CALIFORNIA ENERGY COMMISSION

ADVISORY COMMITTEE MEETING

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

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

A P P E A R A N C E S

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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P R O C E E D I N G S

APRIL 22, 2016 10:22 a.m.

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

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

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

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

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

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

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

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

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

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

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

MR. SWEENEY: What about 20 years to life?

CHAIRMAN BORENSTEIN: Yeah. Yeah.

(Laughter)

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

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

MS. FOOTE: I'll move approval.

CHAIRMAN BORENSTEIN: Kathleen moves approval.

MR. HACKETT: I second it.

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

MR. HACKETT: Aye.

MS. WARD: Aye.

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

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

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

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

(Pause.)

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

MR. MacINTYRE: Okay.

CHAIRMAN BORENSTEIN: There he is.

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

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

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

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

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

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

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

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

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

And that information at the PADD level provides refinery inputs and production. We also have imports at the PADD level, as well as we collect data on inventories. We collect that data not just for finish gasoline, but for some of the blending components, including RBOB. And then, recently --

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

MR. MacINTYRE: Sure, absolutely.

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

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

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

CHAIRMAN BORENSTEIN: Okay.

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

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

CHAIRMAN BORENSTEIN: Okay. Thanks.

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

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

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

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

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

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

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

And then if approved then we go ahead and take on that initiative, which gets us to the data collection process itself. If you go onto the next slide, the Office of Management and Budget, as a result of the Paperwork Reduction Act, is the government authority to decide ultimately what gets surveyed and what the government can survey and what the government can't.

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

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

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

And so we usually on our website post when we've released that Federal Register Notice. If you go to the pain petroleum page on our website, when we do that, that's where you'll see something. We do the same thing for our natural gas surveys, our electricity surveys.

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

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

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

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

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

MR. MacINTYRE: Yeah, you, too.

MR. HACKETT: Can you speak for a moment about disclosure issues, why the EIA doesn't disclose information when there's fewer than, let's say, I think it's generally three competitors as far as the data is concerned, and talk about the, you know, EIA's concerns about basically releasing data that would allow competitors to understand what one another's behavior is.

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

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

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

So we don't even release retail price information, even though that could be gathered if there was enough legwork. So it's important for us to do this, because it's important for us to get good data from our respondents. If people, if the companies thought that their information would be shared with their competitors or, really, with anyone else, we wouldn't be getting the truth from them.

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

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

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

So protecting a respondent's data, we understand it's important for the public to have the information they need, but for them to have the information they need, we need to get good information in return. And that's where the disclosure process comes in.

MR. HACKETT: Great. Thanks for that.

MR. MacINTYRE: That helpful?

CHAIRMAN BORENSTEIN: And Amy?

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

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

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

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

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

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

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

And the imputation is a mathematical formula. It just is based on previous submissions. And then, of course, our final check is our monthly data. So we have a lot more time to check up on our monthly data. And so we do a lot of comparing of monthly to weekly data, and a lot of companies, you know, we'll follow up with them when we're looking over their monthly data and we'll say, oh, well, you told us this on your weekly submission, now you're telling us this on your monthly.

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

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

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

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

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

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

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

There's other agencies that handle that. But if you want to do a statistical study on a specific purpose and you have the ability to protect the data, just as EIA would, and sometimes with the states, they have a difficult time doing that because they have their own state laws. So that might not apply here. It might. I don't know.

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

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

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

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

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

MR. YORK: Okay. So I welcome the opportunity to appear back before PMAC, and hopefully, we can, Wood Mackenzie, can provide some global context of some of the issues that you guys are dealing with. And so when we were asked to prepare this presentation today we kind of thought about, we looked at the recommendations that are before the Committee, and we sort of asked ourselves, well, that we are presuming that the objective of this is to somehow make the transportation fuel markets in California better.

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

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

Basically, because many jurisdictions do not require reporting at all, those that do will tend to have lags that can be up to months at a time. And sometimes, if there is a report it tends to only be once a year. Whereas, Douglas pointed out by contract, the U.S. reports a lot of data on a weekly basis.

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

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

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

And we'll walk you through an example later on in the presentation about why, you know, why they have that concern or what the scenario might be that had these European jurisdictions worried. Then from our Asian colleagues they said that, you know, that the data in Asia tends to not be very consistent and not reliable for analysis.

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

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

So what this next chart shows you is that these are spot gasoline prices. So you know, they're bulk transfer prices. They are not at the wholesale rack. Probably the best translation of this might be that it's the refinery, you know, it's consistent with what you would hear as often as the spot can also be referred to as a refinery gate price.

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

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

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

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

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

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

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

But the important thing to note is that, you know, and I think this might come as a surprise, is if you look at Japan's gasoline prices aren't really materially different from California's gasoline prices over a substantial period of time.

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

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

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

And the reason why California's volatility was so much higher than the other markets is because gasoline prices were falling faster in California or in the Los Angeles market than they were in these other markets. Now, if you look at the average price volatility what you kind of see is that, really, the volatility is pretty much -- isn't really all that meaningfully different.

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

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

And so that's part of one of the takeaways that we wanted to impart, is that you will observe things in the market but there's really, when on a global basis, there really isn't the ability to do the analysis that says that more data reporting or less -- more data reporting would sort of somehow improve or reduce the volatility or reduce price levels.

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

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

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

If you are required to hold a fixed level of inventory and the light blue dash line that you see here is just the average across that sample size, and you sort of say, on average that's what your plan is going to be, then the spikes either above or below that line would be when the refiner would either be compelled to sell, if it's above the line, in order to get their volumes back to plan, or they would be compelled to buy if they're below the line in order to get their inventories back up to plan.

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

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

They're just trading it, and that was part of what the -- as the Europeans went through it, that was sort of the reason why they backed, you know, that ultimately they backed away from the issue to date, because whether, you know, either way, whether you obligate them to meet the plan or it's just sort of a stated plan, or if the non-operators can jump in or out, either way it induces more volatility than what is already in the market that we saw in the prior charts.

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

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

And that's why a lot of jurisdictions have moved rather slowly at requiring more information. But then the final closing comment before I'll open up for questions is go back to the, you know, in the U.S. we're already starting from a much data-rich environment than most of the other jurisdictions in the world.

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

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

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

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

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

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

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

MR. YORK: Yeah. Well, what the IEA requires is days of coverage, and what every jurisdiction does is they will, basically, you know, what they'll essentially do is take sort of what is sort of, let's say sort of normal within their jurisdiction and then the government will then hold strategic.

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

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

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

MS. JAFFE: Because it's my --

MR. YORK: -- jurisdiction by jurisdiction --

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

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

MS. JAFFE: Okay.

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

MS. JAFFE: Right. So --

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

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

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

MS. JAFFE: Okay.

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

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

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

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

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

MS. JAFFE: Only have to carry a minimum.

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

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

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

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

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

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

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

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

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

MS. JAFFE: Is there --

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

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

CHAIRMAN BORENSTEIN: -- that imposes not --

MS. JAFFE: No regulation that says that.

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

CHAIRMAN BORENSTEIN: -- hold more than a given quantity.

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

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

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

MR. YORK: No.

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

CHAIRMAN BORENSTEIN: Right.

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

CHAIRMAN BORENSTEIN: Okay.

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

CHAIRMAN BORENSTEIN: Okay. Right.

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

CHAIRMAN BORENSTEIN: Right.

MS. JAFFE: I understand that. I'm just saying that there's no -- my understanding of the market is that there is no such rule in that jurisdiction or any of these jurisdictions that says they're compelled to sell, which you have on your slide.

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

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

MS. JAFFE: Right.

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

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

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

MS. JAFFE: -- that's --

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

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

MR. YORK: And why the Europeans --

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

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

MS. JAFFE: Okay.

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

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

MR. YORK: Right.

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

CHAIRMAN BORENSTEIN: Okay.

MR. YORK: Right.

CHAIRMAN BORENSTEIN: Let's --

MS. JAFFE: Yeah. Just making that clear.

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

MR. SWEENEY: Only in an interpretation at this moment. When you go back to the graph that shows volatility of others, when you suggest that California is similarly volatile, that's -- we just have to note for the record that that -- it is that encircled area at the end that has caused this Committee to give a lot of their attention.

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

CHAIRMAN BORENSTEIN: And before you do --

MR. YORK: Yeah.

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

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

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

MR. YORK: It's the standard.

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

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

CHAIRMAN BORENSTEIN: Okay.

MR. YORK: Yeah. It's an annualized standard deviation. So yeah. So I think what the, you know, I think what we wanted to convey is that is, you know, if you sort of look at California on the left-hand side of the circle there's really two volatility spikes for California, right.

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

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

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

MR. YORK: Yeah.

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

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

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

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

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

MR. SWEENEY: Right.

MR. YORK: Just public inventory plans.

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

MR. YORK: Yeah. Yeah.

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

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

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

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

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

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

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

MR. YORK: Yeah.

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

MR. COURT: I'm here.

CHAIRMAN BORENSTEIN: Oh, there he is.

MR. COURT: Can you hear me?

CHAIRMAN BORENSTEIN: Yes, we can.

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

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

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

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

And what I believe the transparency measures we're going to talk about here will do is tame that volatility, because we're really disconnected from crude oil prices, production costs, U.S. gas prices, and what we're experiencing this year is this what the market will bear pricing.

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

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

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

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

CHAIRMAN BORENSTEIN: No. No. No. No.

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

CHAIRMAN BORENSTEIN: Forward two.

MR. COURT: I'm confusing.

CHAIRMAN BORENSTEIN: There. Stop.

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

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

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

But the point is, whatever information we have now, which was taken issue with in a couple of very large antitrust cases because it was alleged that OPIS was a vehicle for refiners to communicate in ways that -- as an intermediary in ways that they couldn't legally communicate directly to each others.

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

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

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

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

And this kind of misinformation, when really, from the start we knew there needed to be significant regulatory approval to get Exxon back online, if you're looking with hindsight, the fact that we didn't know that at the beginning, even though Exxon knew that, if the market had known that it clearly would have reacted differently.

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

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

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

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

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

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

Whereas, that cheap gas that goes to Costco, it doesn't come out -- it's certainly cheaper, but the median price tends to gravitate towards the dealer tank wagon price because it's 80 percent of the market. If we go to the next slide. This is probably the most extreme example.

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

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

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

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

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

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

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

But the rest of the market didn't know. The importers didn't know, and that's the point of full disclosure. Everyone has an equal field. Next stage, please, next slide, please. So the next thing is, well, we can go to one more slide, as well, disclosing all dealer tank wagon prices.

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

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

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

If these were all public then we would have a better idea of what was available in the market and there wouldn't be such shell games. Last slide, please, or next slide, please. So basically, we know refiners currently know who conducted trades because they have relationships.

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

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

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

Empowering branded retailers to demand competitive pricing from refiners. Now, this is difficult, but if they have all the information it can happen, because up north there is much better equity between branded and unbranded stations, and they have seen far little, nowhere near the same price volatility.

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

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

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

The bottom line is, the courts have said that the type of exchange agreements, DTW sharing, retail prices, OPIS, exchange and production agreements are legal. That is not collusive. But if they're legal and we know they happen, we should put them out in the light of day so the market can address, the public can look and we can change the laws if we need.

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

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

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

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

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

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

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

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

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

MR. COURT: They do.

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

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

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

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

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

CHAIRMAN BORENSTEIN: But that's a structural remedy. That's not an information remedy.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: Okay.

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

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

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

CHAIRMAN BORENSTEIN: Okay. Jim.

MR. SWEENEY: First, a little correction. We did not vote on three more years, and we did not vote on the 20 years to life possibility of what we would have. But I'd like to go on -- let me -- I listened to what you said, and frankly, I saw very little that showed why transparency would reduce volatility.

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

MR. COURT: Um-hum.

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

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

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

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

FEMALE SPEAKER: What flag number?

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

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

One of the two ships that came in that period was an exchange with Chevron. And that ship, if that had been known that that was an exchange, again, would have created, you know, more opportunities for imports. The forward looking statement that we're talking about is, what the expectation is to get Exxon back up and running, and if it an included a statement that we got to get approval from the air regulators, you know, in the way they had proposed it, I think anyone who's looking at that market would say, no, no, no, that's not happening for nine months; we've got an import issue.

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

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

MR. SWEENEY: Frankly, you still haven't made a case in that case, in these examples, why that data would have caused reduced spikes. The data on Exxon Mobil is that they have to get regulatory approval, which I guess would be new data. But most people would know that if they're involved in it.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: Okay. Amy, you had question?

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

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

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

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

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

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

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

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

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

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

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

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

MS. JAFFE: So I won't name names, but let me just say in a very general way, when you have a market with large, unbelievably large, very wealthy players with a lot of market power, and then you have a new player or a trading player, you know, those players with a lot of capital and a lot of market power can come in and move the market around to harm people who would trade against their interests, right. And it's happening around --

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

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

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

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

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

MR. COURT: And that's why we suggest making all trades public. I just want to tell Jim that the expert in the Aguilar case, and I believe the Gilley case was a colleague of yours at Stanford, Roger Nowell, and he wrote an unbelievable declaration that's quoted in the Appellate decision.

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

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

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

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

MR. COURT: Thank you.

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

CHAIRMAN BORENSTEIN: Yes, there you are.

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

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

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

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

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

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

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

The market's gone from long to short to balanced, to short, to long. A lot of changes in the markets, I've seen it. One other comment I would add, in my term as refinery optimization, in the Exxon world the optimizers are responsible for signaling to the traders and approving all deals, including these dark deals. So I know a fair amount about those things.

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

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

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

As far as what determines the timing, besides the scope of work I mentioned above, on a lot of hydro processing units, and in California we've probably got more hydro processing than anywhere. Because of emissions regulations and some of the fuel specs, catalyst's life can be a big driver.

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

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

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

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

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

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

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

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

You take two or three or four of those out because of a turnaround, you still got the other four or five. So you have to do something to make sure you can blend those off. So that is why you will often buy components and not finished CARBOB, because you need to be feasible with what you are producing.

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

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

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

People run their own systems, they like the components they have and that's what it is. If you need something like alcoholate you're going to reach far, far away for it. Turning to slide five, another factor, of course, is managing your inventory ahead of the outage.

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

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

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

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

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

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

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

Slide six, on the cargo side, assuming, you know, you can't find everything you need in the local market you'll go to the cargo market and try to find some imports. And you can buy them at the load point, which is frequent, or you might find somebody offering it on a delivery basis.

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

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

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

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

You'll end up going to a number of different terminals, because no one will give you the total capacity. As far as sales of excess volumes, you'll kind of do the same thing. I won't really go through all of that. I'm sure you're more interested on the buy side for gasoline.

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

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

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

And any sharing of production plans going forward was definitely not on the list of things you could share. As has been alluded to, I believe by Jamie, is planned outages do, you know, can become apparent to those who enter into the, you know, the deals that you do.

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

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

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

So you know, from a proprietary standpoint, worrying about your own profitability, you care to keep most of the information to yourself. The last bullet, and again, I think it was kind of alluded, but you know, publicizing the planned outages basically will just increase the number of people that are trying to profit from that information.

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

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

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

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

CHAIRMAN BORENSTEIN: Right.

MR. FAULSTICH: Meaning, the LP.

CHAIRMAN BORENSTEIN: Right. Right.

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

CHAIRMAN BORENSTEIN: Okay.

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

CHAIRMAN BORENSTEIN: Okay. So what, you said you gave them the prices?

MR. FAULSTICH: Yes.

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

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

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

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

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

CHAIRMAN BORENSTEIN: Okay. So --

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

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

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

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

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

And I don't know, if it took 20 cents or 30 cents over the gulf to satisfy ourselves that, yeah, that's what we think it'll take, then that's what the number would have been.

CHAIRMAN BORENSTEIN: Okay. So --

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

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

MR. FAULSTICH: At the spot level?

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

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

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

MR. FAULSTICH: Yeah.

CHAIRMAN BORENSTEIN: So something more has been going on than just the normal -- and you know, if we look back at the Chevron fire, if we look back at other disruptions, we've never seen a continuous gap of anywhere near the size we've seen in the last 14 months.

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

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

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

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

CHAIRMAN BORENSTEIN: Okay. Let me change subjects slightly. You're worried that more information will lead to some players trying to take advantage of that information, traders, and I'm trying to understand how that differs from our more general concern about market power among refiners.

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

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

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

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

I can only speak from my experience with Exxon Mobil. It's the only company I worked for. Exxon Mobil is not big on speculation. Exxon Mobil is not big on doing speculative inventory bills. Exxon Mobil is very big on keeping the product moving out every day, keeping your inventory stable and not guessing whether the market was going to go up or down or anything like that.

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

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

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

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

CHAIRMAN BORENSTEIN: Okay.

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

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

MR. FAULSTICH: Yes.

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

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

CHAIRMAN BORENSTEIN: Okay. But they were aware that when they did that they -- I mean, they made that decision based on, and they made decisions three weeks before that, I assume, based on how much they thought they could sell it for, right?

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

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

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

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

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

CHAIRMAN BORENSTEIN: Right. And --

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

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

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

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

MR. FAULSTICH: Yes.

CHAIRMAN BORENSTEIN: But a big part of it.

MR. FAULSTICH: Yes.

CHAIRMAN BORENSTEIN: Obviously, there was also choosing feedstocks.

MR. FAULSTICH: Yes.

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

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

MR. FAULSTICH: Yes.

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

CHAIRMAN BORENSTEIN: Okay.

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

MR. FAULSTICH: Yes, right.

CHAIRMAN BORENSTEIN: So I'm trying to understand how that couldn't involve making choices about production quantities in response to prices. That seems like part of what the LP's supposed to do.

MR. FAULSTICH: No.

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

MR. FAULSTICH: Okay.

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

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

MS. JAFFE: Based on profitability.

MR. HACKETT: Based on profitability.

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

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

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

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

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

MR. FAULSTICH: Absolutely.

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

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

CHAIRMAN BORENSTEIN: Exactly.

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

CHAIRMAN BORENSTEIN: Right. So my point is that price is in the LP, right. If it's not, you're not doing your job. And so my next point is that if price is in the LP where -- my question is, where does that price come from, because it's not today's price. It's a forecast, because you're making some decision for three or four weeks from now.

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

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

MR. FAULSTICH: Yes.

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

MR. FAULSTICH: Yes.

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

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

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

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

(Several people talking at once)

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

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

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

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

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

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

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

MR. FAULSTICH: Okay. I guess -- and I'm not an economist in any way, so I --

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

MR. FAULSTICH: I can just defer to you.

CHAIRMAN BORENSTEIN: -- how this really works.

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

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

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

MR. FAULSTICH: Well, two comments. I don't think there have been significant outages at retail stations. I think enough has come in to meet demand.

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

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

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

MR. FAULSTICH: Well --

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

MR. FAULSTICH: Can I finish my answer?

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

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

MR. FAULSTICH: So my second point was going to be, I mean, if imports coming in, in fact, have a cost associated with them or, you know, for the marginal supply of 20, 30 cents a gallon, we could bring in more and the price is going to be there, and if there's too much supply, what's going to happen.

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

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

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

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

CHAIRMAN BORENSTEIN: Okay.

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

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

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

CHAIRMAN BORENSTEIN: Okay.

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

CHAIRMAN BORENSTEIN: Okay. So --

MR. FAULSTICH: So they could keep making gasoline.

CHAIRMAN BORENSTEIN: So one explanation is that this is actually just reflecting the import cost curve, the cost differential and that California is just going to have a much higher price, because I think there's no disputing it's a much higher price, until we have the Exxon Torrance refinery back at full operation. Dave Hackett had a quick comment. Sorry, John.

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

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

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

CHAIRMAN BORENSTEIN: Thank you. Dave.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: No. No. Sorry.

MR. COURT: Okay.

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

MR. COURT: Well, I'll --

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

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

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

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

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

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

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

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

MS. JAFFE: So I mean, is there some general norm regarding the unlikelihood of unplanned outages, either at your refineries or somebody else's in the course of a certain period, time period?

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

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

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

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

(Unrelated colloquy with unidentified speakers)

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

MS. JAFFE: Okay. Thank you.

MR. SWEENEY: This is -- let me ask this a slight different way. The LP that you were using, was it a deterministic model or was there probabilistic elements of it? Was it a -- you know what I mean. Was it purely deterministic or was there uncertainty rolled into the LP as part of the algorithm you used?

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

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

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

And let me explain that. Say in the case of, we produced gasoline that went to Nevada, but the Nevada is only so big. So we didn't want -- if the economics was driving the refinery to make a gazillion barrels of Nevada gasoline we didn't want to let that happen, because, you know, you would never sell that much. The market wasn't big enough.

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

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

MR. SWEENEY: Okay. So that --

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

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

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

MS. JAFFE: So John, I have a very theoretical question for you, and just noting that I'm kind of a writer. So my apologies for giving you a double theoretical. Not saying Exxon Mobil. So put that out of your mind.

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

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

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

MS. JAFFE: But you do --

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

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

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

MR. FAULSTICH: In no way whatsoever.

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

MR. FAULSTICH: Correct.

CHAIRMAN BORENSTEIN: Good.

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

CHAIRMAN BORENSTEIN: Okay.

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

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

MR. FAULSTICH: You're welcome.

MS. WARD: Thank you. Do we have any public comment here in the room, here at the Energy Commission? Any? Okay. And then on the WebEx, is there anyone we can unmute?

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

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

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

And then the third thing I would say is that I appreciate John Faulstich's views, and I want to find that letter. This is the OPIS Maintenance Report. But I would say when someone who knows this industry, who was an expert under seal in a major anti-trust case tells you to look at the deals behind the stock and bought market price I think it really makes the case that it's really important that those deals come out publicly all the time so we can continue to watch for that type of anti-trust behavior in this type of consolidated market. Thank you all for everything. Appreciate it.

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

MS. WARD: 1:30.

CHAIRMAN BORENSTEIN: Yeah. Thank you very much.

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

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

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

CHAIRMAN BORENSTEIN: Okay. Then we are going to move along with the agenda, and we are going to start by discussing data transparency. And I'm going to take the Chair's prerogative to make a suggestion, but I'm hoping this will be a unstructured discussion among the Committee.

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

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

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

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

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

Is it high prices versus low prices, which is not the same thing? Is it catching wrongdoers or what? I mean, I'm kind of more into the catching wrongdoers part, just given, you know, given that I work for the Attorney General's Office.

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

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

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

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

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

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

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

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

And my guess is that it is also helpful to others, whether they are, you know, whether they are others who are, you know, planning their own lawsuits, not necessarily either on behalf of consumers or on behalf of their suppliers or their competitors, and I'm sure that it is useful to, you know, just sort of the industry generally and the academic world to understand better, because I think that what has come out of these Committee proceedings has been just very illuminating for people who, like me, are at a lower level of comprehension of the market than the rest of you are.

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

And therefore, the data would be obvious that they were -- say somebody wasn't importing or somebody was exporting or somebody was doing a dark deal or wasn't doing a dark deal, right, it's not so much -- I think the question we have as a group is not so much whether certain activities mean there was a collusion, because they don't, right, or even market power necessarily, and certainly, having an understanding of that would be important for the AG if the AG was making an investigation to see if anything like that happened.

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

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

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

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

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

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

The downside is that the people who are setting those prices can find out what their competitors' prices are, too, and the minute they know that there's some kind of a shortage going on they can start upping their -- I mean, you can watch sometimes on airline prices or hotel prices that practically as you're looking at the screen, when there's just a few left it starts going up.

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

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

MR. SWEENEY: That does.

MR. SWEENEY: So along that line --

CHAIRMAN BORENSTEIN: Is your microphone on?

MR. SWEENEY: Yeah. Along this line, I think as we talk about transparency we're going to have to just be clear at what places and what things transparency is useful. It was, you know, when I heard the public comment that says Exxon Mobil should have told when they expect the -- said, oh, my God, that's the best -- I mean, the requirement for that forward-looking statement about what you expect to produce or what time is a real no-no (phonetic) from my point of view.

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

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

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

You know, there could be two ways that something, that information could be brought to the CEC or brought to the public, or there could be some process when we're having an unusual market situation, right, that would be a different kind of "making it public," than making it public like it has to be in the newspaper public.

MR. SWEENEY: Right.

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

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

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

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

I hope it included high prices, because volatility is often used as a sort of broad term that when what people are really annoyed about -- nobody's annoyed about volatile low prices as a consumer. And what really bothers people is high prices.

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

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

CHAIRMAN BORENSTEIN: Yeah.

MR. SWEENEY: After what happened.

CHAIRMAN BORENSTEIN: Yeah. Yeah.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: Oh, okay.

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

CHAIRMAN BORENSTEIN: Yeah.

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

CHAIRMAN BORENSTEIN: Oh, good.

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

CHAIRMAN BORENSTEIN: Okay. Well, I still don't intend to actually dig too deep into it, but I do, I would like to tee up the discussion of where we go next. From our list that we did at the last meeting, I think it was, yeah, we have various possibilities, some of which we've sort of ruled out, such as the state building and pipeline capacity and increasing in-state refining capacity.

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

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

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

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

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

MS. ARENS: I would agree with that.

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

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

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

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

CHAIRMAN BORENSTEIN: Yeah. So Jim, I know that you are -- you believe we shouldn't have to be here for three years, just because we're commissioned for three years.

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

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

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

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

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

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

MS. JAFFE: -- at the federal level.

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

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

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

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

MR. SWEENEY: I believe it is.

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

MR. SWEENEY: Yeah.

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

(Laughter)

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

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

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

CHAIRMAN BORENSTEIN: Yep.

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

CHAIRMAN BORENSTEIN: Yeah. Yeah.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: Yeah. I think that would be useful. Okay.

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

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

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

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

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

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

MR. SWEENEY: Yeah.

MS. FOOTE: Than cap and trade more generally.

MR. SWEENEY: Right.

MS. FOOTE: Yeah, exactly.

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

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

CHAIRMAN BORENSTEIN: Yes.

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

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

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

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

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

MR. HACKETT: Right.

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

MR. SWEENEY: Yeah, we had a --

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

MR. SWEENEY: Yes.

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

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: No.

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

CHAIRMAN BORENSTEIN: Yes.

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

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

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

CHAIRMAN BORENSTEIN: Yeah.

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

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

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

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

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

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

CHAIRMAN BORENSTEIN: -- has thought about this. My view, and I have promoted this idea. So but my idea was that it would take very little of non-CARB gasoline, if it's a true shortage, you know, it might take none at all. If it's market power, just the threat of this might be enough to prevent the price spike.

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

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

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

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

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

MS. FOOTE: Okay. Since we're talking agendas and future agendas, we've pretty much all of us been, certainly today and at other meetings, been acknowledging the existence of market power, at least at the refinery level, maybe at other levels.

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

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

MS. FOOTE: Yeah.

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

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

CHAIRMAN BORENSTEIN: But yeah.

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

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

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

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

CHAIRMAN BORENSTEIN: So Dave, you want to --

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

There's nothing in our agenda that says we're going to do that. So and I think that's why we got commissioned, right. Why is it that this thing got so out of control?

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

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

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

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

MS. JAFFE: Well, fracking.

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

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

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

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

(Laughter)

CHAIRMAN BORENSTEIN: Maybe I'm wrong.

MS. FOOTE: You read my mind.

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

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

MS. FOOTE: Like the Federal Trade Commission?

CHAIRMAN BORENSTEIN: Yeah.

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

It could be associated with the expansion of retail gasoline stations or non-expansion in urban areas. So if we're looking at it, I think there's enough potential dimensions about how market power could be exercised, if it is, as a hypothesis, that we want to try to look at all of those rather than a narrow slice, and that means some preanalysis from other people who can think about it and deliver to us may be a valuable thing.

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

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

MR. SWEENEY: Yeah.

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

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

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

I'm just saying that if you had a group of interested parties that wanted to eliminate a policy or advocate for a policy, you know, and you have market power, then you could create the atmosphere through your market power when something was going through the legislature, for example.

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

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

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

CHAIRMAN BORENSTEIN: Yeah. Actually, there's one other that has come up numerous times in discussions about the industry, which is that if California is serious about moving off of gasoline, which let's say we are, that means declining demand over time, and exit of refineries making CARB, and increasingly think market that is going to be harder and harder to avoid market power.

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

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

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

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

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

(Laughter)

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

CHAIRMAN BORENSTEIN: Yeah.

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

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

MR. SWEENEY: Okay.

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

MR. RHYNE: Well, so --

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

CHAIRMAN BORENSTEIN: Yeah.

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

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

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

The other thing I want to emphasize is I used the term long lead time on purpose. I don't know that anything we want this far, I don't think the request is to have this happen in the next month or two, that the call goes out now perhaps, that we get a sense of what the respondents might be and then we allow this to take shape somewhat organically, somewhat with some collaborative pushing on some people that we think might be appropriate to participate, but see what kind of response we get and allow for the fact that some people may speak to market power, for example, at the refinery level.

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

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

MS> JAFFE: Or the traders.

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

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

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

CHAIRMAN BORENSTEIN: But I think it will take a little while to put it together. I'm trying to think about how this fits together with our policy discussion, and the fact that summer is coming, which might make it a little more difficult to convene, though I work all year round.

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

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

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

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

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

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

MR. SWEENEY: Great.

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

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

CHAIRMAN BORENSTEIN: Oh, right. Right.

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

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

CHAIRMAN BORENSTEIN: Dave Hackett.

MR. HACKETT: First of all, I'd like to say publicly that Severin, Jim and I had lunch together in the atrium, which is a public space, and we traded war stories about earlier engagements that we'd been in involving various kind of energy issues.

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

CHAIRMAN BORENSTEIN: Don't get me started.

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

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

And oh, the final is there was some discussion by a consumer watchdog at the last meeting about this tanker from Exxon Mobil. Exxon Mobil has countered that that claim by a consumer watchdog, there's a letter out there that's publicly available. I suggest that folks read that and actually, I congratulate Exxon Mobil for actually saying what happened, coming out and talking about what really went on.

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

MR. COURT: This is Jamie Court with a public comment on that. We actually had two letters with Exxon Mobil and I'll share out sides of those letters with --

CHAIRMAN BORENSTEIN: I'm going to let you do that, but we are also going to start the timer, Jamie.

MR. COURT: That's fine. It's fascinating because Exxon had some admissions. We'll send the letters around. They can speak for themselves. But what's fascinating is Exxon numbers actually match with ours. They may have done some third-party importing, but they will not tell us how much gasoline they import.

They tell us how much crude oil, gas oil and gasoline up to 600,000 barrels in one month, and those jive with what we've seen from the Land Commission. The only data that may be different, and I do actually appreciate their exchange, is that they may have done some third-party importing.

But if you add it all up, it is -- even if they imported all gasoline and not crude and gas oil, it comes nowhere near their commitments out of Exxon. So I'll share with you our counter to that and the letters back and forth, and we're still waiting for an answer for the split from them between how much of the importing was gas oil crude and actual gasoline. Thanks.

CHAIRMAN BORENSTEIN: Okay. If there are no further comments. Oh, Ryan.

MR. EGGERS: Hi, Severin. Ryan Eggers, with the California Energy Commission. I would just like to point out for the public that the letter U that Dave referenced from Exxon is part of the docket for this proceedings, and you can find that on the Energy Commission website.

CHAIRMAN BORENSTEIN: Excellent. Then we are adjourned and we will post notice of our next meeting as soon as we can coordinate on dates. Thank you.

(Whereupon at 2:33 p.m., the meeting was adjourned.)

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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PETER PETTY
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Elizabeth Reid-Grigsby

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