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<p>CALIFORNIA ENERGY COMMISSION ADVISORY COMMITTEE MEETING</p>

In the Matter of:)	Docket No.
)	15-PMAC-01
PETROLEUM MARKET ADVISORY)	
<u>COMMITTEE (PMAC) MEETING</u>)	

California Energy Commission
 Petroleum Market Advisory Meeting

CALIFORNIA ENERGY COMMISSION
 HEARING ROOM A, 1516 NINTH STREET

ART ROSENFELD HEARING ROOM

SACRAMENTO, CALIFORNIA

FRIDAY, APRIL 22, 2016

10:22 A.M. - 2:33 P.M.

Reported By: Peter Petty

<u>A P P E A R A N C E S</u>

Committee:

Janea Scott, Commissioner, Associate Member

Staff:

Ryan Eggers

Ivin Rhyne

Gordon Schremp

Courtney Ward

Samantha Arens

Foua Moua

Narayani Balakrishnan

PMAC Members:

Severin Borenstein, Chair, UC Berkeley

Kathleen Foote, A.G.'s Office

David Hackett, Stillwater Associates

Amy Myers Jaffe, UC Davis

James Sweeney, Stanford University

Invited Speakers:

Douglas MacIntyre, EIA

John Faulstich

Jamie Court, Consumer Watchdog

Skip York, Wood MacKenzie, WSPA

ALSO PRESENT:
Public

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1 P R O C E E D I N G S

2 APRIL 22, 2016

10:22 a.m.

3 MS. WARD: Thank you for coming here on this rainy
4 Friday. Just some housekeeping before we get into the
5 meeting. For public comment we have Foua sitting in the
6 back, who can take blue cards for any comments that you
7 have. And if you have a business card to give to our court
8 reporter, who's sitting over in the corner, that would be
9 very helpful. And please do say your full name before a
10 comment.

11 And this meeting is being recorded. For those of
12 you new to the building, restrooms are located directly
13 behind you to the left of Hearing Room B. We have a snack
14 bar on the second floor and in the case of an emergency,
15 follow us to the Roosevelt Park.

16 So now, I'm going to transition over to Severin.
17 So thank you.

18 CHAIRMAN BORENSTEIN: Thanks, Courtney. So we're
19 going to start. Amy Myers Jaffe is not here yet, but I'm
20 sure she will be here shortly. My plan is to have all of
21 the presentations and Q and A before lunch, and then do the
22 public comment, and then after lunch have the PMAC
23 discussion among the members, though possibly with some
24 questions to some of the people in the room, if necessary.
25 Does that sound okay?

1 Okay. Then our first order of business is to
2 approve the Minutes from February 8th, which were circulated
3 to the members. Dave, you have a --

4 MR. HACKETT: I do have an amendment to that.

5 CHAIRMAN BORENSTEIN: I think you're not turned
6 on.

7 MR. HACKETT: I do have an amendment, and I spoke
8 with staff about this, one of the bullets on the PMAC Member
9 Statements that's unclear, and at this point none of us can
10 quite recall what I actually said. So staff is going to
11 research that and present alternative language at the next
12 meeting, but other than that, I move that the minutes be
13 approved.

14 CHAIRMAN BORENSTEIN: Yeah. I'm wondering if we
15 should just delay and -- why don't we just delay approving
16 the minutes, because then we're going to just have to come
17 back anyway. Why don't we just do that? Now, the good news
18 is, while the minutes may not reflect what you said, the
19 recording does. So they should be able to -- why don't we
20 just wait and we'll approve them when that's been settled.

21 The second issue is the approval of the Bylaws,
22 which have gone round and round, and I think this time we're
23 actually going to do it. I read through them and they seem
24 fine to me, but did the rest of you get a chance to read
25 them and do you have corrections.

1 The only thing I noticed that's of much content
2 for us is that these terms are three years, which I think we
3 knew at some point. I did wonder whether we could change
4 that to 20 years. If we have the power to appoint ourselves
5 for as long as we want, but since the CEC actually told us,
6 I think, at the beginning there were three years, I'm
7 willing to stick with that for now.

8 MR. SWEENEY: What about 20 years to life?

9 CHAIRMAN BORENSTEIN: Yeah. Yeah.

10 (Laughter)

11 MR. SWEENEY: Didn't have to be recorded.

12 CHAIRMAN BORENSTEIN: So any comments, discussion
13 we want to have before we move further on this?

14 MS. FOOTE: I'll move approval.

15 CHAIRMAN BORENSTEIN: Kathleen moves approval.

16 MR. HACKETT: I second it.

17 CHAIRMAN BORENSTEIN: Dave seconds. All in favor
18 of approving the Draft Bylaws as the Bylaws of the PMAC?

19 MR. HACKETT: Aye.

20 MS. WARD: Aye.

21 CHAIRMAN BORENSTEIN: Aye. Opposed? We have
22 approved the Bylaws. Good. Moving right along, then.
23 Douglas MacIntyre is on the WebEx from EIA, and is -- with a
24 presentation on data transparency. Mr. MacIntyre, are you
25 there?

1 MS. WARD: He's just going to be unmuted. All
2 right, Doug. So just let me know when you're ready for me
3 to switch slides.

4 CHAIRMAN BORENSTEIN: Have we unmuted him? Doug,
5 are you on the line? But he's not speaking.

6 MR. HACKETT: He may have to unmute his phone.

7 (Pause.)

8 MS. WARD: Doug, we're just going to grab IT.

9 MR. MacINTYRE: Okay.

10 CHAIRMAN BORENSTEIN: There he is.

11 MS. WARD: Oh, good. Okay. Sorry.

12 MR. MacINTYRE: All right. Great. All right,
13 everyone, can you hear me now?

14 CHAIRMAN BORENSTEIN: Yes. Thank you very much
15 for joining us.

16 MR. MacINTYRE: Sure. I feel like a phone
17 commercial. So thank you. I'd like to thank the Committee
18 for inviting me to talk. Obviously, California is a very
19 important state and we've worked a lot with the California
20 Energy Commission over the past. So thrilled to be able to
21 help you in any way I can.

22 Going to the overview slide, the next slide, I'd
23 like to just quickly go over what information EIA has
24 available on our website, talk a little bit about how we
25 determine what information to collect and kind of give the

1 Committee members an idea of how they can insert themselves
2 into that process, and then end with how our Data Collection
3 Program is ultimately approved.

4 So going on to next slide. So EIA has a number of
5 different information pieces that could be useful to
6 California, especially during a gasoline price fight. We do
7 a survey every Monday of retail prices, both for gasoline
8 and diesel.

9 The diesel price is usually ready by 1:00 or 2:00
10 o'clock your time in the afternoon, and gasoline usually a
11 little bit thereafter. Our survey provides a sample that
12 gives us an average retail price for California as a whole,
13 as well as we also have a average price for L.A.

14 We also supply gasoline supply data for the entire
15 West Coast region, which we call PADD 5, which includes
16 California, Washington and Oregon, as well as Alaska and
17 Hawaii. We have that weekly, as well as monthly, but our
18 weekly report comes out every Wednesday at I guess it would
19 be 7:30 a.m. your time on the dot, and unless there's a
20 holiday, in which case it comes out on a Thursday, and that
21 would be at 8:00 o'clock a.m. on the dot for you.

22 And that information at the PADD level provides
23 refinery inputs and production. We also have imports at the
24 PADD level, as well as we collect data on inventories. We
25 collect that data not just for finish gasoline, but for some

1 of the blending components, including RBOB. And then,
2 recently --

3 CHAIRMAN BORENSTEIN: Doug, this is Severin
4 Borenstein. Can I ask you a question about that?

5 MR. MacINTYRE: Sure, absolutely.

6 CHAIRMAN BORENSTEIN: EIA has those data for
7 California, I assume, but you can't release those or do you
8 share those with the California Energy Commission? PADD 5
9 is very large and heterogeneous, so, in doing our work.

10 MR. MacINTYRE: Right. Right. No.
11 Unfortunately, there's two issues. First, our sample, how
12 we design our sample, how we form our sample is just based
13 at the PADD level, not at the individual state level,
14 although California we probably most of the time have enough
15 respondents in the sample that that probably isn't an issue.

16 But the other one is giving out data that
17 proprietary data could be backed into. So we have
18 disclosure --

19 CHAIRMAN BORENSTEIN: Okay.

20 MR. MacINTYRE: -- issues. But if there's ever a
21 specific issue that you're interested in, I'd reach out to
22 me and we can see if it's something we can do. It really
23 depends. I mean, if it's like inventory data across a broad
24 enough region within California that we're not giving away
25 proprietary data, that might be possible.

1 We do provide information to the Coast Guard
2 during the winter on inventory situations that we don't
3 publish. We have a separate data sharing agreement with
4 them. So there might be something that we could arrange,
5 but we would need more specifics.

6 CHAIRMAN BORENSTEIN: Okay. Thanks.

7 MR. MacINTYRE: Sure. And something we've
8 recently started doing is providing more detailed reports of
9 what's actually happening in the individual PADD. So one of
10 the first things we released was a PADD 5 Transportation
11 Fuels Market Study, where we broke PADD 5 into about seven,
12 about six or seven different sub-regions within PADD 5.

13 And so that's where you get a lot more geographic
14 detail on how those markets operate, how the supply flows
15 through there, what are the key checkpoints and issues. So
16 I've provided a link directly to that report in the
17 presentation. So hopefully, you can get directly to there.

18 And we've already, the last few years, we've also
19 been releasing refinery outage reports. We use a
20 independent contractor and twice a year we put out what
21 we're estimating to see in terms of planned refinery
22 outages, and that's prior, that comes out, the first one of
23 the year comes out in winter, prior to the spring turnaround
24 season, and the second one comes out in the fall, prior to
25 the fall turnaround season.

1 Moving onto the next slide. So I also want to
2 talk about how we decide what information to collect,
3 because this is where I think you guys might want to think
4 about if you want a play in this. So EIA's doing something
5 new where we're trying to reach out to our stakeholders to
6 better understand what our data gaps are.

7 And so one of the ways we do that is, you know, if
8 for instance we can reach out to CEC or your Committee and
9 see if there's data gaps that you're interested in, and then
10 if we want to go forward with that we write up a business
11 case and we go through all these issues that's shown on the
12 slide in trying to figure out if this is something we want
13 to pursue.

14 And then once a year we pull all these pieces
15 together and we judge it against available resources and
16 decide if that's something we can move forward with. If you
17 go onto the next slide, there's a diagram of that process.
18 So to the left, you know, we get a proposed initiative.

19 We evaluate that. If that moves on, then we go to
20 the next area where we build out a more detailed business
21 case. And then if that gets past the second evaluation,
22 then it gets into the final proposal. And then ultimately,
23 EIA senior leadership will make a call on it.

24 And then if approved then we go ahead and take on
25 that initiative, which gets us to the data collection

1 process itself. If you go onto the next slide, the Office
2 of Management and Budget, as a result of the Paperwork
3 Reduction Act, is the government authority to decide
4 ultimately what gets surveyed and what the government can
5 survey and what the government can't.

6 All of our surveys in the EIA go through a three-
7 year cycle. They're on, you know, we group the surveys in
8 individual families so they're not all going on the same
9 cycles. The ones you'd be interested in mostly are the
10 petroleum supply surveys.

11 And in fact, we're about ready to start a new
12 cycle of them. We went through a public comment period last
13 year and the current ones expire at the end of May. So
14 we'll have a new set, which is pretty much the same as the
15 current set right now, where we had a couple ideas that we
16 wanted to implement, but we couldn't implement them into our
17 systems in time.

18 So we might try and talk about them further when
19 we move ahead with the next go-round. But the way it works
20 is we use this needs assessment process to determine if
21 there's any changes to our current forms we should make.
22 And then a 60-day Federal Register Notice goes out.

23 And so we usually on our website post when we've
24 released that Federal Register Notice. If you go to the
25 pain petroleum page on our website, when we do that, that's

1 where you'll see something. We do the same thing for our
2 natural gas surveys, our electricity surveys.

3 The Federal Register Notice tells people the
4 changes we're planning on making, directs some to the survey
5 forms themselves, the proposed forms, and then the public
6 has up to 60 days to make their comments. We then look at
7 the comments afterwards, make whatever changes we need to
8 make, if any, and then we give everyone another 30-day
9 chance on the next batch.

10 And then once we submit that 30-day Federal
11 Register Notice we go ahead and submit the package to OMB,
12 so now OMB is collecting the comments on that 30-day. And
13 OMB then will come and tell us if we need to make any
14 changes, or will go ahead and say we can go ahead and start
15 using the new forms.

16 So a lot to go. I went through a lot there, and
17 so I'm sure there's going to be more questions. So I'm open
18 to any questions you might have.

19 CHAIRMAN BORENSTEIN: Thanks, Doug. Dave Hackett
20 has a question.

21 MR. HACKETT: Hey, Doug. It's Dave. Good to talk
22 to you again.

23 MR. MacINTYRE: Yeah, you, too.

24 MR. HACKETT: Can you speak for a moment about
25 disclosure issues, why the EIA doesn't disclose information

1 when there's fewer than, let's say, I think it's generally
2 three competitors as far as the data is concerned, and talk
3 about the, you know, EIA's concerns about basically
4 releasing data that would allow competitors to understand
5 what one another's behavior is.

6 MR. MacINTYRE: Right. So excellent question,
7 Dave. So in fact, just yesterday we got a FOIA request from
8 someone who wanted the refinery survey report for a
9 particular refinery. And we're going to respond that we
10 can't do that under exception four of the FOIA Act, which is
11 it would be releasing business confidential information.

12 As everyone knows, a lot of the information we're
13 collecting, for example, how much a particular refinery is
14 producing, how much they have available in storage at a
15 refinery or a pipeline or a terminal, all of that would be
16 valuable information for their competitors to know.

17 It's interesting that even similar surveys that
18 you wouldn't think are protected or still protected, for
19 instance, gasoline price information. Retail prices, anyone
20 can drive by any retail station and see what they're
21 charging. But you'd have to go drive by their station to do
22 it.

23 So we don't even release retail price information,
24 even though that could be gathered if there was enough
25 legwork. So it's important for us to do this, because it's

1 important for us to get good data from our respondents. If
2 people, if the companies thought that their information
3 would be shared with their competitors or, really, with
4 anyone else, we wouldn't be getting the truth from them.

5 We wouldn't be getting -- either we wouldn't be
6 getting anything or we wouldn't be getting what's really
7 going on. It would require a lot of time for us to try and
8 clear things up. It just is not a workable system. So for
9 everyone of the EIA surveys, I think for every government
10 survey, that there's a level of protection that's provided
11 to the survey, and it varies on what's being collected.

12 For most of our petroleum supply surveys we will
13 not disclose the information at the levels below which we
14 publish unless there's a statistical purpose in mind and
15 there's a data-sharing agreement in place, because
16 otherwise, again, we're releasing business confidential
17 information.

18 And even with the data-sharing agreements,
19 oftentimes we'll work with the researcher to make it clear
20 so they can't identify a piece of data with any particular
21 refinery. In other words, we'll, you know, call the
22 information by a particular number and just refer to it
23 there.

24 So protecting a respondent's data, we understand
25 it's important for the public to have the information they

1 need, but for them to have the information they need, we
2 need to get good information in return. And that's where
3 the disclosure process comes in.

4 MR. HACKETT: Great. Thanks for that.

5 MR. MacINTYRE: That helpful?

6 CHAIRMAN BORENSTEIN: And Amy?

7 MS. JAFFE: So I have two questions, Doug. My
8 first question is, do you have a verification process? Do
9 you have any way of knowing that this anonymous data, in
10 other words, anonymous to us the public or aggregated data,
11 if somebody wanted to submit incorrect data, does EIA have
12 any way of re-verifying the data, or you just rely on the
13 companies to provide their best estimate?

14 MR. MacINTYRE: Sure. Excellent question. I
15 think until someone actually is involved with one of these
16 surveys it always, and I'm including myself, you know. Ten
17 years ago I thought, oh, how hard can this be. You just get
18 all the information from the companies. You add it all up
19 and there you go.

20 It's not nearly as simple as that. We have a lot
21 of edit checks that we use to help us validate the data we
22 generate. So in other words, we'll check to see if, you
23 know, how our data point from what one company companies to
24 their previous history.

25 Or we might compare it to similar companies in the

1 area. A lot of ways we can check over the data. We also
2 try and stay up to speed on what's going on in the industry.
3 We get a lot of reports from our analysis folks, as well as
4 others, about refinery shut-ins and other things.

5 But we spend a lot of time. Even the weekly data
6 gets a lot of checks. There's probably about on average 200
7 different verification checks on the weekly data every week.
8 That means either someone's calling the refinery to verify
9 it or checking.

10 A lot of times the company will put in a comment
11 explaining it, but we do spend a lot of our effort to what
12 we call validate the submissions. And you know, especially
13 on the weekly, we have a very limited amount of time to do
14 that. And sometimes, you know, we can't get an answer in
15 time.

16 We're going to have to then make a decision for
17 that week whether we're going to take the data as given or
18 whether we're going to do what we call impute for the data.
19 And when we impute a data that's usually for either someone
20 that didn't respond on our survey or someone that we
21 couldn't validate their data.

22 And the imputation is a mathematical formula. It
23 just is based on previous submissions. And then, of course,
24 our final check is our monthly data. So we have a lot more
25 time to check up on our monthly data. And so we do a lot of

1 comparing of monthly to weekly data, and a lot of companies,
2 you know, we'll follow up with them when we're looking over
3 their monthly data and we'll say, oh, well, you told us this
4 on your weekly submission, now you're telling us this on
5 your monthly.

6 And so sometimes, we can get them to correct their
7 monthly, or maybe they find out that they've been doing
8 something wrong, and so now, from then, that point on,
9 they'll correct their weekly data. So there's a lot of data
10 checking going on.

11 MS. JAFFE: So let me commend EIA, because I think
12 you guys do a great job, but good to be clarified on the
13 process. My second question is sort of a California-based
14 question. So totally understanding why you have business
15 confidential protections, you know, speaking as an academic
16 a lot of times we use aggregated data and we have to sign
17 agreements that we will not release the individual data in
18 all kinds of varieties of things.

19 So my second question for you is, you know, were
20 the CEC to come to EIA and sign a document that says, we are
21 going to protect the business confidential of EIA data, and
22 even if it was maybe even our Committee wanted to look at
23 data and we were willing to sign a thing saying that we
24 would protect the business confidential of certain data; we
25 want to do a study.

1 CEC wants to do a study. CEC wants to do a study
2 and have university experts work on it or CEC wants to have
3 their own internal professionals work on it. If the CEC and
4 all the people who are going to be involved in the process
5 are willing to sign the same, and adhere to the same,
6 business confidential rules as EIA, would that be something
7 that they could request, or the only way they could do it is
8 through asking the EIA to do a special study?

9 MR. MacINTYRE: No. So I think the use of a data-
10 sharing agreement is a possibility. It needs to be specific
11 on what the request is. So I think if we got a request
12 saying, oh, we want all your weekly data every week for
13 California, that probably wouldn't get approved.

14 But we would probably go back and say, okay, is
15 there something specific. You want to look at gasoline
16 blending component production out of all the California
17 refineries for the period of October 1st through March 31st,
18 you know, 2015 to 2016.

19 I mean, something like that, that's specific, that
20 you know, that again, that will be protected, a lot -- and
21 again, the other thing is it has to be for a statistical
22 purpose. So if you're collecting the data for an
23 investigative purpose, that's not something we can turn
24 over.

25 There's other agencies that handle that. But if

1 you want to do a statistical study on a specific purpose and
2 you have the ability to protect the data, just as EIA would,
3 and sometimes with the states, they have a difficult time
4 doing that because they have their own state laws. So that
5 might not apply here. It might. I don't know.

6 But sometimes, there's state laws that say that
7 anything they get, they have to release to the public. But
8 if it's a statistical purpose it could be protected under
9 the same security measures we do. You know, that's where
10 the data-sharing agreements come in.

11 So if the CEC or the Committee is interested in
12 something like that I would just urge you to start off with
13 an email to me and we'll go from there.

14 CHAIRMAN BORENSTEIN: Okay. Any other questions?
15 Thank you, Doug. That was very helpful and we might very
16 well be back in touch to discuss data and further studies we
17 might want to do. Thanks for joining us.

18 MR. MacINTYRE: All right. Thank you. All right.

19 CHAIRMAN BORENSTEIN: Next up, we have Skip York,
20 from Wood Mackenzie, and on behalf of WSPA. Skip.

21 MR. YORK: Okay. So I welcome the opportunity to
22 appear back before PMAC, and hopefully, we can, Wood
23 Mackenzie, can provide some global context of some of the
24 issues that you guys are dealing with. And so when we were
25 asked to prepare this presentation today we kind of thought

1 about, we looked at the recommendations that are before the
2 Committee, and we sort of asked ourselves, well, that we are
3 presuming that the objective of this is to somehow make the
4 transportation fuel markets in California better.

5 And we said, well, by better we think that means
6 probably, could it lower prices or reduce price volatility.
7 So we sort of did it in that framework and then asked
8 ourselves the question, well, if we take a global view of
9 how data is reported, you know, can we test that premise
10 about the availability of data in sort of the improving sort
11 of market access or understanding of how the markets are
12 working.

13 And so the way I did that is I spent some time on
14 the phone with my colleagues in London and Singapore and in
15 the Middle East, just sort of talking about data collection
16 in other parts of the world. And I don't know if Douglas is
17 still on the phone, but hopefully, if he is he'll appreciate
18 that the, I wouldn't say the consensus, it was unanimous
19 across the experts at Wood Mackenzie that the U.S. has
20 recognized it's a leading jurisdiction in terms of petroleum
21 market data reporting.

22 Basically, because many jurisdictions do not
23 require reporting at all, those that do will tend to have
24 lags that can be up to months at a time. And sometimes, if
25 there is a report it tends to only be once a year. Whereas,

1 Douglas pointed out by contract, the U.S. reports a lot of
2 data on a weekly basis.

3 And that's really sort of important to kind of
4 remember that, not that we're spoiled here, but we just have
5 the ability to see a lot of data that the rest of the oil
6 industry doesn't see on a global basis. And then there were
7 a couple of issues that came up in particular to the five
8 recommendations.

9 And one was the discussions with our folks in
10 London, is that a number of European jurisdictions have
11 discussed the potential to improve or increase the amount of
12 inventory data that's reported, increasing the frequency.
13 Some jurisdictions have actually even considered reporting
14 or requiring inventory plans that may or may not be similar
15 to, you know, what this Committee might actually end up
16 recommending.

17 And those European jurisdictions have drawn the
18 conclusion that they were concerned about the unintended
19 consequences, specifically around the inventory levels, and
20 the competitive disadvantage it could put operators against
21 non-operators.

22 And we'll walk you through an example later on in
23 the presentation about why, you know, why they have that
24 concern or what the scenario might be that had these
25 European jurisdictions worried. Then from our Asian

1 colleagues they said that, you know, that the data in Asia
2 tends to not be very consistent and not reliable for
3 analysis.

4 So there is data in Asia, but it's just not as
5 good and it's not as robust. And Douglas kind of walked
6 through a number of the data check processes that the EIA
7 uses, and that's really important for cleaning up the data.
8 Especially, the more frequent the data collection is, the
9 more imperative that cleanup process be, so that, you know,
10 so you don't end up with sort of the, you know, the
11 proverbial fat thumb events that can swing markets because
12 somebody just didn't fill out a form correctly and
13 inadvertently didn't.

14 Now, the one exception that we did see that is a
15 bit different where you do see a bit more data collection
16 than you do see in the U.S. was refining maintenance
17 projects and plans in Japan and in Korea. And so what we'll
18 do is we walk through and kind of, as we start to test what
19 data availability might do to prices or to volatility, we'll
20 kind of -- one of the places we'll look at is Japan.

21 So what this next chart shows you is that these
22 are spot gasoline prices. So you know, they're bulk
23 transfer prices. They are not at the wholesale rack.
24 Probably the best translation of this might be that it's the
25 refinery, you know, it's consistent with what you would hear

1 as often as the spot can also be referred to as a refinery
2 gate price.

3 So it's much further upstream than a consumer would
4 typically see, because it hasn't made it all the way to the
5 retail sides. And what we've done here is compared the
6 price differentials to a number of these markets relative to
7 the U.S. Gulf Coast.

8 And part of the challenge here is the reason why,
9 you know, we've got five markets here is that there just
10 aren't a lot of liquid data points, especially in petroleum
11 markets, product markets around the world. And so, you
12 know, these are really kind of, when you think about liquid
13 petroleum markets, especially on a product basis, these are
14 really kind of the four or five that you can actually test.

15 And what you'll see here in the titles is that
16 there's a number attached to each one. So CARB 87,
17 Singapore 92, and those are the octanes. So that's the --
18 every market has a different quality of gasoline. But what
19 we've done in this chart is we've made those adjustments.

20 We've adjusted for octane and RVP, but RVP's not
21 that important of an issue. But we've adjusted for octane.
22 So what you're seeing is the differentials on octane. So
23 this is an apples to apples comparison. One of the things
24 that you'll see that I'll point out is really just kind of
25 two things.

1 One, that the price spikes or deviations,
2 significant deviations in these differentials tend to be
3 driven by unplanned events. Whether they be refinery
4 outages in, you know, 2006-2007, or Hurricane Ike on the
5 Gulf Coast or, you know, the Exxon Mobil upset or the
6 Richmond fire, the Chevron Richmond fire, which you kind of
7 see had a bit of an impact, but it was fairly short lived,
8 they tend to be driven, you know, they're converging to each
9 other, which is something we talked in the December PMAC
10 meeting.

11 But the deviations tend to be more on an unplanned
12 than on a planned basis. The second thing is if you look at
13 the table down below, you sort of look at structurally what
14 are those price differences, and you kind of see is that
15 California and Japan are -- have positive price
16 differentials structurally to the Gulf Coast, where
17 Singapore and Northwest Europe have discounts to the U.S.
18 Gulf Coast.

19 And that's probably driven more by the fact that
20 California and Japan are importers, net importers of
21 gasoline, and Singapore and Europe are net exporters of
22 gasoline, than anything to do about any sort of, you know,
23 sort of what's happening within the micro markets of some
24 sort of, you know, manipulation for lack of a better term.

25 But the important thing to note is that, you know,

1 and I think this might come as a surprise, is if you look at
2 Japan's gasoline prices aren't really materially different
3 from California's gasoline prices over a substantial period
4 of time.

5 The next thing we want to do, then, is say, well,
6 if we look inside those markets, so then are the prices more
7 volatile in one region than they are in another. And so
8 that's what we look at -- this chart now looks at the
9 volatility and now, we've put the U.S. Gulf Coast on here,
10 you know, looked at the volatility around the Gulf Coast
11 markets, and mapped in those same unplanned interruptions
12 that you saw in the prior chart under this chart and you can
13 kind of see the spikes that show up.

14 The one thing I do want to point out, which has
15 been very interesting is if you look at the volatility spike
16 on the U.S. West Coast or in California, in the fourth
17 quarter of 2015 and first quarter of 2016, it's not unique
18 to California.

19 And what we saw was a volatility spike across all
20 these markets, and when you go back and do the analysis it's
21 that what happened was that gasoline prices were, not
22 gasoline, but crude prices were collapsing after the OPEC
23 meeting on December 4th, and that was actually drawing down
24 not just crude prices, but product prices.

25 And the reason why California's volatility was so

1 much higher than the other markets is because gasoline
2 prices were falling faster in California or in the Los
3 Angeles market than they were in these other markets. Now,
4 if you look at the average price volatility what you kind of
5 see is that, really, the volatility is pretty much -- isn't
6 really all that meaningfully different.

7 California's a bit higher than the other ones and
8 Japan is a bit lower. But here comes the danger of drawing
9 conclusions because we just don't have a very robust sample
10 size of how these different -- of how data collection in
11 different jurisdictions impact markets, is that if you look
12 at the last two charts it says that refinery maintenance
13 plans in Japan result in higher consumer prices, but they're
14 less volatile.

15 And that would be a dangerous conclusion to make,
16 because it's, you know, it's basically a small sample
17 problem, is that there's likely more things than going on
18 that explains the differences between price levels and price
19 volatility in Japan than just a simple reporting
20 requirement.

21 And so that's part of one of the takeaways that we
22 wanted to impart, is that you will observe things in the
23 market but there's really, when on a global basis, there
24 really isn't the ability to do the analysis that says that
25 more data reporting or less -- more data reporting would

1 sort of somehow improve or reduce the volatility or reduce
2 price levels.

3 Now, this is kind of the example we wanted to walk
4 through specific to the inventory issue to sort of
5 illustrate what the European jurisdictions were concerned
6 about. So what we've done, is this is actually PADD 5
7 gasoline storage.

8 But what we've done is sort of let's say, suppose
9 this is what a typical operator would look like in PADD 5,
10 that they would build inventories in the winter and they
11 would draw down their inventories in the summer. And so if
12 that's the illustration and sort of say, well, that's just
13 what the normal, seasonal pattern is, now look at the next
14 chart where now we say, well, now, let's suppose that you
15 regulate that they have to announce some sort of inventory
16 plan.

17 Now, for the purposes of this illustration we sort
18 of say, let's just suppose that the plan is that they have
19 to hold inventories constant, and that's really just kind of
20 to draw out the example that kind of shows you the fear that
21 the European jurisdictions have.

22 If you are required to hold a fixed level of
23 inventory and the light blue dash line that you see here is
24 just the average across that sample size, and you sort of
25 say, on average that's what your plan is going to be, then

1 the spikes either above or below that line would be when the
2 refiner would either be compelled to sell, if it's above the
3 line, in order to get their volumes back to plan, or they
4 would be compelled to buy if they're below the line in order
5 to get their inventories back up to plan.

6 And at the end of the day this is what the
7 Europeans were worried about, is that if the refiner or the
8 operator is regulatorily [sic] obligated to report that
9 plan, then it can induce them in and out of the market when,
10 you know, so you say prudent business practices would be,
11 I'm going to work myself back to plan over a series of weeks
12 or months, rather than within some sort of fixed regulatory
13 window.

14 It also tells the non-operators, which is the last
15 bullet point, it would signal to the non-operators when
16 would be good opportunities to jump in and out of the
17 market, which could -- and this was the concern that the
18 Europeans have -- that that could actually induce greater
19 price volatility, because the non-operators would not be
20 regulatorily required to report their plans, because they
21 don't actually produce gasoline.

22 They're just trading it, and that was part of what
23 the -- as the Europeans went through it, that was sort of
24 the reason why they backed, you know, that ultimately they
25 backed away from the issue to date, because whether, you

1 know, either way, whether you obligate them to meet the plan
2 or it's just sort of a stated plan, or if the non-operators
3 can jump in or out, either way it induces more volatility
4 than what is already in the market that we saw in the prior
5 charts.

6 And so that really is kind of the, when we step
7 back, is sort of the, I think the big takeaway for us, is
8 that there just isn't enough data around specific
9 jurisdictions to draw a conclusion as to, you know, that
10 more data or, you know, more stringent reporting would
11 materially promote price stability or reduce price levels.

12 But what was a big takeaway that we saw across the
13 board is that many jurisdictions are concerned about the
14 unintended consequences. And Douglas kind of went into that
15 about why they're worried about the nondisclosure agreements
16 around individual operators, is that you could, you know,
17 you could impose a reporting requirement that could induce
18 not, you know, not necessarily an unintended consequences,
19 but quite realistically, back to the inventory plans, it
20 could actually result in the exact opposite of what you
21 intended.

22 And that's why a lot of jurisdictions have moved
23 rather slowly at requiring more information. But then the
24 final closing comment before I'll open up for questions is
25 go back to the, you know, in the U.S. we're already starting

1 from a much data-rich environment than most of the other
2 jurisdictions in the world.

3 And we just -- hopefully, that that can be kept in
4 context of the discussions that this Committee has.

5 CHAIRMAN BORENSTEIN: Okay. Thanks, Skip. Amy,
6 you want to go first?

7 MS. JAFFE: Yeah. So Skip, a couple questions.
8 So I just want to clarify to make sure I'm not
9 misunderstanding what you're saying. I mean, in Europe
10 under the IEA system and other kinds of rules, refiners are
11 actually required to hold a certain level of gasoline
12 stocks, correct?

13 MR. YORK: No, they're not required. The country
14 is required. How each jurisdiction goes about that can
15 vary, but --

16 MS. JAFFE: Okay. But in most jurisdictions the
17 way it's --

18 MR. YORK: -- most jurisdictions do hold -- yeah.

19 MS. JAFFE: -- the way the jurisdiction decides is
20 typically they have -- the governments do not themselves
21 hold gasoline inventories. They have minimum standards for
22 the refining industry?

23 MR. YORK: Yeah. Well, what the IEA requires is
24 days of coverage, and what every jurisdiction does is they
25 will, basically, you know, what they'll essentially do is

1 take sort of what is sort of, let's say sort of normal
2 within their jurisdiction and then the government will then
3 hold strategic.

4 So if the normal inventory hold within the
5 industry doesn't meet the total of the IEA requirement, then
6 the government will hold, will build balances or build
7 storage in order to get to the strategic level. That's why
8 we have the strategic petroleum --

9 MS. JAFFE: Saying that the government of France
10 or Germany holds gasoline inventories?

11 MR. YORK: Well, you know, I can't speak
12 specifically to Germany, but --

13 MS. JAFFE: Because it's my --

14 MR. YORK: -- jurisdiction by jurisdiction --

15 MS. JAFFE: -- because my understanding of the way
16 the system works is the governments say, I won't, I mean,
17 I'm just saying the name of a country to make it clear to
18 the audience. I don't know actually country by country.
19 But the way I understood it is the government of Germany has
20 an obligation through the IEA system, they hold some
21 strategic crude oil stocks, and then they order their
22 refining companies to hold some level of gasoline stocks at
23 the refinery gate that could be tapped by the government in
24 a disruption, as they did during Hurricane Rita and Katrina.
25 They lent it to us, the United States. That's my

1 understanding of mostly how the system works.

2 MR. YORK: Yeah. And what it is, it's just
3 jurisdiction by jurisdiction is, is it, you know, does the
4 government bind you to hold inventories, or does the
5 government take your inventory, you know, sort of obligate,
6 you know, strategic obligation less what's normally held.
7 That varies by jurisdiction.

8 MS. JAFFE: Okay.

9 MR. YORK: Some jurisdictions do sort of mandate.
10 Others don't.

11 MS. JAFFE: Right. So --

12 MR. YORK: The other thing, let me just point --

13 MS. JAFFE: -- so just to clarify what you're now
14 saying, you're saying that in some cases, because it's
15 important for California, in some cases the government pays
16 the refiner to hold that inventory and owns it themselves,
17 and in some cases they just ask the refiner to own it and
18 hold it. Is that what you're saying?

19 MR. YORK: There's also the third option, that the
20 government actually has their own facilities, like the SPR.

21 MS. JAFFE: Okay.

22 MR. YORK: The other thing is, let me just make
23 it, the other distinction is, Europe tends to hold more of
24 their strategic in product, and the U.S. tends to hold more
25 strategic in crude.

1 MS. JAFFE: Correct. Okay. Now, going back to
2 your slide, the one before this one, theoretically, the
3 industry can always decide to hold more than the government
4 mandated stock if it's a jurisdiction that's requiring
5 refiners to hold stock.

6 There's no reason why that plan would either
7 require or not require or cause or not cause companies to
8 hold more stocks. They would make that decision based on a
9 commercial decision, the way, you know, we do here in the
10 United States, where we have no rules.

11 I mean, it doesn't affect that. So you're showing
12 this chart and you're showing this volatility of stocks of
13 when they would buy and sell, that they would be compelled
14 to sell to get to the mandated level, and they'd never be
15 compelled to sell because if they had higher than mandated,
16 then it doesn't matter.

17 MR. YORK: No, I think that -- no.

18 MS. JAFFE: Only have to carry a minimum.

19 MR. YORK: No. I'm going to take exception to the
20 premise. It all depends on how the regulation's written.

21 MS. JAFFE: Are there regulations that are
22 written --

23 MR. YORK: And that was the discussion in Europe.

24 MS. JAFFE: -- that say you can't have extra
25 stocks? I can't believe there's any regulation that says

1 that.

2 MR. YORK: No. It depends, is the regulation
3 written that you must meet the plan, or are you just
4 announcing what your plan is and you can do whatever you
5 want?

6 MS. JAFFE: Okay. But my point to you is --

7 MR. YORK: And that was the discussion in Europe.

8 MS. JAFFE: Okay. My point to you is, a refiner
9 who's meeting his obligations under the plan could, ought to
10 have more inventory than the plan for commercial strategic
11 reasons. I mean, that doesn't affect the plan.

12 MR. YORK: No. It depends. If the regulation
13 says, and let's just look at this example, if the regulation
14 says you're required to hold 32 million barrels, when you're
15 above 32 million barrels the regulation would compel you to
16 sell.

17 MS. JAFFE: Is there --

18 CHAIRMAN BORENSTEIN: Right. But are there any
19 regulations that says that, because I've never heard of a
20 regulation --

21 MR. YORK: No, but that's --

22 CHAIRMAN BORENSTEIN: -- that imposes not --

23 MS. JAFFE: No regulation that says that.

24 MR. YORK: -- no, but that's exactly the point.

25 CHAIRMAN BORENSTEIN: -- hold more than a given

1 quantity.

2 MR. YORK: That was the discussion that was had in
3 Europe, and the decision was to not impose that regulatory
4 requirement.

5 MS. JAFFE: Okay. So don't confuse people by
6 making them think there is that regulatory environment,
7 because there really isn't. The only requirement --

8 CHAIRMAN BORENSTEIN: But there is a requirement,
9 a minimum.

10 MR. YORK: No.

11 MS. JAFFE: -- minimum. There's only a
12 requirement that there should be a minimum in some
13 jurisdictions.

14 CHAIRMAN BORENSTEIN: Right.

15 MR. YORK: There's a requirement that the country
16 must hold a minimum.

17 CHAIRMAN BORENSTEIN: Okay.

18 MS. JAFFE: Yeah. That's all I'm saying.

19 CHAIRMAN BORENSTEIN: Okay. Right.

20 MR. YORK: But there is not an EIA requirement
21 that an individual refiner must hold a specified minimum.

22 CHAIRMAN BORENSTEIN: Right.

23 MS. JAFFE: I understand that. I'm just saying
24 that there's no -- my understanding of the market is that
25 there is no such rule in that jurisdiction or any of these

1 jurisdictions that says they're compelled to sell, which you
2 have on your slide.

3 So I'm just clarifying that there isn't actually a
4 regulation that compels a refiner to sell. There is only a
5 regulation that requires, gives, tells, asks refiners to
6 refill when -- after they've used, drawn down their
7 inventory they do have a requirement to go back to a minimum
8 after some period of time, some reasonable period of time,
9 because there is a requirement on the IEA [sic] to have
10 minimums for the country.

11 MR. YORK: Right. And this chart is an example,
12 is an illustration of the discussion that the Europeans had
13 and why they reached the decision --

14 MS. JAFFE: Right.

15 MR. YORK: -- to not impose more stringent
16 inventory regulations.

17 MS. JAFFE: Oh, okay. But my point to you is, no
18 one's discussing the possibility of a compelled to sell
19 rule. All we're talking about --

20 MR. YORK: No. What I'm --

21 MS. JAFFE: -- that's --

22 MR. YORK: -- this chart illustrates what the
23 European discussion was.

24 MS. JAFFE: Okay. But they didn't --

25 MR. YORK: And why the Europeans --

1 MS. JAFFE: -- that discussion was 20 years ago
2 and they didn't actually go with that policy. So I don't
3 want to confuse people.

4 MR. YORK: Well, no. The discussion was actually
5 like four or five years ago, right. This thing was back
6 during the crude spikes after we came out of the last
7 recession. This issue came up again.

8 MS. JAFFE: Okay.

9 MR. YORK: And was re-debated in Europe just in
10 the last few years. It comes up periodically.

11 MS. JAFFE: Oh, okay. But just to clarify for the
12 public, that is not technical people, Europe does not have
13 any system that compels refiners to delete inventory.

14 MR. YORK: Right.

15 MS. JAFFE: They only have a system that requires
16 them to carry a minimum so that it's available if there's an
17 emergency.

18 CHAIRMAN BORENSTEIN: Okay.

19 MR. YORK: Right.

20 CHAIRMAN BORENSTEIN: Let's --

21 MS. JAFFE: Yeah. Just making that clear.

22 CHAIRMAN BORENSTEIN: Okay. Jim, did you have a
23 question, Sweeney?

24 MR. SWEENEY: Only in an interpretation at this
25 moment. When you go back to the graph that shows volatility

1 of others, when you suggest that California is similarly
2 volatile, that's -- we just have to note for the record that
3 that -- it is that encircled area at the end that has caused
4 this Committee to give a lot of their attention.

5 And I would view that as volatility out of the
6 norm of anybody else. Could you -- what can you tell us to
7 explain that?

8 CHAIRMAN BORENSTEIN: And before you do --

9 MR. YORK: Yeah.

10 CHAIRMAN BORENSTEIN: -- could you explain, what's
11 the vertical axis? It's a percentage.

12 MR. YORK: It's a percentage. It's a percentage
13 of the deviation of the -- it's the percentage deviation
14 from a rolling 12-month average.

15 CHAIRMAN BORENSTEIN: It's the standard deviation
16 around --

17 MR. YORK: It's the standard.

18 CHAIRMAN BORENSTEIN: -- the rolling 12-month
19 average?

20 MR. YORK: This thing about as thick, but is a
21 standard deviation.

22 CHAIRMAN BORENSTEIN: Okay.

23 MR. YORK: Yeah. It's an annualized standard
24 deviation. So yeah. So I think what the, you know, I think
25 what we wanted to convey is that is, you know, if you sort

1 of look at California on the left-hand side of the circle
2 there's really two volatility spikes for California, right.

3 There's the first spike, which was the early part
4 of the year, and then there's that second volatility spike.
5 And volatility doesn't always mean that prices are going up.
6 That's the first spike. But sometimes, you get volatility
7 when prices are going down, and that's the second spike.

8 So part of the reason why you saw, you know, you
9 saw a surge in volatility at the very end of last year and
10 the early part of this year everywhere, and in California
11 it's just that prices were falling much faster than they
12 were falling everywhere else.

13 MR. SWEENEY: Okay. I actually look at a very
14 high spike, not that it just is very high, but we need not
15 argue it.

16 MR. YORK: Yeah.

17 MR. SWEENEY: Everybody can look at those numbers
18 themselves. But going back to what Amy was saying, given
19 that it's clear that we're not talking about any obligations
20 to sell access inventories, but only to maintain a certain
21 normal level of inventories, and then adjustment over time
22 to fill them up once you've used them, have you been able to
23 produce any analysis whatsoever that would show that that
24 would create any competitive problems, any problems of
25 additional market volatility or any difficulties whatsoever?

1 You know, I see that one graph and we all heard
2 the exchange between you and Amy, which I thought was quite
3 instructive. And have you seen any whatsoever problems that
4 would be created by that requirement? I didn't hear you say
5 any.

6 MR. YORK: No. I mean, well, it, you know, it's
7 kind of the counterfactual, right. It's kind of, can we do
8 a quantitative analysis on something that doesn't exist,
9 right. Part of what we're trying to convey in this is that
10 there's a lot of things you could propose, but it's really
11 hard to do studies on history, because there just isn't a
12 lot of variation across jurisdictions and whatnot.

13 What we were trying to show in that inventory
14 isn't -- is that this debate -- California's not the only
15 place that has these debates, and we were just trying to
16 show that there was another jurisdiction that had this
17 debate and shared the conclusion that they drew around those
18 inventory plans.

19 But we didn't evaluate any specific inventory plan
20 because, you know, I haven't seen a specific inventory plan
21 proposed.

22 MR. SWEENEY: Right.

23 MR. YORK: Just public inventory plans.

24 MR. SWEENEY: Well, I view that that was a
25 hypothetical that you put.

1 MR. YORK: Yeah. Yeah.

2 MR. SWEENEY: Because nobody's really proposing
3 you have to sell off if you have it. So what I ask, I
4 imagine that in your consulting assignment you were asked to
5 develop a number of different hypotheticals that would have
6 shown that there were unintended consequences of that
7 minimum.

8 You don't have to say whether or not you did. You
9 were asked to, but is it true that you have not in fact
10 identified any hypotheticals, other than this one, that
11 would have created a problem of, and I'll specify the type
12 of thing, of having some minimum inventory required in
13 normal cases, which you can draw down in the case of
14 emergency and which you would be required to fill up over
15 some normal period of time. Have you been able to find any
16 unintended consequences of that?

17 MR. YORK: Well, we haven't done any consulting
18 work on this. What the two charts --

19 MR. SWEENEY: Does that mean the answer's no, you
20 haven't found any?

21 MR. YORK: The answer is, we haven't looked.

22 MR. SWEENEY: Okay. Thanks. That's helpful.

23 CHAIRMAN BORENSTEIN: Okay. Thank you very much,
24 Skip.

25 MR. YORK: Yeah.

1 CHAIRMAN BORENSTEIN: Next, we have Jamie Court on
2 the WebEx, I hope, but we have to unmute him.

3 MR. COURT: I'm here.

4 CHAIRMAN BORENSTEIN: Oh, there he is.

5 MR. COURT: Can you hear me?

6 CHAIRMAN BORENSTEIN: Yes, we can.

7 MS. WARD: All right. I'm just going to pull up
8 your presentation, Jamie.

9 CHAIRMAN BORENSTEIN: Hold on a minute while we
10 pull up your presentation.

11 MR. COURT: Well, thank you for having me, because
12 I really wish to be there but my airplane got delayed. So I
13 decided to opt for the safe option, but I really wanted to
14 be there with you. So thank you. Look, I'm going to try to
15 move through the slides quickly, because I want to stick to
16 the 10 minutes.

17 But I just want to remind people of the
18 consequences, if we can go to slide two, which is that, you
19 know, we've paid 70 cents to a dollar more for gasoline,
20 plus a dollar more than the rest of America through
21 volatility.

22 And what I believe the transparency measures we're
23 going to talk about here will do is tame that volatility,
24 because we're really disconnected from crude oil prices,
25 production costs, U.S. gas prices, and what we're

1 experiencing this year is this what the market will bear
2 pricing.

3 And I believe, and I think will show, that there's
4 too little information to sustain adequate competition, and
5 that's why we're going through this. If you go to number
6 three, this is a list of everything that's not required to
7 be disclosed today to the CDC and the public.

8 Refinery update schedules and updates; dealer tank
9 wagon prices. This is, again, the delivery price from a
10 refiner to their stations. Real time imports and exports,
11 and all trades of a significant size, including exchanges
12 and production agreements. We think that should all be out
13 there in the open. That will create more competition.

14 If we go to the next slide, what's known today is
15 actually quite a bit. You've heard that, deals and
16 quantities. We see that through OPIS. We see it through
17 the EIS. We see it through CEC. But what's not widely
18 known is by whom, and that's the game.

19 And that's where the four refiners that control 80
20 percent of the market and the very small handful of refiners
21 that control the entire market really have us, because they
22 do know a lot about this market, a lot more than we do. If
23 you go to slide six, what -- excuse me -- maybe back up
24 five. I apologize. I missed one here.

25 CHAIRMAN BORENSTEIN: No. No. No. No.

1 MR. COURT: Oh, no. Go back to five. Sorry.

2 CHAIRMAN BORENSTEIN: Forward two.

3 MR. COURT: I'm confusing.

4 CHAIRMAN BORENSTEIN: There. Stop.

5 MR. COURT: All right. So let me just talk about
6 OPIS for a second, as a piece of the puzzle. OPIS was
7 recently sold this year to IHS. It has been, at best, you
8 know, the only information we really have, other than what
9 is produced by the CEC, but it's really detailed, and
10 sometimes it's about trades that do happen.

11 A lot of times there are trades and deals that
12 aren't in OPIS, but it is spotty. It is what people in the
13 industry want to be known, not necessarily what is
14 happening. And it's going to I think get worse, because IHS
15 is a very large information company.

16 It was recently the purchaser of OPIS, and the two
17 biggest -- two of the biggest owners of IHS, Vanguard and
18 Blackrock, were also the two biggest owners of the four
19 largest refiners we have in the state, or four of the larger
20 refiners in the state, I should say, because Exxon's not
21 among the four.

22 But the point is, whatever information we have
23 now, which was taken issue with in a couple of very large
24 antitrust cases because it was alleged that OPIS was a
25 vehicle for refiners to communicate in ways that -- as an

1 intermediary in ways that they couldn't legally communicate
2 directly to each others.

3 IHS puts in question whether it's even going to be
4 reliable, less reliable in the future. The two cases, by
5 the way, which demonstrate this and we'll send around some
6 excerpts from them, is Aguilar v. The Atlantic Richfield
7 Company, and the more recent case, Gilley v. The Atlantic
8 Richfield Company.

9 And I know that Kathleen has some experience,
10 because I know she was privy to the Aguilar discussions. I
11 we go to the next slide what we'll see is the reason we want
12 public disclosure of refinery outages and maintenance is
13 clearly to add more fuel to market, stimulate imports, get
14 information so we can open the market to new players.

15 And if we'd had full information, I think, as
16 we've all agreed, about what really happened with Exxon
17 Torrance last year, that clearly would have created a space
18 for this to happen. If we can go to the next slide on
19 seven.

20 The market was really misled over Exxon Torrance.
21 These are all the statements we've culled from OPIS. You
22 know, the refinery's going to come back online the end of
23 July, and that's when we had that \$4 price spike. Then it
24 was the end of September.

25 And this kind of misinformation, when really, from

1 the start we knew there needed to be significant regulatory
2 approval to get Exxon back online, if you're looking with
3 hindsight, the fact that we didn't know that at the
4 beginning, even though Exxon knew that, if the market had
5 known that it clearly would have reacted differently.

6 We would clearly have more inventories and we
7 would clearly have lower gas prices. If we can go to the
8 next slide. This is what happened, and we went through this
9 in the last meeting. So I'm not going to go through it, but
10 on July 1 all imports stopped.

11 Chevron, and we'll talk about this Tesoro bought
12 out the spot market, that's when we went over \$4 a gallon in
13 Southern California. That's all because of misinformation.
14 If we had accurate information imports clearly would not
15 have stopped.

16 If we go the next slide, how does a disclosure of
17 gas trades, how would they have helped in 2015? Well, there
18 are four, really, areas here. We want to really address the
19 dark deals, which we've talked about in previous meetings,
20 where the refiners are not reporting these to OPIS or
21 anywhere else, but they're giving a really, really low price
22 to unbranded stations, through a super jobber (phonetic),
23 and then the kind of conduct we see where refiners are
24 buying on the spot market all at once and drying it up.

25 And then production agreements between refiners

1 and exchanges between refiners, these we think should all be
2 out in the open. Next slide, please. So here's just a
3 couple of the examples in pricing on a single day, and I
4 didn't pick it for any real -- these, you could see, that a
5 dark deal, which is not reported in red, these unbranded
6 deals from right to the refiners were 153, and then if you
7 go to the OPIS branded rackets, 178, which is a 25 cent
8 difference, which is pretty typical, and that shows, you
9 know, just at the wholesale level, the kind of discrepancies
10 you have about what the real price of gas is.

11 If we go to the next slide we'll also look at the
12 dealer tank wagon prices, and you can see April 1 this is
13 still going on. We have, you know, a more than 25 cent
14 difference, and we've seen periods where it's gone up to 30,
15 40 cent difference between what the dealers are paying at
16 their stations for dealer tank wagon prices, which are not
17 published, publicly available right now, and what these dark
18 deals are, which again, are not publicly available.

19 And that type of difference, really, in Southern
20 California made a huge difference because we have 80 percent
21 of the gas stations in Southern California under the dealer
22 tank wagon or the branded system. They're branded stations,
23 in any case, and so the price there is controlled by the
24 refiners.

25 Whereas, that cheap gas that goes to Costco, it

1 doesn't come out -- it's certainly cheaper, but the median
2 price tends to gravitate towards the dealer tank wagon price
3 because it's 80 percent of the market. If we go to the next
4 slide. This is probably the most extreme example.

5 We had in the merger where Arco was bought, excuse
6 me, BP turned over its refinery to Tesoro, Tesoro agreed to
7 sell Arco at the lowest possible price to keep Arco as the
8 lowest branded price. Well, here you can see Arco's paying
9 from Tesoro the dealer tank wagon price, 23 cents higher
10 than the rack price.

11 And even though the Attorney General entered into
12 that agreement to keep that price low, it was a one-year
13 agreement, I believe, or two-year agreement and this is now
14 three years later. Oh, it's a three-year agreement. So
15 Kathleen, maybe you want to look at it a little closer.

16 But the point is, when there's this control over
17 the market, you know, through the dealer tank wagon price
18 and the Arco owners and others aren't privy to the dark
19 deals, you know, there's a bigger disparity than if that
20 information was more open.

21 If we go to the next slide, please. Okay. This
22 is just an example of something we've heard before of how
23 Chevron and Tesoro at different times cornered the spot
24 market by buying overnight and sucked up all the gas
25 available. And you can see what happens to the price of

1 gas.

2 If that trade, if that buy, if that spot market
3 purchase had been publicly available I suspect they'd be
4 worried about the Attorney General looking over their
5 shoulder, and that probably would not have happened. Next
6 slide, please.

7 This is the real question of the night. How did
8 Exxon Torrance -- Exxon, which lost its only refinery in
9 California last year, increase sales by four percent
10 according to the Board of Equalization, which it did? And
11 the only answer that we can find, because the imports don't
12 add up to that, is the fact that it has production
13 agreements, extensive production exchange agreements with
14 other refiners.

15 Now, these signal these other refiners that
16 because they're of a certain length and for a certain time,
17 that that refinery's not coming up. So at least Tesoro,
18 where we know that there was a lot of crude oil and gas oil,
19 excuse me, gas, oil and crude, that went to Tesoro's
20 refineries, at least Tesoro, but probably other refiners,
21 had very intimate knowledge exactly what was going on at
22 Exxon and could plan their market strategies accordingly.

23 But the rest of the market didn't know. The
24 importers didn't know, and that's the point of full
25 disclosure. Everyone has an equal field. Next stage,

1 please, next slide, please. So the next thing is, well, we
2 can go to one more slide, as well, disclosing all dealer
3 tank wagon prices.

4 I heard the EIA say, well, we can't disclose
5 retail prices, because not everyone has them. Well, look,
6 Lundberg survey sells, corner by corner, DTW prices to the
7 refiners only. We can't get a hold of it. We know it
8 happens, because it was referenced in the Aguilar case,
9 where it was acknowledged in 2000 that that was what was
10 happening following a previous court decision that said
11 refiners couldn't do it themselves.

12 So we know that the dealer tank wagon prices in
13 the hands of the refiners that they know not only what was
14 happening in Torrance, they also know what their competitors
15 are charging all across Los Angeles and they can adjust
16 their prices accordingly. So the public and those stations
17 all across Los Angeles should also have that information.

18 Let's go to the next slide, please. Okay. This
19 is the last piece of information, but even less
20 controversial, which is imports and exports. The study that
21 Cody did for us last time showed that in real time we knew
22 about very little, of only 12 percent of the exports and
23 imports that when you would look back through the Lands
24 Commission data after the fact were actually happening.

25 If these were all public then we would have a

1 better idea of what was available in the market and there
2 wouldn't be such shell games. Last slide, please, or next
3 slide, please. So basically, we know refiners currently
4 know who conducted trades because they have relationships.

5 There is something called the Long Beach Petroleum
6 Club where traders hang out. There are petroleum industry
7 conferences, and if you look through Aguilar and Gilley,
8 they really explain all this, so I won't belabor it. But
9 the trades that they want known they publish on OPIS.

10 But make no mistake, they know more, a lot more
11 than the public do, a lot more than regulators do, a lot
12 more than the smaller market players do. And the fact is,
13 you heard from other traders that they've been driven out of
14 this market by the fact that there are fewer and fewer
15 refiners, they control more and more and they're not letting
16 as much information out.

17 Next slide, please. So in sum, because I'm at my
18 10-minute mark, the benefits of transparency. Creating more
19 opportunities for additional traders and importers to
20 participate in the market. This is really vital if we're
21 going to get new fuel in and break that oligopoly.

22 Empowering branded retailers to demand competitive
23 pricing from refiners. Now, this is difficult, but if they
24 have all the information it can happen, because up north
25 there is much better equity between branded and unbranded

1 stations, and they have seen far little, nowhere near the
2 same price volatility.

3 In fact, when the summer blend came in and
4 Southern California gas prices jumped literally 30 cents, 40
5 cents at the pump, in Northern California it was 10 cents,
6 and that's because they have a better diversity. We would
7 also be able to guard against predatory exports, that short
8 supplied gasoline market, as we talked about last time with
9 our report.

10 And it would give regulators like Kathleen and
11 anti-trust enforcement officials tools to understand anti-
12 competitive pricing in real time. It really takes a long
13 time to peel this back. I mean, we had to reach back to
14 Aguilar to show what was happening, you know, in the 2010
15 case, or Gilley in a 2005 case.

16 If all this information is known in real time we
17 believe there'll be a big deterrent effect to behavior that,
18 by the way, the court said is not collusive, but could be
19 construed collusive in real time, and therefore, refiners
20 would be a lot more worried about it.

21 The bottom line is, the courts have said that the
22 type of exchange agreements, DTW sharing, retail prices,
23 OPIS, exchange and production agreements are legal. That is
24 not collusive. But if they're legal and we know they
25 happen, we should put them out in the light of day so the

1 market can address, the public can look and we can change
2 the laws if we need.

3 But going back and trying to search for this data,
4 as this Committee has found, is just nuts. So we really
5 appreciate the opportunity to be heard, and any questions
6 you have, be happy to take.

7 CHAIRMAN BORENSTEIN: Thanks, Jamie. Questions?
8 I will start, then. So let me ask about the dark deals,
9 which you want to shed light on, and I'm curious. If you
10 did, how do you know that the prices wouldn't go up on
11 average? Why do you think prices would come down on
12 average? It seems like these dark deals, if they had to be
13 revealed it's quite possible they just wouldn't happen at
14 all.

15 MR. COURT: Well, they're not hiding the high
16 price. I mean, you know, look, we want all the deals out on
17 the table, but the point is that if -- I understand what
18 you're saying. Why wouldn't we gravitate more towards a
19 higher DTW price?

20 Well, there's a reason that that gas is being, you
21 know, dumped on the unbrandeds and Costco at that price. I
22 mean, that is a reasonable price in a wholesale market. And
23 I guess there is no way to know, but the reality is, if you
24 want to get the market more competitive you've got to
25 empower, you know, the station owners to be able to look at

1 those, you know, crisis across the spectrum every day.

2 And those cases, Aguilar and Gilley, were brought
3 by Arco station owners, by the way, because they felt that
4 they weren't, you know, getting the best deals. What's
5 happened, and this is a larger point, is that the DTW --
6 this is the larger question, really.

7 The DTW has been used this year as a way when
8 there is ample supply, and we showed this in previous
9 meetings, for the price to be kept artificially high. In
10 other words, this is the reason, when we saw the inventory
11 come in, and ordinarily you'd see a price drop, that's when
12 we saw this big gap between the DTW price -- excuse me --
13 the branded and unbranded racks, which we complained about
14 to you last summer.

15 Then between the DTW and the unbranded racks, and
16 then they started in May and June, right, about -- a little
17 before we complained, actually, with the dark deals because
18 they wanted to hide what this unbranded price was, because
19 it's actually well below the rack in many cases.

20 So the point is I think that if supply and demand
21 are working or people are watching it, like you and I, and
22 saying, why, when we have low supply, okay, we can
23 understand that the price is going to be high --

24 CHAIRMAN BORENSTEIN: Yeah. But Jamie, here's the
25 issue. I mean, your underlying premise is these firms have

1 market power.

2 MR. COURT: They do.

3 CHAIRMAN BORENSTEIN: Which I am not, you know, I
4 wouldn't disagree with. But if firms have market price and
5 are price discriminating, which is what they're doing by
6 selling at two different prices, and you say you can't price
7 discriminate, or you say we're going to make it publicly
8 available --

9 MR. COURT: No. We're going to publish it.

10 CHAIRMAN BORENSTEIN: -- it's not at all clear
11 that their best response is to lower their high price. It
12 might very well be to raise their low price.

13 MR. COURT: No. But what it means is when -- no.
14 But what it means is when there's -- look, the reason
15 they're giving the unbranded sector a better deal is because
16 the unbranded sector can get that gas anywhere. I mean,
17 they have a choice.

18 The branded station owners, the DT, the people
19 that get the DTW don't have a choice. They can't vote with
20 their feet. And the point is, that in a market where you
21 have more people either opting to be unbranded or
22 independent because they're getting really fed up with the
23 way they're being treated by these DTW deals, or in a market
24 where --

25 CHAIRMAN BORENSTEIN: But that's a structural

1 remedy. That's not an information remedy.

2 MR. COURT: Well, but that only comes when you put
3 information. I mean, we're looking at a market right now,
4 that is, where the refiners have such power, not only over
5 the supply, but over the street price, that they're exerting
6 it. And what I would say is the unbranded sector, even
7 though it's 20 percent in Southern California, you know,
8 does have some choices.

9 And the point of publishing all of this is to show
10 what's happening in real time and to give either regulators
11 the tool, or I should say anti-trust regulators the tool to
12 come in and say, what's going on in real time, or to give
13 this Committee, since you're here for another three years,
14 why is this happening, or to give either of these two
15 sectors the opportunity to leverage the refiners for better
16 deals.

17 CHAIRMAN BORENSTEIN: I just want to clarify.
18 We're not here for another three years. We're here for
19 three years. But Jim is --

20 MR. COURT: I mean, there are no guarantees --

21 CHAIRMAN BORENSTEIN: -- Jim is waving to get in.
22 I guess I'm still not clear why we think that the -- it's
23 not real time information that would get a branded station
24 to switch to being unbranded. It's basically your sort of
25 presentation, with -- even with long legs that says, look,

1 you're getting screwed, you should switch to being an
2 unbranded dealer.

3 MR. COURT: That's true, but they don't see that
4 every day. I mean, the only -- they don't have this
5 information, I mean, and --

6 CHAIRMAN BORENSTEIN: Okay.

7 MR. COURT: -- and that's the point, I think, is
8 that -- is to reveal it, you show the true state of the
9 market and the imbalances of power in it, and then players
10 in the market and without the market have an opportunity to
11 stress changes.

12 But instead, we're literally, I mean, I'm not -- I
13 don't mean this facetiously, I really appreciate this
14 Committee's time -- but we're all looking back and
15 describing a market that largely existed in 2000, where all
16 of this was in play.

17 It's just become much more consolidated, so things
18 have gotten an awful lot worse, but the same type of
19 relationships exist, deemed to be not collusive for anti-
20 trust purposes, which means there needs to be another
21 remedy.

22 CHAIRMAN BORENSTEIN: Okay. Jim.

23 MR. SWEENEY: First, a little correction. We did
24 not vote on three more years, and we did not vote on the 20
25 years to life possibility of what we would have. But I'd

1 like to go on -- let me -- I listened to what you said, and
2 frankly, I saw very little that showed why transparency
3 would reduce volatility.

4 I saw you say a lot of things that transparency
5 would create transparency, but not volatility. So let me go
6 out -- let me go ask you about two specific things.

7 MR. COURT: Um-hum.

8 MR. SWEENEY: Why would data on exchanges of oil
9 or gasoline products reduce volatility in the market? I
10 don't get that. And I'll roll into the second one and you
11 can do those separately. When you talked about the Exxon
12 Mobil, the data, you would have required not data on what
13 they're doing, but forward looking statements about the time
14 that they would expect the refinery to come back online.

15 And I don't see how data on forward looking
16 statements on the expectations of the supply of various
17 companies has ever been proved to reduce prices, volatility,
18 but typically has been seen as something that could in fact
19 increase collusion amongst companies.

20 So tell me in those two examples how the forward
21 looking statement of Exxon Mobil would actually reduce
22 volatility and why the data on exchanges would reduce
23 volatility, as opposed to simply creating more information.

24 MR. COURT: Well, on the exchanges, first of all,
25 let's go back to the exchanges --

1 FEMALE SPEAKER: What flag number?

2 MR. COURT: In the Exxon case the accurate
3 information that would be reported to the state about what
4 was wrong with the refinery and included an estimate of time
5 up and a plan to get it back up, which would have told us
6 that they would have, you know, what really happened there
7 and what kind of regulatory hurdles they'd have to get
8 through in order to get an alternate plan established, would
9 have shown that the time horizon wasn't July, but was
10 probably the end of 2016 under best case -- 2015 under best
11 case scenarios.

12 That would have allowed for opportunities to
13 import, and if you bring in imports, or create opportunities
14 for import, then you reduce volatility. In the exchange
15 example, one of the exchanges came in on July 1 when prices
16 went up to \$4 because everybody expected, wrongly, that the
17 refinery was going to open when there was no way it was
18 anywhere close to opening.

19 One of the two ships that came in that period was
20 an exchange with Chevron. And that ship, if that had been
21 known that that was an exchange, again, would have created,
22 you know, more opportunities for imports. The forward
23 looking statement that we're talking about is, what the
24 expectation is to get Exxon back up and running, and if it
25 included a statement that we got to get approval from the

1 air regulators, you know, in the way they had proposed it, I
2 think anyone who's looking at that market would say, no, no,
3 no, that's not happening for nine months; we've got an
4 import issue.

5 But more importantly, what the exchange agreements
6 when they're made public do is not allow the refiners to
7 signal to each other through the exchange agreements what's
8 going on in the market the rest of the market doesn't know.
9 And if you believe that the rest of the market, and I know
10 we're going to hear Mr. Faulstich talk in a minute about how
11 traders trade for profit, well, in this case if you're
12 trading for profit and you know Exxon's not coming back in
13 nine months, you're not going to drive down an already dry
14 market.

15 You're going to fill it up. You're going to find,
16 if you're an importer, you're a trader, you're going to find
17 a way to fill it up. And that's the point, is that it
18 reduces volatility by empowering the other players with
19 information that the exchange agreements and the production
20 agreements have already empowered the refiners to signal to
21 each other exactly the things that they say they're not
22 talking about.

23 MR. SWEENEY: Frankly, you still haven't made a
24 case in that case, in these examples, why that data would
25 have caused reduced spikes. The data on Exxon Mobil is that

1 they have to get regulatory approval, which I guess would be
2 new data. But most people would know that if they're
3 involved in it.

4 The exchange agreements, having studied a lot of
5 circumstances in which exchange agreements work, they really
6 give the opportunity for reduced overall cost of the
7 infrastructure, or cost of moving products that you don't
8 have to move because of exchanges, or moving it across time
9 at a lower cost.

10 And I simply didn't understand at all anything you
11 said about why data on the world would allow those exchange
12 agreements to keep the actual price spikes down.

13 MR. COURT: Well, if you look at the Gilley case,
14 which I'll give you, and the Aguilar case, and I actually
15 had some copies I was going to hand out to you, the Gilley
16 case is all about how exchange and production agreements,
17 which are detailed very specifically, are ways for the
18 refiners to signal to each other, you know, first of all,
19 the way for the -- this proves specific to Chevron -- and
20 the way to reduce CARB capacity in certain areas, and
21 maximum -- which isn't inconsistent with what you're saying
22 -- but an maximize, you know, cooperation so that there
23 wasn't excess CARB capacity in the market, which draws down
24 inventories.

25 Now, to the degree that those are made public and

1 to the degree that companies are using these exchange
2 agreements and production agreements as a way of having
3 sufficient inventories, that tells the rest of the market,
4 you can profit by bringing in more product.

5 So if things work the way they're supposed to
6 work, okay. If you look at these lawsuits and you can see
7 very clearly that all of these are tools in an isolated
8 market based on CARB to keep inventories low or just
9 sufficient, and we're hearing from traders and importers,
10 hey, it takes three weeks to get this product here, and hey,
11 we don't have any information, enough information to make
12 moves to counter and that's why we're going out of the
13 business, what I'm saying is, putting more of this
14 information, knowing that it's a tool being used based on
15 what's happening in the market now and based on what's been
16 established in these cases, it's a tool being used to do
17 what we say is really the cause of the volatility, which is
18 low inventories, perennially low inventories, and what seems
19 to be, you know, an inability to get a refinery up and
20 running for, you know, a year.

21 But I do say that if you knew the extent of the
22 damage up front about the ESP and the FCC at Exxon, if they
23 were just honest right at the get-go about exactly what
24 happened and they need a whole other ESP, I mean, people
25 would have understood exactly the time frame, in addition to

1 the regulatory hurdles to get it up and running.

2 CHAIRMAN BORENSTEIN: Okay. Amy, you had
3 question?

4 MS. JAFFE: No. I was just going to make a
5 summary statement about transparency and data. If you
6 really know, if there's good market information, in other
7 words, you have lack of unclarity or uncertainty in the
8 market, you know, the market will clear.

9 And you know, you never have perfect data. So
10 what I guess I would say from my experience, you know,
11 writing about market volatility, is that sometimes, you
12 know, you could say, well, all the participants would be
13 able to plan because they'd have this, you know, more
14 perfect information.

15 And that could go, depending on market conditions,
16 that can go in either way. That can be all the players have
17 perfect market information and so traders come out and they
18 speculate by either buying or selling a lot, because they're
19 anticipating something, or it could be that it's clear that
20 the problem's going to be adequately met for supply and so
21 there's nothing to trade off of.

22 And you know, to give you an idea of it, example
23 outside the State of California that's a good example that's
24 been studied, is when they have these pipeline reversals for
25 West Texas intermediate crude oil, right. You get a lot of

1 speculation ahead of the basis risk for month to month
2 trading.

3 You know, in the months before this reversal and
4 after the reversal, traders take positions on the spreads,
5 right. So I think honestly, if we're interested in that
6 topic, that is something that's probably quantifiably
7 knowable.

8 Looking in history, over periods of time where
9 there was less perfect information and more perfect
10 information on the market and how did people use that
11 information. I think that it really depends on the
12 circumstances of the information.

13 If you give people the information that there's
14 going to be a giant shortage and there's no way to fix it
15 for nine months, it's unclear that that information would
16 necessarily be as helpful to a consumer. So I really think
17 it kind of -- it's really more specific to the kinds of
18 things that you're looking at.

19 And I think, with respect, Jamie, I think what
20 you're really trying to say, so I'm going to try to say it a
21 little bit more clearly, what you're really saying is, to
22 the extent that we have an AG's office or to the extent that
23 the CEC has a panel like ours or other kinds of protective
24 activities, right, to the extent that industry players with
25 market power would hide data from those bodies and use that

1 data advantageously to exercise market power, that would be
2 a problem, right?

3 And I think we should zero in on -- specifically,
4 on that specific problem, because that is a different
5 problem than just whether people in the market know that
6 there's going to be a shortage or not, which is a different
7 thing.

8 MR. COURT: I appreciate the eloquent restatement,
9 but I would also says that you have heard testimony and we
10 have heard testimony about the traders' trading sector
11 shrinking. I mean, what we're trying to do is undo market
12 power.

13 So yeah, the easiest way to do that is to undo it,
14 but there is no clean way to do it. So the way, you know, I
15 do believe setting sunlight on this market will create new
16 opportunities, especially because we know now, I mean,
17 there's a lot more places that produce CARB now, I mean, you
18 know, than when we were dealing with this 15 years ago.

19 And it's a three-week track, you know. And so if
20 the market doesn't work when we know there's a nine-month
21 shortage and we can't get it in within three weeks, then
22 there's another discussion as to the AG. I would say also -
23 -

24 MS. JAFFE: So I won't name names, but let me just
25 say in a very general way, when you have a market with

1 large, unbelievably large, very wealthy players with a lot
2 of market power, and then you have a new player or a trading
3 player, you know, those players with a lot of capital and a
4 lot of market power can come in and move the market around
5 to harm people who would trade against their interests,
6 right. And it's happening around --

7 MR. COURT: Not if everything's in public.

8 MS. JAFFE: -- you know, in over and over and over
9 again, in the Brent market and other markets where you have
10 a player with market power. Alaska, it used to happen, and
11 they come in and they see some trader's going to, like, do
12 an arbitrage and they just come in and move the market
13 against the player to put that player out of business.

14 The history of the oil industry is littered with
15 trading companies that have been put out of business for
16 getting in the way of a large player. So just saying.

17 MR. COURT: That'd be true, but making all trades
18 transparent, making all trades transparent, make it harder
19 to do it, or when it happens, as you said, and I think very
20 eloquently, gives the information to an anti-trust official
21 that they're doing that, which is an anti-competitive act.

22 CHAIRMAN BORENSTEIN: Okay. So we've been talking
23 about --

24 MR. COURT: And that's why we suggest making all
25 trades public. I just want to tell Jim that the expert in

1 the Aguilar case, and I believe the Gilley case was a
2 colleague of yours at Stanford, Roger Nowell, and he wrote
3 an unbelievable declaration that's quoted in the Appellate
4 decision.

5 Unfortunately, the declaration, as well as the
6 deposition of Mr. Faulstich, who worked at Exxon at the time
7 and a bunch of other witnesses, are all under protective
8 order. But he is cited about 70 times in that decision and
9 perhaps he could share with you some of his reasoning.

10 CHAIRMAN BORENSTEIN: Dave Hackett, you have one
11 final comment. We're getting behind schedule.

12 MR. HACKETT: Yeah. I'm going to offer an
13 opinion, and my opinion is that there are plenty of barriers
14 to supply in this market. Creating additional regulations
15 will create additional barriers and keep market participants
16 out.

17 CHAIRMAN BORENSTEIN: Okay. Thank you very much,
18 Jamie, and we are going to move on to John Faulstich.

19 MR. COURT: Thank you.

20 MR. FAULSTICH: Okay. I believe I have now been
21 unmuted.

22 CHAIRMAN BORENSTEIN: Yes, there you are.

23 MR. FAULSTICH: Okay. Thank you. I will try and
24 move through this as quickly as possible. My focus is, is
25 really --

1 MS. WARD: Sorry to interrupt you, John. Can you
2 speak into your microphone a bit more, or your phone a bit
3 more? You're cutting out a little bit.

4 MR. FAULSTICH: I'm on the computer. Hopefully,
5 this will -- can you hear this?

6 MS. WARD: A little better now. Thank you.

7 MR. FAULSTICH: Okay. I'll try to get closer to
8 this. All right. Really, the focus is on turnarounds and
9 turnaround planning. I do offer some thoughts on the data
10 transparency. I also, I hope the level of this that I have
11 is not too basic, but I guess as we go through it we'll find
12 out.

13 I would like to say right out, fair disclosure, I
14 have done work with Dave Hackett in Stillwater. I worked on
15 some of the EIA projects and other things. I received
16 compensation for that. I am in no way receiving any
17 compensation for this, and what I am presenting are my
18 thoughts, not Dave's thoughts, today.

19 So flipping to slide two, I won't go through
20 everything here, but if you can look at it, I've been out in
21 California in the industry for 20 years, and saw a lot of
22 changes in CARB Phase 2, CARB Phase 3, MTBE and RO
23 (phonetic), you name it, a lot of things like that.

24 The market's gone from long to short to balanced,
25 to short, to long. A lot of changes in the markets, I've

1 seen it. One other comment I would add, in my term as
2 refinery optimization, in the Exxon world the optimizers are
3 responsible for signaling to the traders and approving all
4 deals, including these dark deals. So I know a fair amount
5 about those things.

6 Moving to slide three, refinery maintenance
7 planning. I'm not a maintenance expert. I know a lot more
8 on the inventory and production side of things, but I know
9 something about the maintenance. And hopefully, you're all
10 aware of this, but these turnarounds are not just done, you
11 know, next month or next year.

12 These turnarounds are planned years in advance and
13 the scope of work you perform in the turnaround going on now
14 determines when the next one will be. You do enough work to
15 get you three years, and maybe you try to do more work to
16 get you five years.

17 And the turnarounds are very large events,
18 thousands of contractors, very, very large cranes doing, you
19 know, several hundred-ton lifts in some cases. And those
20 people and resources are lined up well in advance in order
21 to do -- make these things work.

22 As far as what determines the timing, besides the
23 scope of work I mentioned above, on a lot of hydro
24 processing units, and in California we've probably got more
25 hydro processing than anywhere. Because of emissions

1 regulations and some of the fuel specs, catalyst's life can
2 be a big driver.

3 The catalyst in the reactors will only remain
4 active for so long. You can optimize that to some degree by
5 how severe you run the unit. But like I say, the admissions
6 and the product specs will also drive that operation, as
7 well. And in fact, sometimes you can require an outage to
8 replace the catalyst between turnarounds. The catalyst's
9 life can be that short.

10 FCC units, of course, the very popular topic with
11 the Exxon Mobil issue, vessel internal components. An FCC
12 unit you've got something like 50 tons a minute or so of
13 catalyst, which is like sand going around in circles within
14 the unit, creating an awful lot of wear and tear on the
15 insides of these units.

16 There's a refractory there to hopefully withstand
17 the tear, but over a multi-year run it adds up. The other
18 big driver is major compressors. You've got, you know, 10,
19 15,000 horsepower compressors associated with these units to
20 compress the gas and then to get it into the unit or out of
21 the unit.

22 These are big machines. They need to be
23 maintained, as they run seven days a week, 24 hours a day.
24 I've noted typical turnaround levels. I won't -- you can
25 read the numbers as good as I, but again, you know, there's,

1 you know, significant runs on these units.

2 And you try to run for a long time because,
3 frankly, these turnarounds are 20, 30, 40, \$50 million
4 events from a maintenance standpoint. They are not small
5 expenditures. In addition to that, of course, you also lose
6 the production.

7 Turning to slide four, this is really what I am
8 more knowledgeable about, the supply planning for doing one
9 of these event. And I'll say right up front, the goal, at
10 least our goal, was always to maintain a continuous supply
11 chain, despite the refinery not being in the picture or at
12 some reduced runs.

13 We wanted the event to be transparent to the
14 customers, as well as to the refinery. Frankly, the
15 refinery's got enough stuff going on during a turnaround,
16 they don't need to be worried about doing things differently
17 because of something in the supply chain.

18 A lot of the factors you need to address are
19 storing, you know, gas oil, intermediates, crude oil. If
20 gasoline pool, you've got to make sure what gasoline you are
21 making remains feasible. What I mean is, you typically have
22 give to 10 different gasoline components that can blend
23 together to make your finished CARBOB (phonetic).

24 You take two or three or four of those out because
25 of a turnaround, you still got the other four or five. So

1 you have to do something to make sure you can blend those
2 off. So that is why you will often buy components and not
3 finished CARBOB, because you need to be feasible with what
4 you are producing.

5 Then you'll look at buying the finished BOBs to
6 meet your volume requirements, to meet your anticipated
7 demands. We always wanted to minimize any terminal lifting
8 disruptions, but depending on where you could get the volume
9 to, sometimes you have to do something with that.

10 And from the, you know, company standpoint we
11 always, of course, wanted to buy and sell at competitive
12 prices in the market, and that will also encompass what
13 level of price risk we would take on. Next up, of course,
14 is developing good balances from what the refinery thinks is
15 going to happen.

16 You'll get information on each of your streams.
17 You'll put it together and see what you can do, and then
18 you'll assess what you can buy, or if you have something to
19 sell in the local market to make things work. What we have
20 found, frankly, in the local market in California, if you're
21 looking for a specific gasoline component to make your pool
22 work there's not a lot of component trading that goes on in
23 California.

24 People run their own systems, they like the
25 components they have and that's what it is. If you need

1 something like alcoholate you're going to reach far, far
2 away for it. Turning to slide five, another factor, of
3 course, is managing your inventory ahead of the outage.

4 You know, you will typically, you'll operate at a
5 normal inventory. As you get closer to the outage you will
6 try to build inventory, but you know, you can only build so
7 much. So you'll build what will be needed as much as you
8 can, and if you got something that's going to be excess, of
9 course, you'll try to draft that down, with the tradeoff
10 being you don't want to terribly compromise your operations
11 as, you know, before the turnaround in case something
12 unexpected happens.

13 The other important point here is feasible builds
14 or draws of inventory before the outage are pretty small
15 relative to the volume impact of the outages. I've roughed
16 out some numbers and I came up with something like 20
17 percent of the volume associated with an FCC turnaround, you
18 might be able to do with an inventory build or draw or
19 something.

20 Why is this? Because you just don't have a lot of
21 spare tankage. And the inventory that can be depleted, like
22 I say, is also pretty small. So what do you do? You look
23 for, you know, bulk purchase of a lot of stuff from third
24 parties.

25 And that could be a trading company, could be

1 another refiner. It's whoever you can find to supply it.
2 And you'll agree on the contract in advance, and the
3 contract's got a lot of terms and I won't go through all
4 that.

5 But the important thing is you need to buy a lot
6 of material from someone who's got inventory of is a refiner
7 who's producing it, because you need flexibility on batch
8 sizes. You know, a typical trade in the spot market is
9 25,000 barrels.

10 But you could have batches that are 13,000
11 barrels, 37,000 barrels, 5,000 barrels. You need something
12 who can handle all these odd sizes. So that's why you try
13 to get a lot of volume from somebody who can -- then can do
14 the small pieces out of their inventory.

15 Pricing wise, frequently purchased on floating
16 price. So the price is whatever OPIS says the price is in
17 the market for three days or five days or the whole month,
18 or whatever you agree to. That opens up some opportunities.
19 Frankly, the seller has every incentive to try to get that
20 price higher. But certainly, as the buyer for a turnaround
21 you don't necessarily want that price to go up.

22 Slide six, on the cargo side, assuming, you know,
23 you can't find everything you need in the local market
24 you'll go to the cargo market and try to find some imports.
25 And you can buy them at the load point, which is frequent,

1 or you might find somebody offering it on a delivery basis.

2 Either way, frequently the buyer will bear a lot
3 of the risk. People, you know, half the way around the
4 world, four, six weeks of time, don't necessarily want to
5 take the price risk associated with moving product to
6 California.

7 So you as the buyer, you know, you basically
8 guarantee them something and then you figure out how to
9 manage that price risk. And every company's got their own
10 different way of doing it as far as hedging strategies go.
11 Some don't hedge at all and some will hedge to the nth
12 degree.

13 And of course, you need to buy these things at the
14 right time in order to properly manage inventory. Another
15 factor involved in turnarounds is make sure you've got the
16 supply arranged for some locations with limited access,
17 because buying endless volumes at Watson, which is the head
18 of the pipe, doesn't do you any good for some isolated
19 terminal in Anaheim, for example.

20 You need to get the product in the right spot.
21 Otherwise, of course, you can try to move that demand to
22 some other location, but frankly, taking a big chunk of rack
23 volume and trying to move it somewhere else in Los Angeles
24 can be difficult.

25 You'll end up going to a number of different

1 terminals, because no one will give you the total capacity.
2 As far as sales of excess volumes, you'll kind of do the
3 same thing. I won't really go through all of that. I'm
4 sure you're more interested on the buy side for gasoline.

5 But the last thing, the important thing is, you
6 adjust as the turnaround proceeds, because things change.
7 You start with a plan, but the schedule can change. Your
8 demands can change. Your production can change. Anything
9 can change.

10 And that is why, and I think anyone in the
11 industry would agree, as turnarounds proceed, the price,
12 real price volatility isn't at the beginning or the middle
13 of the turnaround, it's at the end of the turnaround. And
14 that's when, again, things have changed that you probably
15 did not see coming terribly far in advance, and that's just
16 the reality of that.

17 Turning to slide seven, again, my thoughts on data
18 transparency, you've heard a lot of thoughts today so I will
19 offer a couple more. First thing I would say right up
20 front, every year we got a good amount of guidance from
21 legal as far as what we could say and what we can't say, due
22 to anti-competition concerns.

23 And any sharing of production plans going forward
24 was definitely not on the list of things you could share.
25 As has been alluded to, I believe by Jamie, is planned

1 outages do, you know, can become apparent to those who enter
2 into the, you know, the deals that you do.

3 So yes, as you do a big deal with somebody in the
4 local market they might figure out that you've got a
5 turnaround happening. Anybody with any knowledge of the
6 impending outage can try to profit from it. It's just the
7 reality. People are in the business to make money.

8 So and traders trade, they trade for profit and
9 they trade on information. Traders will take positions in
10 the market. I think as was just discussed, if you have
11 endless transparency, yeah, you'll get a lot of people, all
12 kind of, you know, lining up to try to profit from that.

13 And frankly, you'll get everybody going the same
14 way, everybody will buy ahead of the turnaround, there won't
15 be any sellers. So what happens? Prices go up before the
16 turnaround. The other thing that can happen, which is,
17 again, as somebody going into a turnaround is anybody that's
18 providing you a service, whether it be a tank for storage or
19 a vessel for transportation or anything, they can see that,
20 hey, we kind of got you, you know, you're in a position
21 where you need something, well, we'll just raise our price.

22 So you know, from a proprietary standpoint,
23 worrying about your own profitability, you care to keep most
24 of the information to yourself. The last bullet, and again,
25 I think it was kind of alluded, but you know, publicizing

1 the planned outages basically will just increase the number
2 of people that are trying to profit from that information.

3 At least, that's my opinion. So I don't know.
4 I'm sure there's pluses and minuses to it, but these are my
5 thoughts.

6 CHAIRMAN BORENSTEIN: Thank you, John. I have a
7 couple questions, but -- okay. I'll start. So I want to
8 take you back to slide two, your background and refinery
9 optimization. This is something that I continue to be
10 curious about.

11 So you actually were in charge of running these
12 optimization models that planned production and so forth, or
13 you participated in that?

14 MR. FAULSTICH: Actually, I did not run the model.

15 CHAIRMAN BORENSTEIN: Right.

16 MR. FAULSTICH: Meaning, the LP.

17 CHAIRMAN BORENSTEIN: Right. Right.

18 MR. FAULSTICH: I have in the past, but not for a
19 long time --

20 CHAIRMAN BORENSTEIN: Okay.

21 MR. FAULSTICH: But I gave them the prices and
22 approved the assumptions that went into the model. They
23 presented the model results to me. I reviewed them and
24 perhaps suggested some changes. That was one of my roles.

25 CHAIRMAN BORENSTEIN: Okay. So what, you said you

1 gave them the prices?

2 MR. FAULSTICH: Yes.

3 CHAIRMAN BORENSTEIN: So that included, so you had
4 forecasts of what the price of various products would be in
5 the future, and that's part of what went into the planning?

6 MR. FAULSTICH: Yeah. We gave them, and it was
7 often as they ran the model, which could have been every
8 week or every two weeks, but we gave them our best
9 assessment of what the prices of the products, and crude oil
10 for that matter, inputs, and the availability of each stocks
11 and perhaps some range of allowable production based upon
12 our assessment of demand, yes, all that was in the model.

13 CHAIRMAN BORENSTEIN: So how did you determine the
14 prices of the products that were coming out? Obviously,
15 crude oil prices went into it. What else went into it?

16 MR. FAULSTICH: Crude oil prices, other feedstock
17 prices. Some of that, you know, would come from the people
18 actually in the market, the traders. Some of it would be
19 looking at, you know, where we expected the fundamentals to
20 be or how they were relative to the current market.

21 For example, let's say this week the price of
22 California gasoline was 30 cents over the Gulf Coast. But
23 looking at it, you know, we just didn't think that was
24 sustainable because, you know, 30 cents is too high at that
25 level and the market will over correct. It will give them a

1 lower price outlook going forward.

2 CHAIRMAN BORENSTEIN: Okay. So --

3 MR. FAULSTICH: Probably at a premium because it
4 typically traded as a premium, but probably not 30 cents.

5 CHAIRMAN BORENSTEIN: All right. So if you found
6 out another refinery in California was having an outage or
7 had had an outage would that affect your price forecast?

8 MR. FAULSTICH: It could. It'd temper it up,
9 certainly, you know, maybe five cents a gallon, but not, you
10 know, 20, 30, 40, 50 cents a gallon, nothing like that. You
11 know, it would probably convince you that for sure the
12 market was going to be, you know, a little bit more of an
13 import market to meet the production shortfall.

14 CHAIRMAN BORENSTEIN: If you were at a different
15 refinery in the beginning of 2014 when -- or 2015 when Exxon
16 had their massive problem, you still would only adjust your
17 price expectations by five cents?

18 MR. FAULSTICH: Well, I would have probably
19 concluded, and this is all, you know, kind of looking back a
20 year now, I would have probably concluded that imports will
21 need to come into this market for a while. I guess I would
22 have taken a look at what our best assessment of the cost of
23 those imports was going to be, and say this market would be
24 at that level.

25 And I don't know, if it took 20 cents or 30 cents

1 over the gulf to satisfy ourselves that, yeah, that's what
2 we think it'll take, then that's what the number would have
3 been.

4 CHAIRMAN BORENSTEIN: Okay. So --

5 MR. FAULSTICH: It depends, you know. And the
6 world has changed a lot, too. We are now in a world where
7 product specs are pretty tight all over the world. So
8 frankly, getting good quality stuff to California is more
9 expensive than it used to be.

10 CHAIRMAN BORENSTEIN: So but it sounds like your
11 expectation after the Exxon news came out would have been
12 systematically too low, because we've seen a differential
13 that has been more on the 30, 40, 50-cent range pretty
14 systematically since the fire.

15 MR. FAULSTICH: At the spot level?

16 CHAIRMAN BORENSTEIN: Well, I'm trying to do this
17 --

18 MR. FAULSTICH: I would not have come to
19 (indiscernible) --

20 CHAIRMAN BORENSTEIN: -- calculation -- 30-cent
21 range, yeah.

22 MR. FAULSTICH: Yeah.

23 CHAIRMAN BORENSTEIN: So something more has been
24 going on than just the normal -- and you know, if we look
25 back at the Chevron fire, if we look back at other

1 disruptions, we've never seen a continuous gap of anywhere
2 near the size we've seen in the last 14 months.

3 So I'm just wondering what your thoughts are about
4 why we're seeing such a large gap for such a long period of
5 time. I mean, this must be big news in the industry. It's
6 a huge amount of money and we've never -- we're seeing
7 something that's completely out of the norm for any time
8 prior to February 2015.

9 MR. FAULSTICH: I mean, I'm sure it is big news in
10 the industry. I would say in my current position I'm not
11 really in the industry. But that being said, you know,
12 given the fact that, as I said, good quality gasoline
13 components, alcoholate, seem to have gotten more expensive
14 worldwide because of tighter specs.

15 Octane differentials, I have noticed, have been
16 high worldwide and alcoholates are the source of octane. So
17 you know, doing all that math, I guess does it shock me that
18 the differential has averaged 30 cents for the last year?
19 Not at all, doing all that math.

20 But again, the world has changed since even 2010
21 when I was really, you know, involved in this.

22 CHAIRMAN BORENSTEIN: Okay. Let me change
23 subjects slightly. You're worried that more information
24 will lead to some players trying to take advantage of that
25 information, traders, and I'm trying to understand how that

1 differs from our more general concern about market power
2 among refiners.

3 It seems that if there's a trader who knows that
4 you're short and really need to buy product, you're worried
5 they will withhold product in order to get a better deal.
6 And it seems that everybody agrees that that's a concern. I
7 agree that's a concern.

8 But it seems that a natural corollary of that is
9 if you're a major refiner and you know that the market is
10 short you're also in a position to withhold product in order
11 to get a better deal. Am I missing something?

12 MR. FAULSTICH: I mean, in theory I can agree and
13 I think there was at least one case in the Midwest where
14 that happened. You may be familiar with that. This was
15 some years ago, but I believe that did happen. Could people
16 do that?

17 Yes, to the extent that they have gasoline in
18 excess to what their commitments are, such as retail
19 stations or whatever. Could they withhold it? I suppose
20 they could. Only they can decide when they want to sell
21 something and if they can decide the price, I guess they
22 can, too.

23 I can only speak from my experience with Exxon
24 Mobil. It's the only company I worked for. Exxon Mobil is
25 not big on speculation. Exxon Mobil is not big on doing

1 speculative inventory bills. Exxon Mobil is very big on
2 keeping the product moving out every day, keeping your
3 inventory stable and not guessing whether the market was
4 going to go up or down or anything like that.

5 CHAIRMAN BORENSTEIN: But Exxon Mobil sold, when
6 you were in the operation, they did sell into the unbranded
7 market, right?

8 MR. FAULSTICH: Well, I'm -- I don't believe --

9 CHAIRMAN BORENSTEIN: Some of their product went
10 into the unbranded market.

11 MR. FAULSTICH: Well, I don't believe we did
12 unbranded rack sales. We did do these dark deals.

13 CHAIRMAN BORENSTEIN: Okay.

14 MR. FAULSTICH: That they have been
15 (indiscernible) --

16 CHAIRMAN BORENSTEIN: So they sold into non -- let
17 me -- they sold into non-branded markets. Whether it's
18 unbranded rack or dark deals or whatever --

19 MR. FAULSTICH: Yes.

20 CHAIRMAN BORENSTEIN: -- they sold product that
21 was not Exxon branded, right?

22 MR. FAULSTICH: That went to someone that did --
23 or actually, Mobil brand in California, but whatever, yes.

24 CHAIRMAN BORENSTEIN: Okay. But they were aware
25 that when they did that they -- I mean, they made that

1 decision based on, and they made decisions three weeks
2 before that, I assume, based on how much they thought they
3 could sell it for, right?

4 If they thought the price they could get for it
5 would be really high, they'd produce more of that and less
6 of something, say, for sale into Arizona or Nevada, wouldn't
7 they?

8 MR. FAULSTICH: That's not how it works. I mean,
9 you'd get a deal --

10 CHAIRMAN BORENSTEIN: Isn't that what the LP does?

11 MR. FAULSTICH: Well, the -- okay. You have to
12 separate the LP from the sale. The sale was like a year
13 contract or something like that, and it would get renewed
14 every year. The LP says, this is what the refinery's going
15 to make. Supply is charged with balancing those two.

16 Whatever reason the refinery isn't going to make
17 gasoline, because they have a turnaround or going to make
18 some other product, supply then has to buy the gas that's
19 needed to rebalance the system. That's what happens.

20 CHAIRMAN BORENSTEIN: Right. And --

21 MR. FAULSTICH: So there's no connection between
22 the LP and this "dark deal."

23 MS. JAFFE: Did supply operate from the point of
24 view of trying to make a profit as a unit? Did the supply
25 team have to try to make a profit?

1 MR. FAULSTICH: In the case of Exxon Mobil, no. I
2 guess you'd have to ask others about. I guess I have heard
3 there are other companies where traders will in fact trade
4 just for profit, in addition to supporting their plant. In
5 the case of Exxon Mobil, you just didn't do that.

6 CHAIRMAN BORENSTEIN: So I still don't understand.
7 I thought the whole point of the LP was to optimize
8 production to maximize profits, not the whole point.

9 MR. FAULSTICH: Yes.

10 CHAIRMAN BORENSTEIN: But a big part of it.

11 MR. FAULSTICH: Yes.

12 CHAIRMAN BORENSTEIN: Obviously, there was also
13 choosing feedstocks.

14 MR. FAULSTICH: Yes.

15 CHAIRMAN BORENSTEIN: But choosing to make a
16 little a little bit more CARB and a little bit less
17 conventional gasoline is part of what the LP does, isn't it?

18 MS. JAFFE: Right. And you're choosing crudes --

19 MR. FAULSTICH: Yes.

20 MS. JAFFE: -- based on the mix of crudes --

21 CHAIRMAN BORENSTEIN: Okay.

22 MS. JAFFE: -- that are going to give you the best
23 products to make the most profits.

24 MR. FAULSTICH: Yes, right.

25 CHAIRMAN BORENSTEIN: So I'm trying to understand

1 how that couldn't involve making choices about production
2 quantities in response to prices. That seems like part of
3 what the LP's supposed to do.

4 MR. FAULSTICH: No.

5 MR. HACKETT: John, this is Dave. Let me take
6 that one on.

7 MR. FAULSTICH: Okay.

8 MR. HACKETT: In the case of the sale that John's
9 describing, the contract he described was a year long. And
10 so at regular intervals every week they would deliver to the
11 customer the product that was specified. Let's call it
12 regular gasoline, regular CARBOB, right.

13 And so what the -- so they had that short that
14 they had to cover. And the supply department can cover that
15 short from the refinery or by buying it from somebody else.
16 And so the refinery's LP is going to decide what the most
17 economic thing for the refinery to do, but when it comes to
18 supplying the customer the supply department is making the
19 choice whether to take it from the refinery or take it from
20 some other --

21 MS. JAFFE: Based on profitability.

22 MR. HACKETT: Based on profitability.

23 MR. FAULSTICH: Right. The only thing I would to
24 that, Dave, is --

25 MR. HACKETT: Yes. Yeah, I agree with that.

1 MR. FAULSTICH: -- in addition to running the
2 model every week or whatever to do the near-term
3 optimization, you start off the year with a year plan from
4 the refinery where the refinery says, this month I think I'm
5 going to make this and next month this, and you have for all
6 12 months.

7 That's the basis for going into the deal in the
8 first place, is you think for that year you have this
9 gasoline you're going to need to sell.

10 CHAIRMAN BORENSTEIN: But you are reoptimizing
11 every few weeks. And presumably --

12 MR. FAULSTICH: Absolutely.

13 CHAIRMAN BORENSTEIN: -- if the Chevron refinery
14 in Richmond goes down and the price spikes I would hope that
15 that would be an opportunity that Exxon would respond to by
16 producing more CARB gasoline and less of something else.

17 MR. FAULSTICH: You would, yes, you would
18 reoptimize your plant assuming the price signal was --

19 CHAIRMAN BORENSTEIN: Exactly.

20 MR. FAULSTICH: -- you know, one that would move
21 the refinery towards more CARB gasoline. You would do that
22 and then you would have some excess gasoline that you would
23 sell, presumably to Chevron.

24 CHAIRMAN BORENSTEIN: Right. So my point is that
25 price is in the LP, right. If it's not, you're not doing

1 your job. And so my next point is that if price is in the
2 LP where -- my question is, where does that price come from,
3 because it's not today's price. It's a forecast, because
4 you're making some decision for three or four weeks from
5 now.

6 MR. FAULSTICH: Yeah. I mean, it's your best
7 assessment. In our case, I think we started with the NYMEX
8 gasoline curve, and to that we put our best judgment into
9 what would be the differential from the NYMEX to the
10 California market, based on whatever we knew at that point,
11 and that's what it was.

12 CHAIRMAN BORENSTEIN: So if you know that a couple
13 other refineries had turnarounds coming, wouldn't that
14 affect your forecast of the price in a few weeks?

15 MR. FAULSTICH: Yes.

16 CHAIRMAN BORENSTEIN: Okay. So supply of other
17 producers does affect price.

18 MR. FAULSTICH: Yes.

19 CHAIRMAN BORENSTEIN: We're agreed on that, right?

20 MR. FAULSTICH: It affects price. Now, how much
21 it affects production, that's a totally different question.

22 CHAIRMAN BORENSTEIN: Well, it's not a totally
23 different question. It goes into the LP.

24 MS. JAFFE: You would increase your runs if you
25 thought you were going to get higher prices.

1 (Several people talking at once)

2 MS. JAFFE: You would increase your runs to
3 capture the higher prices.

4 CHAIRMAN BORENSTEIN: So my question, then, is if
5 the supply of Chevron into the market affects price when
6 you're running the Exxon refinery, how can you tell me the
7 supply of Exxon into the market doesn't affect price?

8 MR. FAULSTICH: I don't think I said that.

9 CHAIRMAN BORENSTEIN: Okay. Good. So the supply
10 of Exxon into the market will affect the price in the
11 market?

12 MS. JAFFE: And it will cause people to reoptimize
13 and rebalance, based on their anticipation of how much it'll
14 change the price.

15 CHAIRMAN BORENSTEIN: I'm trying to get to a point
16 here that seems to be of some disagreement, which is whether
17 refineries have market power in California. I think we just
18 reached agreement that they do, because if your production
19 into the market affects price, that is the definition of
20 market power.

21 Now, how much market power you have we can debate,
22 but if you know that when you produce more it drives down
23 the market price, and when you produce less it drives up the
24 market price, you have market power.

25 MR. FAULSTICH: Okay. I guess -- and I'm not an

1 economist in any way, so I --

2 CHAIRMAN BORENSTEIN: And I'm not asking you to
3 be. I'm just asking --

4 MR. FAULSTICH: I can just defer to you.

5 CHAIRMAN BORENSTEIN: -- how this really works.

6 MR. FAULSTICH: Okay. Well, I guess, you know,
7 you say market power, I think of that, I can take some
8 action that influences the price. And I would agree, your
9 refiners, frankly, could do that. If they want to stop
10 making products just because they didn't want to make
11 product, sure, or they could withhold supply.

12 That could be done. I'm not saying people would
13 do it, but I guess it could be done. But yes, just the
14 absence of the production, in this case from Exxon Mobil,
15 creating this big hold for 60, 70, 80,000 barrels a day or
16 whatever it is of gasoline for the last year, that's got to
17 come from someplace, and I think the fact that imports have
18 come in for the last year indicates it all couldn't have
19 come from the local market, and that has a cost to it, so.

20 CHAIRMAN BORENSTEIN: Yeah. I mean, the concern,
21 of course, is that it not enough has come in, and as a
22 result the price differential in California has been at
23 record levels.

24 MR. FAULSTICH: Well, two comments. I don't think
25 there have been significant outages at retail stations. I

1 think enough has come in to meet demand.

2 CHAIRMAN BORENSTEIN: No. Okay. You're --

3 MR. FAULSTICH: In other words, enough has come
4 in.

5 CHAIRMAN BORENSTEIN: -- you're not an economist,
6 John, but you know that that's not a real statement. If you
7 raise the price to \$12 a gallon, I guarantee you, you can
8 always meet supply. So the price has gone way up. That's
9 how the market is balance. So you can't with a straight
10 face --

11 MR. FAULSTICH: Well --

12 CHAIRMAN BORENSTEIN: -- tell us that because
13 there is no shortage where they have no gas available signs
14 we've run out of --

15 MR. FAULSTICH: Can I finish my answer?

16 MS. JAFFE: And then you've also already told us
17 all that when you're optimizing every couple of weeks you
18 take into consideration that you're change what you're doing
19 based on anticipation that future prices might be higher, in
20 particular, with this thing versus that thing.

21 CHAIRMAN BORENSTEIN: Okay. John, I'm sorry. I
22 interrupted you. I will let you make your points and I will
23 shut up.

24 MR. FAULSTICH: So my second point was going to
25 be, I mean, if imports coming in, in fact, have a cost

1 associated with them or, you know, for the marginal supply
2 of 20, 30 cents a gallon, we could bring in more and the
3 price is going to be there, and if there's too much supply,
4 what's going to happen.

5 The price falls and the imports are going to stop
6 and you know, you get back to the same position. All of a
7 sudden, you have a hole. So you know, people are not going
8 to import the product at a loss.

9 CHAIRMAN BORENSTEIN: No. Absolutely. I
10 understand that. I'm just trying to figure out when we look
11 at the graph of California prices versus the U.S., why we
12 for 18 years had a pretty steady relationship, and in
13 February of 2015 it seems to have completely changes and
14 we've been at a much larger differential since then, than
15 we'd ever been at before.

16 MR. FAULSTICH: I actually submitted a letter with
17 comments following your December meeting. I don't know if
18 you've seen it. I offered my thoughts at that point.
19 Basically, the thoughts were, on the retail side something
20 has obviously changed.

21 There is a wider branded to unbranded spread. I
22 think you need to try to figure out what's behind that. I
23 offered my opinion. I would prefer not to say it now, but
24 it is in the letter.

25 CHAIRMAN BORENSTEIN: Okay.

1 MR. FAULSTICH: And then on the spot side, again,
2 with the absence of the Exxon product, the spot market
3 differential to other markets is going to be higher. Is 30
4 cents the right number? I wish I could tell you, but it's
5 going to be higher.

6 CHAIRMAN BORENSTEIN: Well, it's not that it's 30
7 cents, because there was 30 cents after the Chevron outage.
8 It's that it's been 30 cents for more than a year and that's
9 what I guess I find very disturbing. Chevron's refinery was
10 out for quite a while, but the market balances pretty
11 quickly, and that hasn't happened this time. Did you want
12 to make a quick --

13 MR. FAULSTICH: Well, it's fundamentally
14 different. You know, I don't think Chevron was not flat on
15 their back, I believe.

16 CHAIRMAN BORENSTEIN: Okay.

17 MR. FAULSTICH: As I recall, it imported a lot of
18 FCC feedstocks.

19 CHAIRMAN BORENSTEIN: Okay. So --

20 MR. FAULSTICH: So they could keep making
21 gasoline.

22 CHAIRMAN BORENSTEIN: So one explanation is that
23 this is actually just reflecting the import cost curve, the
24 cost differential and that California is just going to have
25 a much higher price, because I think there's no disputing

1 it's a much higher price, until we have the Exxon Torrance
2 refinery back at full operation. Dave Hackett had a quick
3 comment. Sorry, John.

4 MR. FAULSTICH: The last point in my letter,
5 because it addresses this and you'll be surprised that I
6 think I actually agree with Jamie on this, is that with the
7 FCC outage at Torrance, I think, you know, there is
8 certainly no excess product in the market.

9 It's a very thin, very finely balanced market, and
10 as a result, as you have noted, there have been some pretty
11 severe price spikes. And I think understanding the deals
12 that were involved in those price spikes would be of great
13 advantage to you, because as you have seen, when the stock
14 market goes way up the retail market follows, and the retail
15 market tends to fall off a lot slower than it went up.

16 So I think understanding those stock market spikes
17 would be very important to you.

18 CHAIRMAN BORENSTEIN: Thank you. Dave.

19 MR. HACKETT: John, you've been in the industry
20 for 31 years. Have you ever heard of the term "dark deal"
21 before, and can you tell me what you think that is?

22 MR. FAULSTICH: Dark deal to me kind of has the
23 connotation of something sinister, which there's nothing
24 sinister about this. It's a deal. In this case it was a
25 deal between Exxon Mobil and -- it actually wasn't direct to

1 Costco. It went through Petro Diamond or somebody. I don't
2 know, but it was a deal that was put into place.

3 MR. COURT: I say dark deal to say only that it's
4 not --

5 CHAIRMAN BORENSTEIN: Jamie. Jamie. Jamie, I'm
6 sorry. You don't get to participate in the discussion.

7 MR. COURT: To explain my definition of dark deal?

8 CHAIRMAN BORENSTEIN: No. No. Sorry.

9 MR. COURT: Okay.

10 CHAIRMAN BORENSTEIN: If we're to go down that
11 road we're just going to be here --

12 MR. COURT: Well, I'll --

13 CHAIRMAN BORENSTEIN: But thank you. I think we
14 know what you mean, and I think we're going to try to just
15 move on. I just don't -- I'm sorry to cut you off, but we
16 have to sort of keep this on one discussion at a time.

17 MS. WARD: Public comment should be starting at
18 pretty --

19 CHAIRMAN BORENSTEIN: It will in just a minute.
20 Kathleen has a -- I see your hint there, Courtney.

21 MS. JAFFE: Thanks. John, while you're still on I
22 have a quick question. Most of what you have described in
23 the whole optimization process seems to relate to
24 essentially present conditions. You know, something
25 happens. You start with a plan, but then things keep

1 changing and you adjust to them.

2 What I'm wondering is what's the role of risk
3 management in all of that, in the sense of future trending
4 or projections. Is that something that's done internally by
5 you? Does that take place in some other branch, and it's,
6 you know, maybe a factor in the annual plan? How does that
7 work?

8 MR. FAULSTICH: I think every company does risk
9 management their own way. Frankly, within Exxon Mobil we
10 didn't much of it at all. Exxon Mobil did not like
11 participating in regulated or unregulated markets, for that
12 matter. At least as far as the West Coast goes, we're a big
13 enough company, we're basically self hedged.

14 MS. JAFFE: I don't understand exactly what you
15 mean by that. I mean, there must be somebody crunching
16 numbers on that, right? Where does that take place and --

17 MR. FAULSTICH: Well, again, we did not do any
18 hedging of anything on the West Coast. I'm just telling you
19 that we did not do it. On a global basis I think they
20 looked at, you know, adding up the inventory of all 40 Exxon
21 refineries and this and that, and are we in, I think they
22 called it a band. We in an acceptable band? Yes. Okay.
23 No hedging needed.

24 MS. JAFFE: So I mean, is there some general norm
25 regarding the unlikelihood of unplanned outages, either at

1 your refineries or somebody else's in the course of a
2 certain period, time period?

3 MR. FAULSTICH: Not sure I understand the
4 question. Maybe you could rephrase?

5 MS. JAFFE: I'm not sure how I can. Is there some
6 sense of -- I mean, do you generally have an expectation, or
7 you and your colleagues, of there's always x percentage
8 change that somebody's going to be having an unplanned
9 outage sometime soon?

10 MR. FAULSTICH: I would say it's not something we
11 would factor in, but you know, we would, again, make our
12 best assessment at where the market was going to be,
13 basically long or short, and/or balanced, I guess, and
14 that's more of a seasonal thing than, you know, where the
15 market would typically be relative to the Gulf Coast or the
16 NYMEX.

17 MS. JAFFE: Is there anybody in the company that
18 would be sort of spending more time studying those things
19 and trending them or doing anything of that kind?

20 (Unrelated colloquy with unidentified speakers)

21 MR. FAULSTICH: I'm not aware of that basically
22 happening anywhere, and especially headquarters paying that
23 much attention to the West Coast? No. Just didn't happen.

24 MS. JAFFE: Okay. Thank you.

25 MR. SWEENEY: This is -- let me ask this a slight

1 different way. The LP that you were using, was it a
2 deterministic model or was there probabilistic elements of
3 it? Was it a -- you know what I mean. Was it purely
4 deterministic or was there uncertainty rolled into the LP as
5 part of the algorithm you used?

6 MR. FAULSTICH: No. No. I mean, we just put in,
7 you know, again, our best assessment of prices and volumes
8 and as far as availability or demand, that type of thing,
9 and out would come an answer.

10 MR. SWEENEY: Right. But so you used a purely
11 deterministic model, so any -- and did you put into it as
12 constraints the amount of gasoline that you already have and
13 other refined products to be sold under contracts? Were
14 those constraints that was put in deterministically in your
15 model? That is, were they put in as, it may be this, it may
16 be that? Or would they be put in as a number as an import?

17 MR. FAULSTICH: I hope this answers your question.
18 We would put in our best assessment as to constraints,
19 whether it be the maximum volume we thought we could sell,
20 or in some cases the minimum volume we had to make in order
21 to meet a demand.

22 And let me explain that. Say in the case of, we
23 produced gasoline that went to Nevada, but the Nevada is
24 only so big. So we didn't want -- if the economics was
25 driving the refinery to make a gazillion barrels of Nevada

1 gasoline we didn't want to let that happen, because, you
2 know, you would never sell that much. The market wasn't big
3 enough.

4 A similar thing for premium gasoline. The premium
5 gasoline market is, frankly, it's pretty fixed. There's not
6 a lot of upside to it; not a lot of downside to it for that
7 matter. So you would constrain. So again, the model
8 wouldn't go too far in a direction.

9 There might be other products that you have to
10 make a certain amount of because us folks in supply said, if
11 you don't make it we're not sure where we're going to get
12 it.

13 MR. SWEENEY: Okay. So that --

14 MR. FAULSTICH: So you know, we had to force the
15 solution in certain directions.

16 MR. SWEENEY: Right. So that says that if risk
17 management was being incorporated it was someplace else in
18 the company. It wasn't your refinery operation that did it.
19 Thank you. That's what I wanted to clarify.

20 CHAIRMAN BORENSTEIN: Okay. We have one comment
21 from Amy Jaffe and then we have to move on to public
22 comments.

23 MS. JAFFE: So John, I have a very theoretical
24 question for you, and just noting that I'm kind of a writer.
25 So my apologies for giving you a double theoretical. Not

1 saying Exxon Mobil. So put that out of your mind.

2 In a market that had market power, if there was a
3 particular refiner, not saying any names, that had a tight
4 relationship with an organization that had a political goal,
5 and they thought that to get to that political goal it would
6 be advantageous for the price of gasoline to get to a
7 particular number, would they be able to, using all the
8 things you said, using your optimization model and other
9 consultants and everything, would it be possible to figure
10 out what level of supply adjustment people would have to
11 make to get to that number and maintain it for a period of
12 time?

13 Could you use your models to do that? Not saying
14 Exxon would do that, but it's theoretically possible. Is
15 that correct?

16 MR. FAULSTICH: That's quite a theoretical
17 question. I think, you know, the reality is, as smart as, I
18 won't say myself, but the rest of the people were that were
19 working in the industry, it's hard to know what the
20 aggregate demand is going to be that exactly so that you
21 could compute how exactly what change in your production
22 would cause the price, you know.

23 MS. JAFFE: But you do --

24 MR. FAULSTICH: You know, you could change
25 California --

1 MS. JAFFE: -- but you do project prices --

2 CHAIRMAN BORENSTEIN: Amy. Amy, I'm going to cut
3 you off, because there is some legal concern here. And I'm
4 going to give John an opportunity to say something that I
5 think might make our lives a little easier, or clarify. You
6 in no way are representing Exxon today, correct?

7 MR. FAULSTICH: In no way whatsoever.

8 CHAIRMAN BORENSTEIN: And nothing you're saying is
9 representing the views of Exxon or answering particular
10 questions about Exxon?

11 MR. FAULSTICH: Correct.

12 CHAIRMAN BORENSTEIN: Good.

13 MR. FAULSTICH: They don't pay me. They don't
14 even pay me a pension.

15 CHAIRMAN BORENSTEIN: Okay.

16 MR. FAULSTICH: I took it as lump sum, so that all
17 my --

18 CHAIRMAN BORENSTEIN: No. No. You don't have to
19 tell us about your personal finances. But thank you, and
20 thank you for this. This has been very helpful, and we are
21 way behind schedule. So I'm going to move us along. And I
22 think we have a couple of public comments. But thank you
23 very much, John.

24 MR. FAULSTICH: You're welcome.

25 MS. WARD: Thank you. Do we have any public

1 comment here in the room, here at the Energy Commission?
2 Any? Okay. And then on the WebEx, is there anyone we can
3 unmute?

4 MR. COURT: Jamie, I'd just like to make just a
5 couple of clarifications. You guys have been very gracious
6 with your time, but three things. One is, we gave Courtney
7 a document that I hope she'll put on the screen, which is an
8 OPIS Refinery Maintenance Report that came out on October
9 19th.

10 This talks about refinery maintenance in the west
11 and all across the country. I don't know if she can put
12 that up, but she could hopefully share it with the Committee
13 members to show you this information is out there. It's
14 just not complete and not necessarily necessary, but OPIS
15 itself has reported these comprehensive reports.

16 Number two, there was excess gas in this market.
17 As we went to the summer blend in Southern California there
18 was an excess of winter blend, and that's why the transition
19 went a week and a half, I think a little more than a week
20 and a half, almost two weeks late, because there was an
21 excess that was being held back to keep that price high.
22 That happened in this market.

23 And then the third thing I would say is that I
24 appreciate John Faulstich's views, and I want to find that
25 letter. This is the OPIS Maintenance Report. But I would

1 say when someone who knows this industry, who was an expert
2 under seal in a major anti-trust case tells you to look at
3 the deals behind the stock and bought market price I think
4 it really makes the case that it's really important that
5 those deals come out publicly all the time so we can
6 continue to watch for that type of anti-trust behavior in
7 this type of consolidated market. Thank you all for
8 everything. Appreciate it.

9 CHAIRMAN BORENSTEIN: Thank you, Jamie. Okay. It
10 is 12:40. We are going to take -- or it's 12:38. We're
11 going to take a 52-minute break for lunch and start at 1:30.

12 MS. WARD: 1:30.

13 CHAIRMAN BORENSTEIN: Yeah. Thank you very much.

14 (Recess at 12:38 p.m, until 1:33 p.m.)

15 CHAIRMAN BORENSTEIN: For all of you who have
16 returned, so there was a bit of discussion about a public
17 comment by another individual, but it sounds like that
18 didn't happen. Is that right? That individual has not
19 asked to comment. Fine.

20 MS. WARD: I have not received any contact or
21 update on public comment from anyone.

22 CHAIRMAN BORENSTEIN: Okay. Then we are going to
23 move along with the agenda, and we are going to start by
24 discussing data transparency. And I'm going to take the
25 Chair's prerogative to make a suggestion, but I'm hoping

1 this will be a unstructured discussion among the Committee.

2 My impression from this morning and from earlier
3 discussion is that there is some discomfort about requiring
4 a lot more data transparency, some potential value to it,
5 but I guess my view is that I'd like to sort of postpone
6 saying this is what we should do about data transparency
7 until we have reviewed the other alternatives, as well, so
8 that we're thinking about this in a more integrated way.
9 But that's just my view.

10 Or we could have a more detailed discussion right
11 now of what, if anything, we want to do about data
12 transparency, or recommend. My thinking is that as we go
13 down the road on the other potential responses it will
14 affect our views on data transparency. Kathleen.

15 MS. FOOTE: Well, that, of course, would take care
16 of our time problems this afternoon, wouldn't it.

17 CHAIRMAN BORENSTEIN: Well, that's not why I'm
18 doing it, because --

19 MS. FOOTE: Okay. Fine. I think that makes, from
20 my perspective, that makes a certain amount of sense,
21 because I guess, you know, there's a lot of different things
22 that we've, you know, sort of, what is our goal is one
23 issue. Is it volatility that we're worried about?

24 Is it high prices versus low prices, which is not
25 the same thing? Is it catching wrongdoers or what? I mean,

1 I'm kind of more into the catching wrongdoers part, just
2 given, you know, given that I work for the Attorney
3 General's Office.

4 And for me the information, the pricing
5 information that we've been talking about, there's obviously
6 a great deal that we already do have. There's some things
7 that we don't have that might be nice to get. But pricing
8 alone is not going to tell you whether there's wrongdoing.

9 What pricing tends to do is show you where you
10 need to, you know, what time period and what facilities,
11 maybe, you need to look for, for the actual evidence of
12 wrongdoing. But it doesn't, you know, it doesn't do more
13 than that.

14 So yeah, so for me, talking about some of the
15 other areas besides transparency would probably be more
16 fruitful.

17 MR. SWEENEY: Can I ask you a question about that,
18 Kathleen? I was under the belief, and this does have a
19 question mark at the end, that this type of data that was
20 described is something that if you choose you can in fact
21 get the confidential data within -- you may have to, you
22 know, compel disclosure of it.

23 There may have to be subpoena, but the public
24 release of the data would not significantly influence what
25 the Attorney General's Office was able to get. Is that

1 true?

2 MS. FOOTE: Yeah. That is true. I will note that
3 although it wasn't on our transparency agenda today, on the
4 list of, on our sort of potential policies list, there was
5 the whole question of understanding, you know, what's the
6 AG's role and potential AG/CEC interaction, which I'd be
7 glad to talk about, either in response to your question or
8 later in our Chairman's agenda.

9 MR. SWEENEY: Well, the reason I say that is I
10 fully believe the AG's Office should be able to get all of
11 the type of data we're talking about, but I don't believe
12 the public disclosure of it is what causes that to happen.
13 And I wanted to confirm that was, saying is true, because in
14 that case the real two goals are keeping the prices down,
15 reducing spikes or reducing the length of our sentence here.

16 MS. FOOTE: Well, your internment over the three-
17 year period is actually extremely helpful, because there is
18 a lot of data and you are all experts. And you can spot
19 areas of concern in ways that are certainly extremely
20 helpful to me to understand better what I might be looking
21 at or what people in my office might be looking at if we
22 were, you know, if we were doing an investigation.

23 And my guess is that it is also helpful to others,
24 whether they are, you know, whether they are others who are,
25 you know, planning their own lawsuits, not necessarily

1 either on behalf of consumers or on behalf of their
2 suppliers or their competitors, and I'm sure that it is
3 useful to, you know, just sort of the industry generally and
4 the academic world to understand better, because I think
5 that what has come out of these Committee proceedings has
6 been just very illuminating for people who, like me, are at
7 a lower level of comprehension of the market than the rest
8 of you are.

9 MS. JAFFE: Let me ask another question on the
10 transparency thing that I think's pretty pivotal for us to
11 think about. And I don't really have an answer, so I'm just
12 asking the question to raise the question. So I think one
13 thing to our process, Kathleen, and I'd like your insight
14 into this from thinking about other cases in other markets,
15 is I think for the consumer groups that, and the kinds of
16 things that they've weighed in on, what they are trying to
17 or intuitively thinking is that if a corporation or a market
18 player could be a trader, right, perceive that their actions
19 that they would take would be less opaque, right.

20 And therefore, the data would be obvious that they
21 were -- say somebody wasn't importing or somebody was
22 exporting or somebody was doing a dark deal or wasn't doing
23 a dark deal, right, it's not so much -- I think the question
24 we have as a group is not so much whether certain activities
25 mean there was a collusion, because they don't, right, or

1 even market power necessarily, and certainly, having an
2 understanding of that would be important for the AG if the
3 AG was making an investigation to see if anything like that
4 happened.

5 The question is, for me as a public policy person,
6 as an academic who writes about public policy, the question
7 is, if the data was more transparent, in other words, say we
8 have real time data on exports or we have real time data on
9 refinery maintenance or whatever it would be, that I do
10 agree with some of the other commentators that we had from
11 experts that sometimes that can actually create more trading
12 speculation and not less.

13 I totally -- I think I would agree with that
14 point, right. But I think the argument for it if you're
15 going to make one is that a company would be less apt to be
16 -- the company would be more nervous, maybe, about taking on
17 a collusive action if they thought all these things were so
18 very transparent that it would be more obvious what they
19 were doing.

20 They would feel like they weren't doing something
21 in secret. So I'm not saying anybody did anything in
22 secret, but the argument for transparency that I could
23 imagine would be, well, if my actions are more transparent
24 it'd be easier for people to know they wanted to bring a
25 case or investigation. So I guess that would be I think a

1 question that might be worth your opinion.

2 MS. FOOTE: Well, I mean, there are two arguments
3 for transparency. One is that it potentially -- potentially
4 it limits the opportunities for backdoor deals. And the
5 other is that it provides opportunities for startups of one
6 sort or another for people to enter the market more easily,
7 things of that kind.

8 But as other people have noted, there is also the
9 potential downside. I mean, with information exchange, you
10 know, you can call it transparency or call it information
11 exchange, basically, the more info you have on past
12 transactions is, I mean, in any industry we anti-trust
13 people view as always pro competitive, always a good thing,
14 always helpful.

15 With respect to, you know, sort of actual
16 information at a given time, it may be pro competitive. It
17 may be anti-competitive. I mean, now, with the Internet
18 there's all kinds of ability to know precisely with, you
19 know, especially with dynamic pricing if you will, for
20 airplane tickets or hotels or, you know, all these things
21 that we consumers have a lot of experience with, the good
22 thing is of course we can find out immediately, you know,
23 what all the prices are on the Internet.

24 The downside is that the people who are setting
25 those prices can find out what their competitors' prices

1 are, too, and the minute they know that there's some kind of
2 a shortage going on they can start upping their -- I mean,
3 you can watch sometimes on airline prices or hotel prices
4 that practically as you're looking at the screen, when
5 there's just a few left it starts going up.

6 So it can cut both ways. With anything that
7 relates to the future or any kind of trending, that is
8 generally regarded as so much more possibly anti-competitive
9 than it could be pro competitive. Even if the argument that
10 it's good for consumers because it tends to stabilize
11 things, that's where the volatility thing comes in that,
12 yeah, you know, stabilizing prices is also fixing prices.

13 And you know, from a policy standpoint, if we
14 favor competition then that's a bad thing, sort of by
15 definition. I don't know if that's answered your question.

16 MR. SWEENEY: That does.

17 MR. SWEENEY: So along that line --

18 CHAIRMAN BORENSTEIN: Is your microphone on?

19 MR. SWEENEY: Yeah. Along this line, I think as
20 we talk about transparency we're going to have to just be
21 clear at what places and what things transparency is useful.
22 It was, you know, when I heard the public comment that says
23 Exxon Mobil should have told when they expect the -- said,
24 oh, my God, that's the best -- I mean, the requirement for
25 that forward-looking statement about what you expect to

1 produce or what time is a real no-no (phonetic) from my
2 point of view.

3 So I think when we go forward into getting into
4 this we've got to decide are there particular areas of
5 transparency that would be useful. Where I've come,
6 listening to most of the debates, what seems to me is issues
7 of the differences in pricing to the retail stations between
8 branded and unbranded services is useful information that
9 would be very helpful to get a handle on it.

10 The forward-looking, no, never, and things like
11 specific exchange agreements, those are things that you
12 really don't want to make very public what you're doing, so
13 as to -- because you want to allow the cost minimize. So if
14 we go forward, the first thing we do is to bring some
15 categories of what's useful, because we've been talking
16 about it too broadly so far.

17 MS. JAFFE: Can I just say, though, on these
18 things about the exchanges, you know, there's two kinds of
19 public knowledge. There's, I have to announce it and it
20 gets reported in plans (phonetic), and there's, I have to
21 register my exchanges during a time of disruption with the
22 AG's office.

23 You know, there could be two ways that something,
24 that information could be brought to the CEC or brought to
25 the public, or there could be some process when we're having

1 an unusual market situation, right, that would be a
2 different kind of "making it public," than making it public
3 like it has to be in the newspaper public.

4 MR. SWEENEY: Right.

5 MR. HACKETT: You know, I think I absolutely agree
6 that some of these issues we don't care about and likely
7 wouldn't be helpful, and some others, there may be some
8 merit to it. Do we need to deal with it now? Up to you.

9 CHAIRMAN BORENSTEIN: Well, my impression is that
10 there are some transparency issues that are potentially
11 valuable, but that it is a delicate balance, because there
12 are certain cases where requiring more public disclosure I
13 think could actually be harmful.

14 But unless there's an objection I'm going to say
15 we have now covered this topic and we are not ready to
16 write, to "write," virtually or physically, the section on
17 data transparency, that we should pursue these other
18 potential ways of addressing the issue.

19 And I want to come back to what the issue is in a
20 second, and then think more holistically about all of these,
21 because I have a feeling they interact in ways that we'd
22 want to know about. As far as the issue, I don't remember
23 what the original charge was, whether it was volatility or
24 high prices.

25 I hope it included high prices, because volatility

1 is often used as a sort of broad term that when what people
2 are really annoyed about -- nobody's annoyed about volatile
3 low prices as a consumer. And what really bothers people is
4 high prices.

5 And even that, I suspect, if every 30-cent price
6 spike up was followed by a 30-cent price spike down, people
7 would sort of shrug and move on and we wouldn't have this
8 Committee. It's that the view is there are these occasional
9 price spikes up that are costing consumers money, because on
10 average it means we pay more.

11 MR. SWEENEY: It was that it wasn't volatile on
12 the downside.

13 CHAIRMAN BORENSTEIN: Yeah.

14 MR. SWEENEY: After what happened.

15 CHAIRMAN BORENSTEIN: Yeah. Yeah.

16 MR. SWEENEY: It wasn't, I agree.

17 CHAIRMAN BORENSTEIN: It just went -- and you
18 know, when we formed this Committee in 2014, I think I said
19 to Commissioner Scott at the time that I wasn't sure there
20 was a problem worth fixing, but my views have certainly
21 changed since February 2015.

22 It seems like something has really changed, and at
23 least understanding what that something is, and John
24 Faulstich I think agrees with that, and I'm pretty sure
25 Jamie Court agrees with that. But and now that our

1 Committee exists and that problem has become disturbingly
2 persistent, I guess I'd like to understand what it is and if
3 there's something we can do about it.

4 So with your permission, I think I'm seeing nods,
5 we're going to move on to other topics. Okay. So other
6 topics. So this is I think even, we aren't even allowed to
7 have an in-depth discussion of other topics, since we didn't
8 notice it, maybe. But in any case, I don't intend to. I
9 want to tee up the next meeting.

10 MS. WARD: You can feel free to discuss other
11 topics.

12 CHAIRMAN BORENSTEIN: Oh, okay.

13 MS. ARENS: This is Samantha Arens, staff attorney
14 at the Energy Commission.

15 CHAIRMAN BORENSTEIN: Yeah.

16 MS. ARENS: There is an item on the agenda for a
17 PMAC discussion on policies.

18 CHAIRMAN BORENSTEIN: Oh, good.

19 MS. ARENS: Other than transparency, for curbing
20 California price spikes.

21 CHAIRMAN BORENSTEIN: Okay. Well, I still don't
22 intend to actually dig too deep into it, but I do, I would
23 like to tee up the discussion of where we go next. From our
24 list that we did at the last meeting, I think it was, yeah,
25 we have various possibilities, some of which we've sort of

1 ruled out, such as the state building and pipeline capacity
2 and increasing in-state refining capacity.

3 I have been transparent from the beginning that,
4 number two, the price pressure relief valve by allowing non-
5 CARB gasoline, is something I would like to look into much
6 more deeply and I think has real potential. I think Jim
7 talked about inventory requirements.

8 Was it you? Somebody earlier today, and I think
9 that is a topic, that is something that's done in Europe and
10 it would be worth thinking about. And I think if you do
11 that, that necessarily is bundled with California's state
12 inventory, because if you're going to have a discussion of
13 the refiners carrying inventory, a natural variant on that
14 is why should it be refiners rather than the state, or where
15 should those inventories be held.

16 And then related to all of those is, but I think
17 separate enough that maybe doesn't have to be discussed at
18 the same time, is the idea of California actually getting
19 into forward purchasing. Though that has relations to
20 California getting into inventory, since in some ways both
21 of them are California making supply decisions as a state.

22 I think what I would propose, but I want the
23 Committee to weigh in on this, is at our next meeting we
24 discuss the price pressure relief valve idea, and the two
25 inventory ideas, possibly, also including California forward

1 purchasing.

2 Maybe we should try to cover all that in one
3 meeting. Yeah, I think it's going to be hard to discuss one
4 without weaving in the others.

5 MS. ARENS: I would agree with that.

6 CHAIRMAN BORENSTEIN: The only other topic other
7 than that was expanding capacity of import terminals, which
8 seems like a very different topic, and maybe we should leave
9 ourselves an option if we move through the other stuff
10 quickly, but I'm pretty sure we won't. So maybe we should
11 leave that for a later meeting.

12 MS. FOOTE: Yeah. On import terminals, on our
13 list on that list of data, our transparency list of data
14 that might be collectible, imports and exports was sort of
15 flagged with high payoff in terms of information, and that
16 might be combined with the whole question of capacity
17 expansion.

18 CHAIRMAN BORENSTEIN: Yeah. In fact, thank you
19 for reminding me, because that was one of the points where I
20 thought that discussion of transparency interacts with
21 discussion of policy intervention in a way that it wouldn't
22 be useful to try to make decisions on transparency first.

23 MS. FOOTE: Yeah. So that could be a separate,
24 yeah, a separate meeting.

25 CHAIRMAN BORENSTEIN: Yeah. So Jim, I know that

1 you are -- you believe we shouldn't have to be here for
2 three years, just because we're commissioned for three
3 years.

4 MR. SWEENEY: No. I don't believe it should be a
5 20-year to life sentence.

6 CHAIRMAN BORENSTEIN: Okay. Okay. I promise you,
7 you and I won't be here 20 years from now.

8 MR. SWEENEY: Yeah. I'm somewhat torn in yours as
9 to whether we want to roll all of those in or move those in
10 a couple of separate meetings. My fear is that if we try to
11 do all of them we won't give any of these the depth that
12 they need.

13 So I'm saying this as a tradeoff. I don't know
14 what the right answer is, was take the example, which I
15 myself think has a lot of value, the price pressure relief,
16 allowing non-CARB gasoline in, in particular times. I think
17 those are very complicated tradeoffs between environmental
18 consequences and price consequences that'll be required
19 understanding of the relative --

20 MS. JAFFE: I think also, or let me just add so I
21 don't cut you off, is that we've done that at the federal
22 level. And so we might, if we were going to take that on,
23 we might want to try to get that data of how it affected air
24 quality --

25 MR. SWEENEY: And you want to bring that in --

1 MS. JAFFE: -- at the federal level.

2 MR. SWEENEY: -- you want to evaluate benefits and
3 costs of the different types of harms. You want to take
4 into account the incentives that this creates. So I could
5 see teeing up that alone and getting some people who've done
6 some really careful analysis, including the federal
7 analysis, and fully occupying a whole day in doing that.

8 So that's what I have in mind of what I'm being
9 concerned about, whether we're putting them all in. And I
10 think we're talking -- although I joke about the 20 years to
11 life, I think I would rather -- I recognize that we're
12 really not talking about how to fix the current price spike.

13 We're talking about a longer term set of policies,
14 and I'd rather put more attention and get a deep, careful
15 recommendation of a limited number of longer term policies
16 than, even if it takes a long time to get it, than to get
17 more quickly a less deep and more superficial, knee-jerk,
18 I'm afraid, response to the others.

19 CHAIRMAN BORENSTEIN: Well, that is the one of the
20 four that is more easily segmented, I think.

21 MR. SWEENEY: I believe it is.

22 CHAIRMAN BORENSTEIN: The other three inventory
23 requirements, California state inventory and California
24 forward purchasing I think are pretty closely intertwined.

25 MR. SWEENEY: Yeah.

1 CHAIRMAN BORENSTEIN: So we could next meeting, I
2 almost said next class.

3 (Laughter)

4 CHAIRMAN BORENSTEIN: Showing that where my brain
5 is most of the time. Next meeting we could focus on the
6 price pressure relief valve and we could actually try to get
7 some input from federal experience with similar types of
8 programs. I'm sure WSPA would have something to say.

9 I suspect some consumer watchdog or others might
10 have something to say, and environmental groups might have
11 something to say.

12 MR. SWEENEY: And I'd like to get NRDC or EDF --

13 CHAIRMAN BORENSTEIN: Yep.

14 MR. SWEENEY: -- to comment on this, as well.

15 CHAIRMAN BORENSTEIN: Yeah. Yeah.

16 MR. HACKETT: And I wonder, staff, have you got
17 any analysis on this that's been previously done, you know,
18 going back the last 10 or 15 years?

19 CHAIRMAN BORENSTEIN: There was something done
20 during the Attorney General's Gasoline Task Force 20 years
21 ago. Oh, no. That was 15 years ago.

22 MR. SCHREMP: So this is Gordon Schremp, Staff
23 Energy Commission. Yes, we've looked at the concept, but
24 we'd have to be careful on, you know, what sort of the price
25 relief concept is, what all of the, you know, options or

1 characterization would be.

2 So what was looked at previously was the idea that
3 you could bring in non-CARB gasoline. And so closest, you
4 know, reasonable, large supply would be the U.S. Gulf Coast.
5 So if you could just bring that in and sell it into the
6 market, we looked at what the prices were in the Gulf Coast
7 and what the prices were in California, and we looked at
8 what happened to the prices between the moment you said go,
9 relief is on, and you had to load your boat, sail it here,
10 as potentially as many times as a multi-week issue, and when
11 your boat arrived that is the value of your cargo, you know,
12 a day before and after that.

13 And so we looked at those instances over a number
14 of years and saw that you were -- would be, if you were the
15 owner of the cargo and brought that in, you would be the
16 loser. More times than not the market would go down, you
17 would lose money, considering that there was also a fee of
18 some sort you would pay.

19 So what's the size of the fee? Is there a fee?
20 What kind of gasoline can you use? Where can you source it
21 from? How would you bring it here, are all important
22 elements of any sort of analysis. But we did do some of
23 that in the past and would be happy to talk about that next
24 meeting, if the Committee would like to do that.

25 CHAIRMAN BORENSTEIN: Yeah. I think that would be

1 useful. Okay.

2 MS. FOOTE: On that, could I also, as we were
3 trying to remember what our initial charge was, of course,
4 it did I believe have something to do with cap and trade.
5 And so now that we're talking about --

6 CHAIRMAN BORENSTEIN: Of all people to forget
7 that, yeah.

8 MS. FOOTE: -- now that we're talking about price
9 pressure relief valves by bringing in non-CARB gas, maybe we
10 should also add a component to that, which is the
11 relationship to the planning that the Air Resources Board is
12 doing.

13 I mean, if we're going to even talk about it I
14 think we probably have to hear how that might be impacted by
15 anything of that sort, even if it's only on, you know, for
16 short-term emergency kinds of things.

17 MR. SWEENEY: If we do that, I endorse what you
18 said, but it was not just for cap and trade. It was for all
19 of the policies, including the low carbon fuel standard,
20 who, as we know, those credit prices have been going up
21 very, very rapidly over the last six or eight months.

22 MS. FOOTE: Yeah. Well, actually, that's more
23 what I meant.

24 MR. SWEENEY: Yeah.

25 MS. FOOTE: Than cap and trade more generally.

1 MR. SWEENEY: Right.

2 MS. FOOTE: Yeah, exactly.

3 CHAIRMAN BORENSTEIN: Okay. I see an agenda
4 coming into focus for our next meeting that would be on
5 price pressure reliefs, including non-CARB gasoline sales
6 and policies towards greenhouse gas emissions reduction.

7 MR. HACKETT: And so I'll direct this back at
8 staff. Do we need the input from the Air Board, as well,
9 relative to their issues around --

10 CHAIRMAN BORENSTEIN: Yes.

11 MR. HACKETT: -- monitoring, you know, how this
12 would go and the quality of gasoline in service stations in
13 California.

14 MR. SCHREMP: This is Gordon Schremp with the
15 Energy Commission. And yes, there is an enforcement aspect
16 that the Air Resources Board certainly would weigh in for
17 their own regulation. And there is also, as the members
18 know, gasoline is rather fungible in the distribution
19 system, a lot of that operated by third party Kinder Morgan.

20 And so maybe it might be instructive to have
21 Kinder Morgan talk about how they would try to handle that
22 kind of pressure relief system, and not jeopardize the, you
23 know, complying gasoline they're storing in community
24 storage tanks. So they might have some information to
25 provide to the Committee members, as well.

1 MR. HACKETT: And so that suggests that we have to
2 detail some kind of a base case, you know. What is it that
3 we're talking about with this relief valve? What does that
4 mean, so that the people who are on the ground can wrap
5 their heads around the problem and talk about it with some
6 specificity?

7 CHAIRMAN BORENSTEIN: Yeah. I'm not sure we're
8 going to be able to do that. I mean, this may have to be a
9 bit more iterative.

10 MR. HACKETT: Right.

11 CHAIRMAN BORENSTEIN: We may actually have to -- I
12 have a vague memory that at one point we invited Kinder
13 Morgan to participate and either they couldn't or they
14 declined to. I couldn't remember. Or did they?

15 MR. SWEENEY: Yeah, we had a --

16 CHAIRMAN BORENSTEIN: Oh, no, they did. Okay.
17 I'm sorry.

18 MR. SWEENEY: Yes.

19 CHAIRMAN BORENSTEIN: That's right. That's right.
20 So yeah. No, I think it would be useful.

21 MS. FOOTE: It's not on that topic.

22 CHAIRMAN BORENSTEIN: Yeah, it wasn't on that
23 topic. It would be useful to have that interaction. Also,
24 there has been at least one use of the current waiver. In
25 some year, not the 2012 fire, but some Chevron, it was a

1 Chevron disruption and Chevron applied for and got a waiver
2 to bring in non-CARB gasoline with what at the time I
3 believe was a 15-cent surcharge. And maybe Dave Hackett
4 knows so much about this we don't need an outside expert,
5 but.

6 MR. HACKETT: I think, you know, what I recall is
7 that the process was so arduous, I heard in the marketplace
8 that Chevron would never do that again. So I'm not quoting
9 Chevron. I'm just relaying what I heard.

10 CHAIRMAN BORENSTEIN: Well, that's what we need to
11 learn more about. So maybe we can invite WSPA back to tell
12 us about the experience or Chevron or somebody else. So I
13 will work with staff. Yeah, sorry.

14 COMMISSIONER SCOTT: I didn't mean to cut off your
15 sentence.

16 CHAIRMAN BORENSTEIN: No.

17 COMMISSIONER SCOTT: I was just going to recommend
18 that when you have that discussion it would probably be
19 terrific to have some folks from Air Resources Board --

20 CHAIRMAN BORENSTEIN: Yes.

21 COMMISSIONER SCOTT: -- here to talk with, as
22 well.

23 CHAIRMAN BORENSTEIN: Yes; no. And that's not --

24 MR. HACKETT: And I would encourage Chevron to
25 come and talk about their experience.

1 CHAIRMAN BORENSTEIN: Yeah.

2 MR. HACKETT: I mean, I like Skip York, but I
3 really would like to have the companies come and talk to us.

4 MS. JAFFE: And let me add, I could look into it
5 or maybe somebody else has the knowledge, maybe someone from
6 the professional staff. I recall, so Houston is one of the
7 cities that has had difficulty with air attainment on a very
8 continual basis.

9 And there was some issue around the hurricanes
10 about whether or not to do waivers, because there was the
11 air attainment problem. And I can say as a person who lived
12 in Houston, maybe people in Houston are maybe a little bit
13 less worried about air quality than people in California,
14 because it's so onerous in Houston, maybe there's a belief
15 that you can't actually fix it.

16 But it might be interesting to, you know, try to
17 find someone from a case study for some of these either
18 federal or local waivers that actually happened in the city,
19 and what happened to the air quality impact. So that might
20 be interesting to know.

21 CHAIRMAN BORENSTEIN: I wonder if there's somebody
22 as USEPA who actually would --

23 MS. JAFFE: Yeah, I think that's right.

24 CHAIRMAN BORENSTEIN: -- has thought about this.
25 My view, and I have promoted this idea. So but my idea was

1 that it would take very little of non-CARB gasoline, if it's
2 a true shortage, you know, it might take none at all. If
3 it's market power, just the threat of this might be enough
4 to prevent the price spike.

5 And so the air quality problem is something that
6 would need to be evaluated in light of that. But I suspect
7 there are people at the EPA, in fact, the EPA has some
8 really great economists who may have actually studied the
9 economics of these sorts of waivers that I could get in
10 touch with.

11 Okay. So I think that we will then make that the
12 agenda of the next meeting, talking about relief valve from
13 the CARB gasoline requirement and possible relief or policy
14 contingencies related to cap and trade and the LCFS and
15 other environmental policies around fuels.

16 So in some ways these are, yeah, very parallel
17 topics. And then if we do that, then we will tee up the
18 following meeting to talk about inventories and forward
19 purchases. We're all on board? Then I think we can move
20 things along and Jim will easily beat rush hour traffic back
21 to Palo Alto.

22 MR. SWEENEY: No. It's started already.

23 CHAIRMAN BORENSTEIN: That's true. There is that
24 problem, isn't there. I've learned that.

25 MS. FOOTE: Okay. Since we're talking agendas and

1 future agendas, we've pretty much all of us been, certainly
2 today and at other meetings, been acknowledging the
3 existence of market power, at least at the refinery level,
4 maybe at other levels.

5 And I am wondering if there's any particular goal
6 that might be served by focusing on that a little bit
7 further in some discussion, not because it necessarily is
8 going to specifically, you know, solve some problem about
9 the new spread between the branded and the unbranded, but as
10 a kind of a marker for other things going forward.

11 CHAIRMAN BORENSTEIN: So this would be more an
12 informational inquiry than a actual proposal.

13 MS. FOOTE: Yeah.

14 CHAIRMAN BORENSTEIN: This is sort of a backdrop.
15 Yeah. In some ways we went down that road today in the
16 context of transparency.

17 MS. FOOTE: We did, but we weren't --

18 CHAIRMAN BORENSTEIN: But yeah.

19 MS. FOOTE: So I guess it's kind of like, you
20 know, since we're here it's so unusual to have, you know,
21 this group of people with the kind of input from
22 knowledgeable segments of the market, consumer groups and so
23 on, that you know, I mean, for purposes, I'm thinking for
24 purposes of should there be new entrances or exits from the
25 state at any level of production and marketing.

1 Should there be mergers, anything of that sort.
2 Just kind of gathering information and having some
3 discussion about it might actually serve as a kind of a
4 benchmark against which you could -- it would be helpful, I
5 mean, not definitive, but helpful to examine any changes in
6 the market in the future.

7 MS. JAFFE: I think that's important because there
8 are some facilities that may or may not come on the market,
9 and in discussion about policies and discussion even about
10 environmental policies, I was on another commission which
11 John Wyatt, Jim's colleague, was on, and there was a lot of
12 discussion about people who might enter or not enter the
13 market in the future, and what the impact of environmental
14 policies related to that would be.

15 So I think that that does come under this category
16 of the things we're supposed to be covering in terms of
17 future prices. And so I think that's a good suggestion.

18 CHAIRMAN BORENSTEIN: So Dave, you want to --

19 MR. HACKETT: Well, the issue of the change in the
20 relative price of wholesale gasoline is an interesting one
21 that has changed. John's right about that. Should we look
22 into it? Up to the Committee. Another thing that we have,
23 we're not looking at the root cause of the extreme
24 volatility.

25 There's nothing in our agenda that says we're

1 going to do that. So and I think that's why we got
2 commissioned, right. Why is it that this thing got so out
3 of control?

4 CHAIRMAN BORENSTEIN: Yeah. I see those as
5 related, although the word "volatility" keeps making me
6 uncomfortable, because it's as if people just care about
7 variance, regardless of what the mean is, and I think that's
8 not what people care about.

9 But I think it is the case that the road we're
10 going down is the possibility that one cause is that because
11 of concentration in the market we now have situations where
12 when there is a tight market there's more ability to exploit
13 it with market power. This is a hypothesis, not a claim.

14 And I think there are cogent, well-founded
15 arguments that could be made on the other side, including
16 the idea that the threat of imports disciplines the market,
17 and I would like to -- I'm going to come out saying I agree
18 with Kathleen.

19 I think it would be useful, because I would like
20 to sort of vet more directly these arguments that, how much
21 of a disciplining effect does the threat of entry of imports
22 have. How much of a disciplining effect in the longer run
23 does the threat of refinery expansion and -- yeah, I guess
24 you have to throw in new refineries, though I don't think
25 anyone's suggesting someone's going to build a new refinery.

1 MS. JAFFE: Well, fracking.

2 CHAIRMAN BORENSTEIN: But that wouldn't be the
3 refining end of it. That'd just be the source. And have a
4 bit of a record on this that the state would then have from
5 this Committee about, we really looked into the role that
6 all these things play in the potential for market power, and
7 maybe came to a conclusion, maybe came to a disagreement,
8 but we're better informed on it.

9 MR. HACKETT: Okay. So then what we're talking
10 about with these potential policies, these are really
11 designed to reduce market power, then?

12 CHAIRMAN BORENSTEIN: Well, no. In fact, when I
13 first proposed the price pressure relief valve I thought the
14 beauty of it is that it doesn't matter whether it's market
15 power or scarcity. If the price is high for some reason,
16 this is a way of addressing it.

17 But I think partially because it would certainly
18 play a role in the next proposed merger, that having some
19 better information and discussion, which is I think what
20 Kathleen's asking for, which is sort of cheap consulting
21 services for the Attorney General's Office, which doesn't
22 have much money.

23 (Laughter)

24 CHAIRMAN BORENSTEIN: Maybe I'm wrong.

25 MS. FOOTE: You read my mind.

1 CHAIRMAN BORENSTEIN: I could be wrong. But
2 having some investigation of, or discussion of, you know,
3 how would you think about market power in this context and
4 is there an obvious analysis. I should have said free.
5 Sorry. Cheap. Jim?

6 MR. SWEENEY: Oh, I agree that it will be
7 something that could be looked at. I was wondering whether
8 this is something where we might be a call for people who
9 actually did some analysis ahead of time and delivered it to
10 us, because I think that if there is --

11 MS. FOOTE: Like the Federal Trade Commission?

12 CHAIRMAN BORENSTEIN: Yeah.

13 MR. SWEENEY: Well, actually, academics around who
14 might want to look at it and deliver papers that examine the
15 issue, because if there is market power, and I'll use it as
16 a hypothesis, how that could be performed is not so obvious.
17 It could be in the way a company sets its differential
18 pricing between branded and unbranded, that the pricing and
19 branding services.

20 It could be associated with the expansion of
21 retail gasoline stations or non-expansion in urban areas.
22 So if we're looking at it, I think there's enough potential
23 dimensions about how market power could be exercised, if it
24 is, as a hypothesis, that we want to try to look at all of
25 those rather than a narrow slice, and that means some pre-

1 analysis from other people who can think about it and
2 deliver to us may be a valuable thing.

3 And they could be, you know, this is in some sense
4 a call to everybody who's listening on the Web that we may
5 be interested in seeing independent analyses, analysis of
6 people who not necessarily have fish to fry in this.

7 MS. FOOTE: Yeah. I mean, I think we have to
8 remember, market power is not the same as market share.

9 MR. SWEENEY: Yeah.

10 MS. FOOTE: Market power is by definition
11 influencing, using it to influence, knowingly, usually. I
12 mean, all of that. And we've been talking about the danger
13 of that all along, and suggesting that there may have been
14 some exercises of market power over the course of the last
15 year.

16 And it might be good to just kind of try to, given
17 the market shares that exist in California and given the
18 players, if we can just kind of get our arms about the, what
19 is the universe of market power out there to be exercised.

20 MS. JAFFE: And I think, you know, what are some
21 of the levers. You know, whether it's in the actual product
22 space or whether it's in the importing/exporting space would
23 be another way that people could exercise market power. And
24 then, you know, I'm not saying this has happened.

25 I'm just saying that if you had a group of

1 interested parties that wanted to eliminate a policy or
2 advocate for a policy, you know, and you have market power,
3 then you could create the atmosphere through your market
4 power when something was going through the legislature, for
5 example.

6 So I'm not saying anybody's done that. I'm just
7 saying, you know, once you have market power you have to
8 think through, you know, sometime, five years from now, what
9 would I do with that market power. And then also, as the
10 market changes, because we are going to have changes in the
11 type of automobiles that are going to be driven and so
12 forth.

13 You know, I was on another panel where there was a
14 lot of discussion about players staying in and exiting the
15 market, right? And if sometime in the future there might be
16 players that would choose to exit the market or consolidate
17 and have a larger share of the market.

18 You know, we need to understand where we are today
19 and what those changes might mean for a policy or for
20 consumers in the future. So I think there are a lot of very
21 rich topics that people could do research on for sure, but
22 definitely, I think would fall under the purview of what
23 we're concerned with here.

24 CHAIRMAN BORENSTEIN: Yeah. Actually, there's one
25 other that has come up numerous times in discussions about

1 the industry, which is that if California is serious about
2 moving off of gasoline, which let's say we are, that means
3 declining demand over time, and exit of refineries making
4 CARB, and increasingly think market that is going to be
5 harder and harder to avoid market power.

6 And as one person in the industry said to me, you
7 know, you can't on the one hand tell us we're getting rid of
8 your product, and on the other hand berate us for not
9 investing more in capacity to produce it. And I think
10 there's something to that that we need to think hard about,
11 not just sort of the static market power issue, but the
12 dynamic issue as things change over time.

13 MR. RHYNE: So Chairman, this is Ivin Rhyne with
14 the California Energy Commission. Just for the benefit of
15 my staff and the logistics that are going on, I want to
16 maybe try and crystallize what I think I understand the ask
17 to be.

18 What I hear you saying, what I hear the Committee
19 saying sounds something more like a long lead time workshop
20 rather than a decision-making meeting, and that workshop
21 would include almost certainly a call for input on what are
22 the sources and levers of market power in the California
23 petroleum market, both now and in the future, as the market
24 changes.

25 It sounds like you're interested in both academic

1 and industry expertise on this question, and to have it be a
2 questioning, sort of an open forum workshop, not a place to
3 put forward policy prescriptions. At least, I don't think I
4 hear anyone asking for policy prescriptions on how to make
5 that change, but to create a record of where it is, it might
6 be and how it might develop as, as you say, the petroleum
7 market changes. Is that a correct encapsulation of the ask?

8 CHAIRMAN BORENSTEIN: Thank you, Ivin. I think
9 that's an excellent encapsulation. I was about to say that,
10 yeah.

11 (Laughter)

12 MR. SWEENEY: But following up on that, that may
13 suggest when we do that we want to really change the form of
14 this meeting.

15 CHAIRMAN BORENSTEIN: Yeah.

16 MR. SWEENEY: Instead of having this, it may be a
17 public where we have a whole group of people having
18 interchanges. And I think this sort of form of a few people
19 testifying to a group of people sitting on a high podium is
20 probably not going to be the most effective way of moving it
21 forward. Rather, and I like your word, Ivin, workshop
22 rather than --

23 CHAIRMAN BORENSTEIN: What Ivin's about to tell
24 you is workshop is not just a vague reference. It is a term
25 of legal art that --

1 MR. SWEENEY: Okay.

2 CHAIRMAN BORENSTEIN: -- says we can do very
3 different things.

4 MR. RHYNE: Well, so --

5 MS. JAFFE: And I think if we have a workshop the
6 great thing is if it's felt that you then want, after the
7 workshop, the panel to be in this format to discuss the
8 findings from the workshop, we could certainly do that.

9 CHAIRMAN BORENSTEIN: Yeah.

10 COMMISSIONER SCOTT: Logistical thing. This room
11 can be set up so that there's a big square here so that
12 everyone would be all around the table, able to talk to one
13 another.

14 CHAIRMAN BORENSTEIN: Which would be much more
15 conducive. Ivin.

16 MR. RHYNE: That's correct. And I think Chairman
17 Borenstein's correct in the sense that a workshop gives us
18 some more leeway in terms of what we do. It also tends to
19 create the atmosphere that I think, Jim, you were talking
20 about, a little more conducive to discussion.

21 The other thing I want to emphasize is I used the
22 term long lead time on purpose. I don't know that anything
23 we want this far, I don't think the request is to have this
24 happen in the next month or two, that the call goes out now
25 perhaps, that we get a sense of what the respondents might

1 be and then we allow this to take shape somewhat
2 organically, somewhat with some collaborative pushing on
3 some people that we think might be appropriate to
4 participate, but see what kind of response we get and allow
5 for the fact that some people may speak to market power, for
6 example, at the refinery level.

7 Some people might try to speak to market power at
8 the distribution or retail level. Others might try and
9 speak to market power just in how alternative fuels might be
10 coming into the market, and allow that to happen in a more
11 organic fashion.

12 MR. SWEENEY: My image is if there was --

13 MS> JAFFE: Or the traders.

14 MR. SWEENEY: -- a workshop like that we may be
15 talking about September, October, November, because you
16 can't get that in-depth, thoughtful papers created very
17 quickly. The only thing you can get done quickly is people
18 who have a position already.

19 CHAIRMAN BORENSTEIN: Well, there is research out
20 there that has been done by people who I think really are
21 quite credible.

22 MR. SWEENEY: You won't get it in the next few
23 months. You do need a little lead time.

24 CHAIRMAN BORENSTEIN: But I think it will take a
25 little while to put it together. I'm trying to think about

1 how this fits together with our policy discussion, and the
2 fact that summer is coming, which might make it a little
3 more difficult to convene, though I work all year round.

4 COMMISSIONER SCOTT: So maybe we should at least,
5 Severin, have the meeting you're talking about, about the
6 waiver topics, for sure, before we would have the workshop.

7 CHAIRMAN BORENSTEIN: Okay. So here's what I
8 propose. I propose that we schedule an next meeting, I hope
9 sometime this summer, that will be on relief valves. At the
10 same time, I propose that we now-ish, very soon, put out a
11 notice that we intend to have a workshop in the September-
12 October time frame on the competitiveness of the California
13 gasoline market from -- maybe not from oil well, but from
14 refining to retail, and that we try to schedule a date for
15 that.

16 And I can think of actually three or four academic
17 papers off the top of my head that I think would be directly
18 relevant, including a couple very recent ones that have used
19 confidential EIA refinery data. So and that we try to
20 schedule that.

21 And it will obviously have an interplay with the
22 policy debate, but I think we can have the policy discussion
23 and at least talk about, for instance, the price pressure
24 relief valve or the environmental relief, policy relief,
25 independently of that. What would be the logistics of that?

1 The think we won't be able to answer if we aren't
2 first answering the market power question is, you know, how
3 much of a problem with market power does this address. But
4 I think those things are scarcity issues, even if there
5 isn't a market power issue, and so it makes sense.

6 I think we can pursue them on a parallel track.
7 Okay. Amy has to leave, but thank you, Amy, and I think
8 we're almost done anyway. So I will work with staff and we
9 will schedule our next meeting, hopefully, in two or three
10 months. But then we will also schedule a workshop for the
11 fall.

12 MR. SWEENEY: Great.

13 CHAIRMAN BORENSTEIN: Anything else I'm supposed
14 to do before I say goodbye? Same says yes.

15 MS. WARD: Let me just see if we have any public
16 comments.

17 CHAIRMAN BORENSTEIN: Oh, right. Right.

18 MS. WARD: Does anyone here at the Commission have
19 a comment, or WebEx, anyone? All right. Looks like we
20 don't have --

21 MR. HACKETT: I would make a couple of quick
22 comments.

23 CHAIRMAN BORENSTEIN: Dave Hackett.

24 MR. HACKETT: First of all, I'd like to say
25 publicly that Severin, Jim and I had lunch together in the

1 atrium, which is a public space, and we traded war stories
2 about earlier engagements that we'd been in involving
3 various kind of energy issues.

4 And Severin was very careful to instruct us not to
5 talk about anything that had to do with what the Committee's
6 working on. So I want to say that right up front. Also,
7 oh, by the way, this whole Bagley-Keene thing is extremely
8 arduous to --

9 CHAIRMAN BORENSTEIN: Don't get me started.

10 MR. HACKETT: -- hard to get anything done.
11 That's sort of, that's the first. The second is that the
12 root cause of why we're here in my view is the scarcity
13 caused by the Torrance outage, and most of the higher prices
14 are due to the marginal costs of supplying the marketplace.

15 Having said that, I agree with John Faulstich,
16 things happen in this marketplace that I've never seen
17 before and should be understood what those were. And so
18 until we understand those things and -- because we haven't
19 got a root cause analysis and we don't know if -- what we
20 may propose going forward which would solve those problems.
21 So that's the second thing.

22 And oh, the final is there was some discussion by
23 a consumer watchdog at the last meeting about this tanker
24 from Exxon Mobil. Exxon Mobil has countered that that claim
25 by a consumer watchdog, there's a letter out there that's

1 publicly available. I suggest that folks read that and
2 actually, I congratulate Exxon Mobil for actually saying
3 what happened, coming out and talking about what really went
4 on.

5 This is sort of contrary to their normal position.
6 So I congratulate them in being forward in discussing in
7 public what's going on in the marketplace.

8 MR. COURT: This is Jamie Court with a public
9 comment on that. We actually had two letters with Exxon
10 Mobil and I'll share out sides of those letters with --

11 CHAIRMAN BORENSTEIN: I'm going to let you do
12 that, but we are also going to start the timer, Jamie.

13 MR. COURT: That's fine. It's fascinating because
14 Exxon had some admissions. We'll send the letters around.
15 They can speak for themselves. But what's fascinating is
16 Exxon numbers actually match with ours. They may have done
17 some third-party importing, but they will not tell us how
18 much gasoline they import.

19 They tell us how much crude oil, gas oil and
20 gasoline up to 600,000 barrels in one month, and those jive
21 with what we've seen from the Land Commission. The only
22 data that may be different, and I do actually appreciate
23 their exchange, is that they may have done some third-party
24 importing.

25 But if you add it all up, it is -- even if they

1 imported all gasoline and not crude and gas oil, it comes
2 nowhere near their commitments out of Exxon. So I'll share
3 with you our counter to that and the letters back and forth,
4 and we're still waiting for an answer for the split from
5 them between how much of the importing was gas oil crude and
6 actual gasoline. Thanks.

7 CHAIRMAN BORENSTEIN: Okay. If there are no
8 further comments. Oh, Ryan.

9 MR. EGGERS: Hi, Severin. Ryan Eggers, with the
10 California Energy Commission. I would just like to point
11 out for the public that the letter U that Dave referenced
12 from Exxon is part of the docket for this proceedings, and
13 you can find that on the Energy Commission website.

14 CHAIRMAN BORENSTEIN: Excellent. Then we are
15 adjourned and we will post notice of our next meeting as
16 soon as we can coordinate on dates. Thank you.

17 (Whereupon at 2:33 p.m., the meeting was adjourned.)

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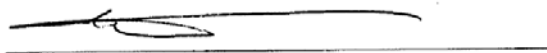
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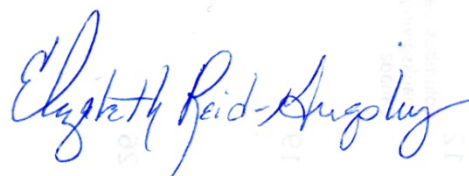
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