these states. These examples of responsible governance could be replicated by other states if given the necessary flexibility under federal law.

6. Regulate Petroleum Exchanges. Balancing the need for an efficient petroleum market with the desire to limit petroleum speculation could help burst the bubble that has formed in the petroleum markets. Congress should consider the merits of expanding government oversight of electronic petroleum exchanges to make it less attractive for hedge funds to speculate on petroleum prices, while ensuring that a robust market exists for legitimate purposes.

B. Recommendations to Increase Supply.

In addition to reducing consumption and lessening the demand for petroleum, we need to focus on increasing our supply of crude oil.

1. Increase Domestic Exploration. ATA believes that increasing our domestic supply of crude oil will help lower diesel fuel prices. To achieve this goal we need to begin environmentally responsible exploration for crude oil in the Arctic National Wildlife Reserve and Outer Continental Shelf. We also must begin developing the oil shale and tar sands resources in Colorado, Utah and Wyoming and eliminating the barriers to utilizing coal-to-liquid technologies to exploit our vast domestic coal resources. The technology exists to ensure that these resources are developed in a manner that protects the environment. The debate over whether to drill in these areas of the United States has been ongoing for decades. In light of geopolitical instability, the

growing demand for energy from Asia and Europe, and new drilling techniques to ensure that environmentally-sensitive areas remain protected and carbon emissions are sequestered, it is time to change these policies and develop these critical domestic resources.

2. Increase Domestic Refining Capacity. For years now it has been apparent that the U.S. has underinvested in refining capacity. Regardless of the reason for this underinvestment (e.g., environmental restrictions or economic factors), it is time to reverse this trend.

To help expand U.S. refining capacity, ATA has asked that EPA streamline its permitting process to facilitate refinery expansions and new refinery construction. Congress also should consider enacting incentives to encourage increased domestic refinery capacity.

3. Enact a Sensible Approach to Renewable Fuels. The United States needs to enact a more sensible approach to the use of alternative fuels such as biodiesel. The voluntary use of high quality biodiesel in low percentage blends may be an acceptable means of extending the Nation's diesel fuel supply. But biodiesel producers must improve the quality of their product. A recent DOE study showed that 10% of the biodiesel produced last year did not meet the quality specifications recommended by diesel engine manufacturers. This off-spec product causes motor carriers to bear increased maintenance and repair costs or worse could strand a truck on the side of the road, preventing the timely delivery of freight and potentially endangering the truck driver's health.

The economics of biodiesel also are a concern. When Congress first began considering the renewable fuel standard. Soybean oil, the primary feedstock for biodiesel, was about 25 cents per pound, and after application of the $1 federal tax credit for biodiesel blending, the decision to use biodiesel was economically neutral. Today, however, soybean oil is trading at 56 cents per pound, the cost of producing biodiesel has jumped to $4.69 per gallon and the $1 per gallon biodiesel tax credit is scheduled to expire at the end of the year. We note that beginning next year the federal biodiesel mandate contained within the renewable fuel standard (RFS) will require the use of 500 million gallons of biodiesel. At current economic levels and without the extension of the biodiesel tax subsidy, this aspect of the RFS amounts to a hidden tax on the trucking industry and other diesel consumers.

Before leaving the discussion of the economics of biodiesel, I would like to mention ATA's support for Congress' efforts to close the splash and dash loophole. We believe that the American public would be outraged if they knew that their tax dollars were being spent to subsidize biodiesel that is ultimately exported for sale outside the U.S. Beginning next year the Congressionally-mandated biodiesel standard will require U.S. companies to consume 500 million gallons of biodiesel. This number jumps to a billion gallons in 2012. For this reason, we do not believe that we should create an incentive to export subsidized biodiesel, which will drive up the price of this mandated alternative fuel for U.S. consumers.

4. <u>One National Diesel Fuel Standard</u>. While gasoline moves people, diesel fuel moves our economy. Due to the uniquely interstate nature of diesel fuel, ATA believes that Congress should take extraordinary steps to ensure that no state enacts a boutique diesel fuel mandate. Today, California and Texas require special boutique diesel fuel blends. These unique blends cost more to produce and prevent diesel fuel from simply being transported from one jurisdiction to another in times of shortage. In addition, boutique fuels are typically produced by only a handful of refineries, which results in less competition, higher refining margins, and ultimately higher fuel prices.

While Congress took steps to curb the proliferation of boutique fuels as part of the Energy Policy Act of 2005, the Act created a loophole for states seeking to enact renewable fuel mandates. To date, five states have enacted biodiesel mandates and several others are considering this course of action. In light of the federal requirement to use biodiesel, which begins next year, we believe that Congress must preempt state biodiesel mandates. These duplicative state mandates are not needed to ensure a strong domestic biodiesel industry and will simply create an economic environment where biodiesel producers can charge extraordinarily high prices for their product – insulated from the checks and balances of a competitive market. These state mandates will have an adverse impact on the trucking industry and consumers that depend upon trucks to deliver food, clothing, and virtually every other consumable good.

5. <u>The Strategic Petroleum Reserve</u>. ATA has previously asked the federal government to temporarily stop filling the strategic petroleum reserve (SPR) and consider releasing oil from the SPR to address this fuel crisis. The U.S. currently deposits 70,000 barrels of crude oil into the SPR each day. The SPR currently stores just over 700 million barrels of crude oil, which is equivalent to a 58-day supply of imported oil for our nation or a 9 day supply of the oil consumed globally. While we know that the SPR does not contain enough oil to permanently alter the supply of crude oil in the market place, we believe that strategic releases from the SPR could temporarily increase the supply of crude oil and hopefully help restore rational behavior to the petroleum markets. This type of government intervention could drive speculators out of the market and help ensure that petroleum prices are once again driven by supply and demand.

* * * * *

ATA and Combined Transport appreciate this opportunity to offer our insight into measures that the country should take to help address the high cost of petroleum products.

Statement by John Felmy
Chief Economist, American Petroleum Institute
Committee on House Transportation & Infrastructure
Subcommittee on Highways and Transit

"Rising Diesel Fuel Costs in the Trucking Industry"

May 6, 2008

American Petroleum Institute
1220 L Street, NW
Washington, DC 20005
202-682-8000

Statement by John Felmy
Chief Economist
American Petroleum Institute
May 6, 2008

I am John Felmy, chief economist of API, the national trade association of the U.S. oil and natural gas industry. API represents nearly 400 companies involved in all aspects of the oil and natural gas industry, including exploration and production, refining, marketing and transportation, as well as the service companies that support our industry.

I would like to talk about petroleum markets today and about why prices have been rising. Higher prices are a burden on families and businesses, particularly those in the transportation sector such as trucking and the airlines. Being able to understand why the increases have happened is the first step to being able to do something about them.

The biggest factor in the price increases? It's higher crude oil prices. Through the first four months of the year, average crude oil prices were about $1.00 per gallon higher (or $42 a barrel higher) than the same period a year ago. A similar comparison shows gasoline prices up about $0.71 a gallon and diesel up $1.03 a gallon. Gasoline prices have risen more slowly because of weakening demand, record production, strong imports and ample inventories.

Crude oil – the raw material for all petroleum fuels – is the biggest cost component of gasoline and diesel. Crude oil is bought and sold on international markets, and most of what we need we import.

This week, refiners were paying as much as $2.86 for the gallon of crude oil they need to make a gallon of gasoline or diesel. That's most of the price at the pump. When you add about $0.47 in gasoline taxes (or almost $0.54 in diesel taxes) to each gallon, you've accounted for the vast majority of what people are paying.

Crude oil prices have been rising because of strong worldwide demand – even as U.S. overall petroleum demand, including demand for gasoline, has flattened. However, in the U.S., demand for diesel has remained strong. This follows a long-term trend here and around the world. Over the past five years, U.S. demand for highway diesel has been rising at triple the rate of gasoline. In Europe, demand has also been rising, reflecting growth in diesel vehicles, spurred in part by lower taxes on diesel.

Continuing strong U.S. demand for diesel versus weakening demand for gasoline is a key factor why diesel prices have been higher here than gasoline prices. Demand for diesel has remained strong in the face of higher prices at the pump in large part because its use is less discretionary. Consumption is mostly business related. Fuel is an indispensable cost component and just one of the costs in the manufacturing/distribution chain. Also, keep in mind that, unlike Europe, taxes on diesel in the U.S. are higher than on gasoline, and the new ultra-low sulfur diesel formulations cost more to produce, too.

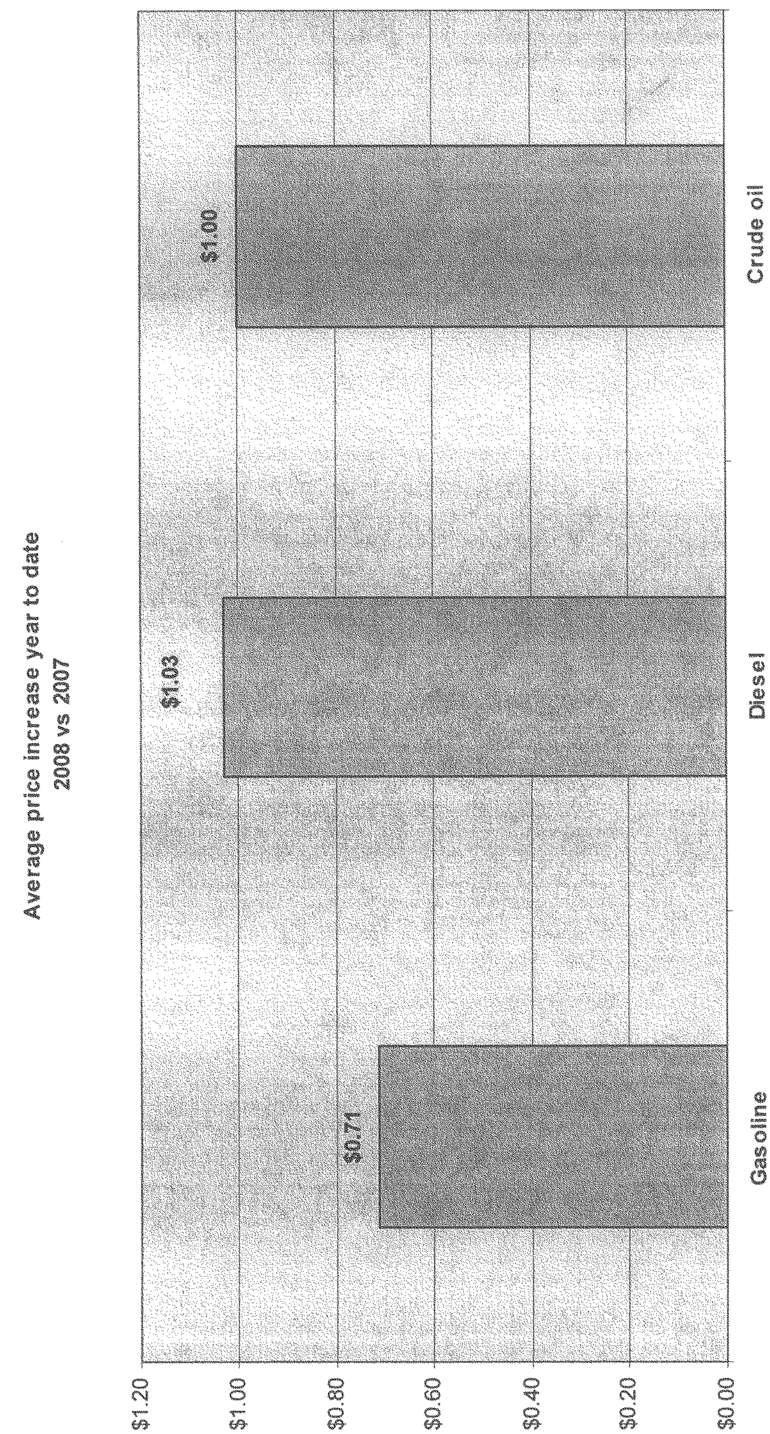
U.S. refiners have been working hard to meet demand, churning out record amounts of both gasoline and distillate, which includes heating oil and diesel – nearly 9 million barrels per day of gasoline and more than 4 million barrels per day of distillate during the first four months of this year. At the same time, they continue to invest heavily in environmental improvements, including billions of dollars for cleaner-burning gasolines and diesel fuels. Recently, despite healthy industry-wide earnings, refiner and retailer margins have tightened.

Industry earnings are strong, but don't be deceived by the big numbers. The size of gross earnings is largely a function of the size of the industry, which is massive because of the magnitude of the job the industry has to do. Both taxes paid and investments made to keep supplies coming in the years ahead are also massive. Which is why *earnings on each dollar of sales* last year aren't as remarkable as the rhetoric and accusations might suggest. In 2007, earnings per dollar of sales were just over eight cents, about a penny above the all-industry average and a good bit lower than the rates of some other prominent industries.

Siphoning away earnings from the industry through new tax schemes won't help address the current market situation. It won't increase investments, it won't produce more supply, and it won't help consumers. It will hurt oil and natural gas company owners, 98.5 percent of which have no connection with the oil industry other than through the pensions they receive invested in oil company stock or through their 401ks, IRAs and other stock holdings. Price gouging laws – another term for price controls – also won't work. They would discourage investment in new supplies and could lead to allocation controls and gasoline lines.

There's no magic wand to fix this situation nor is there a silver bullet. It comes down to increasing supply and reducing demand. There are a lot of ways to work on both ends of that equation, including developing other forms of energy and conserving. However, one strategy we can't overlook is expanding access to more of the nation's own petroleum resources, much of which government policies have put off limits. Energy independence is a slogan, not good policy, but we can produce more and ease global market tightness. That along with more conservation is how to put downward pressure on crude oil prices.

That concludes my remarks. I'd be happy to answer your questions.


Average price increase year to date
2008 vs 2007
$1.20
$1.00
$0.80
$0.60
$0.40
$0.20
$0.00
$0.71
$1.03
$1.00
Gasoline
Diesel
Crude oil

STATEMENT OF MR. WAYNE JOHNSON

on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
1700 North Moore St.
Arlington, VA 22209
(703) 524-5011

before the

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

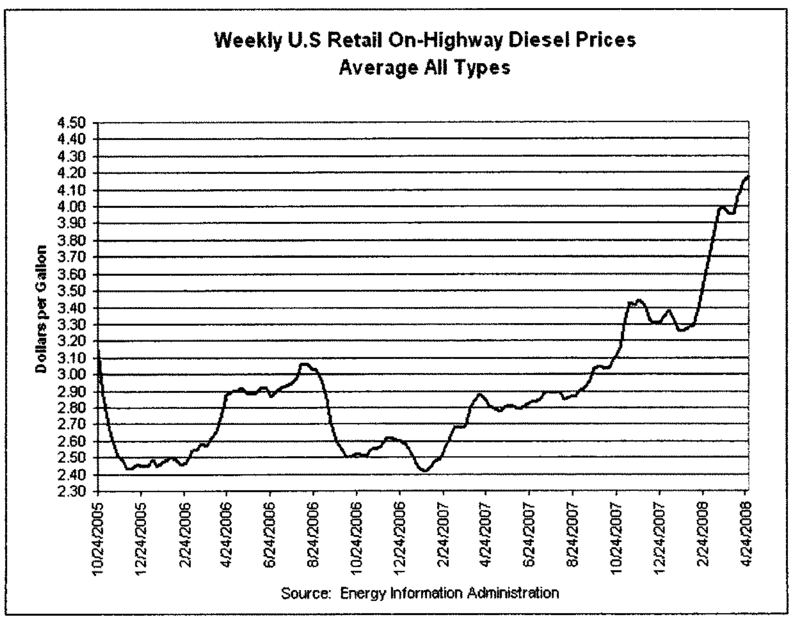
on

"RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY"

May 6, 2008

Chairman DeFazio, and members of the subcommittee, I am Wayne Johnson, the Director of Logistics of American Gypsum Company, located in Dallas, Texas. In that capacity, I am responsible for over $150 million in transportation of the products of American Gypsum Company across the United States. I am here today representing The National Industrial Transportation League. The League is the nation's oldest and largest association of companies interested in transportation. The League's more than 600 members range from some of the largest companies in the nation to much smaller enterprises. The League's members are primarily companies that move their products through our country's transportation network and are engaged in the movement of goods both domestically and internationally. League members ship their products via all modes of transportation, including motor carriers. I am the Chairman of the League's Highway Transportation Committee, which is composed of League members concerned with transportation via motor carriage on our nation's highways.

The League is pleased to have been invited to present testimony on recent diesel fuel price increases in the motor carrier industry and possible regulation with respect to such matters. League members are obviously very well aware of the fact that diesel prices have increased dramatically in the past year. Last week, the League reported to its members that, according to the Energy Information Administration, the national average price for diesel fuel was $4.14 per gallon, ranging from a high of $4.37 per gallon in the Central Atlantic states, to $4.07 on the Gulf Coast. Just one year ago, the average price of diesel fuel in the United States was $2.81 per gallon. In the last two months, the average price of diesel fuel in the United States has increased by more than 62 cents. The chart below shows the change in the price of diesel fuel over the past two and a half years.



Obviously, this rapid increase in diesel fuel prices presents a challenge to all sectors of the freight transportation community. Of course, it must be remembered that rising diesel fuel are a part of a larger problem, namely, increasing energy costs in general.

Fortunately, the transportation industry has the tools to meet that challenge. Over twenty-five years ago, in 1980, the Congress deregulated the motor carrier industry in order to free the industry from outdated and unnecessary government regulation. That policy, which has been followed consistently by every administration since then, has been a spectacular success, providing for a strong, innovative, efficient, and highly responsive motor carrier industry.

The system depends upon a complex set of individually-negotiated, market-driven confidential contracts for the provision of transportation services. Under this system, a shipper will enter into a confidential agreement directly with a motor carrier to pay for services to be provided by the carrier. In some cases, instead of entering into a transportation contract directly with a motor carrier, the shipper will instead enter into a confidential contract with a broker, under which the broker arranges for the transportation and often provides a variety of other services to the shipper, such as tracking and tracing, load management, and others. In situations involving a broker, the broker will enter into a confidential contract with a motor carrier for the actual transportation to be performed for the shipper.

These two sets of confidential agreements encompass all expenses and compensation required by the parties to each agreement, on the basis of the nature of the work to be performed and the entire package of services to be provided. It is a system that is flexible, efficient, and – because these agreements are negotiated in a highly competitive and dynamic environment and are often of short duration – amazingly responsive to changes in market conditions, including the price of fuel.

In fact, as this Committee well knows, since 1980 the country has experienced numerous ups and downs in the price of fuel. Though it is difficult or even impossible to predict when and how much the price of fuel might increase or decrease, the entire industry knows that rapid increases or decreases can occur. In fact, the chart above shows that a little more than two years ago, there was a rapid spike in the price of diesel fuel, and six months later, an equally precipitous decline.

This well-known rise and fall in the price of diesel fuel led shippers years ago to create fuel surcharge programs within their confidential agreements with their carriers. While there are similarities in these privately-administered programs, there are important differences too, reflecting the differing conditions under which each shipper operates, including the nature of services required, the materials to be moved, the markets served, the ability to administer simpler or complex fuel surcharge programs, the weight of the goods, and a variety of other competitive factors.

Many shippers have a specific fuel surcharge provision in their agreements, often based on nationally-published indices such as the Energy Information Agency diesel price figures noted above, applied to an agreed-to base trigger point. However, some shippers prefer, either periodically or as a matter of course, to roll changes in fuel prices into the line haul charge in their agreements with their carriers or brokers, so that they pay a flat "all-inclusive" rate. Thus, there is no single "right answer" to the question of what a fuel surcharge should be, or even whether a separate fuel surcharge should be included. Shippers pay carriers and brokers for fuel both directly through a fuel surcharge and/or indirectly through their rates and other charges. Confidential contracts provide for a total compensation package to the carrier and broker, which includes many factors besides the cost of fuel, such as labor, equipment costs, maintenance, and insurance.

In the case of many shipments, fuel costs are the responsibility of the trucking company, and thus the trucking company is protected by the fuel surcharge mechanisms that it negotiates with shippers. There are also instances when a trucking company employs the services of an independent operator. In those cases, the independent operator typically is responsible for the cost of fuel. That independent operator negotiates its compensation with the trucking company just as shippers negotiate their service and rates with the trucking company. Independent operators have the same opportunity and responsibility to negotiate fair compensation from the trucking companies with which they do business.

This is a competitive system. Shippers, brokers and carriers can enter and exit this market freely, and they participate in the market on terms that they can negotiate in light of the conditions of the market. Competition is facilitated – in fact, it is really made possible – by the fact that these agreements are confidential, and that no party is forced to disclose its economic interest to another. Thus, industry participants can protect (and have in the past protected) themselves from increases and decreases in the costs of fuel through these privately-negotiated, confidential agreements that take into account the specific competitive circumstances of the shipper, carrier, broker or forwarder.

In this connection, I would note that legislation (S. 2910 and H.R. 5934) has been introduced in Congress that would require that confidential fuel surcharges collected by a motor carrier, broker, or freight forwarder be passed through to the person responsible for bearing the cost of fuel. The League is strongly opposed to this proposed legislation.

The proposed legislation would require a motor carrier, broker or freight forwarder using fuel for which it does not bear the cost, to provide to the person who does bear the cost a "payment in the amount equal to the charges invoiced or otherwise presented to the person directly responsible to the motor carrier, broker, or freight forwarder" which "relate to the cost of fuel." That person would also have to provide a "written list" that specifically identifies any "freight charge, brokerage fee or commission, fuel surcharge or adjustment," and "any other charges invoiced or otherwise presented" to that person. Finally, the proposed legislation would forbid a person to cause a motor carrier, broker, or freight forwarder to present "false or misleading" information in an "oral representation" about a rate, charge or allowance.

This proposed legislation would substantially undermine the competitive system upon which our efficient system of motor carriage relies, by forcing one party to reveal to another its confidential business information. This would be an unprecedented, unnecessary and unwarranted intrusion into the workings of the competitive market, and would likely harm competition.

The proposed legislation is also likely to spawn substantial litigation. Under Section 10704(a)(2) of the current law, a carrier or broker is liable for damages sustained by a person as a result of an act or omission in violation of the statute. Under S. 2910 and H.R. 5934, substantial litigation would arise as one party tries to prove whether another caused what was alleged to be "false or misleading" information in an "oral representation." This type of "he said – she said" litigation would be almost impossible to resolve, and would do nothing more than provide a windfall to the litigation bar. Finally, since there are many motor carrier contracts which roll compensation for fuel into an overall price, what is the charge that "relates to" the cost of fuel?

At bottom, this proposed legislation would undo the highly successful competitive market that the Congress successfully created in the motor carrier industry.

In sum, the League is strongly opposed to S. 2910 and H.R. 5934 and believes that the current system of confidential contracts appropriately provides for the needs of all sectors of the transportation marketplace.

I would be pleased to answer any questions that you may have.

May 6, 2008

Testimony of Tyson Slocum, Director
Public Citizen's Energy Program
www.citizen.org

U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit

"Hot Profits And Global Warming: Financial Firm and Oil Company Profits and Rising Diesel Fuel Costs in the Trucking Industry"

Thank you, Mr. Chairman and members of the Subcommittee on Highways and Transit for the opportunity to testify on the issue of gasoline prices. My name is Tyson Slocum and I am Director of Public Citizen's Energy Program. Public Citizen is a 37-year old public interest organization with over 100,000 members nationwide. We represent the needs of households through research, public education and grassroots organizing.

Gasoline prices are up 160% since the summer of 2001, and diesel up more than 210%,[1] creating financial hardship for millions of families, as the average annual expenditure on gasoline increased $1,000 for the typical family over that time.[2] While some households have been able to reduce their consumption in response to these high prices by either investing in a more fuel-efficient or alternative-fuel car, taking mass transit or weatherizing their home to cut down on home heating oil costs, most lack the financial resources to make such investments or lack access to alternatives to driving in their car. That explains why, even in the face of skyrocketing gasoline and diesel prices, demand has hardly moderated.

While American families and truckers pay record high prices, oil companies and the financial firms that dominate energy trading are enjoying among the strongest profits in the economy. Since 2001, the largest five vertically-integrated oil companies operating in the United States—ExxonMobil, ChevronTexaco, ConocoPhillips, BP and Shell—recorded $586 billion in profits.[3] Recent entries to oil markets like investment banks, hedge funds and private equity firms have also been posting record earnings. While some of their profit clearly stems from certain aspects of global supply and demand and the weak U.S. dollar, investigations show that a portion of these record earnings are fueled by market manipulation and other anti-competitive practices, made possible by the wave of recent mergers and weak regulatory oversight, thereby denying Americans access to competitive markets. At least $30 of the current $115 of a barrel of oil (or about 70 cents of a gallon of gasoline) is pure speculation, unrelated to supply and demand

---

1 "Weekly Retail Gasoline and Diesel Prices," U.S. Energy Information Administration, http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm

2 http://judiciary.house.gov/media/pdfs/Cooper070516.pdf

3 Public Citizen calculations from company financial reports.

fundamentals. To add insult to injury, oil companies enjoy billions of dollars worth of subsidies courtesy of the U.S. taxpayer at a time when the industry records record profits. Investing in America's communities—not Big Oil—is needed to provide families with access to alternatives.

Public Citizen research shows that oil companies aren't adequately investing these record earnings into projects that will help consumers, as the five largest oil companies have spent $170 billion buying back their stock since 2005.

America's addiction to oil is a major source of greenhouse gas emissions that cause global warming. Forty-three percent of America's world-leading carbon dioxide emissions in 2006 were from the burning of petroleum.[4] Until the oil industry takes the lead on prioritizing investments to curb America's addiction, Congress should take steps to revoke oil company subsidies or impose a windfall profits tax to finance sustainable energy solutions such as increased funding for mass transit.

In addition, energy trading markets, where futures prices of oil and gasoline are set, were recently deregulated, providing new opportunities for oil companies and financial firms to manipulate prices. Investigations show that energy trading firms have not only exploited recently weakened regulatory oversight, but a new trend of energy traders controlling energy infrastructure assets like pipelines and storage facilities provide additional abilities to use "insider" information to help manipulate markets.

Public Citizen has a five point plan for reform:

- Repeal all existing oil company tax breaks, close loopholes allowing oil companies to escape paying adequate royalties and/or implement a windfall profits tax, dedicating the new revenues to financing clean energy, energy efficiency and mass transit.
- Strengthen antitrust laws by empowering the Federal Trade Commission to crack down on unilateral withholding and other anti-competitive actions by oil companies.
- Establish a Strategic Refining Reserve to be financed by a windfall profits tax on oil companies that would complement America's Strategic Petroleum Reserve (SPR), and cease filling the SPR.
- Re-regulate energy trading exchanges to restore transparency and impose firewalls to stop energy traders from speculating on information gleaned from the companies' affiliates.
- Improve fuel economy standards to reduce gasoline demand.

Recent Mergers, Weak Anti-Trust Law Threaten Consumers

According to the U.S. Government Accountability Office, over 2,600 mergers have been approved in the U.S. petroleum industry since the 1990s.[5] In just the last few years,

---

[4] Available at www.eia.doe.gov/oiaf/1605/ggrpt/pdf/table4.pdf

[5] *Mergers and Other Factors that Affect the U.S. Refining Industry*, U.S. GAO, July 2004, GAO-04-982T, Page 2,

mergers between giant oil companies—such as Exxon and Mobil, Chevron and Texaco, Conoco and Phillips—have resulted in just a few companies controlling a significant amount of America's gasoline, squelching competition. And the mergers continue unabated as the big just keep getting bigger. In August 2005, ChevronTexaco acquired Unocal; ConocoPhillips acquired Burlington Resources in December 2005; and in June 2006, Anadarko Petroleum announced it was simultaneously acquiring Kerr-McGee and Western Gas Resources. ExxonMobil, ChevronTexaco, ConocoPhillips, BP and Shell produce 10 million barrels of oil a day—more than the combined exports of Saudi Arabia and Qatar.

Consumers are paying more at the pump than they would if they had access to competitive markets, and five oil companies are reaping the largest profits in history. Since 2001, the six largest oil companies operating in America have recorded $586 billion in profits. While of course America's tremendous appetite for gasoline plays a role, uncompetitive practices by oil corporations are a cause—more so than OPEC or environmental laws—of high gasoline prices around the country.

High prices are having a detrimental impact on the economy and national security. Imported oil represents one-third of America's trade deficit,[6] slows economic growth, adds to inflationary pressures and creates financial hardship for families and businesses.

Motorists are not getting any bang for their buck. While drivers are stuck paying record high prices, oil companies are spending more money buying back their own stock then they are on investing in their ageing infrastructure. The industry leader, ExxonMobil, spent $40 billion buying back its stock since 2007, while spending only $4.3 billion on U.S. oil exploration and refining capital investment.

In just the last few years, mergers between giant oil companies—such as Exxon and Mobil, Chevron and Texaco, Conoco and Phillips—have resulted in just a few companies controlling a significant amount of America's gasoline, squelching competition. Public Citizen research shows that in 1993, the largest five oil refiners controlled one-third of the American market, while the largest 10 had 55.6 percent. By 2005, as a result of all the mergers, the largest five now control 55 percent of the market, and the largest 10 dominate 81.4 percent (see Appendix 1). This concentration has led to skyrocketing profit margins. As a result of all of these recent mergers, the largest five oil refiners today control as much capacity as the largest 10 did a decade ago.

The consolidation of downstream assets—particularly refineries—plays a big role in determining the price of a gallon of gas. A recent government study revealed that the "source of potential market power in the wholesale gasoline market is at the refining level because the refinery market is imperfectly competitive and refiners essentially control gasoline sales at the wholesale level" and concluded that "mergers and increased market concentration generally led to higher wholesale gasoline prices in the United States."[7]

---

available at www.gao.gov/new.items/d04982t.pdf

6 Available at www.bea.gov/international

7 *Mergers and Other Factors that Affect the U.S. Refining Industry*, U.S. GAO, July 2004, GAO-04-982T, available at

The industry has plenty of incentive to intentionally keep refining markets tight. ExxonMobil's new CEO told *The Wall Street Journal* that even though American fuel consumption will continue growing for the next decade, his company has no plans to build new refineries:

> *Exxon Mobil Corp. says it believes that, by 2030, hybrid gasoline-and-electric cars and light trucks will account for nearly 30% of new-vehicle sales in the U.S. and Canada. That surge is part of a broader shift toward fuel efficiency that Exxon thinks will cause fuel consumption by North American cars and light trucks to peak around 2020—and then start to fall. "For that reason, we wouldn't build a grassroots refinery" in the U.S., Rex Tillerson, Exxon's chairman and chief executive, said in a recent interview. Exxon has continued to expand the capacity of its existing refineries. But building a new refinery from scratch, Exxon believes, would be bad for long-term business.*[8]

ExxonMobil and other major oil companies are not building new refineries because it is in their financial self interest to keep refining margins as tight as possible, as that translates into bigger profits.

Margins for U.S. oil refiners have been at record highs. In 1999, U.S. oil refiners enjoyed a 22.8 cent margin for every gallon of gasoline refined from crude oil. By 2006, they posted a 53.5 cent margin for every gallon of gasoline refined, a 135 percent jump. Refiner margins on diesel have increased from 11.9 cents per gallon in 1999 to 55.7 cents in 2006, a 368 percent jump.[9] That forced *The Wall Street Journal* to conclude that "the U.S. market is especially lucrative, sometimes earning its refiners $20 or more on every barrel of crude oil they refine."[10] Another *Wall Street Journal* article notes:

> *On a per-barrel basis, the difference between crude prices and gasoline prices, known as the "crack spread" and considered to be a proxy for refining profit margins, widened to more than $23 a barrel [in March 2007], the highest level this year and up from this year's low of less than $5 on Jan. 31. Last year, the spread briefly topped $26 a barrel in April [2006], and following the devastation Hurricane Katrina of 2005, it ballooned to $40.87. In recent years, the spread has averaged about $10 a barrel...rising gasoline prices tend to lift crude prices because they boost refinery margins, leading to a rise in crude-oil demand."*[11]

Indeed, BP's most recent financial report shows that refining margins at their US operations are more than double the margins in other countries. In 2007, BP had a

---

www.gao.gov/new.items/d04982t.pdf

[8] Jeffrey Ball, "As Gasoline Prices Soar, Americans Resist Major Cuts in Consumption," May 1, 2006.

[9] *Refiner Sales Prices and Refiner Margins for Selected Petroleum Products, 1990-2006*, available at www.eia.doe.gov/emeu/aer/pdf/pages/sec5_53.pdf

[10] Steve LeVine and Patrick Barta, "Giant New Oil Refinery in India Shows Forces Roiling Industry," August 29, 2006.

[11] Masood Farivar, "Crude-Oil Futures Decline as Gasoline Surges," March 17-18, 2007, Page B5.

refining margin of $12.81 for every barrel they refined in the Midwest, $13.48/barrel in the Gulf Coast and $15.05/barrel on the West Coast. Compare these returns with those at BP's European operations ($4.99/barrel) and Singapore ($5.29/barrel).[12]

While major oil companies haven't applied for a permit to build a new refinery, a small start-up has: Arizona Clean Fuels.[13] The company is successfully obtaining the necessary air quality permits to build the facility, which begs the question: if a small company can do it, why can't ExxonMobil, the world's most profitable corporation, do it?

Concentration of refinery markets has been compounded by consolidation in gasoline marketing. Refiners get gasoline to the market by distributing their product through terminals, where jobbers then deliver to retail gas stations. The number of terminals available to jobbers in the U.S. was cut in half from 1982 to 1997, leaving retailers with fewer options if one terminal raises prices.[14]

As a result of this strategy of keeping refining capacity tight, energy traders in New York are pushing the price of gasoline higher, and then trading the price of crude oil up to *follow* gasoline:

> *"Last time, Mother Nature intervened in the market [in the form of Hurricane Katrina]," [Larry] Goldstein [president of New York-based Petroleum Industry Research Foundation] said. "This time, prices are being driven by market forces," **with gasoline pulling crude and other forms of fuel higher,** he says.*[15]

Since gasoline futures are a more localized market than crude oil, it is easier for oil companies, hedge funds and investment banks to manipulate gasoline markets. Now that crude oil trading often follows the gasoline markets, the ability of these traders to exploit America's underregulated futures markets raises concerns that consumers are being price-gouged.

The U.S. Federal Trade Commission found evidence of anti-competitive practices in the physical refined product market in its March 2001 *Midwest Gasoline Price Investigation*:[16]

> *An executive of [one] company made clear that he would rather sell less gasoline and earn a higher margin on each gallon sold than sell more gasoline and earn a lower margin. Another employee of this firm raised concerns about oversupplying the market and thereby reducing the high market prices. A decision to limit supply does not violate the antitrust laws, absent some agreement among firms. Firms that withheld or delayed shipping additional supply in the face of a price spike did not violate the antitrust laws. In each*

---

12 www.sec.gov/Archives/edgar/data/313807/000115697308000263/u54999_20f.htm

13 www.arizonacleanfuels.com

14 *The Petroleum Industry: Mergers, Structural Change and Antitrust Enforcement,* Federal Trade Commission, Table 9-1, August 2004, available at www.ftc.gov/os/2004/08/040813mergersinpetrolberpt.pdf

15 Bhushan Bahree, "Oil Prices Show No Sign of Slowing," *The Wall Street Journal*, April 10, 2006.

16 "Midwest Gasoline Price Investigation," available at www.ftc.gov/os/2001/03/mwgasrpt.htm

instance, the firms chose strategies they thought would maximize their profits.

In December 2007, HR 6 was signed into law. Sections 811 through 815 of that act empower the Federal Trade Commission to develop rules to crack down on petroleum market manipulation.[17] If these rules are promulgated effectively, this could prove to be an important first step in addressing certain anti-competitive practices in the industry.

A congressional investigation uncovered internal memos written by major oil companies operating in the U.S. discussing their successful strategies to maximize profits by forcing independent refineries out of business, resulting in tighter refinery capacity. From 1995-2005, 97 percent of the nearly 929,000 barrels of oil per day of capacity that has been shut down were owned by smaller, independent refiners.[18] Were this capacity to be in operation today, refiners could use it to better meet today's reformulated gasoline blend needs.

Taxing Oil Company Profits

Apologists for record oil company profits argue that the companies need and deserve record windfalls to provide the necessary market incentive to invest more money into increased energy production.

Public Citizen's analysis of oil company profits and their investments show that they are spending unprecedented sums on benefits for their shareholders in the form of stock buybacks and dividend payments and not adequately investing in sustainable energy that is necessary to end America's addiction to oil. Since January 2005, the top five oil companies have spent $170 billion buying back stock and held $70 billion in cash.[19] This not only represents a huge transfer of wealth from consumers to oil company investors, but shows that oil companies are squandering opportunities to use their record profits to make investments that will end America's addiction to oil.

With nearly $1 trillion of combined assets tied up in extracting, refining and marketing petroleum and natural gas, the big five oil companies' entire business model is designed to squeeze every last cent of profit out of their monopoly control over fossil fuels. They simply will not make significant investments in anything else until their monopoly control over oil is spent.

And this monopoly control translates into unprecedented profits. When communicating to the general public and lawmakers, oil companies downplay these record earnings by calculating profits differently than they do when they speak to Wall Street and shareholders. Conversing with lawmakers and the general public, the oil industry highlights the small profit margins (typically around 8 to 10 percent) that measuring net income as a share of total revenues produces.

---

[17] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ140.110.pdf

[18] Energy Information Administration Form EIA-820, *Annual Refinery Report.*

[19] Public Citizen calculations from company financial reports.

But that's not the calculation ExxonMobil and other energy companies use when talking to investors and Wall Street. For example, here's an excerpt from the company's 2005 annual report: "ExxonMobil believes that return on average capital employed (ROCE) is the most relevant metric for measuring financial performance in a capital-intensive business such as" petroleum.[20]

ExxonMobil's 2007 earning report shows that that the company's global operations enjoyed a 32 percent rate of return on average capital employed. And the company's rate of profit in the U.S. was even higher: domestic drilling provided a 35 percent rate of return on average capital employed, while domestic refining returned 65 percent. Shell's 2007 return on capital employed was 24.5 percent. ChevronTexaco has posted strong returns as well, reporting a 23 percent rate of return on average capital employed in 2007—the median return on capital employed for Chevron over the last 19 years was only 8.7 percent.

It isn't just oil producing nations like Saudi Arabia that get rich when the price of a barrel of oil exceeds $60—major oil producing corporations get rich, too. On average, it costs an oil company like ExxonMobil about $20 to extract a barrel of oil from the ground, while they sell that barrel to American consumers at the market price of $60/barrel. Indeed, a Merrill Lynch analyst estimated that "ConocoPhillip's overall 'finding and developing' costs [in 2006] were $18 a barrel, including barrels obtained through acquisitions."[21]

With oil companies failing to take action to protect America's middle- and low-income families from the high energy prices that fuel their profits, oil industry subsidies should be repealed with the proceeds invested in renewables, alternative fuels, energy efficiency and mass transit. Indeed, HR 5351, which passed the House on February 27, 2008 repeals $18 billion in oil company subsidies over the next decade and dedicates the money to bigger investments in clean energy. A windfall profits tax could be modeled on S. 2761, S.2782 or S.1238, all introduced in the 110th Congress.

Naysayers argue that increasing taxes on oil companies or enacting a Windfall Profits Tax didn't work the last time it was tried. The Windfall Profits Tax of 1980-88 was ineffective not because of the tax itself, but because oil prices fell shortly after enactment of the tax due to global events unrelated to U.S. tax policy. Congress enacted the Windfall Profits Tax in 1980 after U.S. oil company profits surged following the Iranian Revolution and the resulting Iran-Iraq war, which caused oil prices to increase from $14/barrel in 1979 to $35/barrel by January 1981. But after 1981, crude oil prices steadily decreased until completely bottoming out in 1986-87 as demand slackened and as other oil producing countries increased their output. As the value of the commodity subject to tax fell, the effectiveness of the tax was diminished.

But that was then. *The Wall Street Journal* concluded that "a crash looks unlikely now,

---

20 Available at www.exxonmobil.com/corporate/files/corporate/sar_2005.pdf, page 19.

21 Russell Gold, "Big Oil's Earnings Gusher Starts to Slow," *The Wall Street Journal*, January 25, 2007, Page A2.

both because supplies remain tight and because of the large volumes of money that investors are pouring into oil markets."[22]

In addition to a Windfall Profits Tax, Congress needs to reform the royalty system imposed on companies drilling for oil and natural gas on public land. One-third of the oil and natural gas produced in the United States comes from land owned by the taxpayers, but royalty payments by oil companies have not been keeping up with the explosion in energy prices and profits enjoyed by the industry. A recent Inspector General audit of the U.S. Department of the Interior's Minerals Management Service concludes that oil companies are pumping oil from federal land without paying adequate royalties to taxpayers for the privilege. The report cites widespread cronyism, ethical breaches, decimated auditing staff and overreliance on information provided by Big Oil as culprits in the oil industry giveaway.[23] Meanwhile the Justice Department unexpectedly announced the welcome news that it has initiated criminal investigations into the Interior Department's oversight of oil companies.[24] Taxpayers must be fairly compensated for allowing oil companies the privilege of extracting resources from federally-owned land.

Public Citizen also recommends repealing all federal subsidies currently enjoyed by the oil industry and transferring those expenditures to renewable energy, energy efficiency and mass transit. Public Citizen estimates that the oil industry receives about $9 billion annually, or roughly 40 percent of all federal government energy tax breaks and government spending programs, including:[25]

- Excess of percentage over cost depletion.
- Credit for enhanced oil recovery costs.
- Expensing of exploration and development costs.
- Exception from passive loss limitation for working interests in oil and gas properties.
- Last in, first out accounting for vertically integrated oil companies.
- "Geological and geophysical" costs from Section 1329 of EPACT 2005.
- Oil refinery expensing from Section 1323 of EPACT 2005.
- Deductions for foreign taxes.
- Manufacturing tax deduction from Section 102 of HR 4520 passed in 2004.
- Various Department of Energy spending programs, including the Ultra-Deepwater drilling subsidy in Title IX, Subtitle J of EPACT 2005.

Other countries often feature higher gas prices than the U.S., but that is because they impose higher taxes on gasoline than we do. For example, the average federal, state and local gas taxes in the United States are 39 cents/gallon (45 cents/diesel), compared to

---

22 Bhushan Bahree, "Oil Settles Above $70 a Barrel, Despite Inventories at 8-year High," April 18, 2006.

23 "Minerals Management Service's Compliance Review Process," December 2006, available at www.doioig.gov/upload/2007-G-00011.pdf

24 Edmund L. Andrews, "Criminal Inquiries Look at U.S. Oil-Gas Unit," *The New York Times*, December 15, 2006.

25 Based partly on data contained in *Federal Financial Interventions and Subsidies in Energy Markets 2007*, Energy Information Administration, www.eia.doe.gov/oiaf/servicerpt/subsidy2/

$2.08/gallon in Japan ($1.33/diesel), $4.45/gallon in France ($3.35/diesel); $4.76/gallon in Germany ($3.64/diesel); and $5.08/gallon in the United Kingdom ($5.11/diesel).[26] These high taxes are not only a disincentive to drive, but generate the revenue the countries need to help subsidize mass transit and other sustainable energy investments to actively provide citizens with alternatives to driving.

FTC Not Adequately Protecting Consumers

The Federal Trade Commission has contributed to the problem by allowing too many mergers and taking a stance too permissive to anti-competitive practices, as evidenced by the conclusions in its most recent investigation, for example, finding evidence of price-gouging by oil companies but explaining it away as profit maximization strategies and opposing federal price-gouging statutes.[27] This stands in stark contrast to the May 2004 conclusions reached by a U.S. Government Accountability Office report[28] which found that recent mergers in the oil industry have directly led to higher prices. It is important to note that this GAO report severely *underestimates* the impact mergers have on prices because their price analysis *stops* in 2000—before the mergers that created ChevronTexaco-Unocal, ConocoPhillips-Burlington Resources, and Valero-Ultramar/Diamond Shamrock-Premcor.

The FTC consistently allowed refining capacity to be controlled by fewer hands, allowing companies to keep most of their refining assets when they merge, as a recent overview of FTC-approved mergers demonstrates.

The major condition demanded by the FTC for approval of the August 2002 ConocoPhillips merger was that the company had to sell two of its refineries—representing less than four percent of its capacity. Phillips was required only to sell a Utah refinery, and Conoco had to sell a Colorado refinery. But even with this forced sale, ConocoPhillips remains the largest domestic refiner, controlling refineries with capacity of more than 2.2 million barrels of oil per day, or 13 percent of America's entire capacity. And the FTC allowed ConocoPhillips to purchase Premcor's 300,000 barrels/day Illinois refinery in 2004.

As a condition of the 1999 merger creating ExxonMobil, Exxon had to sell some of its gas retail stations in the Northeast U.S. and a single oil refinery in California. Valero Energy, the nation's fifth largest owner of oil refineries, purchased these assets. The inadequacy of the forced divestiture mandated by the FTC was compounded by the fact that the assets were simply transferred to another large oil company, ensuring that the consolidation of the largest companies remained high.

The sale of the Golden Eagle refinery was ordered by the FTC as a condition of Valero's purchase of Ultramar Diamond Shamrock in 2001. Just as with ExxonMobil and

---

26 www.fhwa.dot.gov/ohim/mmfr/mmfrpage.htm

27 "Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases," available at www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf

28 *Effects of Mergers and Market Concentration in the U.S. Petroleum Industry*, GAO-04-96, available at www.gao.gov/new.items/d0496.pdf

ChevronTexaco, Valero sold the refinery, along with 70 retail gas stations, to another large company, Tesoro. But while the FTC forced Valero to sell one of its four California refineries, the agency allowed the company to purchase Orion Refining's only refinery in July 2003, and then approved Valero's purchase of the U.S. oil refinery company Premcor. This acquisition of Orion's Louisiana refinery and Premcor defeats the original intent of the FTC's order for Valero to divest one of its California refineries.

In response to the Carlyle/Riverstone (and AIG and Goldman Sachs) 2006 acquisition of Kinder Morgan, the FTC only required that Carlyle/Riverstone's investment in Magellan be changed to *passive*. The FTC required no firewalls or other restrictions between Goldman Sachs' energy trading affiliate (J. Aron) and the Kinder Morgan affiliate.[29]

Rule of Reason versus Per Se Antitrust Analysis

A recent Supreme Court decision continued an unfortunate trend of relying on the *rule of reason* rather than a *per se* analysis of alleged anticompetitive conduct. *Per se* offenses are those that are, on their face, illegal, with no economic justification. All *per se* offences are violations of section 1 of the Sherman Act. As the Supreme Court has argued:

> *...there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.*[30]

Examples of *per se* antitrust violations include: horizontal and vertical price fixing, bid rigging, territorial allocation and tying arrangements.

A *rule of reason* standard, on the other hand, is one where the activity is judged in context and the reasonableness is considered. Therefore, an action that otherwise would be unlawful could be judged to be in compliance with the Sherman Act if the conduct surrounding the unlawful activity is deemed to justify it.

Clearly then, courts that favor a *rule of reason* standard over *per se* condone otherwise uncompetitive actions. Such is the case in *Texaco* v. *Dagher*, where the Supreme Court ruled in February 2006 that a joint venture Equilon between two competitors, Shell and Texaco, that resulted in the companies unilaterally setting prices that the venture charged customers.[31] As an amicus brief filed by the American Antitrust Institute explained:

> *Evidence suggests that Shell and Texaco officials had deliberately refrained from discussing brand pricing prior to the formation of the venture "because of anti-trust concerns." Of greatest significance, Respondents offered evidence that Equilon sharply raised the price of its gasoline, at a time when crude oil prices were stable or declining...Shell and Texaco were not seeking to create a more*

29 "FTC Challenges Acquisition of Interests in Kinder Morgan, Inc. by The Carlyle Group and Riverstone Holdings," available at www.ftc.gov/opa/2007/01/kindermorgan.htm

30 *Northern Pacific Railroad Co. v. United States*, 356 US 1, 5 (1957)

31 Available at www.supremecourtus.gov/opinions/05pdf/04-805.pdf

> *efficient competitor in a competitive marketplace, but to profit by lessening competition between the two former rivals.'*[32]

But because the Court relied on a *rule of reason* analysis, this anti-competitive practice was deemed to be in compliance with the Sherman Act.

Energy Trading Abuses Require Stronger Oversight

Two regulatory lapses are enabling anti-competitive practices in energy trading markets where prices of energy are set. First, oil companies, investment banks and hedge funds are exploiting recently deregulated energy trading markets to manipulate energy prices. Second, energy traders are speculating on information gleaned from their own company's energy infrastructure affiliates, a type of legal "insider trading." These regulatory loopholes were born of inappropriate contacts between public officials and powerful energy companies and have resulted in more volatile and higher prices for consumers.

Contrary to some public opinion, oil prices are not set by the Organization of Petroleum Exporting Countries (OPEC); rather, they are determined by the actions of energy traders in markets. Historically, most crude oil has been purchased through either fixed-term contracts or on the "spot" market. There have been long-standing futures markets for crude oil, led by the New York Mercantile Exchange (NYMEX) and London's International Petroleum Exchange (which was acquired in 2001 by an Atlanta-based unregulated electronic exchange, ICE). NYMEX is a floor exchange regulated by the U.S Commodity Futures Trading Commission (CFTC). The futures market has historically served to hedge risks against price volatility and for price discovery. Only a tiny fraction of futures trades result in the physical delivery of crude oil.

The CFTC enforces the Commodity Exchange Act, which gives the Commission authority to investigate and prosecute market manipulation.[33] But after a series of deregulation moves by the CFTC and Congress, the futures markets have been increasingly driven by the unregulated over-the-counter (OTC) market over the last few years. These electronic OTC markets have been serving more as pure speculative markets, rather than traditional volatility hedging or price discovery. And, importantly, this new speculative activity is occurring outside the regulatory jurisdiction of the CFTC.

Energy trading markets were deregulated in two steps. First, in response to a petition by nine energy and financial companies, led by Enron[34], on November 16, 1992, then-CFTC Chairwoman Wendy Gramm supported a rule change—later known as Rule 35—exempting certain energy trading contracts from the requirement that they be traded on a regulated exchange like NYMEX, thereby allowing companies like Enron and Goldman Sachs to begin trading energy futures between themselves outside regulated exchanges. Importantly, the new rule also exempted energy contracts from the anti-fraud provisions

---

32 At 3, 6, available at www.antitrustinstitute.org/archives/files/465.pdf

33 7 USC §§ 9, 13b and 13(a)(2).

34 The other eight companies were: BP, Coastal Corp (now El Paso Corp.) Conoco and Phillips (now ConocoPhillips), Goldman Sachs' J. Aron & Co, Koch Industries, Mobil (now ExxonMobil) and Phibro Energy (now a subsidiary of CitiGroup).

of the Commodity Exchange Act.[35] At the same time, Gramm initiated a proposed order granting a similar exemption to large commercial participants in various energy contracts that was later approved in April 2003.[36]

Enron had close ties to Wendy Gramm's husband, then-Texas Senator Phil Gramm. Of the nine companies writing letters of support for the rule change, Enron made by far the largest contributions to Phil Gramm's campaign fund at that time, giving $34,100.[37]

Wendy Gramm's decision was controversial. Then- chairman of a House Agriculture subcommittee with jurisdiction over the CFTC, Rep. Glen English, protested that Wendy Gramm's action prevented the CFTC from intervening in basic energy futures contracts disputes, even in cases of fraud, noting that that "in my 18 years in Congress [Gramm's motion to deregulate] is the most irresponsible decision I have come across." Sheila Bair, the CFTC commissioner casting the lone dissenting vote, argued that deregulation of energy futures contracts "sets a dangerous precedent."[38] A U.S. General Accounting Office report issued a year later urged Congress to increase regulatory oversight over derivative contracts,[39] and a congressional inquiry found that CFTC staff analysts and economists believed Gramm's hasty move prevented adequate policy review.[40]

Five weeks after pushing through the "Enron loophole," Wendy Gramm was asked by Kenneth Lay to serve on Enron's Board of Directors. When asked to comment about Gramm's nearly immediate retention by Enron, Lay called it "convoluted" to question the propriety of naming her to the board.[41]

Congress followed Wendy Gramm's lead in deregulating energy trading *contracts* and moved to deregulate energy trading *exchanges* by exempting electronic exchanges, like those quickly set up by Enron, from regulatory oversight (as opposed to a traditional trading floor like NYMEX that remained regulated). Congress took this action during last-minute legislative maneuvering on behalf of Enron by former Texas GOP Senator Phil Gramm in the lame-duck Congress two days after the Supreme Court ruled in *Bush v Gore*, buried in 712 pages of unrelated legislation.[42] As Public Citizen pointed out back in 2001,[43] this law deregulated OTC derivatives energy trading by "exempting" them from the Commodity Exchange Act, removing anti-fraud and anti-manipulation regulation

---

35 17 CFR Ch. 1, available at www.access.gpo.gov/nara/cfr/waisidx_06/17cfr35_06.html

36 "Exemption for Certain Contracts Involving Energy Products," 58 Fed. Reg. 6250 (1993).

37 Charles Lewis, "The Buying of the President 1996," pg 153. The Center for Public Integrity.

38 "Derivatives Trading Forward-Contract Fraud Exemption May be Reversed," *Inside FERC's Gas Market Report*, May 7, 1993.

39 "Financial Derivatives: Actions Needed to Protect the Financial System," GGD-94-133, May 18, 1994, available at http://archive.gao.gov/t2pbat3/151647.pdf

40 Brent Walth and Jim Barnett, "A Web of Influence," *Portland Oregonian*, December 8, 1996.

41 Jerry Knight, "Energy Firm Finds Ally, Director, in CFTC Ex-Chief," *Washington Post*, April 17, 1993.

42 HR 5660, an amendment to H.R.4577, which became Appendix E of P.L.106-554 available athttp://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ554.106.pdf

43 *Blind Faith: How Deregulation and Enron's Influence Over Government Looted Billions from Americans*, available at www.citizen.org/documents/Blind_Faith.pdf

over these derivatives markets and exempting "electronic" exchanges from CFTC regulatory oversight.

This deregulation law was passed against the explicit recommendations of a multi-agency review of derivatives markets. The November 1999 release of a report by the President's Working Group on Financial Markets—a multi-agency policy group with permanent standing composed at the time of Lawrence Summers, Secretary of the Treasury; Alan Greenspan, Chairman of the Federal Reserve; Arthur Levitt, Chairman of the Securities and Exchange Commission; and William Rainer, Chairman of the CFTC—concluded that energy trading must not be deregulated. The Group reasoned that "due to the characteristics of markets for nonfinancial commodities with finite supplies ... the Working Group is unanimously recommending that the [regulatory] exclusion not be extended to agreements involving such commodities."[44] In its 1999 lobbying disclosure form, Enron indicated that the "President's Working Group" was among its lobbying targets.[45]

As a result of the Commodity Futures Modernization Act, trading in lightly-regulated exchanges like NYMEX is declining as more capital flees to the completely unregulated OTC markets, such as those run by the IntercontinentalExchange (ICE). Trading on the ICE has skyrocketed, with the 138 million contracts traded in 2007 representing a 230 percent increase from 2005.[46] This explosion in unregulated trading volume means that more trading is done behind closed doors out of reach of federal regulators, increasing the chances of oil companies and financial firms to engage in anti-competitive practices. The founding members of ICE include Goldman Sachs, BP, Shell and Totalfina Elf. In November 2005, ICE became a publicly traded corporation.

Goldman Sachs' trading unit, J. Aron, is one of the largest and most powerful energy traders in the United States, and commodities trading represents a significant source of revenue and profits for the company. Goldman Sachs' most recent 10-k filed with the U.S. Securities and Exchange Commission show that Fixed Income, Currency and Commodities (which includes energy trading) generated 35 percent of Goldman's $46 billion in revenue for 2007.[47] In 2005, Goldman Sachs and Morgan Stanley—the two companies are widely regarded as the largest energy traders in America—each reportedly earned about $1.5 billion in net revenue from energy trading. One of Goldman's star energy traders, John Bertuzzi, made as much as $20 million in 2005.[48]

In the summer of 2006, Goldman Sachs, which at the time operated the largest commodity index, GSCI, announced it was radically changing the index's weighting of gasoline futures, selling about $6 billion worth. As a direct result of this weighting

---

[44] "Over-the-Counter Derivatives Markets and the Commodity Exchange Act," *Report of The President's Working Group on Financial Markets*, pg. 16. www.ustreas.gov/press/releases/docs/otcact.pdf

[45] Senate Office of Public Records Lobbying Disclosure Database, available at http://sopr.senate.gov/cgi-win/opr_gifviewer.exe?/1999/01/000/309/000309331|30, page 7.

[46] Available at www.theice.com/exchange_volumes_2005.jhtml

[47] www.sec.gov/Archives/edgar/data/886982/000095012308000857/y46519e10vk.htm

[48] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_senate_committee_prints&docid=f:28640.pdf, pages 24 and 26.

change, Goldman Sachs unilaterally caused gasoline futures prices to fall nearly 10 percent.[49]

A recent bipartisan U.S. Senate investigation summed up the negative impacts on oil prices with this shift towards unregulated energy trading speculation:

> *Over the last few years, large financial institutions, hedge funds, pension funds, and other investment funds have been pouring billions of dollars into the energy commodity markets—perhaps as much as $60 billion in the regulated U.S. oil futures market alone...The large purchases of crude oil futures contracts by speculators have, in effect, created an additional demand for oil, driving up the price of oil to be delivered in the future in the same manner that additional demand for the immediate delivery of a physical barrel of oil drives up the price on the spot market...Several analysts have estimated that speculative purchases of oil futures have added as much as $20–$25 per barrel to the current price of crude oil...large speculative buying or selling of futures contracts can distort the market signals regarding supply and demand in the physical market or lead to excessive price volatility, either of which can cause a cascade of consequences detrimental to the overall economy...At the same time that there has been a huge influx of speculative dollars in energy commodities, the CFTC's ability to monitor the nature, extent, and effect of this speculation has been diminishing. Most significantly, there has been an explosion of trading of U.S. energy commodities on exchanges that are not regulated by the CFTC...in contrast to trades conducted on the NYMEX, traders on unregulated OTC electronic exchanges are not required to keep records or file Large Trader Reports with the CFTC, and these trades are exempt from routine CFTC oversights. In contrast to trades conducted on regulated futures exchanges, there is no limit on the number of contracts a speculator may hold on an unregulated OTC electronic exchange, no monitoring of trading by the exchange itself, and no reporting of the amount of outstanding contracts ("open interest") at the end of each day.*[50]

Thanks to the Commodity Futures Modernization Act, participants in these newly-deregulated energy trading markets are not required to file so-called Large Trader Reports, the records of all trades that NYMEX traders are required to report to the CFTC, along with daily price and volume information. These Large Trader Reports, together with the price and volume data, are the primary tools of the CFTC's regulatory regime: "The Commission's Large Trader information system is one of the cornerstones of our surveillance program and enables detection of concentrated and coordinated positions that might be used by one or more traders to attempt manipulation."[51] So the deregulation of OTC markets, by allowing traders to escape such basic information reporting, leave federal regulators with no tools to routinely determine whether market manipulation is

---

49 Heather Timmons, "Change in Goldman Index Played Role in Gasoline Price Drop," *The New York Times*, September 30, 2006.

50 *The Role Of Market Speculation In Rising Oil And Gas Prices: A Need To Put The Cop Back On The Beat*, Staff Report prepared by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, June 27, 2006, available athttp://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_senate_committee_prints&docid=f:28640.pdf

51 Letter from Reuben Jeffrey III, Chairman, CFTC, to Michigan Governor Jennifer Granholm, August 22, 2005.

occurring in energy trading markets.

One result of the lack of transparency is the fact that even some traders don't know what's going on. A recent article described how:

> *Oil markets were rocked by a massive, almost instant surge in after-hours electronic trading one day last month, when prices for closely watched futures contracts jumped 8%...this spike stands out because it was unclear at the time what drove it. Two weeks later, it is still unclear. What is clear is that a rapid shift in the bulk of crude trading from the raucous trading floor of the New York Mercantile Exchange to anonymous computer screens is making it harder to nail down the cause of price moves...The initial jump "triggered more orders already set into the system, and with prices rising, people thought somebody must know something," Tom Bentz, an analyst and broker at BNP Paribas Futures in New York who was watching the screen at the time, said the day after the spike. "The more prices rose, the more it seemed somebody knew something."*[52]

Oil companies, investment banks and hedge funds are exploiting the lack of government oversight to price-gouge consumers and make billions of dollars in profits. These energy traders boast how they're price-gouging Americans, as a recent *Dow Jones* article makes clear: energy "traders who profited enormously on the supply crunch following Hurricane Katrina cashed out of the market ahead of the long weekend. 'There are traders who made so much money this week, they won't have to punch another ticket for the rest of this year,' said Addison Armstrong, manager of exchange-traded markets for TFS Energy Futures."[53]

The ability of federal regulators to investigate market manipulation allegations even on the lightly-regulated exchanges like NYMEX is difficult, let alone the unregulated OTC market. For example, as of August 2006, the Department of Justice is still investigating allegations of gasoline futures manipulation that occurred *on a single day in 2002.*[54] If it takes the DOJ four years to investigate a single day's worth of market manipulation, clearly energy traders intent on price-gouging the public don't have much to fear.

That said, there have been some settlements for manipulation by large oil companies. In January 2006, the CFTC issued a civil penalty against Shell Oil for "non-competitive transactions" in U.S. crude oil futures markets.[55] In March 2005, a Shell subsidiary agreed to pay $4 million to settle allegations it provided false information during a federal investigation into market manipulation.[56] In August 2004, a Shell Oil subsidiary

---

52 Matt Chambers, "Rise in Electronic Trading Adds Uncertainty to Oil," *The Wall Street Journal*, April 10, 2007.

53 Leah McGrath Goodman, "Oil Futures, Gasoline In NY End Sharply Lower," September 2, 2005.

54 John R. Wilke, Ann Davis and Chip Cummins, "BP Woes Deepen with New Probe," *The Wall Street Journal*, August 29, 2006.

55 "U.S. Commodity Futures Trading Commission Assesses Penalties of $300,000 Against Shell-Related Companies and Trader in Settling Charges of Prearranging Crude Oil Trades" available at www.cftc.gov/newsroom/enforcementpressreleases/2006/pr5150-06.html

56 "Commission Accepts Settlement Resolving Investigation Of Coral Energy Resources," available at www.ferc.gov/news/news-releases/2005/2005-1/03-03-05.asp

agreed to pay $7.8 million to settle allegations of energy market manipulation.[57] In July 2004, Shell agreed to pay $30 million to settle allegations it manipulated natural gas prices.[58] In October 2007, BP agreed to pay $303 million to settle allegations the company manipulated the propane market.[59] In September 2003, BP agreed to pay NYMEX $2.5 million to settle allegations the company engaged in improper crude oil trading, and in July 2003, BP agreed to pay $3 million to settle allegations it manipulated energy markets.[60]

In August 2007, Oil giant BP admitted in a filing to the Securities and Exchange Commission that "The US Commodity Futures Trading Commission and the US Department of Justice are currently investigating various aspects of BP's commodity trading activities, including crude oil trading and storage activities, in the US since 1999, and have made various formal and informal requests for information."[61]

In August 2007, Marathon Oil agreed to pay $1 million to settle allegations the company manipulated the price of West Texas Intermediate crude oil.[62]

There is near-unanimous agreement among industry analysts that speculation is driving up oil and natural gas prices. Representative of these analyses is a May 2006 Citigroup report on the monthly average value of speculative positions in American commodity markets, which found that the value of speculative positions in oil and natural gas stood at $60 billion, forcing Citigroup to conclude that "we believe the hike in speculative positions has been a key driver for the latest surge in commodity prices."[63]

Natural gas markets are also victimized by these unregulated trading markets. Public Citizen has testified before Congress on this issue,[64] and a March 2006 report by four state attorneys general concludes that "natural gas commodity markets have exhibited erratic behavior and a massive increase in trading that contributes to both volatility and the upward trend in prices."[65]

While most industry analysts agree that the rise in speculation is fueling higher prices, there is one notable outlier: the federal government. In a widely dismissed report, the

---

57 "Order Approving Contested Settlement," available at www.ferc.gov/whats-new/comm-meet/072804/E-60.pdf

58 "Coral Energy Pays $30 Million to Settle U.S. Commodity Futures Trading Commission Charges of Attempted Manipulation and False Reporting," available at www.cftc.gov/opa/enf04/opa4964-04.htm

59 www.cftc.gov/newsroom/enforcementpressreleases/2007/pr5405-07.html

60 "Order Approving Stipulation and Consent Agreement," 104 FERC ¶ 61,089, available at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10414789

61 www.sec.gov/Archives/edgar/data/313807/000115697307001223/u53342-6k.htm

62 www.cftc.gov/newsroom/enforcementpressreleases/2007/pr5366-07.html

63 *The Role Of Market Speculation In Rising Oil And Gas Prices: A Need To Put The Cop Back On The Beat*, Staff Report prepared by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, June 27, 2006, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_senate_committee_prints&docid=f:28640.pdf

64 "The Need for Stronger Regulation of U.S. Natural Gas Markets," available at www.citizen.org/documents/Natural%20Gas%20Testimony.pdf

65 *The Role of Supply, Demand and Financial Commodity Markets in the Natural Gas Price Spiral*, available at www.ago.mo.gov/pdf/NaturalGasReport.pdf

CFTC recently concluded that there was "no evidence of a link between price changes and MMT [managed money trader] positions" in the natural gas markets and "a significantly negative relationship between MMT positions and prices changes...in the crude oil market."[66]

The CFTC study (and similar one performed by NYMEX) is flawed for numerous reasons, including the fact that the role of hedge funds and other speculators on long-term trading was *not* included in the analysis. The *New York Times* reported that "many traders have scoffed at the studies, saying that they focused only on certain months, missing price run-ups."[67]

The CFTC has a troublesome streak of "revolving door" appointments and hiring which may further hamper the ability of the agency to effectively regulate the energy trading industry. In August 2004, CFTC chairman James Newsome left the commission to accept a $1 million yearly salary as president of NYMEX, the world's largest energy futures marketplace. Just weeks later, Scott Parsons, the CFTC's chief operating officer, resigned to become executive vice-president for government affairs at the Managed Funds Association. Former CFTC Lead Prosecutor Tony Mansfi left the Commission to join the DC firm Heller Ehrman, where he will work for Geoff Aronow—his old boss at CFTC. Such prominent defections hamper the CFTC's ability to protect consumers. As a result, a revolving door moratorium must be established to limit CFTC decision makers from leaving the agency to go to entities under its regulatory jurisdiction for at least two years.

Latest Trading Trick: Energy Infrastructure Affiliate Abuses

Energy traders like Goldman Sachs are investing and acquiring energy infrastructure assets because controlling pipelines and storage facilities affords their energy trading affiliates an "insider's peek" into the physical movements of energy products unavailable to other energy traders. Armed with this non-public data, a company like Goldman Sachs most certainly will open lines of communication between the affiliates operating pipelines and the affiliates making large bets on energy futures markets. Without strong firewalls prohibiting such communications, consumers would be susceptible to price-gouging by energy trading affiliates.

For example, In January 2007, Highbridge Capital Management , a hedge fund controlled by JP Morgan Chase, bought a stake in an energy unit of Louis Dreyfus Group to expand its oil and natural gas trading. Glenn Dubin, co-founder of Highbridge, said that owning physical energy assets like pipelines and storage facilities was crucial to investing in the business: "That gives you a very important information advantage. You're not just screen-trading financial products."[68]

---

66 Michael S. Haigh, Jana Hranaiova and James A. Overdahl, "Price Dynamics, Price Discovery and Large Futures Trader Interactions in the Energy Complex," available at www.cftc.gov/files/opa/press05/opacftc-managed-money-trader-study.pdf

67 Alexei Barrionuevo and Simon Romero, "Energy Trading, Without a Certain 'E'," January 15, 2006.

68 Saijel Kishan and Jenny Strasburg, "Highbridge Capital Buys Stake in Louis Dreyfus Unit," Bloomberg, January 8, 2007, www.bloomberg.com/apps/news?pid=20601014&sid=aBnQy1botdFo

Indeed, such an "information advantage" played a key role in allowing BP's energy traders to manipulate the entire U.S. propane market. In October 2007, the company paid $303 million to settle allegations that the company's energy trading affiliate used the company's huge control over transportation and storage to allow the energy trading affiliate to exploit information about energy moving through BP's infrastructure to manipulate the market.

BP's energy trading division, North America Gas & Power (NAGP), was actively communicating with the company's Natural Gas Liquids Business Unit (NGLBU), which handled the physical production, pipeline transportation and retail sales of propane. A powerpoint exhibit to the civil complaint against BP details how the two divisions coordinated their manipulation strategy, which includes "assurance that [the] trading team has access to all information and optionality within [all of BP]...that can be used to increase chance of success [of market manipulation]... Implement weekly meetings with Marketing & Logistics to review trading positions and share opportunities."[69]

And in August 2007, BP acknowledged that the federal government was investigating similar gaming techniques in the crude oil markets.

BP is not alone. A Morgan Stanley energy trader, Olav Refvik, "a key part of one of the most profitable energy-trading operations in the world...helped the bank dominate the heating oil market by locking up New Jersey storage tank farms adjacent to New York Harbor."[70] Again, control over physical infrastructure assets plays a key role in helping energy traders game the market.

This shows that the energy traders were actively engaging the physical infrastructure affiliates in an effort to glean information helpful for market manipulation strategies. And it is important to note that BP's market manipulation strategy was extremely aggressive and blatant, and regulators were tipped off to it by an internal whistleblower. A more subtle manipulation effort could easily evade detection by federal regulators, making it all the more important to establish firewalls between energy assets affiliates and energy trading affiliates to prevent any undue communication between the units.

Financial firms like hedge funds and investment banks that normally wouldn't bother purchasing low-profit investments like oil and gasoline storage have been snapping up ownership and/or leasing rights to these facilities mainly for the wealth of information that controlling energy infrastructure assets provides to help one's energy traders manipulate trading markets. The *Wall Street Journal* reported that financial speculators were snapping up leasing rights in Cushing, Ok.[71]

In August 2006, Goldman Sachs, AIG and Carlyle/Riverstone announced the $22 billion acquisition of Kinder Morgan, Inc., which controls 43,000 miles of crude oil, refined

[69] www.cftc.gov/files/enf/06orders/opa-bp-lessons-learned.pdf

[70] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_senate_committee_prints&docid=f:28640.pdf, page 26.

[71] Ann Davis, "Where Has All The Oil Gone?" October 6, 2007, Page A1.

products and natural gas pipelines, in addition to 150 storage terminals.

Prior to this huge purchase, Goldman Sachs had already assembled a long list of oil and gas investments. In 2005, Goldman Sachs and private equity firm Kelso & Co. bought a 112,000 barrels/day oil refinery in Kansas. In May 2004, Goldman spent $413 million to acquire royalty rights to more than 1,600 natural gas wells in Pennsylvania, West Virginia, Texas, Oklahoma and offshore Louisiana from Dominion Resources. Goldman Sachs owns a six percent stake in the 375-mile Iroquois natural gas pipeline, which runs from Northern New York through Connecticut to Long Island. In December 2005, Goldman and Carlyle/Riverstone together are investing $500 million in Cobalt International Energy, a new oil exploration firm run by former Unocal executives.

In 2003, Morgan Stanley teamed up with Apache Corp to buy 26 oil and gas fields from Shell for $500 million, of which Morgan Stanley put up $300 million in exchange for a portion of the production over the next four years, which it used to supplement its energy trading desk.[72]

Solutions

- Re-regulate energy trading markets by subjecting OTC electronic exchanges to full compliance under the Commodity Exchange Act and mandate that all OTC energy trades adhere to the CFTC's Large Trader reporting requirements. In addition, regulations must be strengthened over existing lightly-regulated exchanges like NYMEX. Senators Feinstein, Snowe, Levin and Cantwell have introduced S.577 in the 110th Congress which would address many of these issues.
- Impose legally-binding firewalls to limit energy traders from speculating on information gleaned from the company's energy infrastructure affiliates or other such insider information, while at the same time allowing legitimate hedging operations. Congress must authorize the FTC and DOJ to place greater emphasis on evaluating anti-competitive practices that arise out of the nexus between control over hard assets like energy infrastructure and a firm's energy trading operations. Incorporating energy trading operations into anti-trust analysis must become standard practice for federal regulatory and enforcement agencies to force more divestiture of assets in order to protect consumers from abuses.
- A revolving door moratorium must be established to limit federal government decision makers from leaving the agency to go to entities under its regulatory jurisdiction for at least two years.

Conclusion

Although the U.S. is the third largest oil producing nation in the world[73]—producing more oil than Iran, Kuwait and Qatar *combined*—we consume one out of every four barrels used in the world every day, forcing us to import 66 percent of our oil and

72 Paul Merolli, "Two Morgan Stanley M&A deals show bullish stance on gas," Natural Gas Week, Volume 19; Issue 28, July 14, 2003.

73 Available at www.eia.doe.gov/emeu/cabs/topworldtables1_2.html

gasoline. In all, we use more than the next five biggest oil consumers (China, Japan, Russia, Germany and India) put together.[74] Sixty percent of the oil consumed in America is used as fuel for cars and trucks. Nine percent is for residential home heating oil, with the remainder largely used for various industrial and agricultural processes (only 1.4 percent is to fuel electric power).[75] So improving efficiency in our transportation sector by fully-funding mass transit will go a long way to reducing our dependence on oil.

This era of high energy prices and record oil company profits isn't a simple case of supply and demand, as the evidence indicates that consolidation of energy infrastructure assets, combined with weak or non-existent regulatory oversight of energy trading markets, provides opportunity for energy companies and financial institutions to price-gouge Americans. Forcing consumers suffering from inelastic demand to continue to pay high prices—in part fueled by uncompetitive actions—not only hurts consumers economically, but environmentally as well, as the oil companies and energy traders enjoying record profits are not investing those earnings into sustainable energy or alternatives to our addiction to oil. As a result, our consumption of fossil fuels continues to grow, and the impacts of global warming take their toll on our environment.

Reforms to strengthen regulatory oversight over America's energy trading markets and bolster anti-trust enforcement are needed to restore true competition to America's oil and gas markets.

---

[74] Available at www.eia.doe.gov/emeu/cabs/topworldtables3_4.html

[75] *Adjusted Sales of Distillate Fuel Oil by End Use in the U.S., 2005,* http://tonto.eia.doe.gov/dnav/pet/pet_cons_821dsta_dcu_nus_a.htm

Testimony of

TODD SPENCER
EXECUTIVE VICE PRESIDENT
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Regarding

RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY

MAY 6, 2008

****

Submitted by

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 444-5791
Fax: (816) 427-4468

Good morning Chairman Defazio, Ranking Member Duncan and distinguished members of the Subcommittee. Thank you for inviting me to testify on matters that are extremely important to our nation's small business trucking professionals.

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and an owner-operator; and then as a representative for small-business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 162,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 260,000 individual heavy-duty trucks. Owner-operators' trucks represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

The Association actively promotes the views of small business truckers through its interaction with state and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers.

The rising cost of fuel is causing harm to the trucking industry as we know it. Across this nation, small business truckers are experiencing unprecedented operating cost increases and are being forced to make tough decisions in the name of saving their businesses and providing for their families. Unfortunately, the climbing diesel prices have already painted many truckers into a corner and for them it is too late. Small businesses comprise the vast majority of the trucking industry in the United States. Approximately 96% of U.S. motor carriers have fleets of 20 or fewer trucks and 87% operate just 6 or fewer trucks.

Without the services small business truckers provide, the price of goods will dramatically rise and arguably send this economy into a tailspin. That is precisely what happened in 2000 prior to the recession, when more than 250,000 trucks were repossessed and it very well could happen again.

In a recently introduced report, longtime trucking analyst Donald Broughton of Avondale Partners, LLC estimated that 935 American trucking companies went out of business in the first quarter of 2008. The report estimated that those businesses operated approximately 42,000 trucks and accounted for roughly 2.1 percent of the nation's over-the-road, heavy-duty truck capacity. While this data is shocking, it is not the complete picture. Broughton's data is not representative of the industry as a whole because it only counts trucking companies with five or more trucks.

Therefore, the thousands of owner-operators and smaller fleet carriers who also failed in the same time period have not been accounted for. But at OOIDA, we hear the stories everyday of the drivers who have recently lost their businesses and the overwhelming majority cite the inability to recoup increased fuel costs as the major contributor to their failures.

ProMiles, a leading provider of professional truck routing, mileage, IFTA fuel tax reporting, and fuel management software tracks the average retail fuel prices Monday through Friday from more than 9,600 truck stops. This past Friday, ProMiles calculated the national average retail price of diesel at an astonishing $4.21/gallon. The AAA also monitors daily fuel prices, and arrived at a more gruesome figure, calculating the national average for diesel at $4.25 – equaling a historic high that was set the day before. That is more than $1.30 more per gallon that truckers are paying for diesel than last year at this time.

To put this into perspective as to how fuel prices impact the trucking industry, each time the price of fuel increases by 5 cents per gallon a trucker's annual costs increase by roughly $1,000. In just the past month, the average price of diesel has climbed by more than 20 cents per gallon – that equates to $4,000 in one month alone. This is an enormous burden on the small business trucker whose average annual income is around $38,000. With strong demand, tight supplies and the rising cost of crude oil, the Department of Energy predicts that diesel prices will continue to rise. The urgency for action to help truckers survive grows with every additional cent they must pay at the fuel pump.

In order to offset possible fuel increases, the trucking industry has long used fuel surcharges as a mechanism to help transportation providers weather rough pricing storms. In fact, the very first surcharges were implemented in 1974 by the Interstate Commission at the explicit direction of the US Congress after recognizing that the existing mechanisms would not allow small business truckers to offset their increased costs and recognizing the market on its own would not adjust to keep this vital transportation segment in business. Due to the structure of the trucking industry, small business truckers are often constrained from adjusting their freight hauling rates or realizing the full benefit of fuel surcharges paid by shippers or the entities whose freight they are transporting.

Without the ability to recoup higher fuel costs, tens of thousands of small business truckers are finding it economically infeasible to continue their business operations. The corresponding loss in freight hauling capacity has already caused American manufacturers, retailers and farmers to struggle to find enough trucks or affordable rates to transport their products.

Fuel surcharges are the only mechanism that has proven to give the trucking industry relief during times of high fuel prices over the last 30 years. It is the same mechanism that has been used in the last several years in other industries including: airlines, railroads, steamship lines, hotels, and even D.C. taxicabs who may suffer from the burdens of high fuel costs.

Throughout the history of the trucking industry, the only viable marketplace solution to erratic fuel prices has been the application of a surcharge. It is a tool used by all of the large carriers because it is established as the primary means by which trucking companies are able to vary their pricing to respond to increased fuel costs. With diesel prices consistently rising, shippers are paying more now in fuel surcharges to get their freight moved than ever before.

But, due to the nature of the trucking industry and the lack of regulatory oversight, middlemen often hold all the cards and are able to exploit shippers as well as truckers.

For a wide variety of reasons, owner operators seldom deal directly with shippers. Most of their freight comes to them through brokers (third party logistics companies) if they are true independent operations or through a larger trucking company if they are leased as independent contractors. Mid-size trucking firms often have contracts with shippers for 'front hauls', but depend entirely on brokers for 'back hauls'. Small and midsize trucking operations make up the vast majority of the industry. As opposed to large corporations, they are the ones getting particularly hard hit by fuel prices.

It is common practice for motor carriers and especially brokers to push shippers for higher fuel surcharges, but only pass along a portion of those surcharges to the truckers who are actually hauling the freight and paying the fuel bill. This is often done by charging the shipper in one way (per mile freight rate + surcharge) then withholding information or misrepresenting transactional information and compensating truckers in another manner for example providing one flat rate, which is usually much lower.

Most shippers may not realize that motor carriers and freight brokers often pass just a fraction, if any, of their surcharges through to the truckers who open their wallets at the pump and therefore have paid these costs willingly without knowing that brokers can abuse and unjustly profit from the current deficiencies of the marketplace during times of high fuel prices.

Truckers must have loads set to run constantly so that their truck won't be idle. They must keep the truck moving - even at a loss sometimes - in order to maintain sufficient cash flow to make their truck payments and try to support their families. Truckers cannot leave the business when they have an outstanding $80,000 truck loan. They must keep trying to make it. Brokers understand this position of truckers, can keep track of what rates truckers are willing to accept, and use this information to their full advantage. If they know that their load is going to bring the trucker back to his home area, they often offer even less.

Certain segments of the U.S. transportation industry are facing hard times, yet brokers appear to be thriving. Just last week the Journal of Commerce published an article entitled, "Third party logistics thrive despite U.S. Ills". The article cites a report by market analyst Armstrong & Associates and says that despite the ongoing freight recession in the United States, revenues of U.S. third-party logistics service providers grew to $122 billion in 2007.

C.H. Robinson is one of the largest players in that arena and probably the largest brokerage firm that small business truckers must deal with. C.H. Robinson posted double-digit first quarter gains in gross revenues and profits and net income. They also use the practice of charging shippers in one fashion with base rates and surcharges, but only offering loads to truckers in so-called "all inclusive" rates in part so that they may profit from fuel surcharges though they do not reimburse truckers for fuel costs.

A couple of years ago FMCSA received quite a bit of criticism from Members of Congress in regards to its oversight of household goods movers and brokers as well as its enforcement of regulations governing the household goods segment of the trucking industry. Those problems pale in comparison to the agency's lacking oversight of general property brokers and freight forwarders.

Every day at our headquarters in Missouri we hear horror stories from small business truckers about unscrupulous brokers with FMCSA authority who collect money from shippers, but never pay the truckers who actually transport the loads. Often when the truckers try to collect the money due to them, they find the broker has closed up shop and moved on. FMCSA seldom responds to complaints about such brokers and never takes any action against them.

Fraudulent brokers such as I described apparently encounter little difficulty when applying for a new operating authority from FMCSA. With the change of the company name and a change of address, they get their new authority and start bilking truckers all over again.

The cost of fuel and the affect it has on our society is a topic of daily newspaper headlines in our home state of Missouri and throughout the nation. Small business truckers are also continuing to experience difficulties as they contend with adjusting to a recovering economy. If we do not find ways to help them soon, small business truckers will continue to lose their businesses or refuse to drive unprofitably. I have no doubt that we will see greater disruptions in the movement of our nation's commerce and our economy.

Small businesses are truly the backbone of our nation's ground transportation system. They are responsible for the vast majority of our freight hauling capacity. Their economic health is necessary if a stable trucking industry is to be available, in good times and bad, to move freight across the country.

Thank you again Chairman DeFazio and Congressman Duncan for the opportunity to testify before the Subcommittee. I look forward to the dialogue, and will be happy to answer any questions that you may have.

STATEMENT OF SUZANNE M. Te BEAU
CHIEF COUNSEL
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
MAY 6, 2008

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, thank you for inviting me today to describe the Federal Motor Carrier Safety Administration's (FMCSA's) jurisdiction over interstate property brokers and the leasing of commercial motor vehicles. The Secretary of Transportation exercises statutory authority "over transportation by motor carriers and the procurement of that transportation" to the extent the transportation is in interstate or foreign commerce. The authority to execute this jurisdiction is delegated to FMCSA.

Brokers are transportation intermediaries who procure the services of motor carriers to transport property. Generally, brokers do not handle the freight nor do they assume legal liability for cargo loss and damage. On behalf of shippers, they arrange for motor carriers to transport individual shipments from origin to destination, a definition codified at 49 U.S.C. §13102(2).

Available statistics indicate a growing reliance on brokers in the shipment of goods. FMCSA's Motor Carrier Management Information System (MCMIS) indicates that approximately 16,930 active general commodities brokers were registered with the Agency as of April 2006. The number of active property brokers registered with FMCSA has increased to 20,268, as of April 25, 2008, 813 of which were household goods brokers. The number of active property brokers registered has increased 15 percent since 2006. These figures indicate that property brokers represent an expanding segment of the transportation industry and are being utilized to help meet the transportation needs of a large number of commercial shippers.

History of Broker Regulation

Brokers arranging for transportation of property in interstate commerce were regulated initially by the Interstate Commerce Commission (ICC) in 1935. Brokers were required to obtain operating authority from the ICC and meet financial responsibility and other regulatory requirements.

The ICC Termination Act of 1995 (P. L. 104-88, or ICCTA) continued the licensing (i.e., registration) and bond requirements for property brokers; however this authority was transferred to the Department of Transportation where it was delegated to the Office of Motor Carriers (OMC) within the Federal Highway Administration. The Motor Carrier Safety Improvement Act of 1999 (P. L. 106-159, or MCSIA) then established OMC as FMCSA, a free standing operating administration within the Department, to elevate the importance of the agency's safety mission and place it on equal standing with the other safety operating administrations in the Department. MCSIA, however, did not affect any of the existing requirements concerning brokers. It is important to note that the ICC did not have authority over the regulation of fuel surcharges, nor does FMCSA have such authority today. Thus, the Department does not have authority to mandate that brokers pass receipts from broker-imposed fuel surcharges onto independent drivers.

Prior to the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P. L. 109-59, or SAFETEA-LU) on August 10, 2005, the Agency's jurisdiction over brokers basically consisted of the following: 49 U.S.C. 13904, which required FMCSA to register all brokers, provided the prospective registrant was "fit, willing, and able" to be a broker and comply with applicable regulatory requirements; 49 U.S.C. 13906 which limited registration to brokers who filed with the Agency "a bond, insurance policy, or other type of security…."; and 49 U.S.C. 13303 and 13304, which collectively required brokers to designate process agents.

Section 4142(c) of SAFETEA-LU continued the registration requirement for brokers of household goods. However, it amended 49 U.S.C. 13904, providing that the Secretary *may* register a person to be a broker of non-household goods (otherwise known as general commodities brokers) to provide service subject to FMCSA jurisdiction *if* the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with applicable regulations of the Secretary.

On August 24, 2006, FMCSA, under authority delegated by the Secretary, published a notice in the Federal Register finding that continued registration of non-household goods brokers under 49 U.S.C. 13904 is needed for the protection of shippers and that brokers must register pursuant to 49 U.S.C. 13901 to engage in interstate transportation. As a result, property brokers remain subject to both registration and bond requirements.

In sum, the Federal Government's jurisdiction over interstate property brokers has remained relatively unchanged from its origin in 1935. Generally, property brokers are required to register with FMCSA for authority to operate, to file evidence of financial responsibility, and to designate an agent for purposes of process service.

Process of Obtaining Authority and Oversight of Brokers

In order to obtain authority to operate as a broker, applicants must register pursuant to 49 U.S.C. 13901 and be granted operating authority. A prospective broker is required to file an OP-1 Form to request the authority to become a broker. This filing can be completed either on-line or in paper format. Upon completion of the filing, analogous to the process for obtaining authority to operate as a motor carrier, it is published in the FMCSA Register and there is a 10-day period to allow for protests. Before the broker authority is granted, the applicant must also file evidence of a surety bond or trust fund to meet the financial responsibility requirements and a BOC-3 Form designating the process agent.

After the broker authority is granted, FMCSA monitors the status of the surety bond or trust fund agreement via the Licensing and Insurance (L&I) system. The L&I system will generate an automatic notice to the broker if there are proposed changes to its operating authority status. One example of a proposed change to operating authority is the receipt of a financial responsibility cancellation notice. The financial institution filing the surety bond or trust fund agreement is required to provide 30 days' written notice to the FMCSA prior to cancellation. Upon receipt of the notice of cancellation the FMCSA issues a notice of investigation informing the broker that if we do not receive a replacement surety bond or trust fund the broker authority will be revoked. If the replacement surety bond or trust fund is not received within the prescribed timeframe, the broker authority is revoked. The broker may have its authority reinstated if a surety bond or trust fund is received at a later date.

The FMCSA conducts reviews of the operations of brokers for compliance with the statutory and regulatory requirements; however, these reviews are generally undertaken based on complaints received by the Agency that a broker is noncompliant. It is our experience that in many instances the complaints concern brokers of household goods.

History of Leasing Regulation

Independent truckers (also known as owner-operators) usually own and operate one, or perhaps a few, trucks. Because of the small size of their operations, they may not seek their own operating authority, choosing instead to lease their equipment and services to a regulated carrier, transporting freight under the regulated carrier's operating authority. The owner-operator generally must cover most of the costs of operation and is usually paid either by receiving a pre-determined portion of the gross revenue or a fixed amount per mile. The amount of compensation is determined by the parties to the leasing contract; FMCSA does not have authority to regulate compensation between the parties.

The Federal Government has regulated the leasing of motor vehicles to provide interstate for-hire transportation for more than 50 years. The U.S. Supreme Court held in 1953 that the ICC had authority to regulate these activities under its general powers even though the Interstate Commerce Act did not specifically grant such authority. In 1956, Congress enacted legislation expressly authorizing the ICC to impose certain requirements on the use of leased vehicles by for-hire motor carriers to provide interstate transportation. The motor carrier industry has since adopted long-standing leasing practices in accordance with these established ICC requirements. These requirements, which are now codified at 49 U.S.C. 14102(a), include the requirement of a written lease signed by both parties which specifies its duration and the compensation to be paid by the motor carrier. The leasing requirements do not apply to property brokers, who may not provide interstate transportation unless they are also registered with FMCSA as a motor carrier. Accordingly, any transportation provided by an entity having dual authority would be as a motor carrier, not a broker.

In response to serious financial problems affecting the nation's independent truckers, the ICC made significant revisions to its leasing regulations in 1979. These regulations, commonly known as the truth-in-leasing regulations, required, among other things, that the authorized motor carrier fully disclose in the lease all deductions from owner-operator compensation and established requirements governing escrow funds deposited with the motor carrier to guarantee performance or cover expenses initially paid by the carrier but ultimately borne by the owner-operator. The regulations also required the carrier to pay the owner-operator within 15 days after submission of the necessary delivery documents. Although the regulations govern the timeliness of payment and require that the method of compensation be specified in the lease, they do not mandate any particular method or amount of compensation. In 1980, the U.S. Court of Appeals for the District of Columbia Circuit upheld these regulations as a valid exercise of the ICC's authority to regulate leasing contracts.

In 1995, the ICCTA transferred the ICC's authority over motor carrier leasing arrangements to the Secretary, and it now resides with FMCSA. The Act did not make any substantive changes to the ICC's leasing authority under the former Interstate Commerce Act. However, Congress clearly directed that leasing disputes be resolved primarily through private rights of action. In 1996, the former ICC truth-in-leasing regulations were recodified without substantive change at 49 CFR Part 376.

Conclusion

Mr. Chairman, I appreciate the opportunity to provide background on FMCSA's authority over brokers and motor carrier leasing requirements today.

I would be pleased to answer any questions you or other members of the Subcommittee may have.

Global Markets Research

North America United States

Deutsche Bank

5 May 2008

Congressional Testimony

Committee on Transportation and Infrastructure

Industry Analysis

Table of contents

Research Team

Paul Sankey
Research Analyst
(+1) 212 250-6137
paul.sankey@db.com

Ryan Todd
Research Associate
(+1) 212 250-8529
ryan.todd@db.com

The following is our prepared testimony for the US House of Representatives Committee on Transportation and Infrastructure.

Mr. Ryan Todd

Ryan Todd is an oil analyst at Deutsche Bank, covering major US oil and gas companies as well as independent refiners. Prior to his employment at Deutsche Bank, he was employed as a reservoir engineer with ExxonMobil.

Executive Summary

The problem with conspiracies

The problem with conspiracy theories or talk of price gouging is that it gives the oil companies far more control than they actually have. Certainly, during the recent run in crude oil and gasoline prices, the oil companies have become much more of price takers than price makers.

Part of the paradox of the oil markets has been the breakdown of expected elasticities and the emergence of reverse elasticities. Prior to joining Deutsche Bank in 2005, I was employed as a reservoir engineer at ExxonMobil. From my perspective on both sides of the table, we believe that both sides have got the oil price terribly wrong – with ExxonMobil doing a worse job of predicting the price of oil than Wall Street - but just barely.

Decades of low returns and underinvestment during the low oil price 1980's and 1990's has left the industry playing catch up, both in terms of resource under development and in terms of qualified personnel able to meet the new challenges. Higher prices, rather than increasing supply, has actually further constrained it. While new unconventional sources have become economic, resource nationalism around the globe has restricted International Oil Company access to less than 20% of the world's reserves and rising fiscal takes (including the US) has driven up the cost of doing business, or eliminated access all together in some cases. An incredibly tight global service and construction industry has further exaggerated both the cost and time of doing business.

Reverse elasticity of demand has also seen global demand increase with higher prices in major oil producing nations, driven by a combination of rapid demographic growth, subsidized oil prices and higher revenue in oil producing nations that allow governments to continue to provide cheap oil to local populations.

The resulting run up in the price of crude has driven up the price of gasoline as well, although not as much as one might expect. 2007 saw record refining margins as stretched US capacity, operational outages, strong demand and legislative mandates pushed inventories to recent lows. We testified last year that high gasoline prices would cure high gasoline prices, and weakening demand *has* proved to minimize the damage to the American consumer this year. When we broke $3.00/gal gasoline in 2007, crude oil cost $1.58/gal, with refining margins adding an additional $0.83/gal and taxes making up the other $0.60/gal. Today, crude oil is priced at $2.85/gal, with refining margins making up only $0.18/gal and tax the remainder. At times, gasoline has been manufactured for free.

Diesel, which has typically priced at a discount to gasoline, is subject to the same global supply trends as crude. The dieselization of the European automobile fleet has increased diesel demand relative to gasoline in recent years, while strong demand growth in developing nations has driven growth for both transport diesel as well as industrial users. US refining capacity, which is maximized to produce gasoline, not diesel, will respond with additional capital investment, but it will take time.

Efforts by the government to intervene typically have unintended consequences on all sides. In a tight global balance, the government through ULSD and ethanol has mandated tougher-to-make fuels, requiring more refining and plant maintenance. Suggestions for windfall profit taxes would further raise the cost of supply, while a suspension of the gasoline tax in summertime would only serve to artificially increase demand for gasoline (the wrong solution) while robbing the government of infrastructure revenue.

Ethanol is not a solution. The ethanol "methadone" simply subsidies farmers to grow corn for ethanol using oil-based fertilizer driving oil-powered tractors and serves to make this economic using government/taxpayer's money. Ultimately ethanol subsidy lowers the pump price of gasoline and effectively encourages the cheap gasoline addiction.

US policy makers must stop attempting to re-create a 20th century of abundant and cheap US gasoline, it is as dead as the geology that leaves no more cheap US oil. Avoid additional mandates and allow the market to direct capital towards the areas of tightness – in this case diesel capacity. It is vital to allow US gasoline prices to reflect the true cost of supply, which even now they arguably do not do (poor geopolitics, the suffering environment).

Paradox, not conspiracy

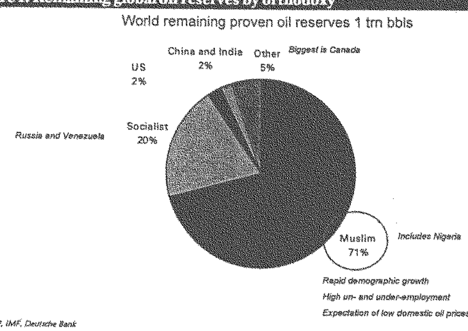
The challenge of traditional elasticities

The problem with conspiracy theories is that it assumes that the oil companies are in control. However, the reality is that they have become more of price takers than price makers. The run up of crude oil prices over the past four years has dumped much of conventional economic wisdom on its head as higher prices have worked to lower supply and increase demand.

Lower supply and higher demand

As oil prices have risen, so has the access of International oil companies to reserves decreased. Resource nationalism has cut off access to reserves in most of the Middle East, Russia and parts of South America. Empowered producing countries across the globe have re-written fiscal policy to receive a higher take, raising the cost of supply in the process. The US has not been immune, raising fiscal take, threatening windfall profit taxes and seeking to place ever more acreage out of reach of drilling.

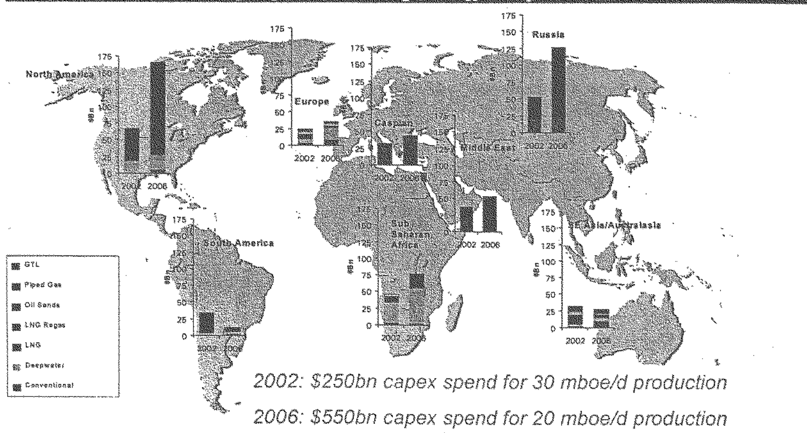
Figure 1: Remaining global oil reserves by orthodoxy



Source: BP, IMF, Deutsche Bank

While the oil and gas industry has significantly ramped up spending, both upstream and downstream, ability to reinvest is somewhat constrained. In addition to the resource nationalism mentioned above, a shortage of trained personnel has left the industry operating near the limits of its ability to reinvest capital, tougher geology is has left remaining reserves in ever more challenging and expensive locations, and a tight global service and construction industry has driven the cost of production to record levels. As a result, a rise in planned capital spending by the global integrated majors of 220% between 2002 and 2006, would develop 33% less total reserves – and it's only gotten worse.

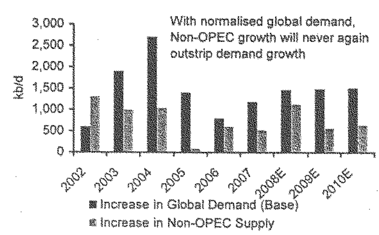
Figure 2: Between '02 and '06, capex spend rose 220% to generate 33% less production



Source: Deutsche Bank, Wood Mackenzie

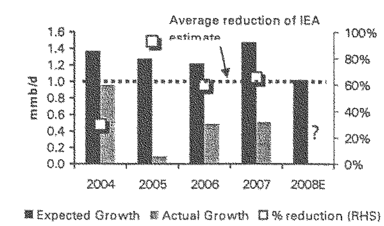
As a result, as a global economic boom, not least in China and India, has driven demand growth for all commodities, including oil, supply has an increasingly difficult time keeping up. Only once since 2000 has Non-OPEC supply growth exceeded demand growth. Despite robust forecasts for increasing supply, few believe the numbers. In recent years, growth has inevitably disappointed for a variety of the reasons cited above, with annual supply growth only averaging 40% of that forecasted a year earlier.

Figure 3: Demand growth vs Non-OPEC supply growth



Source: Deutsche Bank, IEA

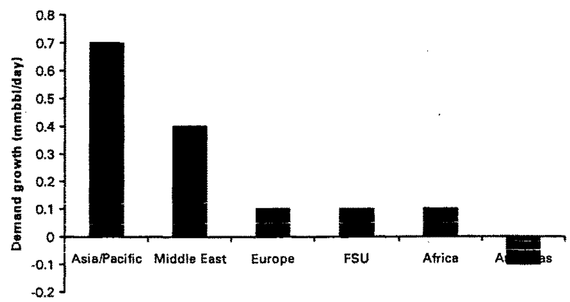
Figure 4: Downgrades in Non-OPEC supply outlook



Source: Deutsche Bank, IEA

The paradox of demand is that in much of the world, we have seen reverse elasticity with higher prices resulting in higher demand. Rapid demographic growth combined with subsidized prices and higher oil prices that allow governments to continue to provide cheap oil to local populations. It is no coincidence that nearly half of 2008 estimated demand growth will be from the Middle East, with the other half driven by China and India.

Figure 5: Breakdown of 2008 estimated demand growth, YOY



Source: IEA

While fundamentals are seen to be softening in the next couple of months, the steady stream of negative news on the supply side – declining production in Mexico, downgrades to Russian growth forecasts, Nigerian unrest, North Sea strikes, etc. – increase doubt that this looseness will materialize. This keeps spare capacity at uncomfortably low levels, increasing the risk priced into the commodity for future supply uncertainty (geopolitical, geologic, etc.).

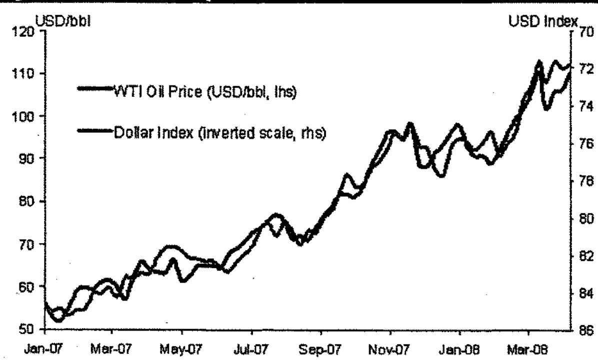
Longer term, the market is pricing in the inability of supply growth to meet the rising global demand. With supply challenged, the only solution is to increase the price to sufficient levels to destroy demand. In a country with a consumption problem, higher prices are your friend and more accurately reflect the true cost of energy supply (energy security, environmental, etc.).

The best thing the government can do is allow the markets to allocate capital effectively to adjust to current realities. US policy makers trying to re-create a 20th century of abundant and cheap US gasoline is a pipe dream, only serving to artificially increase the demand for gasoline, when it should be doing the opposite.

The US dollar

Further aggravating the problem in the past year has been a slowing US economy and US fiscal/monetary policy that has put the US dollar in freefall, reaching a recent all-time low against the euro. While prices have dramatically increased 230% in the US since January 2007, the rest of the world has seen a much more muted rise. Producing nations, whose costs are often in euro with their revenue in dollars have seen their earnings power reduced, while investors have bought crude and other commodities as a hedge against inflation.

Figure 6: US dollar vs. crude price



Source: Deutsche Bank, Bloomberg

Gasoline

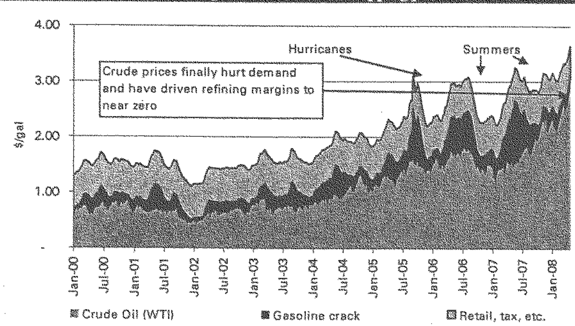
It's the crude

Last year we testified before the Senate on the realities of the gasoline market. Despite cries of price gouging, a combination of continued demand strength, low inventories, and weak supply drove gasoline prices over $3.00/gal. Some of this was the result of US government policies, which added additional complexity into an already stretched US refining system with the mandates of Ultra Low Sulfur Diesel and ethanol blending.

Despite the higher prices, we witnessed surprisingly little demand response over the past four years. In gasoline terms, we tested the equivalent of $100/bbl crude oil at various points between 2005 and 2008, often driven by externalities such as hurricanes, refinery accidents or introduction of government mandates. The current combination of high prices and a slowing national economy are finally impacting demand, with current motor gasoline demand down nearly 1% vs. this time in 2007.

While weakening demand has helped to mitigate rising prices, the cost of crude oil has set the floor for gasoline pricing. When we broke $3.00/gal gasoline in 2007, crude oil cost $1.58/gal, with refining margins adding an additional $0.83/gal and taxes making up the other $0.60/gal. Today, crude oil is priced at $2.85/gal, with refining margins making up only $0.18/gal and tax the remainder – with refiners actually losing money with each barrel refined at times.

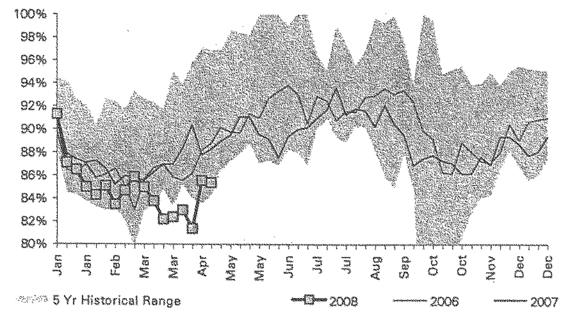
Figure 7: Crude finally drives gasoline to a demand tipping point



Source: Deutsche Bank

Although demand is falling, refining supply, which was uncharacteristically low in 2007 has remained low so far in 2008. Last year we testified that extended periods of maintenance - caused by tighter fuel specs, shortage of skilled contract workers and machinery pushed to the limit by strong demand – were partly to blame for the low utilization rates. Safety concerns in the wake of the Texas City disaster further contributed to a tightening of supply.

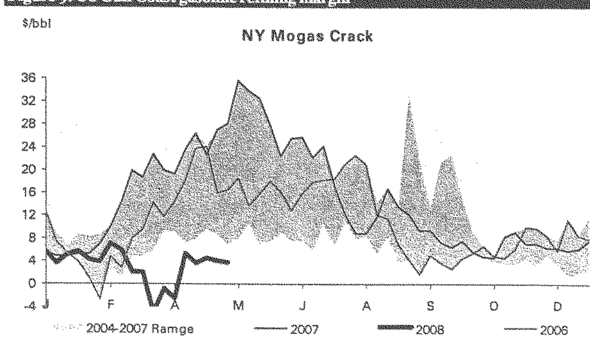
Figure 8: US refinery utilization



Source: US Department of Energy – Energy Information Agency, Deutsche Bank

This year, an additional factor has tightened supply: economics. Record crude prices and weakening demand in the US has created NEGATIVE gasoline margins at times over the last 3 months. This means that for each gallon of gasoline produced, *prior* to operating expense, a refiner is losing money. Pricing for bottom of the barrel products, such as asphalt and residual oil has been even worse.

Figure 9: US Gulf Coast gasoline refining margin



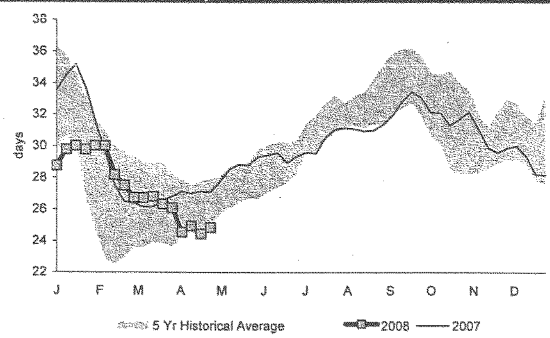
Source: Bloomberg, Deutsche Bank

Why is diesel at a premium?

Shifting trends in global growth

Diesel has historically traded at a discount to gasoline here in the US, driven primarily by much stronger demand for motor gasoline. However, recent global trends have pushed diesel to a premium to gasoline, a trend that is likely to hold for the foreseeable future. Again, this is the result of supply and demand. The dieselization of the automobile fleet in Europe has seen diesel demand significantly outpace that of gasoline. Strong growth in international economies, both in terms of transportation and industrial demand has exacerbated the balance. And while high prices have weakened consumer demand for gasoline here in the US, global industrial demand has remained relatively strong. The result has been a significant tightening in global diesel markets, drawing down US and other OECD nation inventories.

Figure 10: US distillate demand days forward cover

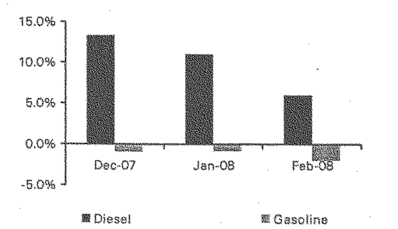


Source: US Department of Energy – Energy Information Agency, Deutsche Bank

The government mandated switch to Ultra Low Sulfur Diesel (ULSD), while not having a tremendous impact on supply, has certainly increased the cost of production and limited refinery flexibility in manufacturing product.

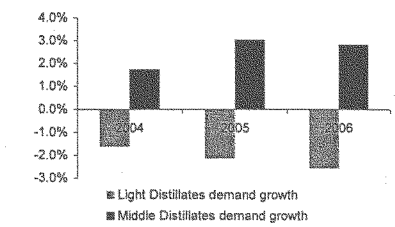
The dieselization of Europe, as well as the growing economies of developing nations around the world has driven strong growth in diesel demand. These nations tend to be structurally higher users of diesel relative to gasoline, both as part of the automobile and trucking fleets, as well as for power generation. Strong global demand, combined with a government enforced tightening of supply has pushed diesel prices to new highs relative to gasoline, with neither trend likely to be reversed any time soon.

Figure 11: US diesel demand outpacing gasoline



Source: US Department of Energy - EIA, Deutsche Bank

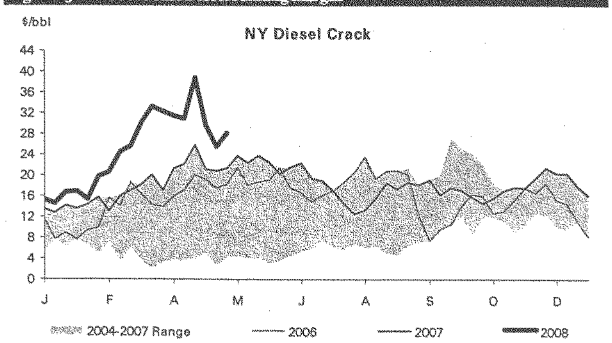
Figure 12: ...and Europe is even more pronounced



Source: BP Statistical Review

As a result, diesel margins have been much stronger than historical averages.

Figure 13: US Gulf Coast Diesel refining margin



Source: Bloomberg, Deutsche Bank

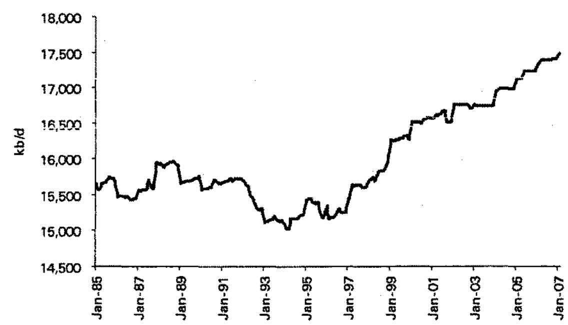
As with all things, time and capital have a way of solving the problem. There is little that the industry can do in the short term, as refineries are maximizing their diesel production for obvious economic reasons. But, currently underway in the United States, and around the globe, refiners are investing to maximize diesel capacity (ie. Marathon's Garyville Refinery expansion).

Myths

There are three key myths for policy makers to keep in mind.

Myth: US refining capacity is not growing
While a new refinery has not been built in this country for decades, plenty of refining capacity has been added. The chart below depicts US refining capacity, which as grown steadily since the mid-1990s. US refiners are adding capacity and have significant projects planned out into the next decade.

Figure 14: US refining capacity



Source: Department of Energy-Energy Information Agency, Deutsche Bank

Myth: High gasoline prices are bad
Gasoline consumption is widely viewed as excessive on the basis of energy security and environmental concerns such as global warming. As discussed previously, over the long-term, the only proven effective way to slow gasoline (oil) consumption is through prices. Given this fact, high gasoline prices can be viewed as a friend to the policy maker.

Myth: High gasoline prices are caused by price gouging
In a rising gasoline price environment, oil companies tend to lose money at the petrol pump, because cost of supply is outstripping price of sales. In fact, spectacular profits for gasoline marketing (the service station) are made in rapidly falling price environments. In neither case do we believe there is systematic price manipulation on the part of the major oil companies.

Appendix 1

Important Disclosures

Additional information available upon request

For disclosures pertaining to recommendations or estimates made on a security mentioned in this report, please see the most recently published company report or visit our global disclosure look-up page on our website at http://gm.db.com.

Analyst Certification

The views expressed in this report accurately reflect the personal views of the undersigned lead analyst about the subject issuers and the securities of those issuers. In addition, the undersigned lead analyst has not and will not receive any compensation for providing a specific recommendation or view in this report. Paul Sankey

Equity rating key

Buy: Based on a current 12- month view of total share-holder return (TSR = percentage change in share price from current price to projected target price plus projected dividend yield) , we recommend that investors buy the stock.

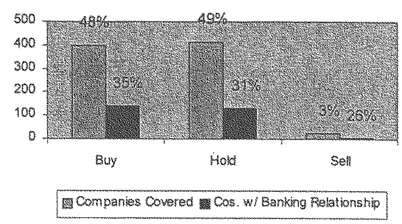
Sell: Based on a current 12-month view of total share-holder return, we recommend that investors sell the stock

Hold: We take a neutral view on the stock 12-months out and, based on this time horizon, do not recommend either a Buy or Sell.

Notes:

1. Newly issued research recommendations and target prices always supersede previously published research.
2. Ratings definitions prior to 27 January, 2007 were:
   Buy: Expected total return (including dividends) of 10% or more over a 12-month period
   Hold: Expected total return (including dividends) between -10% and 10% over a 12-month period
   Sell: Expected total return (including dividends) of -10% or worse over a 12-month period

Equity rating dispersion and banking relationships



North American Universe

Regulatory Disclosures

SOLAR Disclosure

For select companies, Deutsche Bank equity research analysts may identify shorter-term trade opportunities that are consistent or inconsistent with Deutsche Bank's existing longer term ratings. This information is made available only to Deutsche Bank clients, who may access it through the SOLAR stock list, which can be found at http://gm.db.com

Disclosures required by United States laws and regulations

See company-specific disclosures above for any of the following disclosures required for covered companies referred to in this report: acting as a financial advisor, manager or co-manager in a pending transaction; 1% or other ownership; compensation for certain services; types of client relationships; managed/comanaged public offerings in prior periods; directorships; market making and/or specialist role.

The following are additional required disclosures:

Ownership and Material Conflicts of Interest: DBSI prohibits its analysts, persons reporting to analysts and members of their households from owning securities of any company in the analyst's area of coverage.

Analyst compensation: Analysts are paid in part based on the profitability of DBSI, which includes investment banking revenues.

Analyst as Officer or Director: DBSI policy prohibits its analysts, persons reporting to analysts or members of their households from serving as an officer, director, advisory board member or employee of any company in the analyst's area of coverage.

Distribution of ratings: See the distribution of ratings disclosure above.

Price Chart: See the price chart, with changes of ratings and price targets in prior periods, above, or, if electronic format or if with respect to multiple companies which are the subject of this report, on the DBSI website at http://gm.db.com.

Additional disclosures required under the laws and regulations of jurisdictions other than the United States

The following disclosures are those required by the jurisdiction indicated, in addition to those already made pursuant to United States laws and regulations.

Analyst compensation: Analysts are paid in part based on the profitability of Deutsche Bank AG and its affiliates, which includes investment banking revenues

Australia: This research, and any access to it, is intended only for "wholesale clients" within the meaning of the Australian Corporations Act.

EU: A general description of how Deutsche Bank AG identifies and manages conflicts of interest in Europe is contained in our public facing policy for managing conflicts of interest in connection with investment research.Disclosures relating to the firm's obligations under MiFiD can be found at http://globalmarkets.db.com/riskdisclosures.

Germany: See company-specific disclosures above for holdings of five percent or more of the share capital. In order to prevent or deal with conflicts of interests Deutsche Bank AG has implemented the necessary organisational procedures to comply with legal requirements and regulatory decrees. Adherence to these procedures is monitored by the Compliance-Department.

Hong Kong: See http://gm.db.com for company-specific disclosures required under Hong Kong regulations in connection with this research report. Disclosure #5 includes an associate of the research analyst. Disclosure #6, satisfies the disclosure of financial interests for the purposes of paragraph 16.5(a) of the SFC's Code of Conduct (the "Code"). The 1% or more interests is calculated as of the previous month end. Disclosures #7 and #8 combined satisfy the SFC requirement under paragraph 16.5(d) of the Code to disclose an investment banking relationship.

Japan: See company-specific disclosures as to any applicable disclosures required by Japanese stock exchanges, the Japanese Securities Dealers Association or the Japanese Securities Finance Company.

New Zealand: This research is not intended for, and should not be given to, "members of the public" within the meaning of the New Zealand Securities Markets Act 1988.

Russia: The information, interpretation and opinions submitted herein are not in the context of, and do not constitute, any appraisal or evaluation activity requiring a licence in the Russian Federation.

South Africa: Publisher: Deutsche Securities (Pty) Ltd, 3 Exchange Square, 87 Maude Street, Sandton, 2196, South Africa. Author: As referred to on the front cover. All rights reserved. When quoting, please cite Deutsche Securities Research as the source.

Turkey: The information, interpretation and advice submitted herein are not in the context of an investment consultancy service. Investment consultancy services are provided by brokerage firms, portfolio management companies and banks that are not authorized to accept deposits through an investment consultancy agreement to be entered into such corporations and their clients. The interpretation and advices herein are submitted on the basis of personal opinion of the relevant interpreters and consultants. Such opinion may not fit your financial situation and your profit/risk preferences. Accordingly, investment decisions solely based on the information herein may not result in expected outcomes.

United Kingdom: Persons who would be categorized as private customers in the United Kingdom, as such term is defined in the rules of the Financial Services Authority, should read this research in conjunction with prior Deutsche Bank AG research on the companies which are the subject of this research. Disclosures relating to the firm's obligations under MiFID can be found at http://globalmarkets.db.com/riskdisclosures.

Deutsche Bank Securities Inc.

North American locations

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005
Tel: (212) 250 2500

Deutsche Bank Securities Inc.
225 Franklin Street
25th Floor
Boston, MA 02110
Tel: (617) 988 8600

Deutsche Bank Securities Inc.
222 South Riverside Plaza
30th Floor
Chicago, IL 60606
Tel: (312) 537-3758

Deutsche Bank Securities Inc.
3033 East First Avenue
Suite 303, Third Floor
Denver, CO 80206
Tel: (303) 394 6800

Deutsche Bank Securities Inc.
1735 Market Street
24th Floor
Philadelphia, PA 19103
Tel: (215) 854 1546

Deutsche Bank Securities Inc.
101 California Street
46th Floor
San Francisco, CA 94111
Tel: (415) 617 2800

Deutsche Bank Securities Inc.
700 Louisiana Street
Houston, Texas 77002

International locations

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005
United States of America
Tel: (1) 212 250 2500

Deutsche Bank AG London
1 Great Winchester Street
London EC2N 2EQ
United Kingdom
Tel: (44) 20 7545 8000

Deutsche Bank AG
Große Gallusstraße 10-14
60272 Frankfurt am Main
Germany
Tel: (49) 69 910 0

Deutsche Bank AG
Deutsche Bank Place
Level 16
Corner of Hunter & Phillip Streets
Sydney, NSW 2000
Australia
Tel: (61) 2 8258 1234

Deutsche Bank AG
Level 55
Cheung Kong Center
2 Queen's Road Central
Hong Kong
Tel: (852) 2203 8888

Deutsche Securities Inc.
2-11-1 Nagatacho
Sanno Park Tower
Chiyoda-ku, Tokyo 100-6171
Japan
Tel: (81) 3 5156 6701

Global Disclaimer

The information and opinions in this report were prepared by Deutsche Bank AG or one of its affiliates (collectively "Deutsche Bank") for its clients. The information herein is believed by Deutsche Bank to be reliable and has been obtained from public sources believed to be reliable. With the exception of information about Deutsche Bank, Deutsche Bank makes no representation as to the accuracy or completeness of such information.

This published research report may be considered by Deutsche Bank when Deutsche Bank is deciding to buy or sell proprietary positions in the securities mentioned in this report.

For select companies, Deutsche Bank equity research analysts may identify shorter-term opportunities that are consistent or inconsistent with Deutsche Bank's existing, longer-term Buy or Sell recommendations. This information is made available on the SOLAR stock list, which can be found at http://gm.db.com.

Deutsche Bank may trade for its own account as a result of the short term trading suggestions of analysts and may also engage in securities transactions in a manner inconsistent with this research report and with respect to securities covered by this report, will sell to or buy from customers on a principal basis. Disclosures of conflicts of interest, if any, are discussed at the end of the text of this report or on the Deutsche Bank website at *http://gm.db.com.*

Opinions, estimates and projections in this report constitute the current judgement of the author as of the date of this report. They do not necessarily reflect the opinions of Deutsche Bank and are subject to change without notice. Deutsche Bank has no obligation to update, modify or amend this report or to otherwise notify a reader thereof in the event that any matter stated herein, or any opinion, projection, forecast or estimate set forth herein, changes or subsequently becomes inaccurate, except if research on the subject company is withdrawn. Prices and availability of financial instruments also are subject to change without notice. This report is provided for informational purposes only. It is not to be construed as an offer to buy or sell or a solicitation of an offer to buy or sell any financial instruments or to participate in any particular trading strategy in any jurisdiction or as an advertisement of any financial instruments.

The financial instruments discussed in this report may not be suitable for all investors and investors must make their own investment decisions using their own independent advisors as they believe necessary and based upon their specific financial situations and investment objectives. If a financial instrument is denominated in a currency other than an investor's currency, a change in exchange rates may adversely affect the price or value of, or the income derived from, the financial instrument, and such investor effectively assumes currency risk. In addition, income from an investment may fluctuate and the price or value of financial instruments described in this report, either directly or indirectly, may rise or fall. Furthermore, past performance is not necessarily indicative of future results.

Derivative transactions involve numerous risks including, among others, market, counterparty default and illiquidity risk. The appropriateness or otherwise of these products for use by investors is dependent on the investors' own circumstances including their tax position, their regulatory environment and the nature of their other assets and liabilities and as such investors should take expert legal and financial advice before entering into any transaction similar to or inspired by the contents of this publication. Trading in options involves risk and is not suitable for all investors. Prior to buying or selling an option investors must review the "Characteristics and Risks of Standardized Options," at http://www.optionsclearing.com/publications/risks/riskchap1.jsp. If you are unable to access the website please contact Deutsche Bank AG at +1 (212) 250-7994, for a copy of this important document. Furthermore, past performance is not necessarily indicative of future results. Please note that multi-leg options strategies will incur multiple commissions.

Unless governing law provides otherwise, all transactions should be executed through the Deutsche Bank entity in the investor's home jurisdiction . In the U.S. this report is approved and/or distributed by Deutsche Bank Securities Inc., a member of the NYSE, the NASD, NFA and SIPC. In Germany this report is approved and/or communicated by Deutsche Bank AG Frankfurt authorised by Bundesanstalt für Finanzdienstleistungsaufsicht. In the United Kingdom this report is approved and/or communicated by Deutsche Bank AG London, a member of the London Stock Exchange and regulated by the Financial Services Authority for the conduct of investment business in the UK and authorised by Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). This report is distributed in Hong Kong by Deutsche Bank AG, Hong Kong Branch, in Korea by Deutsche Securities Korea Co. and in Singapore by Deutsche Bank AG, Singapore Branch. In Japan this report is approved and/or distributed by Deutsche Securities Inc. The information contained in this report does not constitute the provision of investment advice. In Australia, retail clients should obtain a copy of a Product Disclosure Statement (PDS) relating to any financial product referred to in this report and consider the PDS before making any decision about whether to acquire the product. Deutsche Bank AG Johannesburg is incorporated in the Federal Republic of Germany (Branch Register Number in South Africa: 1998/003298/10) Additional information relative to securities, other financial products or issuers discussed in this report is available upon request. This report may not be reproduced, distributed or published by any person for any purpose without Deutsche Bank's prior written consent. Please cite source when quoting.

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

Rising Diesel Fuel in the Trucking Industry

COMMENTS

submitted by the

TRANSPORTATION INTERMEDIARIES ASSOCIATION

TRANSPORTATION INTERMEDIARIES ASSOCIATION
1625 Prince Street, Suite 200
Alexandria, Virginia 22314

Robert A. Voltmann
President & CEO

May 6, 2008

The Transportation Intermediaries Association (TIA) submits these comments on the rising cost of diesel fuel costs in the trucking industry and the role that transportation brokers and other third party logistics companies play with regard to fuel in the trucking industry.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the $162 billion third party logistics industry. TIA is the only organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is also the United States member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in virtually every trading country. The members of TIA include transportation brokers, domestic and international forwarders, NVOCCs, air forwarders, logistics management companies, and intermodal marketing companies. TIA members adhere to the only mandatory Code of Ethics in the transportation industry. TIA's 1,200 company members include publicly traded as well as family owned businesses that employ tens of thousands of people throughout the United States.

THE ROLE OF TRANSPORTATION INTERMEDIARIES

Transportation intermediaries or third party logistics companies (3PL) act as the "travel agents" for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers. Transportation intermediaries play a key role in cross border transportation by land, sea, and air.

Traditionally, transportation intermediaries have been primarily non-asset based companies whose expertise is providing mode- and carrier-neutral transportation arrangements for shippers with the underlying asset-owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation to meet those needs. Transportation intermediaries bring a targeted expertise to meet the shipper's transportation needs. Transportation intermediaries invest in sophisticated software that helps maximize logistics efficiency. Today, many also invest in physical assets such as trucks, aircraft, warehouses, and consolidation centers so that they can offer a fuller, vertically integrated range of service options.

Depending on the mode of transportation or the services offered, transportation intermediaries are called by a number of names. Transportation intermediaries involved in the trucking industry are licensed by the Federal Motor Carrier Safety Administration (FMCSA) of the United States Department of Transportation as either brokers or freight forwarders. The terms transportation intermediary or third party logistics company (3PL) will be utilized throughout this brief.

Over the past decade, many shippers of cargo have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal with only a few "core carriers" directly. Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party experts. Every Fortune 100 company now has at least one 3PL as one of its core carriers. Since the intermediary or 3PL, in turn, may have relationships with hundreds, or even thousands, of underlying carriers, the shipper has many service options available to it from a single source. A 3PL may use more than a hundred carriers to serve a single shipper. In 2007, 3PLs directed the purchase of $162 billion in transportation services.

Transportation intermediaries are independent contractors. They negotiate the terms and conditions of the services to be provided to their customers, including the role to be played by the intermediary at each stage of the transportation movement. 3PLs provide shippers with logistics expertise and access to thousands of small truck fleets through a single source.

The typical 3PL involved in the trucking industry will contract with thousands of carriers each year. 3PLs provide an essential service to a large and dynamic market. 3PLs manage equipment imbalances for carriers and provide small carriers with access to freight from big shippers. 3PLs act as the sales arm for the thousands of motor carriers that cannot afford to have their own sales staff in each region in which their trucks travel. In short, without a healthy 3PL industry, there would not be a healthy small trucking industry.

3PLs assume the credit risk for the carrier. When a carrier takes a load from a TIA member, they know they will be paid whether the 3PL is paid by the shipper or not. This is because the 3PL pays the carrier within hours of delivery even though the cargo shipper may take up to 30 days after delivery to pay the 3PL. There are credit agencies that track 3PL payments to carriers. These agencies report on days to pay and any non-payment complaints received about particular 3PLs. No 3PL wants to have a negative credit rating. TIA member days to pay are the lowest in the industry and the average credit score for TIA members is higher than that of shippers.

STATEMENT OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

1. Transportation Intermediaries Pay Fuel Surcharges to Carriers

Shippers and 3PLs understand how rapidly increasing diesel fuel costs affect carriers in every mode. Shippers and 3PLs also understand how the increasing cost of fuel affects all American business. 3PLs generally enter into long-term contracts with their shippers. These contracts are generally fixed and do not fluctuate. Some shippers negotiate to pay a separate fuel surcharge, while others want what is called an "all in" rate with the price of fuel included in the transportation rate. In any event, price matrixes are negotiated shipper by shipper with different "trigger" points defining the base price of diesel before a separate fuel surcharge may be added.

While rates with shippers are set in long term contracts, rates with carriers are generally negotiated on a load by load based on supply and demand and the fuel costs at the time the load ships. As fuel costs increase, transportation intermediaries have to pay more money or the trucker will not haul the load. Truckers are generally interested only in the total dollars the intermediary is offering to pay on the shipment, so the intermediary almost always negotiates an all-inclusive rate. If the carrier needs a portion of the charge separated as a fuel surcharge, the 3PL can accommodate them. <u>The trucker alone decides how much money they need to profitably handle a specific shipment on a specific day and they are never forced to take a shipment.</u>

It is not correct to state that intermediaries are profiting from fuel surcharges. In truth, due to the dynamic nature of 3PL-carrier contracts and the more static nature of 3PL-shipper contracts, intermediaries are paying trucking companies more money when fuel spikes occur than the intermediaries receive from shippers. TIA members report that their profit margins (the difference between the money paid to them by the shipper and the money they pay to the carrier) have declined since early 2007 because of rising fuel costs and the weak economy. For example, C. H. Robinson Worldwide, the largest 3PL in the United States, reported that its margin declined 10 percent during the first quarter of this year compared to the first quarter of 2007. This reduction in margin is a direct result of their receiving less revenue from shippers while paying carriers more for fuel. A quick analysis of the dozen or so largest privately held 3PLs shows similar reductions in margin. The following example indicates the increase in truckload rates from first quarter 2007 to first quarter 2008 paid by 3PLs to carriers in specific lanes:

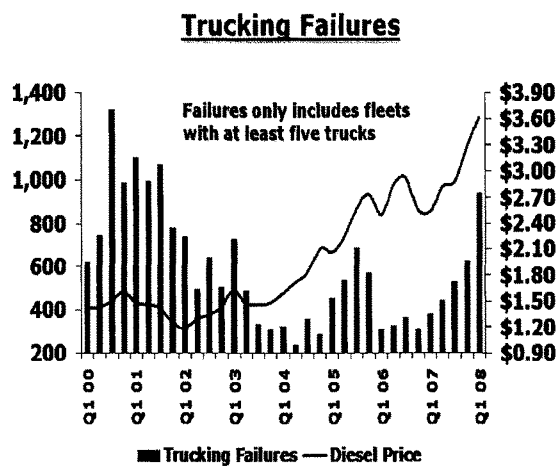
St. Paul, MN to Laredo, TX	$397 increase
San Francisco, CA to Seattle, WA	$210 increase
Los Angeles, CA to Minneapolis, MN	$317 increase
Baltimore, MD to Eugene, OR	$267 increase

These rate increases represent what the 3PL paid to obtain the truck, but the actual increase paid by the shipper to the 3PL is less. In other words, even though 3PLs cannot recover the increase in the cost of fuel from their customers, 3PLs are paying motor carriers more to cover the cost of the fuel increase. In effect, the 3PLs are *absorbing* some of the increased cost of fuel for their carriers, and accepting *lower* profit margins as a result. If these, the largest companies in the industry with the greatest market share are not profiting from fuel surcharges, then no one is. It is utterly false, therefore, to claim that brokers and other 3PLs are profiting from fuel surcharges.

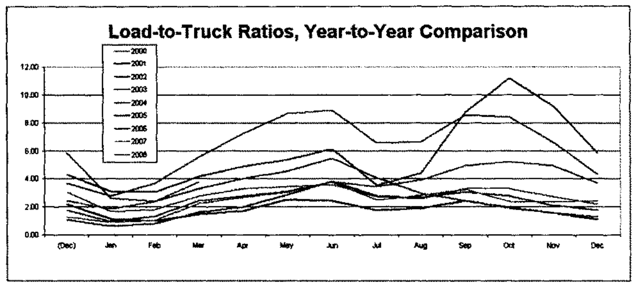
2. Affects of Rapidly Increasing Fuel on the Trucking Industry

The economy and the corresponding amount of freight being shipped coupled with fuel costs and an overcapacity of equipment have had a severe impact on trucking companies. When the amount of freight being shipped declines the demand for trucks decline. When demand drops, utilization of the truck drops as well. During times like the first quarter of 2008, when freight shipped was particularly low, carriers have had to travel greater distances without a load (deadheading) in order to get another load. Shippers and 3PLs generally only pay for truck moves when they have a load on the truck, so these deadhead miles are not generally covered. When fuel prices spike and empty deadhead miles increase in search of a load, it is a perfect storm for the carrier.

The chart below indicates carrier failures compared to the price of fuel. The chart indicates that there is not a direct correlation between the price of fuel and carrier failures. During the period 2000 to 2003, for example, as fuel slowly increased in price, the number of carrier failures dramatically increased. During the period of 2003 to 2005, however, as fuel sharply increased, carrier failures fell to their lowest point during the eight year period. Even today, failures are not as severe as the very dramatic increase in fuel would seem to indicate. The following chart adds further explanation to the fuel/failure chart. During the period 2000 to 2003, when carrier failures were at their highest and fuel was fairly stable by today's standards, the chart indicates



Sources: Avondale Partners, LLC



that freight was a low 2.5 loads per truck. The combination of scarce freight and high fuel costs led to carrier failures. By the same token, during 2003 to 2005 as fuel spiked, the number of loads available to trucks increased to a high of 11 loads posted for each truck posted, leading to the lowest carrier failure rate during the eight year period. The same can be seen comparing both charts during 2006. It is only when the economy started to slow during 2007 and the first quarter of 2008 with freight low and fuel high that the carrier failure rate increased.

Yet, even the current failure rate of carriers does not correlate to the failure rate during the period 2000 to 2002. For example, there were nearly 1,400 carrier failures during the third quarter of 2000 with fuel at $1.50 a gallon. If there was a direct correlation between fuel and failures then today, with fuel over $4.00 a gallon, carrier failures could be expected to be in the thousands, but they are not. The question then is why not? TIA believes that the relatively low carrier failure rate during a period of severely spiking fuel costs and decreased available freight results from shippers and 3PLs paying fuel surcharges to their carriers. The real issue affecting carriers, therefore, is the weakened economy, which has reduced the number of loads available for them to haul. As the economy improves, even with high fuel costs, carriers should do fine. This could be why there are no motor carrier organizations supporting either S. 2910 or H.R. 5934.

3. The 3PL – Motor Carrier Industry is a Dynamic Market

3PLs buy carrier capacity on a load by load, or spot market basis. The rates offered to the carrier adjust load by load based on truck supply and freight demand in the local market, fuel costs, and the urgency of the shipment. When the 3PL and carrier begin their negotiation, the carrier generally asks for a total rate for the load including the cost of fuel. If the carrier wants, the 3PL can break out the cost of fuel. The transaction between the 3PL and the carrier is a negotiation. The 3PL knows what it is going to receive from the cargo shipper and so it tries to obtain truck service at a lower rate so that the 3PL's costs are covered. As previously indicated, in many instances in today's market, the 3PL may pay more to get the truck than they thought they would. Just as the carrier alone decides whether to take a load at an offered rate, the 3PL alone decides whether or not to hire the truck. The 3PL could, for example move the load by railroad, which is generally less expensive for long moves.

The dynamic nature of the market coupled with spiking fuel costs and scarce freight from a weak economy create the perfect storm for carriers. Typically, the carrier pegs its fuel surcharges to the date the load is booked, say \$3.00 on April 1. The load might actually move however, on April 10 when fuel costs \$3.25 and the carrier will receive the money for that load on May 8 when he is paying \$3.75 for fuel. In a dynamic market economy, carriers need to know how to be profitable and manage current and expected costs.

The carrier alone decides how much they need to profitably handle the specific shipment on a specific day. Just as 3PLs are free to reject a load from a shipper unwilling to pay enough to cover the 3PL's costs, carriers are free to say no to freight that they do not think provides adequate or fair compensation. If a carrier does decide to take the load at the rate offered, that is its choice alone—and the federal government should not be asked to protect the carrier by law from the exercise of poor business judgment if the load is accepted at rates that are too low to cover the carrier's costs.

There are services that provide tools to carriers to help them understand where they are most likely to obtain their next load. With this information, a carrier that takes a load to an area in which there is a paucity of backhaul freight should seek a higher rate to the area since they will likely receive a lower rate coming out of the area.

TIA makes it easy for carriers to find loads from TIA members. Loads posted by TIA members are marked with the TIA logo on all of the major freight listing services. There is no excuse, therefore, for carriers to take non-remunerative loads from 3PLs offering to pay rates that are below the carrier's costs.

4. The TRUCC Act Will Result in Re-Regulation and Lawsuits

The Trust in Reliable Understanding of Consumer Costs (TRUCC) Act, is not necessary, will re-regulate the industry, will create a lawsuit nightmare for shippers, carriers, and 3PLs, and will harm owner operators.

a. The TRUCC Act is Not Necessary

As indicated earlier, shippers and 3PLs are paying fuel surcharges to carriers, sometimes at a loss to the 3PL. If shippers and 3PLs were not paying fuel surcharges to carriers, the truck failure rate would be significantly higher than what it is and our members would not be able to find trucking companies willing to work with them.

The real problem for carriers is the high price of fuel coupled with a weak freight market. The TRUCC Act will do nothing to affect these issues. The price of fuel will only come down when fear and speculation is reduced in the world, the value of the U.S. dollar increases, and the U.S. produces more oil domestically. The amount of freight being shipped will increase when the U.S. economy comes out of recession.

b. The TRUCC Act will Re-Regulate the Industry

The second provision of the TRUCC Act

> (2) at the time payment is made under paragraph (1), a written list that specifically identifies any freight charge, brokerage fee or commission, fuel surcharge or adjustment, and any other charges invoiced or otherwise presented to the person described in paragraph (1).

would, if enacted, turn the clock back on 28 years of economic deregulation in the motor carrier and third party logistics industries; industries that are the envy of the world because of our efficiency and innovation.

The TRUCC Act would essentially return the industry to the era of rate tariffs that ended in the mid-1990s. If enacted, the TRUCC Act will require every broker, forwarder, and motor carrier to detail their income on every load. In no other American business has Congress so repudiated deregulation and private enterprise. More than 90 percent of the 3PL and motor carrier industry are small family owned businesses. If enacted, the TRUCC Act will severely harm these family run businesses, cripple creativity, eliminate innovation, and stifle competition. Every carrier, broker, and forwarder would know what every other carrier, broker, and forwarder is making. This information would lead to a reduction in competition, which would lead to a rush to consolidate, which in turn, would further reduce competition.

Mandatory disclosure of what private companies earn would be a repudiation of Congress's support for the free market and family run business. For 28 years since the passage of the Motor Carrier Act of 1980, U.S. 3PLs and the trucking industry have created the most efficient transportation and logistics system in the world. It should be noted that not a single trucking association supports this return to 1930's style regulation.

c. The TRUCC Act will Result in a Lawsuit Nightmare

The TRUCC Act would require the disclosure of actual fuel surcharges and fuel costs, freight charges, commissions, and all other charges associated with every load, so that the owner-operator can police how much the shipper is paying the 3PL and demand a larger share of the revenue earned by the 3PL. The TRUCC Act is supported solely by the Owner-Operator Independent Drivers Association (OOIDA), an organization well known for its lawsuits against trucking companies. A quick look at the OOIDA website (www.ooida.com), shows that OOIDA is currently involved in dozens of lawsuits against trucking companies and 3PLs.

Previously, OOIDA sought fuel surcharge legislation in 2005. That version contained a specific lawsuit provision for enforcement. Congress declined to act on that bill to avoid a new rash of lawsuits brought by OOIDA. In the TRUCC Act, OOIDA is much more clever. They first expand the scope of the legislation to include all pricing information and then eliminate any specific reference to lawsuits. The Interstate Commerce Act at §14704(a)(2), however, provides for private lawsuits to enforce any aspect of the Act.

The lawsuit provision is, therefore, a component of the current legislation. If enacted, Congress would be handing OOIDA a weapon to use against shippers, brokers, forwarders, and the very motor carriers they claim to help. It is incongruous to imagine Congress knowingly unleashing a new nightmare of lawsuits against America's family run small businesses.

d. The TRUCC Act will Harm Owner Operators

The legislation being proposed purports to be a simple fix to a complex problem. In recent years Congress has seen how easily legislation meant to remedy one problem can have unintended consequences that create worse problems. The same is true here. We believe that one of the most likely effects of the TRUCC Act would be to give shippers and 3PLs a strong incentive to avoid disclosure of their margins and the exposure to lawsuits under the Act by avoiding altogether the use of carriers that utilize owner operators. Such a result would have a devastating effect on the very people this proposal is supposed to help.

CONCLUSION

The Transportation Intermediaries Association urges the Congress to reject the TRUCC Act (HR 5934 and S 2910) as an unnecessary return to heavy handed government regulation of an essential world class industry.

1625 Prince Street, Suite 200
Alexandria, Virginia 22314-2818
703.299.5700
703.836.0123 fax
www.tianet.org

TIA
Transportation Intermediaries Association

December 8, 2008

The Honorable Peter DeFazio
Chairman
Subcommittee on Highways and Transit
U.S. House of Representatives
Washington, DC 20515

Platinum Performance Program

WATCHDOG

TIA is the U.S. Member of FIATA

TIA FOUNDATION

TIA CTB

3PLU

TIA SERVICES

TAMTEX

Dear Chairman DeFazio:

Thank you again for the opportunity to testify and to respond to the follow-up questions from your letter of November 17th. Below please find our responses and we would welcome the opportunity to meet with you to discuss them further at your earliest convenience.

Several bills have been introduced in the 110th Congress requiring fuel surcharges collected by a motor carrier or broker be passed through to the drivers bearing the cost of fuel, as well as the disclosure of these or any other charges invoiced by the motor carrier or broker. What impact would this disclosure requirement have on your business?"

The private right of parties to review transaction details is already provided in current regulations (49 CFR 371.3 and 376.12). The legislation introduced in the 110th Congress would have made the details public. By requiring this information to be published, it would serve to re-create a tariff doctrine, which would serve to limit competition and reduce service. This would happen, because competitors could easily discover what each other were charging for specific shipments and specific lanes. We believe the results would be to erode motor carrier profits and collapse the very competitive, fragmented, and highly specialized niche markets into larger entities, which in turn would increase any real or perceived monopsony power in the market.

Specifically, the TRUCC Act would require burdensome public disclosure by brokers and carriers on every invoice, not just upon request. Brokers and carriers could easily track each others' profits and use this information to their favor in rate negotiations. With such specific pricing information, companies would be placed at a significant disadvantage in negotiations that would only serve to drive profits down and cost jobs, which in turn will drive industry consolidation.

The disclosure language in the TRUCC Act would force brokers and carriers to disclose confidential rate information on every shipment involving an owner operator. Conversely, CFR 371.3 allows an owner operator that works directly with a broker to ask to see the details surrounding the transaction. If that owner operator takes a brokered load, but through the trucking company to whom they are leased, CFR 376.12 provides them with the right to see the details of their transaction with that carrier. The TRUCC Act would expand the disclosure of this information from a voluntary business decision to a tariff requirement. This type of margin disclosure does not exist in any other business.

The TRUCC Act also failed to take into account the very complex and interconnected nature of today's global supply chain. An international shipment, for example, starting by truck in China, then moving by ship to the U.S., moved by drayage carrier to a railroad for transcontinental movement, and then delivered by an owner operator would have to have the fuel for that owner operator identified. Another example would be that of a package that is consolidated into a truckload movement, for which the fuel surcharge related to that package and due to the owner operator would need to be identified.

The TRUCC Act and others failed to recognize the competitive nature of logistics to a shipper's business. Shippers opposed the proposed legislation because they did not want their sensitive logistics information published and known by their competitors. It is likely that shippers would dictate that only trucking companies with company drivers be used to move their freight.

The most likely result from passage of the TRUCC Act would be a wholesale movement by brokers away from trucking companies that use owner operators to avoid the burdensome requirements and the need to reveal sensitive pricing information.

"In your testimony you state that a carrier that takes a load from a TIA member knows they will be paid. However, we have heard about brokers that have failed to pay small trucking companies for carrying a load or otherwise failed to live up to their end of their agreement. What programs does TIA have in place to weed out these bad actors? Does TIA do anything to police bad actors outside of their membership?"

We strongly support punishing "bad actors" in the marketplace. TIA members are governed by the strict TIA Code of Ethics, which among other provisions, requires members to pay their carriers whether they get paid by their shippers. TIA has an Ethics Committee to act as a carrier's ombudsman in investigating complaints about our members.

TIA tracks its members' transportation credit via the TransCredit service. TIA also randomly inspects a certain percentage of our membership each month to ensure that their license, bond, and other requirements are up-to-date. All TIA members are identified with the TIA logo on the load boards where carriers go to secure loads from brokers.

TIA has launched its *Performance Certified* Program that allows members to voluntarily secure a higher surety bond than the $10,000 required by law. Many of our members now have a $100,000 surety. All *Performance Certified* companies have verified broker sureties, verified financials, and credit scores of at least 90. These members are identified with a distinctive logo on the freight matching boards where carriers go to secure loads from brokers.

In addition, TIA maintains a product called *TIA Watchdog®* that allows our members to report problem brokers and carriers with non-payment issues or other egregious problems to a central database. *TIA Watchdog®* allows participants to report inappropriate behavior and allows the accused the opportunity to address and rectify the situation. In this way, we communicate about bad brokers/carriers as this tool polices TIA members and non-members.

The major public load boards, TransCore, Internet Truckstop, and Getloaded.com, who sell their services to both brokers and carriers also track complaints against brokers and carriers. Each of these services takes a different approach as to how they deal with problem actors. The important thing to understand is that the private sector is addressing the issue.

The Federal Motor Carrier Safety Administration (FMCSA) has strong statutory authority to investigate complaints against rogue brokers and carriers. The ICC Termination Act transferred all of the Interstate Commerce Commission's enforcement authority to FMCSA. TIA welcomes the opportunity to work with FMCSA to improve their enforcement of broker and carrier regulations.

The way the very dynamic market works is for the broker to enter into long term contracts with shippers to move their freight at specified rates, or to negotiate spot rates. The broker must then find a carrier to move the freight. The market is one of buy/sell not a negotiated sale like that of a house transaction where all parties are at the same table. The competitive nature of the market is such that the broker pays the carrier in a matter of days from clean proof of delivery and then bills the shipper who may takes months to pay the broker. Carriers that wait for the broker to be paid before the broker pays the carrier are working with the wrong brokers. Since brokers pay their carriers prior to being paid by their shipper, it is not uncommon for TIA members to pay carriers thousands of dollars each year even though the shipper has not paid the broker. Many TIA members pay tens of thousands of dollars in premiums to "insure their receivables" with reputable insurance firms, who assist in the credit checking of all new and existing shipper clients.

In addition to these services, TIA members advance cash via wire, to carriers before the load delivers to help with costs and cash flow and to make their freight more attractive to the driver marketplace. Most TIA brokers provide critical assistance to trucking companies, including: financing and advance payments, sales and marketing by having numerous offices and sales professionals around the country to find freight for carriers, insuring 100% of the carrier's receivables for that broker's freight and collection from the shipper; and investing millions of dollars in sophisticated software to meet the needs of shippers.

"Several bills have been introduced in the 110th Congress requiring fuel surcharges collected by a motor carrier or broker be passed through to the drivers bearing the cost of fuel. You urge Congress to reject fuel surcharge legislation in your testimony. What are your concerns about this legislation?"

There are multiple concerns about this legislation. The TRUCC Act falsely assumes that brokers are not paying carriers and owner operators for higher fuel costs. If that were the case, our member's profit margins should have increased from January to June 2008 when fuel costs hit record highs. A look at TIA members' balance sheets shows just the opposite.

Fuel is a cost of doing business and the industry takes these costs into consideration just as they do wages, rent, interest rates and insurance costs. The fuel surcharge collected from the shipper relates only to the fixed freight rate we negotiate with the shipper. This rate does not fluctuate with fuel costs or the market rates but the fuel surcharge is used to accommodate fuel cost fluctuations. Our members' rates with carriers on the other hand fluctuate daily or even hourly based on the cost of fuel, supply and demand, and the services required for shipment.

Carriers negotiate the total payment on each shipment, including fuel. Passing the shipper's fuel surcharge through to the carrier would be double paying for fuel. Alternatively, our members would simply deduct the shipper fuel surcharge from the total rate negotiated with the carrier and the balance would be the base rate to the carrier. In the end, there is no net gain to the carrier.

The legislation failed to distinguish between truckload and less than truckload. In addition, many shipments today involve multiple modes of transport negotiated through a third party logistics company as a single rate; there is simply no fuel surcharge formula to address the complexities of such moves. The competitive global supply chain does not lend itself to a one-size-fit all government down approach. Nor does the dynamic nature of the diesel marketplace lend itself to a static regulatory approach. Shippers, brokers, and carriers should be free to negotiate the line haul and fuel surcharge rates that meet the needs at the time of the shipment.

"Some say that requiring fuel surcharges or regulating how fuel surcharges are implemented is a step toward reregulating rates in the trucking industry. Are the economics of the trucking industry such that the government needs to step in and regulate freight rates?"

No, the government does not need to step in to re-regulate freight rates. With a worsening economy, artificially supported rate structures would increase the cost of motor truck transportation for customers and the end-users of the commodities being transported. This is evidenced by the decrease in rates after the Motor Carrier Act of 1980 was passed. The current regulatory structure in the trucking industry has successfully existed for almost 30 years and has been tested in recessionary and expansionary markets.

Prior to 1980, when the transportation industry operated under intense regulation, the cost of logistics exceeded 16% of US GDP. Today's transportation industry represents less than 10% of US GDP, largely due to the fluid nature that carriers and shippers can change direction based on market opportunities.

American productivity and our nation's ability to move goods to market quickly, efficiently and inexpensively is far too critical to our nation's economic health to risk the catastrophic impact of rate regulation.

Sincerely,

Robert A. Voltmann
President

Statement of

The Associated General Contractors of America

Presented to the

Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives

For a hearing on

Rising Diesel Fuel Costs in the Trucking Industry

May 6, 2008

Building Your Quality of Life

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 33,000 firms, including 7,500 of America's leading general contractors, and over 12,500 specialty-contracting firms. Over 13,000 service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
2300 Wilson Boulevard, Suite 400 • Arlington, VA 22201 • Phone: (703) 548-3118 • FAX: (703) 548-3119

STATEMENT OF
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
MAY 6, 2008

Introduction

The Associated General Contractors of America (AGC) respectfully submits the following comments on rising fuels costs in the trucking industry. AGC has observed dramatic increases in the price of diesel fuel, along with other construction inputs, since December 2003. AGC is concerned about proposals to suspend all or part of the federal excise on gasoline or diesel to provide relieve to consumers. AGC is concerned that such a proposal would further deplete the Highway Account of the Highway Trust Fund, which is already projected to be in deficit during fiscal year 2009, and lead to significant cuts in transportation maintenance and improvement programs nationwide.

AGC is concerned the nation may be facing a "perfect storm" set of conditions that could lead to a substantial downturn in the construction of highways, bridges, transit, and other transportation facilities. One of the major areas of concern is dramatic construction material cost inflation – driven largely by the rising cost of diesel – which has greatly reduced the purchasing power of the public works dollar.

While economic data show that public investment in transportation infrastructure has remained relatively stable over the past year, these numbers do not tell the full story. An industry survey of states indicates that many have cut back on the number of highway projects going out to bid in the last year because of the significant increase in highway construction material costs. As a result, fewer contracts are going out to bid which leads to less work for contractors and fewer jobs for their employees.

The Bureau of Labor Statistics' research shows that the Producer Price Index (PPI) for highway and street construction rose 56 percent from December 2003 to March 2008. This compares to a 16 percent increase in the Consumer Price Index (CPI) over the same period of time. The PPI reflects the dramatic increase in the cost of basic building materials, including: diesel fuel, steel, cement, asphalt, aggregate and other materials.

Diesel Fuel Prices

The rising price of diesel fuel has contributed significantly to the rate of construction material inflation. According to the Energy Information Agency (EIA), the average price of diesel fuel in the US was $4.33 on May 12, or 56 percent more than a year ago. From December 2003 to March 2008, the cumulative change in the PPI for diesel fuel was 262 percent.

The construction industry is a fuel intensive sector of the economy; the most diesel-intensive construction segment is highway construction. Contractors use diesel to power earthmoving and other offroad equipment as well as construction vehicles such as dump trucks, concrete mixer and pumpers, and tower cranes. In addition, contractors pay fuel surcharges on deliveries of equipment and materials to job sites and on backhauls of dirt, debris, and equipment. Diesel costs and fuel surcharges also work their way into the prices of many materials that require fuel to mine, manufacture, mill, mix, and move throughout the production process.

AGC predicts that diesel fuel prices will average 20 to 40 percent more in 2008 than in 2007. As diesel fuel prices and other construction inputs continue to rise, the cost of construction will further increase. AGC predicts that highway construction material costs will grow in the 10 to 15 percent range during the remainder of 2008, compared to about 4 percent for the CPI, and in the range of 6 to 8 percent for the next several years.

Highway Trust Fund Solvency

In addition to high diesel prices, the projected shortfall of Highway Trust Fund revenue in fiscal year 2009 would heighten the "perfect storm" scenario and result in a further cutback in transportation projects that would not only have a drastic effect on the transportation construction industry, but also on the US economy as well. The construction industry employs more than 7 million people (about 5 percent of total employment) and represents more than $1 trillion annually in economic activity including the purchase of $500 billion in materials and supplies and $36 billion in new equipment. Construction represents over eight percent of annual US gross domestic product.

When Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users—or SAFETEA-LU—in August 2005, guaranteed funding for the federal highway program was set at the highest annual levels for fiscal years 2005 through 2009 that could be supported by projected Highway Account resources. Not only did the bill spend all of the projected revenues into the Highway Account through 2009, it also spent down the accumulated cash balance in the Highway Account, envisioning virtually no cash reserve when SAFETEA-LU expires on September 30, 2009.

However, the Bush Administration's fiscal year 2009 budget forecasts that revenues for the Highway Account of the Highway Trust Fund will actually fall short of meeting SAFETEA-LU's highway investment commitment by $3.7 billion. As a result of this shortfall, Highway Account revenues would only be able to support a $29.2 billion highway program in FY 2009, which is $14 billion—or nearly 34 percent—below the amount guaranteed by SAFETEA-LU.

AGC commends both chambers of Congress for having passed budget resolutions that assume the full $41.2 billion highway investment guaranteed for FY 2009. But Congress still has to address the pending Highway Account insolvency to assure this recommendation can be realized in this year's appropriations process.

Senate Finance Committee Chairman Max Baucus and Ranking Republican Charles Grassley made a commitment to find the necessary revenue to keep the Highway Trust Fund whole for the life of the current authorization. They honored that commitment when the Finance Committee developed a three-part plan—the American Infrastructure Investment and Improvement Act, S. 2345—that would:

- Compensate the Trust Fund for emergency highway spending since 1998;
- Suspend exemptions from the federal motor fuels taxes for six months; and
- Reduce motor fuel tax evasion.

The proposal would generate an estimated $5.1 billion for the Highway Account between now and the end of FY 2009, which would be sufficient to support a $41.2 billion federal highway investment in FY 2009 as called for in SAFETEA-LU and possibly provide a small cash cushion for the SAFETEA-LU reauthorization process. AGC strongly support this proposal, even though it is temporary, and urges the Subcommittee to support enactment of the Senate Finance Committee proposal.

"Gas Tax Holiday"

Given the financial state of the Highway Trust Fund and the rising cost of construction due largely to the dramatic increase in the price of diesel fuel over the last few years, AGC is very concerned about proposals to suspend all or portion of the federal motor fuels tax on gasoline and diesel to provide temporary consumer relief at the pump.

The federal motor fuels tax is not a tax in the traditional sense. Since it was established in 1956, it has served as a user fee to generate revenue for the Highway Trust Fund to support federal investments in state and local highways and in public transportation. A pause in the collection of the federal motor fuels tax would do little to help the driving public or stimulate the economy, and do nothing to address the root causes of escalating fuel prices. This proposal would establish a bad precedent of suspending collections needed to finance highways, bridges, and transit programs.

Even the most optimistic scenario shows that a "Gas Tax Holiday" would save the average motorist consuming gasoline less than 30 cents per day, or about $30 over the summer months, depending on whether the savings would actually be passed on to consumers at the pump. The cost to the Highway Trust Fund, however, is much greater. A three-month suspension of the federal motor fuels tax would cost the Highway Trust Fund about $9 billion at a time when the Highway Account of the Highway Trust Fund is expected to be in deficit by as much as $3.7 billion in FY 2009. A "Gas Tax Holiday" would make that deficit grow to almost $11 billion, which would wipe out the entire federal-aid highway program next year.

Proposing to reimburse the Highway Trust Fund for lost revenue with General Fund revenues or other offsets is poor public policy because it would undermine the user fee concept that has been the success of the federal transportation program since its inception, shifting costs from users to taxpayers at large. There is no guarantee the reimbursement would occur. With the federal budget already projecting a $410 billion deficit in FY 2008, a General Fund reimbursement would make this situation worse.

A feel-good break in the federal motor fuels tax is no substitute for a comprehensive energy policy that decreases our dependence on foreign oil. The proposal would not do anything to increase our supply or curb demand for fuel. In fact, if successful, it would induce demand for fuel. AGC strongly urges the Subcommittee to oppose all proposals to suspend the federal motor fuels tax.

Impact on Construction Jobs

The combination of rising construction materials prices and the threat of a 34 percent reduction in states' federal highway funding in FY 2009 if the Highway Account of the Highway Trust Fund is not replenished, along with eroding revenues at the state level, many states will have no option but to stop work on highway projects, putting thousands of construction workers out of jobs.

The impact from the cutback in contracts being bid by state DOTs is already being felt. Heavy and civil engineering construction employment peaked in January 2007 and has steadily decreased over the past 15 months. There was more than a 3.5 percent decrease in construction employment over that time period, which equates to 35,000 construction employees now out of work. An industry survey of transportation construction businesses indicates that future layoffs are a very real possibility if states continue to cut back on the number of contracts going out to bid. This worrisome trend should not be allowed to continue. The potential cut of as much as 34 percent in highway program funding in FY 2009 would lead to further job loss only making this situation worse.

Conclusion

AGC predicts that the price of diesel fuel will average at least 20 percent more in 2008 than in 2007; gasoline prices will also likely remain high. Fuel prices will continue to erode the public works dollar and, combined with the uncertainty of federal highway funding, will lead to additional cutbacks in construction spending and higher unemployment in the sector.

The American public and the trucking community are justifiably concerned and anxious over the continuing rise in the price of fuel. While suspending the federal motor fuels tax on gasoline and diesel seems like a good idea at first glance, closer inspection reveals that the economic costs far outweigh the slight benefit that might result. The $9 billion cost of suspending the user fee for three months means not only that there is $9 billion less to spend on the nation's aging and congested transportation system, but also that 300,000 highway construction jobs that average over $21 an hour are put at risk. Regardless, a "Gas Tax Holiday" leaves the public with the mistaken impression that the federal motor fuels tax is the reason for higher fuel prices notwithstanding the fact that the rate has remained constant for 15 years. Congress should not support this proposal.

Furthermore, the fact that the pending Highway Trust Fund insolvency will not occur until FY 2009 belies the fact that Congress cannot waste time resolving the problem. This has to be addressed quickly or it will have a serious negative impact on highway construction this year, compounding the economic downturn and partially thwarting the recent efforts of Congress to stimulate the economy. Congress must act soon to protect states' federal highway funds.

Thank you.

AUTO RESEARCH CENTER

Before the
U.S. House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Highway and Transit

Statement of Mike Camosy
on behalf of the
Auto Research Center (ARC)

Hearing on:

Rising Diesel Fuel Costs in the Trucking Industry

May 8, 2008

Mr. Chairman and Members of the Subcommittee:

My name is Mike Camosy; I am the General Manager of the Auto Research Center (ARC). ARC is a research and development facility providing advanced technical solutions for all types of vehicles within the motorsports, automotive, and trucking industries based in Indianapolis, Indiana. ARC has been in business since 1999 and is widely known in the racing industry as the leader in aerodynamic research and development - boasting one of America's finest rolling-road wind tunnels. ARC has built two of the three existing scale rolling-road wind tunnels in the United States and several others in Europe. Over the years, ARC has been able to smoothly transfer its expertise in race car aerodynamics to the automotive industry and now successfully to the trucking industry as well. ARC's customer list includes several of the world's largest automotive and trucking manufacturers and NASCAR, Indy Car, Formula One, and NHRA teams.

My goal is that this testimony will move leaders in Congress to further investigate the importance of using existing and proven technology like rolling-road wind tunnels to help address the impact on the trucking industry of the fuel cost crisis in the United States.

Proven Solutions for a National Challenge

Increasing oil prices do not just affect American motorists at the pump. The cost of consumer goods is drastically climbing as transportation costs continue to rise. America needs to invest in proven technologies, already existing in motorsports, to help reverse these dangerous economic trends for both the trucking industry and the American consumer.

We know the statistics all too well. Over 2 million trucks are constantly travelling America's highways, contributing to the consumption of more than 28 billion gallons of diesel fuel nationally each year. These trucks are a critical component of our economy. Businesses from restaurants to manufacturers depend on trucks to reliable carry goods to them each day, on time and inexpensively. The cost to transport goods has continued to rise as diesel prices have more than doubled in the last four years. The result, American fleets and independent owners and operators are struggling to stay in business. And as the cost of transportation goes up the cost of consumer goods continues to rise.

This reality is made all the more problematic by the fact that most efforts to mitigate the impact of these high prices on the trucking industry are themselves expensive and require significant time to develop and deploy. Re-design of truck power units is one step that is being taken, but it will take years to deploy, and then the costs of purchasing a new power unit are prohibitive for many drivers – many of whom survive on very thin margins of profit already.

The good news is technology exists to make trucks and trailers more fuel efficient in the short –term, and at cost levels that are low enough that the improvements can pay for themselves in reasonable time frames.

The ARC rolling-road wind tunnel engineers have identified many ways to eliminate wind drag and improve fuel efficiency of large trucks. Significant percentage gains have been found in ARC's unique rolling-road wind tunnel that have not been measured before by using older traditional methods and technologies.

America can no longer afford to delay improving its use of fuel when technology already exists to achieve efficiency and save businesses from failure and hold down inflation.

From the Race Track to the Highway

ARC has successfully partnered with many worldwide leading automotive OEMs resulting in more fuel efficient aerodynamic designs. These success stories have proven motorsports research and development can be transferred from the race track to the highway. It only makes sense that the technology used to make the fastest cars on the planet can lead to more aerodynamic and therefore more fuel efficient cars and trucks.

As fuel efficiency becomes more and more important to consumers and governments, truck manufacturers face a growing demand to produce more aerodynamic vehicles. Many automotive companies have already partnered with ARC to find new ways to decrease drag and increase fuel efficiency to save customers money. OEMs realize the toughest testing environment is the race track and ARC has successfully found the winning formula for years and now that technology is being transferred from the race track to the highway.

What Do Americans Have to Gain?

I understand this committee's focus is on the cost of fuel, yet we cannot ignore the impact your decisions will have on the trucking industry and upon every American citizen. Americans have everything to gain from more fuel efficient trucks. Going to the grocery store or to the mall is becoming more and more expensive. Much of the price hike is caused by higher transportation costs related to the price of diesel fuel. Everyone knows that almost everyone

AUTO RESEARCH CENTER

shares the burden in this fuel crisis. Trucking companies that employ more than 2.5 million Americans are having difficulties and many are going out of business. Americans, especially the poorest among us, are suffering from increased gas and consumer goods prices and are finding it hard to make ends meet. More efficient trucks will save the trucking industry billions of dollars and thousands of jobs while getting consumer goods to market less expensively, thus enabling prices to return to more manageable levels for citizens.

Supply and demand mostly drives fuel costs. Increased fuel efficiency = lower fuel demands = lower fuel prices. This simple equation starts with improved efficiency and ends in lower prices for the trucking industry. In a time where elected officials are concerned about America's dependency on foreign oil, taking advantage of existing technologies that can lead to a lower demand for oil will help lesson our dependency on foreign oil.

Trucks are pulling heavy loads of goods that need to get to market, yet aerodynamic inefficiency has not been adequately addressed. Truckers and truck fleets are being marketed after-market aerodynamic products that claim to improve the aerodynamics of their trucks. The reality is that many of these devices have never been tested for their aerodynamic affect on trucks. They certainly will affect the aerodynamics, but how is the question. Truckers desperate for low-cost solutions to fuel costs are interested in making their trucks less expensive to operate but they need to know what will work.

As the Congress considers what to do to help the trucking industry, aerodynamic testing should be at the forefront of options. Congress can fund aerodynamic testing and make the data public so that the trucking industry can use it in making informed decisions about how each driver can make their truck more fuel efficient with the use of aerodynamic improvements. Validated data is the key. Trucks fuel use can be significantly improved with aerodynamic alterations that are low-cost and pay for themselves – but only if validated aerodynamic data is produced and made public. With further rolling road wind tunnel R&D significant gains can be made, resulting in greater efficiency and extending miles per gallon.

<u>Why is Rolling Road Wind Tunnel Technology a Solution?</u>

In August of 2007 I presented a white paper at the Heavy Truck and Vehicle Consortium in California. ARC performed an experimental investigation of the aerodynamic impact of rotating wheels on both simplified and detailed truck models. For this study, wind tunnel measurement of aerodynamic forces and surface pressures were used in both stationary road and rolling road conditions.

The research revealed that the effects of rotating wheels on aerodynamic forces, as compared to stationary wheels, are dependent on the interaction of the flow around the rotating wheels and the base wake of the trailer, as well as the changes in flow separation points between the stationary versus rotating wheels. These results emphasize that wind tunnel testing with rotating wheels is indispensable during the aerodynamic development process to design an aerodynamically optimal truck.

ARC
AUTO RESEARCH CENTER

Since the first oil crisis in the 70's, truck aerodynamic efficiency has been a focus of scientific investigation using generic truck models. As a result, a significant number of possible aerodynamic solutions have been suggested. However, many of these designs have failed to see mass acceptance within the trucking industry. Two of the main reasons for this lack of acceptance are:

- Overall tractor-trailer design is limited by federal regulations as well as the current infrastructure in which they have to operate (loading platforms, etc.)
- Tractor shape is designed to meet the sometimes conflicting requirements of aerodynamic performance and styling which are driven by customer desires.

However, it is increasingly obvious that fuel efficiency will continue to play a paramount role in the transportation industry. Therefore, it is imperative that aerodynamic solutions are found which can be adopted by the majority of the trucking industry. Previous research has shown that rotating wheels play a major role in the overall aerodynamic development of a passenger car. This study shows that the same is true of semi-trucks. Therefore, truck design should include rolling road wind tunnel testing early on in the product's development cycle.

Experience at the Auto Research Center with various vehicles ranging from passenger cars to open wheel racecars has shown that rotating wheels play a key role in aerodynamic performance. In many tests at ARC it has been found that changes made to a vehicle may show a drag decrease in a fixed floor tunnel test, yet show an increase when the wheels are rotated. It must also be said that the opposite effect has also been witnessed. This highly nonlinear interaction of rotating wheels with the overall airflow around the vehicle must be considered carefully when designing aerodynamically optimal vehicles. This study confirms that this is also the case for tests conducted with rotating wheels on both standard production vehicles and class 8 trucks. Each evaluation yields similar dependency trends, which emphasizes that drag reductions found with fixed non-rotating wheels are at times drag increases once the wheels are rotated and vice versa.

In the paper we investigated the influence of rotating wheels on semi-truck aerodynamics. The baseline configuration was based on the generic simplified truck previously studied by NASA. This model was further refined to include rotating wheels as well as additional details to study flows in the engine compartment and the underbody of the tractor and trailer. Further comprehensive testing with rotating the wheels on semi-trucks while utilizing several underbody flow devices was conducted utilizing two base models, the NASA generic model and a more representative truck model.

In summarizing the research, ARC built a copy of NASA's GCM semi-truck model and tested it in ARC's rolling road capable wind tunnel. Comparison tests between ARC's GCM and NASA's GCM showed good correlation between force and pressure data for the non-rolling road condition through various beta sweeps. Additional comparison runs between ARC's GCM both with non-rotating wheels (NRW) and rotating wheels (RW) were completed. These tests highlighted the importance of understanding and managing the overall flow field resulting from the rolling road effects. For both model configurations, NRW and RW, the road off conditions

Auto Research Center • 4012 Championship Drive • Indianapolis, IN USA 46268 • Phone 317-291-8600 • Fax 317-291-8700

AUTO RESEARCH CENTER

gave closely matching results. However, the road on condition revealed quantitative differences between the road off conditions with respect towards each model configuration as well as differences between these configurations themselves while tested in the road on condition.

The ARC detailed model tested in the tunnel represented a more "real world" class 8 truck. Multiple pieces to this model were systematically fitted to build it to a more accurate final specification as individual test runs. While fitting these basic parts, several of them caused a reversal of force trends between the road off and road on conditions. A combination of three of these basic parts, (landing gear, air tank, spare wheel), actually recorded a 0.42% drag increase in the road off condition, while recording a 0.95% drag decrease in the road on condition representing a 1.4% variance.

During initial testing of ARC's first rolling road scale model semi-truck, it was very quickly discovered that without rolling road testing, semi-truck development could be misleading given the trucking industry's current testing methodologies.

Conclusion

As the trucking industry faces many challenges in a time of unprecedented fuel prices intelligent efforts must be focused on improved efficiency. Long-term solutions can be found immediately with more research on scale rolling-road wind tunnels like ARC. It is critical that the industry investigates and implements existing proven technologies that have worked in the racing and automotive industries for years. The longer we wait the worse this particular economic struggle will become.

Congress can help by exploring the immediate benefits that validated aerodynamic data on trucks can provide to the trucking industry and the nation's consumers.

The SmartWay program is well positioned to lead the way into new forms of R&D including rolling-road wind tunnel testing. Increased funding would enable SmartWay to investigate technologies allowing for more efficient new semi truck design and more efficient aftermarket product design and testing.

Auto Research Center • 4012 Championship Drive • Indianapolis, IN USA 46268 • Phone 317-291-8600 • Fax 317-291-8700

ARC
AUTO RESEARCH CENTER

STATEMENT FOR THE RECORD

NATSO, Inc., Representing America's Travel Plazas and Truckstops

Hearing on Rising Diesel Fuel Costs in the Trucking Industry

Subcommittee on Highways and Transit

Committee on Transportation and Infrastructure

U.S. House of Representatives

May 6, 2008, 10:00 a.m.

2167 Rayburn House Office Building

NATSO appreciates the opportunity to submit the following statement for the record for the Committee's May 6, 2008 hearing on Rising Diesel Fuel Costs in the Trucking Industry. NATSO is a national trade association representing travel plaza and truckstop owners and operators. NATSO represents over 1,000 travel plazas and truckstops nationwide, owned by more than 250 corporate entities. Truckstops and travel plazas sell approximately 75 percent of all diesel fuel in the United States, contributing $31 billion in federal, state, and local tax revenue annually.

As the price of diesel fuel continues to rise to record-breaking levels, NATSO's truckstop members are very concerned about the impact high diesel prices are having on their customers. We recognize the strain these record-breaking prices are having on the trucking industry and call on Congress to take action to address the country's long-term energy challenges. It is widely recognized that the leading factor in the rapid escalation of both gasoline and diesel prices is the rising cost of crude oil. Crude oil prices have topped new records this year, surpassing $120 a barrel. Several factors have created the "perfect storm" leading to this rapid price run-up: a weak currency; excessive speculation on the energy commodities markets including expansion of unregulated "over the counter" exchanges; and a blind reliance on the rapid development of alternative fuels without encouraging the simultaneous development of domestic oil supplies.

While the rise of fuel prices has led to accusations of excessive profits in the oil industry, one thing is certain: retailers of diesel fuel are encountering as much economic hardship as consumers from these increases in oil prices. It is important for Congress to understand that truckstops and travel plazas are not "Big Oil." They are independent businesses, many of which are single stop, family owned operations. Like the truck drivers who rely on diesel fuel to run their businesses, the high cost of fuel is having a serious financial impact on NATSO's truckstop members, who have no control over the price they pay for diesel. Only a couple of years ago, a tanker-truckload of diesel cost a truckstop operator a little more than $10,000. Today, that load costs more than $32,000. This has had a serious impact on the smaller, independent operators who are struggling to simply maintain their inventories. Diesel costs are climbing at a much faster rate than the credit lines of the truckstop operators, and many operators are now in the position of having to manage their businesses with a negative cash flow.

According to Oil Price Information Service (OPIS), retail margins on diesel fuel have dramatically declined, and in many parts of the country, retailers' margins are not covering their costs. With credit card and fuel card fees ranging from 8 to 12 cents per gallon and transportation costs ranging from 2.5 to 3.5 cents per gallon, many retailers are actually losing money on every gallon of fuel sold. Today's average margin on diesel fuel, according to OPIS (May 6, 2008), is 8.8 cents per gallon nationwide, compared to 18 cents per gallon one year ago. In 32 states, OPIS data reveals that average margins are less than 10 cents per gallon. Combined with overall depressed retail margins due to the slowing economy, there is no question that if high fuel prices continue to escalate, many independent truckstop operators cannot survive, which will lead to a much less competitive market for diesel fuel.

Credit Card Fees Contributing to Problem

For truckstop operators, high fuel prices and thin margins are further compounded by increasing interchange fees charged to them by credit card issuers such as Visa and MasterCard. Visa and MasterCard charge retailers a percentage-based interchange fee, averaging approximately two percent of the amount of the transaction, with other costs associated with accepting the cards averaging from 0.5 percent to 1 percent of the transaction for a total cost of 2.5 to 3 percent. Because the fees are percentage based, surging fuel prices have been a windfall for credit card and fleet fuel card companies. At today's average retail diesel price of $4.16[1] per gallon, the cost of accepting credit card payments ranges from 10 cents to 12.5 cents per gallon. Without question, in today's economic environment, credit card companies are making far more profit off the sale of a gallon of diesel fuel than the retailer itself.

Furthermore, the major credit card and fleet card companies do not negotiate with merchants in setting these fees. It's a "take it or leave it" proposition, and unfortunately the retail fuel industry's business model evolved based on the acceptance of credit and fleet fuel cards. These interchange fees were originally imposed to cover the cost of the paper-based credit card transactions. However, as technology has significantly lowered the transaction costs for the credit card companies, these fees have continued to steadily increase. A small, independent truckstop simply cannot refuse to accept a Visa or

[1] Oil Price Information Service, 05/06/2008

MasterCard purchase, and differing state laws make it difficult to offer discounts for cash purchases. Congress must allow retailers to have negotiating power with Visa and MasterCard. H.R. 5546, "The Credit Card Fair Fee Act," by Representatives John Conyers and Chris Cannon, will provide retailers with a forum in which they can negotiate with Visa and MasterCard to set a reasonable interchange rate. NATSO encourages Congress to support this legislation, which will help restore balance in the marketplace between credit card companies and retailers.

Along with traditional credit cards, many diesel fuel purchases at independent truckstops are transacted with fleet fuel cards. For these truckstop operators, fleet fuel card transaction fees range from 1.85 to 3 percent, a cost of approximately 7.7 cents to 12.5 cents per gallon at today's pricing numbers. Just as Visa and MasterCard control the consumer credit card market, the fuel fleet card industry is dominated by a single company, Comdata. Comdata contractually prohibits truckstops from offering its customers lower priced alternatives and prohibits truckstops from passing on the increased costs of these transactions to the customer. Because an estimated 70 percent of diesel fuel purchases are made using a Comdata card, truckstops nationwide have the choice of either accepting this card or risk losing a significant number of customers. Following an investigation of the anti-competitive effects of Comdata acquisitions, the Federal Trade Commission noted in an analysis of its proposed consent order that this market is "highly concentrated" and that "Comdata controls the majority of that market." Truckstop operators have little choice but to accept these fleet cards from their customers. The recent surge in fuel prices has resulted in a windfall for the credit card and fuel fleet card companies, who are taking in additional revenue from retailers and consumers without incurring any new transaction costs.

Retailers Have Little Control Over Prices

We recognize that a solution to the problem of spiking fuel prices must be a long term one and NATSO strongly urges Congress to take action to solve this difficult problem. Fuel retailers are on the front line of this issue, and are often the first to receive blame for rising fuel prices. However, retailers are the final party in the distribution chain and have the least influence over prices. According to the Energy Information Administration (EIA), more than 63 percent of the price of diesel fuel is attributed to crude oil prices[2]. Refining costs and taxes account for 21 and 12 percent of the price, respectively, for a total of 33 percent of the cost of diesel fuel. The smallest component of the price at 7 percent described by EIA as "distribution and marketing," includes pipeline transportation, terminal fees, common carrier transportation costs from the terminal to the retail location, any wholesale margin and retailer costs and margins. Thus, by the time the fuel reaches the truckstop location, most of the price of the gallon of diesel fuel has been set.

Congress must revisit our country's energy policy by enacting a long-term plan that focuses on increasing domestic oil supplies in addition to furthering the development of alternative sources of energy. To date, Congress has fashioned an energy policy based

[2] Energy Information Administration, March 2008

almost exclusively on alternative fuels, and that must be re-evaluated. There is no question that a number of new fuel technologies are on the horizon, and we strongly support the development of these technologies. But the reality is that widespread use of these new fuel technologies are years away. From the current "food to fuel" situation, we are learning hard lessons about the impact too great a reliance on a single energy source such as corn-based ethanol. Our energy policy should be a dual policy of increasing domestic oil supplies **and** encouraging development of alternative fuels from a variety of sources. America's economy today depends on reliable and affordable access to traditional fuels; and its future depends on development of new sources. It is imperative that Congress approach energy policy with both of these goals in mind.

Limit Speculation in the Oil Market

A growing number of industry experts and economists are questioning the rapid increase of crude oil prices over the past year, and have pointed to increased speculation of oil trading on "over the counter" exchanges. NATSO joins other petroleum organizations calling for increased transparency of trading on exempt commodities exchanges, as well as providing the Commodities Futures Trading Commission regulatory authority over the "over the counter" exchanges. NATSO is strongly supportive of congressional efforts to bring greater transparency to the oil trading market, and supports language included in the Senate-passed version of H.R. 2419, which would grant the CFTC with the authority to regulate these exchanges.

The rapid rise in the price of diesel fuel over the last year is clearly impacting all facets of the economy, and has the potential to dramatically tighten the flow of goods throughout the country. As the retailers of over 75 percent of all diesel fuel sold in the United States, truckstop operators are on the front line of this serious problem. NATSO members are seeing their operating margins shrink, and continually increasing prices of gasoline and diesel are straining their cash flow. Unfortunately for those businesses most at risk, there are no immediate solutions to these problems. However, it is imperative that Congress move forward now, though these issues require long-term solutions, including efforts to increase the global supply of diesel and bringing greater transparency to the oil trading markets. NATSO is eager to work with Congress to help develop solutions to this issue and its impact on the retail level.