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EXXONMOBIL AND SHELL ANSWER QUESTIONS ABOUT HOT FUEL

HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC POLICY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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EXXONMOBIL AND SHELL ANSWER QUESTIONS ABOUT HOT FUEL

WEDNESDAY, JULY 25, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 2154, Rayburn House Office Building, Hon. Dennis J. Kucinich (chairman of the subcommittee) presiding.

Present: Representatives Kucinich, Cummings, Davis of illinois, Watson, Higgins, Issa, and Bilbray.

Staff present: Jaron R. Bourke, staff director; Charles Honig, counsel; Jean Gosa, clerk; Evan Schlom, intern; Leneal Scott, information systems manager; Natalie Laber, press secretary, Office of Congressman Dennis J. Kucinich; Larry Brady, minority senior policy advisor; and Alex Cooper, minority professional staff member.

Mr. KUCINICH. Good morning. The Subcommittee on Domestic Policy of the Committee on Oversight and Government Reform will now come to order.

Today's hearing will continue the subcommittee's examination of hot fuels and effects they have on consumers and dealers. This time we will hear from two oil companies and get their views on thermal expansion of gasoline and the possibility of automatic temperature compensation at the retail level in the United States.

I ask unanimous consent that all opening statements, written statements, and other materials be able to be placed in the record.

Without objection, the Chair and ranking minority member will have 5 minutes to make opening statements, followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition. Without objection.

Without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record.

I want to thank the ranking member, Mr. Issa of California, for his presence here today, and I look forward to our participation and cooperation in this hearing. Mr. Issa, I have always appreciated the opportunity to work with you. Thank you.

Good morning, gentlemen and ladies. This is the second half of our June 8th hearing on Hot Fuels. We had invited ExxonMobil and Shell to testify at that hearing; unfortunately, they refused. So at my request, the full committee chairman, Mr. Waxman, sent ExxonMobil and Shell invitation letters asking again for their testimony before our committee, but this time it was in order to avoid

the necessity of a subpoena. We are happy that ExxonMobil and Shell reconsidered their earlier reluctance to testify.

The oil industry has known for 100 years that gasoline expands and contracts with temperature. As it warms, gasoline expands by volume but not by weight or energy content. As it cools, gasoline contracts.

At the turn of the last century, the oil industry developed a standard and method for compensating for temperature variations, and they use it to this day in most wholesale transactions.

Regardless of the actual temperature of the gasoline, its volume is adjusted mathematically prior to sale, according to the known physical properties of gasoline. If the actual temperature of the gasoline is above a reference temperature of 60 degrees fahrenheit, its volume is adjusted downward. If the actual temperature is below 60 degrees Fahrenheit, the volume is adjusted upward. As a result, neither the seller nor the buyer receives an advantage in wholesale transactions of gasoline due to the temperature. That has been the standard for wholesale transactions—wholesale transactions—since the 1920's.

But retail sales of gasoline are a very different story. The oil industry does not compensate for temperature in retail sales to consumers. In fact, it refuses to do so. One of the leading manufacturers of automatic temperature compensation equipment applied for and received certification for sale in the State of California. No oil company would buy it.

This is the first apparent double standard we hope to clarify today. How do the oil companies justify opposing temperature compensation at retail while conducting most wholesale transactions with temperature compensation?

But that is not the only apparent double standard. While they refuse to use temperature compensation for retail sales in the United States, this subcommittee has learned that the industry does the opposite in Canada, where nearly all the gasoline sold at retail is measured in temperature compensated volumes.

The majority of gasoline pumps in Canada are equipped with technology that adjusts the volume dispensed according to temperature. We have, furthermore, learned that the industry moved voluntarily to install temperature-compensating equipment in Canada. This is the second instance of what appears to be a double standard. How does the oil industry justify refusing to use temperature compensation for retail sales in the United States while universally and voluntarily embracing temperature compensation at retail in Canada?

But even that is not where the apparent double standards end. We have learned that the oil industry applies one standard to the retail sale of some hydrocarbons, while applying a different standard to others. Throughout the United States today, liquified petroleum gas, such as propane, is dispensed for retail sale using automatic temperature compensation. Liquefied petroleum gas is a fossil fuel product like gasoline. Large, integrated oil companies like those represented by our witnesses, produce liquefied petroleum gas, as well as gasoline, and they sell those products. But, as we don't need now to be reminded, when it comes to selling gasoline as opposed to liquefied petroleum gas, the industry refuses to use

temperature compensation. So here is the third instance of an apparent double standard.

It has long been the position of the National Institute on Standards and Technology—and they testified to this effect at our last hearing—that compensating for temperature ensures the most accurate way of measuring volume. So what could be the industry's reason for opposing accurate measurement of retail gasoline sales in the United States? Well, maybe it is all a wash. Maybe the effort involved in using temperature compensation is not necessary because, on average, gasoline temperatures would average over the course of a full year to be 60 degrees Fahrenheit, exactly the same as the reference temperature that the industry uses for its wholesale standard.

Well, it turns out that their averages are at a higher temperature than the industry wholesale standard. At our last hearing, one of our witnesses testified that his company routinely monitors the temperature of gasoline in underground storage tanks. They do it at gas stations as part of an EPA enforcement program to detect leaking underground storage tanks.

My staff tallied the past year of temperature data from nearly every State, and weighted it by the amount of gasoline sold in that State. Here is the result of that arithmetic: 66.7 degrees Fahrenheit. The industry standard is 60 degrees Fahrenheit. So the actual national average temperature for gasoline is higher than the standard temperature the industry uses in most wholesale transactions. So it is not a wash. Temperature variation of gasoline in the United States consistently tilts to the industry's advantage, where retail gallons of gasoline have less energy than wholesale gallons. That creates a potential for less than accurate measurement and the sale of ghost gallons to consumers during the summer driving season.

We hope that today's witnesses will be able to clarify the issues for us. Consumers and dealers alike have an interest in accurate measurement. Both would appreciate answers. ExxonMobil and Shell are large oil companies in both the United States and Canadian markets, so who would be better positioned to explain to the committee the industry's view of these apparent double standards.

Thank you very much.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee
ExxonMobil and Shell Answer Questions About Hot Fuel
2154 Rayburn HOB – 10:00 A. M.
Wednesday, July 25, 2007

Good morning.

Today is the second half of our June 8 hearing on Hot Fuels. We had invited ExxonMobil and Shell to testify at that hearing. Unfortunately, they refused. So at my request, the full committee Chairman, Mr. Waxman, sent ExxonMobil and Shell invitation letters asking, again, for their testimony before our committee, but this time it was in order to avoid the necessity of a subpoena. We are happy that ExxonMobil and Shell reconsidered their earlier reluctance to testify.

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sell those products. But, as we don't need now to be reminded, when it comes to selling gasoline, as opposed to liquefied petroleum gas, the industry refuses to use temperature compensation. So here is the third instance of an apparent double standard.

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We hope that today's witnesses will be able to clarify the issue for us. Consumers and dealers alike have an interest in accurate measurement. Both would appreciate answers.
ExxonMobil and Shell are large oil companies in both the U.S. and Canadian markets. So who would be better positioned to explain

to the committee the industry's view of these apparent double standards?

Mr. KUCINICH. With that, the Chair recognizes the distinguished ranking member from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I have only the greatest respect for you as a chairman and as a friend. Today, however, we are going to agree to disagree on some aspects of today's hearing.

I believe the issue we are addressing here today is an important one, but not because it is a legitimate issue on the question of temperature correction of gasoline. As I said on June 8th, when we had our first hearing on this subject, it is important, but it underscores the Democrat majority's preference to focus on the tangential matters instead of the real discussion on oil and gas supplies and demand situation and economic catastrophe that we will face if we do not squarely come to a real understanding of how we get more gasoline, more natural gas, how we save natural gas for better uses, how, in fact, we get to a lower-carbon environment.

Today I suspect that along the way, as we talk about whether or not temperature compensation devices being added to pumps is legitimate, we are also going to touch on the question of whether the Democrat leadership needs to focus on the legitimate issues of providing greater amounts of raw petroleum and greater refining capacity so that we can, in fact, reduce the high prices that Americans are paying at the pump today.

I don't believe we would be having a discussion on something that has been known since 1920 if, in fact, gasoline prices were $1.89 a gallon. We are dealing in the 1 percent because of, in fact, we have had a 40 percent rise in fuel in a relatively short period of time. That is why I appreciate the hearing we are having today, because I believe that, in fact, we need every opportunity to talk about the 40 percent, even if it is while discussing tangentially the 1 percent.

Last year back in June our hearing concentrated, quite frankly, on those least in the position to control the price of gasoline, those who make, to a great extent, some of the least amounts on gasoline. We brought up in our press release the fact that MasterCard and Visa make more on gasoline than the retailer does. Again, let's remember it is the retail location that we are dealing with here to day. No matter what price Shell, Exxon, or others supply gasoline to the retailer for and how much correction there will be, it will have no effect on the net earnings of ExxonMobil, Shell, or anyone else. In fact, what we are talking about is a new burden for the retailer. As far as I can understand, a single-source burden for the retailer. An acceptable design? Yes, an acceptable design that if mandated would be paid at whatever price the patent holder and device certifier would like to charge.

I do believe there is always an opportunity to bash big oil. I suspect that we will do it here today.

Thank you for representing big oil. It is always brave of you to do so.

I believe, though, that, in fact, we are going to have an opportunity to have a lively and positive discussion. I believe that the Washington Post has already done a good job by doing their article, "A Full Tank of Hypocrisy." I thought that was aimed at people not in this room, but I think we will take it.

I certainly think that Senator Schumer's suggestion that breaking up big oil, in fact, is legitimately in play here to day, that there are people who feel that if we had smaller oil companies somehow we would have lower prices. Can you imagine a smaller oil company trying to get through the bureaucracy of the deep sea oil drilling permit, or even, in fact, building a new refinery here in America?

I also believe that today is a unique opportunity for us to discuss this particular subject, and I will do so in two quick inclusions. One is, in fact, recognizing that the National Conference on Weights and Measures recently said this was not necessary. They didn't say it wouldn't be nice. They didn't say that if we chose to do it, let's say, 20 years from now when every pump will have been replaced and could simply turn on a feature on a given day to where every corner in America 1 day would be not compensated, and every corner in America the next day would be compensated, so that nobody would be able to gain the system between one pump and another.

I hope we all understand here today that if one pump had temperature compensation at 90 degrees and the other didn't, then there would be legitimate gaming, because, I fact, somebody would be able to shave a point on that transaction.

I hope today when we are finished that we will agree that, in fact, a phase-in over the logical period of time of the capability and then a single-day turn-on in America, if this is to be chosen both by ourselves and the agencies that review this, is, in fact, the only legitimate goal. Having dispensed with the legitimate goal here today, I certainly want to talk about big oil, the high cost of fuel, and how we get to it, and how we are going to get out of it.

Mr. Chairman, in addition to that, I would like to include in the record a statement by the Ohio Petroleum Marketers and Convenience Store Associations who have also written on this.

Mr. KUCINICH. Without objection, so ordered.

[The prepared statements of the Ohio Petroleum Marketers and Convenience Store Associations follow:]

FOR IMMEDIATE RELEASE
July 23, 2007

KUCINICH PLAN FOR TEMPERATURE COMPENSATION PUTS OHIO MOTORISTS AT RISK FOR HIGHER GAS PRICES

The Ohio Petroleum Marketers and Convenience Store Association (OPMCA), representing small business fuel retailers and distributors, issued the following statement regarding the two hearings held by the Domestic Policy Subcommittee of the House Oversight and Government Reform Committee:

We are very disappointed that Rep. Dennis Kucinich (D-OH), chairman of the subcommittee, has taken an aggressive stance advocating automatic temperature compensation (ATC) for retail fuel dispensers. ATC, if implemented in Ohio, would likely cost Ohioans millions of dollars annually and would mean that Ohio residents will get less gas at the pump.

Congressman Kucinich says that retailers should adjust the amount of gasoline dispensed to customers based on temperature. Since Ohio's average temperature year-round is cooler than the "reference" temperature used to calibrate these pumps, Ohio residents will receive less fuel when they pump gas.

At his previous hearing, Kucinich's staff developed a report on the costs on the so-called "hot fuel premium," claiming that fuel expands in warmer temperatures and thus has less energy per gallon when sold in warmer months. The subcommittee staff claimed that American consumers will pay a $1.5 billion "hot fuel premium" and that Ohio constituents will pay $31 million. However, the staff failed to disclose that due to Ohio's cooler months, fuel sold to Ohioans contracts more than it expands when you consider all 12 months of the year, resulting in a gain of energy content per tank over the year. Using the same analysis and data that the Kucinich staff applied to calculating summer costs, when the remaining months of the year are factored in, Ohioans actually gain—not lose—energy content. Using Kucinich's own estimate of valuing that product at $2.94/gallon, the data applied over a one year period results in a "gain" of over $12 million for Ohio drivers.

The data Rep. Kucinich presented at the hearing was severely flawed. It omitted eight months of the year (the months that benefit consumers) from the analysis. Rep. Kucinich is aware that a formal scientific study is under way at the National Academy of Sciences, yet proceeds with representing his analysis as conclusive proof consumers are being cheated, knowing he is not giving his constituents the fully story.

Rep. Kucinich claims he is only advocating "voluntary" or permissive temperature compensation, yet has not told Ohioans that this will make it harder for drivers to comparison shop for gasoline. When a driver decides where to stop, he or she examines large price signs on the street. Under Rep. Kucinich's proposal of "voluntary" temperature compensation, a consumer will have to discern between one gas station pricing "temperature adjusted" gasoline versus another who is selling a traditional gallon. This will make it more difficult for them to compare prices.

4242 Tuller Road, Suite B • Dublin, Ohio 43017 • (614) 792 5212 • Fax (614) 792 1706 • E Mail: opmca@opmca.org • Website: www.opmca.org

Additionally, the Ohio Department of Weights and Measures is opposed to Congressman Kucinich's plan to establish permissive temperature compensation devices for fuel at the retail level. At a meeting earlier this month of the National Conference of Weights and Measures, the State of Ohio voted against the approval of a permissive standard for a variety of reasons. It is our experience that this body does a good job of looking out for the consumers of Ohio, and we would like Rep. Kucinich to explain why he has disregarded his own state's careful deliberations on this issue.

We believe Rep. Kucinich should communicate with public officials and industry in his own state before advocating a dramatic change in the way fuel is sold to consumers. He has made no effort to do so.

In his first hearing, Rep. Kucinich tried to represent his efforts as an attack on "Big Oil," titling the hearing "Hot Fuel: Big Oil's Double Standard." However, he has been repeatedly informed that "Big Oil" does not own the vast majority of Ohio's gas stations. Small business owns Ohio's gas stations and would be footing the bill for installing these unnecessary devices—costs that will be passed on to the drivers of Ohio.

It is our sincere hope that Congressman Kucinich puts the citizens of Ohio first by reversing his position on fuel temperature compensation.

Contact: Roger Dreyer, President OPMCA
614-792-5212
614-296-0041 (Cell Phone)

####

Mr. ISSA. Thank you, Mr. Chairman. Mr. Chairman, I know that is tough rhetoric. It is not aimed at you. It is aimed at the fact that I believe we both owe to America a cleaner environment, one that delivers energy at a good price, it delivers the appropriate energy from the appropriate source, and I know that with your leadership we will be able to work together toward that. This may not be the neatest way to do it. This may be a little messy, but I know at the end of the day we will be heading in the right direction, and I thank you for holding this hearing and yield back.

[The prepared statement of Hon. Darrell E. Issa follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 Rayburn House Office Building
Washington, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

Statement of Rep. Darrell Issa
"Exxon Mobil and Shell Answer Questions about Hot Fuels"
July 25, 2007

Mr. Chairman, thank you for scheduling this hearing. I believe the issue we are addressing today is an important one not because it is a legitimate issue, as I said on June 7th when we had the first hearing on this subject, but it is important because it underscores the Democrat majority's preference to focus on tangential matters instead of having a real discussion on the oil and gas supply and demand situation and the economic catastrophe we face if we do not address the issue squarely and tell the American people the truth.

This is one more hearing in a series ordered up by the Democrat leadership and delivered by this committee. The pattern is clear: go after Big Oil, go after Big Pharma, go after the housing sector, and the military, not to mention the Bush Administration.

But today's issue is not one of big oil vs. the consumer, or different measuring standards for wholesale and retail sales that somehow defraud the consumer. Very simply the price charged for gasoline at the retail level reflects the difference between the retailer's operating costs and the wholesale price he has paid for the gasoline and of course the federal and state taxes on the gas. The wholesaler and the retailer buy a certain amount of product under agreed conditions and resell the product having to get a certain amount of money for the amount sold. This is a price point issue entirely and nothing more. More importantly, it has almost no association with "big oil."

This issue manifests a fundamental thread running through most issues we deal with in the Congress these days. Rather than deal with the hard truths of an issue and solve it, we look for distractions, for someone to blame, a fall guy. If we told the American people the truth they might not like it, so we look for scapegoats.

A few weeks ago, Robert Samuelson, an economics columnist for the Washington Post, wrote a column entitled, "A Full Tank of Hypocrisy." Mr. Chairman, I ask unanimous consent that the Samuelson column be put in the hearing record because it goes to the heart of what I am talking about.

Samuelson makes the point that it is hypocritical for political leaders, and he mentions Speaker Nancy Pelosi and Sen. Charles Schumer specifically, to lament high gas prices on one hand and then warn against global warming when they know very well that high

gasoline prices are a sure way to curb the use of fossil fuels. He writes that anyone fearful of global warming should cheer higher gasoline prices. But what were Speaker Pelosi and Sen. Schumer's response? Sen. Schumer suggested breaking up big oil companies. Speaker Pelosi pushed through the Federal Price Gouging Prevention Act, which she says "would punish those who are cheating America's families by artificially inflating the price of gasoline." Both needed someone to blame.

I believe both the Speaker and Sen. Schumer knew that there was no gouging and that breaking up the oil industry would solve nothing. They were provided an excellent opportunity to tell the American people the truth, but they declined.

The following quote from the column goes to the core of the matter. Samuelson writes, "Americans want to stop global warming. They want to cut oil imports. They want cheaper energy. And who will tell them that they can't have it all? Not our "leaders."

It's time for the Congress to put an end to the blame game and the hypocrisy and tell the American people the truth about what is required to sustain economic growth in the United States and for Americans to maintain their standard of living.

washingtonpost.com

A Full Tank of Hypocrisy

Advertisement

By Robert J. Samuelson
Wednesday, May 30, 2007; A13

It's one of those delicious moments when Washington's hypocrisy is on full and unembarrassed display. On the one hand, some of America's leading politicians condemn high gasoline prices and contend that they stem from "gouging" by oil companies. On the other, many of the same politicians warn against global warming and implore us to curb our use of fossil fuels that emit carbon dioxide, the main greenhouse gas.

Guess what: These crowd-pleasing proclamations are contradictory. Anyone fearful of global warming should cheer higher gasoline prices, because much higher prices represent precisely the sort of powerful incentive needed to push consumers toward more fuel-efficient vehicles and to persuade the auto industry to produce them in large numbers. Bravo for higher prices!

Perish the thought.

In late May, gasoline prices hit a national average of $3.22 a gallon, which, after correcting for inflation, is roughly as high as in early 1981, the recent peak. This elicited the usual expressions of outrage. Sen. Charles E. Schumer (D-N.Y.) suggested breaking up big oil companies that he says may be to blame for "the sky-high gas prices." By a vote of 284 to 141, the House passed the Federal Price Gouging Prevention Act, which would make it illegal during an "energy emergency" (to be declared by the president) to sell gasoline at a price that is "unconscionably excessive."

The legislation, said House Speaker Nancy Pelosi (D-Calif.), would "punish those who are cheating America's families by artificially inflating the price of gasoline."

It's always fun to blame unpopular occurrences on corporate greed. Schumer's notion, for example, is that the wave of giant oil mergers (among others: BP/Arco, Exxon/Mobil, Chevron/Texaco) has so concentrated U.S. refinery capacity that companies can constrict supply and create artificial scarcities by refusing to build new refineries. It's a plausible-sounding theory whose major defect is the absence of supporting evidence.

Whenever gasoline prices surge unexpectedly, Congress routinely vents its anger by ordering the Federal Trade Commission to investigate the oil industry for collusive practices. Invariably, the studies exonerate the industry.

Testifying last week before the congressional Joint Economic Committee (JEC), Michael Salinger, an FTC economist, said that the industry's concentration levels remain "low to moderate." According to JEC figures, ConocoPhillips is the biggest U.S. refiner, with 13 percent of capacity; the six largest have 61 percent of capacity. The oil industry is less concentrated than the auto industry, which is considered intensely competitive. As for the absence of new refineries, that problem preceded the merger wave by

many years; the last major U.S. refinery was constructed in 1976. There must be some other explanation (environmental restrictions, past low profitability).

Today's higher gasoline prices mostly reflect supply and demand. "Holiday travelers ignoring fuel costs," headlined USA Today before the Memorial Day weekend. Gasoline demand is up almost 2 percent from 2006 levels. Meanwhile, gasoline supplies have tightened. More refineries than usual shut this spring for repairs -- some outages planned, some not (from accidents or dangerous conditions). In April and May, refineries normally operate well above 90 percent of capacity; in 2007, the operating rate was about 89 percent. Imports also declined for many reasons: higher demand in Europe; refinery problems in Venezuela; more gasoline demand from Nigeria.

It's true that oil companies will reap eye-popping profits from high prices. Still, the logic that steep prices, imposed by the market or by taxes, will encourage energy conservation is irrefutable. At the least, high prices would curb the growth of greenhouse gases and oil imports. Congressional Democrats especially have targeted global warming. "We hold our children's future in our hands," Pelosi said early this year. "As the most adaptable creatures on the planet, it is time for us to adapt."

Energy prices apparently are the huge exception to this moral imperative. It is not necessary to adapt to them. The way that Pelosi and others navigate around this illogic is to assume painless improvements in energy efficiency. Congress will order car companies to make more efficient vehicles. It will mandate more renewable energy. It will impose stricter efficiency standards on appliances. Presto, everything's solved. No voter must suffer any inconvenience or cost.

But if fuel prices aren't high, people won't want to buy fuel-efficient cars, which will be more expensive, smaller or both. People will also drive more -- offsetting efficiency gains -- because it's cheaper. In 2005, the average car traveled 12,375 miles, up 1,871 miles since 1990. Given expanding populations of people and cars, massive gains in efficiency are needed merely to hold total fuel use constant. All this applies equally to buildings and appliances; higher electricity prices are an essential catalyst.

Americans want to stop global warming. They want to cut oil imports. They want cheaper energy. Who will tell them that they can't have it all? Not our

"leaders."

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Mr. KUCINICH. Thank you very much, Mr. Issa. I have no question that cooperation on this will find a way to benefit American consumers. I thank you.

Does Mr. Bilbray wish to make a statement? We have a few minutes if you wish to do so.

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Chairman, I am really thankful that you are having this hearing, because I think that it is an opportunity for us not to just talk about one segment of the issue of what may or may not help the consumer at the end of the process. I think it also gives some of us an opportunity to talk about not only what is the private sector doing or not doing to protect the consumer, but what are those of us in Government doing and what have we done in the last 30 years that has severely impacted the price of fuels for the American people.

So I hope to highlight the fact that, though we may be to pointing fingers at certain private sectors that may tweak the numbers 1 or 2 percent, I hope at the same time that we are brave enough to look in the mirror and look in our own face and see that what Government has done in the last 30 years has jacked up the price of gasoline at the pump in such extraordinary numbers that I will show you exactly what the Federal Government has done with misguided policies and not only hurt the consumer, hurt the environment under the guise of protecting the consumer and protecting the environment.

As you know, our local government experience, I had the privilege of serving for 6 years on the State Air Resources Board of California, one of the premier environmental groups that worked with the fuel industry. Frankly, the Federal Government's history of addressing the issue of affordable, clean energy is dismal, to say the least.

I hope in this hearing that we are able to point fingers at the oil industry and say where they can do better, and then by doing that open ourselves up to pointing fingers at ourselves and saying, physician, heal thyself, and do not find the speck in your neighbor's eye when you have a log in your own.

As this testimony goes over, I hope that we can work together at going back to the new majority and say, Hey, we really have screwed up, and we screwed the consumer and the environment at the same time, and good intentions do not make fuel any more affordable or any cleaner.

I hope to be able to engage in this discussion and I hope you join us in taking the leadership of going back and taking a look at those mistakes we have made and the things we have done wrong or haven't done right that can really help both the consumer and the environment if we do them right.

Thank you very much.

Mr. KUCINICH. Thank you, Mr. Bilbray. I will respond to the points that you made. I think that it is important that this committee always be open to examining the role that Government plays. In this particular case, part of the work of this committee has been to examine the role of those who set the standards to see if Government actually is in some way, directly or indirectly, through commission or omission, playing a role in the high price of gasoline.

I commit to you that this committee is not simply about probing the decisions of the private sector, but it is important to look at the inter-relationship between the private sector and the public sector, and also the public sector's policies as they reflect upon and impact upon the private sector. Thank you.

If there are no additional statements, the subcommittee will now receive testimony from the witnesses before us today. I want to start by introducing our panel.

Mr. Ben Soraci is the U.S. retail sales director for ExxonMobil Fuels Marketing Co., a position that he has held since May 1, 2007. Prior to his current position, Mr. Soraci was manager of the U.S. company-operated retail sites for 3½ years. Mr. Soraci joined Mobil in its U.S. Marketing and Refining Division in 1984, and has held various positions in many divisions, including Resale Marketing, Marketing Real Estate and Retail, as well as management positions with Mobil's International Division in Japan, Africa, and Europe. Along with his duties at Exxonmobil, Mr. Soraci is co-chair of the American Petroleum Institute's General Marketing Committee.

Mr. Hugh Cooley is vice president and general manager of National Wholesale and Joint Ventures for Shell Oil Co. Mr. Cooley has been with the Shell Oil Co. for more than 35 years. He has held numerous positions in the areas of sales, marketing, and operations management. He became vice president and general manager of National Wholesale in March 2002, and became responsible for retail joint ventures in 2006. In his current position, Mr. Cooley is in charge of managing Shell's sale of Shell-branded gasoline at the wholesale level. Mr. Cooley also serves on a number of industry boards and is co-chair of the American Petroleum Institute's General Marketing Committee.

In introducing the members of this panel, I think we have established that these are people who have high qualifications and are certainly here to be able to answer our questions.

I want to welcome you for being here. Please let those who you work with at your respective companies know that this subcommittee does very much appreciate your presence.

Gentlemen, it is the policy of the committee on oversight and Government Reform to swear in all witnesses before they testify. I would ask if you would rise and raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. Thank you. Let the record reflect that the witnesses answered in the affirmative.

At this time I would ask the witnesses to give an oral summary of your testimony, and to try to keep that summary under 5 minutes in duration. I want you to know that your written statement will be included in the hearing record, and any other extraneous materials that you wish to supply. Our committee will cooperate with you in facilitating the inclusion of those materials in the record.

Mr. Soraci, thank you for being here. We would like to begin with you. You are recognized to proceed. Thank you.

STATEMENTS OF BEN SORACI, U.S. RETAIL SALES DIRECTOR, EXXONMOBIL FUELS MARKETING COUNSEL; AND HUGH COOLEY, VICE PRESIDENT AND GENERAL MANAGER, NATIONAL WHOLESALE AND JOINT VENTURES, SHELL OIL

STATEMENT OF BEN SORACI

Mr. SORACI. Chairman Kucinich, Ranking Member Issa, distinguished subcommittee members, I appreciate the opportunity to be with you today to talk about automatic temperature compensation.

Let me start by saying that I know people are concerned about energy costs and they are looking for answers. The question that is before us today is whether we should change the way we dispense fuel at the gas pump.

As indicated, my name is Ben Soraci. I am the U.S. retail sales director for ExxonMobil Corp. My testimony today will address three key points which reflect ExxonMobil's view on automatic temperature compensation. From here on out, I will refer to it as ATC.

First, ExxonMobil's sale of motor fuel to consumers is fully compliant with the law, and selling temperature compensated motor fuel at retail would violate current laws and regulations.

Second, ExxonMobil supports a comprehensive study regarding the use of ATC at retail.

Third, and very importantly, the investment cost associated with implementing ATC at retail will primarily be borne by the independent retailers.

Now, with regard to my first point, as required by law, retailers in the United States sell motor fuels by the volumetric gallon measurement. With the exception of Hawaii, a gallon is defined across the United States as 231 cubic inches; in other words, no different than any other liquid. This volume measurement method for retail transactions is governed by State laws and regulations, based on guidelines from the National Conference on Weights and Measures [NCMM]. Therefore, if ATC is to be permitted, new laws and regulations would need to define a gallon of motor fuel on a temperature compensated basis. ATC equipment would need to be certified for retail stations, and calibration and special protocols will need to be developed and adopted.

My second point is that ExxonMobil supports a comprehensive study to evaluate whether a basis exists to change the current retail measurement standard. States such as New York and Minnesota have considered and expressly prohibit the sale of motor fuel on a temperature compensated basis at retail. On the other hand, California and Arizona appear to desire a permissive or optional approach.

At the national level the NCMM considered permissive ATC guidelines at its annual meeting the week of July 8th, and they voted not to adopt new guidelines pending further study. In Congress, the House Science and Technology Committee has asked the National Academy of Sciences to conduct a nationwide study to determine whether a problem exists and whether widespread use of ATC equipment was warranted.

So there are differences of opinion regarding ATC, and there are unanswered questions. This is why we believe a comprehensive study will provide an appropriate basis for evaluating any potential

change to current NCMM guidelines and the associated laws and regulations have governed the use of ATC.

There are several fundamental questions that should be addressed in such a study. For example, if a change in the measurement standard is deemed appropriate, should implementation be mandatory or permissive? Should the measurement method vary according to the choice of each State, or should there be a national standard? And, most importantly, what are the costs versus benefits for the consumers and the independent retailers?

ExxonMobil believes a comprehensive study is an important prerequisite for making an informed decision with regard to ATC at retail.

My third point is that the investment cost associated with the implementation of ATC at retail stations would primarily be borne by independent retailers. You heard Tim Columbus, who represents the interests of independent retailers through the SIGMA and NACS industry associations, makes this same point in his recent testimony.

The fact is, ExxonMobil owns a very small percentage of the retail motor fuel stations in the United States. Of the approximately 170,000 retail stations throughout the country, less than 2 percent are owned by ExxonMobil. Furthermore, of the stations that are branded Exxon or Mobil, over 80 percent are owned by independent retailers, who would be directly impacted by the implementation of ATC. This is a very important point to keep in mind. Why? Because as owners of existing equipment, they would directly incur the cost of the new equipment or any retrofits that might be required.

As you also heard Mr. Columbus say, many of these independent retailers would struggle to make this investment. ExxonMobil concurs with his assessment.

In summary, the three key points of my testimony are: first, ExxonMobil's sale of motor fuel to consumers is fully compliant with the law, and selling temperature-compensated motor fuel at retail would violate current laws and regulations.

Second, ExxonMobil supports a comprehensive study regarding the use of ATC at retail.

And, third, the investment cost of implementing ATC at retail would be primarily borne by the independent retailer.

I thank you for your time, and I would be happy to answer any questions on this subject.

[The prepared statement of Mr. Soraci follows:]

STATEMENT

Ben A. Soraci

Director, US Retail Sales

ExxonMobil Fuels Marketing Company

before the

House Subcommittee on Domestic Policy

July 25, 2007

Chairman Kucinich, Ranking Member Issa, distinguished subcommittee members: I thank you for the opportunity to share ExxonMobil's views on Automatic Temperature Compensation of motor fuels at retail stations in the United States. My name is Ben Soraci, and I am the US Retail Sales Director for ExxonMobil Fuels Marketing Company. I have been an employee of ExxonMobil for over 20 years, and my experience includes both domestic and international retail operations.

My testimony today will address three key points which reflect ExxonMobil's views on Automatic Temperature Compensation at retail – which I'll refer to as "ATC":

- First, ExxonMobil's sale of motor fuel to consumers is fully compliant with the law, and selling temperature compensated motor fuel at retail would violate current laws and regulations.
- Second, ExxonMobil supports a comprehensive study regarding the use of ATC at retail.
- And, third, the investment cost of implementing ATC at retail would primarily fall upon independent motor fuel retailers.

With regard to the first point, as required by law, retailers in the U.S. sell motor fuels by volumetric gallon measurement. With the exception of Hawaii, a gallon of motor fuel is defined by law throughout the U.S. as 231 cubic inches - in other words, no differently than for any other liquid. This volume measurement method for retail

transactions is governed by state laws or regulations based on guidelines from the National Conference on Weights and Measures, or NCWM. Therefore, if ATC is to be permitted, new laws and regulations would need to define a gallon of motor fuel on a temperature compensated basis, ATC equipment would need to be certified for retail stations, and calibration and inspection protocols would need to be developed and adopted.

My second point is that ExxonMobil supports a comprehensive study to evaluate whether a basis exists to change the current retail measurement standard. States such as New York and Minnesota have considered and expressly prohibit the sale of motor fuel on a temperature compensated basis at retail. On the other hand, California and Arizona appear to desire a permissive or optional approach.

At the national level, the NCWM considered permissive ATC guidelines at its annual meeting July 8-12, 2007, and voted not to adopt them pending further study. In Congress, the House Science and Technology Committee has asked the National Academy of Sciences to conduct a nationwide study to determine whether a problem exists and whether widespread use of ATC equipment is warranted. So there are differences of opinion regarding the use of ATC at retail, and there are unanswered questions. This is why we believe a comprehensive study would provide an appropriate basis for evaluating any potential change to current NCWM guidelines and the associated laws and regulations governing use of ATC.

There are several fundamental questions that should be addressed in such a study. For example, if a change in the measurement standard is deemed appropriate, should implementation be mandatory or permissive? Should the measurement method vary according to the choice of each state or should there be a national standard? And most importantly, what are the costs versus benefits for consumers and independent retailers? ExxonMobil believes a comprehensive study is an important prerequisite for making an informed decision with regard to ATC at retail.

Finally, my third point is that the investment cost associated with the implementation of ATC at retail stations would primarily be borne by independent retailers. You heard Tim Columbus, who represents the interests of independent retailers through the SIGMA and NACS industry associations, make this same point in his recent testimony. The fact is, ExxonMobil owns or operates a very small percentage of the retail motor fuel stations in the U.S. Of the approximately 170,000 retail fuel stations throughout the country, less than 2% are owned by ExxonMobil. Furthermore, of the stations that are branded Exxon or Mobil, over 80% are owned by independent retailers, who would be directly impacted by implementation of ATC at retail. This is a very important point to keep in mind. Why? Because as owners of the existing equipment, they would directly incur the cost of any new equipment or retrofits that might be required. As you also heard Mr. Columbus say, many of these independent retailers would struggle to afford this investment. ExxonMobil concurs with his assessment.

So, in summary, these are the key points of my testimony:

- First, ExxonMobil's sale of motor fuel to consumers is fully compliant with the law, and selling temperature compensated motor fuel at retail would violate current laws and regulations.
- Second, ExxonMobil supports a comprehensive study regarding the use of ATC at retail.
- And, third, the investment cost of implementing ATC at retail would primarily fall upon independent motor fuel retailers.

Thank you for your time, and I would be happy to answer any questions on this subject.

Mr. KUCINICH. I thank the gentleman.
The Chair recognizes Mr. Cooley.

STATEMENT OF HUGH COOLEY

Mr. COOLEY. Good morning, Mr. Chairman and members of the subcommittee. My name is Hugh Cooley, and I am Vice President and General Manager of National Wholesale and Joint Ventures for Shell Oil Products Co. in Houston, TX.

I am here to testify because for several years I have been responsible for managing the relationship with our wholesalers. Wholesalers supply most of our local independent Shell stations in the United States by independent stations, I mean stations which Shell does not own or operate.

Now let me begin by summarizing Shell's position on some of the central concerns and questions about this issue. Shell does not believe that the American consumers are harmed in any way by not having temperature adjustment at retail dispensers. The standard applied by State weights and measures authorities for fuel cells to consumers has long been the volumetric gallon, a standard that is easy to understand and easy for State regulators to enforce.

This way of measuring gasoline just makes good sense. When a consumer purchases a gallon of gasoline, the consumer is assured each and every time, winter or summer, that a true volumetric gallon of gasoline is being pumped into their car. Consumers understand and depend on this methodology, and local weights and measures officials easily and uniformly enforce regulations requiring that a gallon is, indeed, a gallon.

If all sellers use the same unit of measure in a given local market, then the market will settle on the most competitive price in that place, time, and circumstances. The idea that temperature adjustment will somehow get people more for their money simply does not take into account the realities of the retail gasoline market. If gasoline were temperature adjusted at the retail level, the intense competition in the market would adjust prices to take that into account, as well. In other words, if retailers sell larger gallons, you should expect they will charge more for larger gallons.

Now let's talk about energy content. The notion that automatic temperature adjustment would guarantee that every gallon of gasoline has the same energy content, as well.

The EPA recognizes that the energy content of gasoline is affected by numerous factors in addition to temperature, including the percentage of ethanol it contains, the grade of crude oil from which it was refined, and the processes used at the refinery.

Another misconception is that all wholesale transactions are temperature adjusted. The reality is that temperature adjustment does not occur at all wholesale transactions. Some States forbid it, some States require it, and some States give the buyer a choice. In fact, most of Shell's sales at the wholesale level in the warmer States are temperature adjusted, and most sales in the colder States are not. This is exactly the opposite of what you would expect if the proponents of temperature adjustment were correct that it is used only when it benefits the oil companies.

Furthermore, companies like Shell exchange large volumes of gasoline between terminals that are often far apart, often in mark-

edly different climates, and at varying times of the year. All of this does require accounting for the impact of temperature variation.

Now, regarding the question of why most Canadian retailers temperature adjust in retail sales, the government of Canada legally permitted temperature adjustment for retail gasoline approximately 15 years ago, and apparently at the urging of the manufacturer of a temperature adjustment device. We believe that some Canadian retailers thought that the use of temperature adjustment devices would provide them with a competitive advantage over other retailers. When their use became an industry trend, most other retailers, including Shell, followed to avoid a competitive disadvantage.

After most stations had converted and the market essentially had transitioned to automatic temperature adjustment, basic economics lead us to believe that the price at the street level would have adjusted to take into account the new temperature adjusted unit of measure.

Finally, the cost of installing automatic temperature adjustment equipment would hit the independent retail stations, which are not owned or operated by the integrated oil companies. Independent stations are the major player in selling gasoline to consumers, accounting for more than 90 percent of such sales.

As Mr. Columbus testified in the committee on behalf of NACS and SIGMA, the temperature adjustment debate is not about integrated oil companies; it is about the independent retailers and the consumers.

In summary, Shell believes that the fundamental economic principles that dictate the cost of temperature adjustment would be incurred predominantly by local, independent retailers and passed on to consumers without any economic benefit to the consumer.

On behalf of Shell, I look forward to answering your questions today. Thank you, Mr. Chairman.

[The prepared statement of Mr. Cooley follows:]

Written Statement of

HUGH COOLEY

Vice President and General Manager
National Wholesale and Joint Ventures
Shell Oil Company

Before the

SUBCOMMITTEE ON DOMESTIC POLICY
OF THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

July 25, 2007
10:00 a.m.
2154 Rayburn Office Building

My name is Hugh Cooley, and I am Vice President and General Manager, National Wholesale and Joint Ventures, with Shell Oil Company in Houston, Texas. I have been with Shell in various capacities for more than 35 years. I am here to testify because for a number of years I have been responsible for managing Shell's sale of Shell-branded gasoline at the wholesale level, including managing the relationships with our wholesalers who supply most of the independent stations that make up ninety-three percent of the Shell-branded stations in the United States. Independent stations are stations to which Shell sells its branded gasoline, but Shell is not involved in the day-to-day operations, including setting prices of the fuel.

Before I offer my substantive comments, I ask that you appreciate the circumstances under which I appear today. Since December of last year, numerous class action lawsuits have been filed naming more than 100 companies, including Shell, alleging that these companies did something improper by selling fuel using the standard 231cubic inch volumetric gallon specified by each of the states in which the lawsuits were filed. We firmly believe that these claims are merit-less and based on a seriously flawed understanding of the situation. As I am sure you can appreciate, we usually hope to avoid commenting on the subject matter of pending litigation, especially where there are many other companies whose interests are also at stake.

Let me begin by summarizing what I believe to be the primary questions that concern the Subcommittee and Shell's short answer to each.

Number 1: Are consumers losing billions of dollars because there is no automatic temperature adjustment of retail gasoline sales? Absolutely not. Consumers are purchasing

gasoline dispensed in a uniform measurement and sold in a consistent pricing system that takes into account the same factors in each market, such as supply, distribution logistics, demand, temperature, and the like. The retail market for gasoline is highly competitive, and Shell firmly believes that market prices take into account the absence of temperature adjustment.

Number 2: Would automatic temperature adjustment guarantee that every gallon of motor fuel contained the same amount of energy? Again, the answer is no. Uniform energy content for gasoline is virtually impossible due to the many factors other than temperature that affect its energy content.

Number 3: Why is temperature adjustment used for wholesale gasoline transactions but not for retail sales? The applicable State laws and regulations allow or require temperature adjustment for many wholesale transactions but specify volumetric measurement without regard to temperature for retail sales.

Number 4: Why is automatic temperature adjustment used for retail sales in Canada? My understanding is that the government of Canada approved temperature adjustment for retail gasoline fifteen years ago at the urging of the manufacturer of a temperature adjustment device. A few years later, some retailers began to temperature adjust, presumably to obtain a competitive advantage over other retailers as a result of their lowered unit cost. Once the trend became apparent, other retailers followed to avoid a competitive disadvantage.

Number 5: Should automatic temperature adjustment be allowed or required for retail sales in this country? No. Shell believes that consumers would not realize any pricing benefit and that consumers would ultimately bear the financial brunt of such a shift in required retail equipment.

Before I address each of these issues in greater detail, I would like to offer a couple of important points that provide context to better understand these issues. First, the cost of installing automatic temperature adjustment equipment would have a significant financial impact on independent owners and operators of retail stations not owned or operated by the integrated oil companies. We believe that independent stations are the major players in selling gasoline to consumers, accounting altogether for more than ninety percent of such sales. For example, as I mentioned earlier, ninety-three percent of all retail stations selling Shell-branded gasoline are not operated by Shell but are independent businesses that have entered into agreements with Shell or Shell wholesalers to purchase Shell-branded gasoline and license the Shell trademarks. Shell determines the retail price of its gasoline at only about seven percent of the Shell-branded stations in the United States. As Mr. Columbus testified to this subcommittee several weeks ago on behalf of the National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America, the temperature adjustment debate is not about the integrated oil companies; it is about the independent retailers. And we believe that if independent retailers are impacted, consumers will be as well.

Second, individual state governments set the standards for how gasoline is to be measured at the retail level, and with one exception they follow the recommendations of the independent standard-setting body responsible for recommending the system of weights and measures in this country – the National Conference on Weights and Measures (NCWM). The NCWM has uniformly maintained the historical measurement system based on volumetric gallons without regard to temperature. Thus, the laws of *all states* except Hawaii specify that gasoline be sold by volumetric gallons consisting of 231 cubic inches of fuel, without regard to the temperature of that fuel. Hawaii also specifies the sale of gasoline by a uniform volumetric

gallon, no matter what the temperature, but in the 1970's redefined a gallon of gasoline to be 234 cubic inches. Proposals to institute the use of automatic temperature adjustment for the retail sale of gasoline have been debated on numerous occasions at the NCWM since the 1970's, but that organization has never adopted any of those proposals. Most recently, during the week of July 9, 2007, at its annual conference in Salt Lake City, the NCWM once again declined to endorse automatic temperature adjustment on either a mandatory or permissive basis. The NCWM has set up a steering committee comprised of national experts to help the technical committees answer important questions that were raised during the debate in Salt Lake City.

The Current Law Requiring the Sale of Gasoline By Volumetric Gallons Does Not Harm Consumers.

Some have asserted that the absence of temperature adjustment in the retail sale of gasoline costs American consumers billions of dollars per year. This assertion is incorrect and is based on a misunderstanding of the economics that drive the retail gasoline market. The market for retail sales of gasoline is intensely competitive and localized. This intense competition necessarily adjusts prices to take into account the effect of temperature variations on retail gasoline sales.

Shell similarly believes based on economic principles that, if gasoline were temperature-adjusted at the retail level, the intense competition in the market would adjust prices to take that into account as well. Consumers could benefit from temperature-adjusted fuel sales in warm states only if retail stations were willing to sell larger, non-standard, temperature–adjusted gallons at the same price as they had been selling smaller, unadjusted standard gallons, and Shell does not believe that retailers would or even could do so.

Some have also incorrectly suggested that consumers are misled by retail sales of gasoline in standard volumetric gallons without temperature adjustment, which, as explained above, is the method specified by state regulations. First, the science underlying the temperature adjustment debate is not secret or novel in any way. Second, temperature adjustment at the retail level has been debated for decades at the NCWM, an open and public organization and the appropriate forum for that debate. Third, I do not think anyone could reasonably assert that any advertising or signage at retail stations or elsewhere somehow represents that gasoline sales are adjusted for variations in temperature. To the contrary, every indication at the stations themselves is that consumers are purchasing gasoline in standard volumetric gallons, and that is exactly what they have been getting.

Automatic Temperature Adjustment Cannot Guarantee Uniform Energy Content.

The primary assumption on which the proponents of automatic temperature adjustment rest their case is that it would guarantee a uniform energy content for every gallon of gasoline. We believe that is factually wrong. Many factors other than temperature affect the energy content of gasoline, including the percentage of ethanol it contains, the grade of crude oil from which it was refined, and the processes used at the refinery. In fact, gasoline from different stations or different tank truck deliveries is not likely to have the same energy content, even at the exact same temperature. Thus, the claim made by the proponents of automatic temperature adjustment that it would guarantee that consumers would get the same amount of energy in every gallon of fuel is simply not correct. For example, some areas use various winter boutique fuel formulations designed in part to promote cold starts and better car performance by making the fuel more volatile, resulting in less energy per gallon. Conversely, some states mandate the use of various summer boutique formulations of gasoline that are designed to avoid evaporation by

making the fuel more dense thus helping reduce ozone pollution. Denser fuel has more energy per gallon. *See* http://www.epa.gov/otaq/rfgecon.htm. Similarly, fuels that contain ethanol contain less energy than gasoline without ethanol. For example, the Department of Energy and Environmental Protection Agency Fuel Economy Guide indicates that the fuel economy penalty for E-85 averages about 26% with a range between 21% and 35%. *See* http://www.fueleconomy.gov (U.S. Department of Energy and U.S. Environmental Protection Agency). These examples demonstrate that the assumption that temperature adjustment would somehow give every gallon of gasoline the same energy content does not hold up under scrutiny.

All Wholesale Transactions Are Not Adjusted for Temperature.

Previous testimony before this subcommittee indicated that all sales at the wholesale level (that is, sales other than to the motoring public) are temperature adjusted. That testimony was inaccurate. As I have previously explained, state laws require that gasoline be sold to consumers at the retail level by volumetric gallons without regard to temperature. In contrast, some, but certainly not all, wholesale transactions are adjusted for temperature. By law, some states require temperature adjustment in wholesale transactions, some states allow it but do not require it, some states prohibit it altogether, and some states give the buyer the right to choose whether sales will or will not be adjusted for temperature. Thus, not all wholesale transactions are adjusted for temperature. For example, about half of Shell's sales at the wholesale level are temperature adjusted and half are not. In addition, the number of terminals where wholesale transactions occur is much smaller than the number of retail stations in the United States, making installing, maintaining, and inspecting temperature adjustment at the wholesale level far more practical and less expensive than at the retail level.

Furthermore, the reasons that temperature adjustment makes sense for inter-company exchange transactions do not apply to retail sales: distance, time, quantity, and temperature. Gasoline marketers like Shell exchange large volumes of gasoline between terminals that are very far apart, often in markedly different climates, and at varying times of the year, all of which requires accounting for the impact of temperature variations. For example, Shell might deliver a specific number of gallons of gasoline to another company in Texas (where we have a refinery) in exchange for that company's near simultaneous delivery of gasoline in northern Minnesota (where we do not have a refinery). Similarly, in some instances a company may receive product in one season and repay the gallons at a later date when the weather is cooler or warmer.

In contrast, retail gasoline sales occur at far smaller quantities under highly competitive conditions in a specific place, at a specific time, under specific conditions, which include the ambient temperature and large signs visible from the street posting prices. Unlike the exchange context, consumers do not buy and sell gasoline over a huge geographic distance and climate difference — in fact, they cannot do so. Likewise, consumers do not receive product in one season and repay it in another — nor is that possible.

The Canadian Experience Does Not Support Temperature Adjustment in the United States.

Shell Canada has historically been a separate company from Shell U.S. In addition, Shell Canada converted most stations to automatic temperature adjustment more than ten years ago. As a result, we are still working to get information regarding the reasons why Shell Canada chose to follow the rest of the market and adopt automatic temperature adjustment for retail sales. That said, I will do my best to convey what we have learned so far from various sources.

My current understanding is as follows: The Canadian government made automatic temperature adjustment permissive at the retail level approximately fifteen years ago. Media reports indicate that a manufacturer of automatic temperature adjustment devices first proposed that Canadian regulators allow automatic temperature adjustment and then marketed the device after the law was changed. We also understand that few, if any, retailers installed automatic temperature adjustment devices in Canada for the first few years after it was allowed. Apparently some retailers started to install automatic temperature adjusting devices, which allowed them in a cold climate to sell smaller volumetric gallons than their non-adjusting competitors, giving them a potential competitive advantage over other retailers because they had a lower effective unit price. Once a number of retailers had installed automatic temperature adjustment devices, other retailers appear to have followed suit to avoid being competitively disadvantaged. Shell Canada apparently followed those retailers that started the trend to convert to automatic temperature adjustment. After most stations had converted and the market essentially had transitioned to automatic temperature adjustment, basic economics leads us to believe that prices at the street level would have adjusted to take into account the new temperature adjusted unit of measure.

Permissive Automatic Temperature Adjustment Would Not Ultimately Benefit Consumers.

Shell believes that making automatic temperature adjustment permissive throughout the United States would not be a good idea. First, if in any given area some stations adopted the technology and others did not, consumers would be confused over how to compare prices. Even if there were a way to easily distinguish a temperature-adjusting station from one that did not adjust, a consumer driving down the street and comparing the prices on the signs would have no practical way to know the current temperature of the gasoline in order to

determine which station had the better price. Second, a permissive system like Canada's would encourage independent retailers to install such devices in the colder states, but would have no ultimate benefit to consumers in those states and no impact whatsoever in the warmer states.

Because Shell believes that there is no real benefit to be gained from the use of automatic temperature adjustment, and certainly not a benefit equal to the cost of the equipment, Shell has no plans to install such equipment at the small percent of sites we own (if allowed to do so in the future) unless market forces required automated temperature adjustment in order to remain competitive. Since independent businesses operate the vast majority of Shell-branded locations, it would be the decision and cost burden of those independent operators to choose whether to install such equipment.

Mandatory Automatic Temperature Adjustment Would Not Ultimately Benefit Consumers.

Shell also does not believe that making automatic temperature adjustment mandatory is warranted because the equipment cost would likely raise prices for consumers and might drive some independent operators out of business. Shell perceives no real benefit to consumers due to the fact that per-gallon market prices would likely rise where temperature adjustment resulted in dispensing larger "gallons" and fall where temperature adjustment resulted in dispensing smaller "gallons." At the same time, installation of such equipment, the cost of which Shell estimates (based on our own network) to be approximately $20,000 to $30,000 per site, would undoubtedly be a very material capital investment for the many independent businesses that sell Shell-branded gasoline. The need of these retailers to recoup this capital investment would likely lead to an increase in the real price of gasoline. Moreover, this capital investment might well be such a burden on some of the smallest, family-operated retail stations that they might not survive. Thus, the non-existent benefit to consumers would

likely be outweighed by the unintended consequences of mandatory retail temperature adjustment: higher retail prices and fewer independent retailers.

Others Have Rejected Automatic Temperature Adjustment.

Shell believes that for all of these reasons the Subcommittee should conclude that automatic temperature adjustment is not a concept that should be pursued. Others have studied this issue and come to the same conclusion. For example, as described earlier in my testimony, the NCWM has been considering and studying this issue for decades and has never concluded that automatic temperature adjustment would benefit consumers. A report prepared by the Australian Institute of Petroleum in 1996 based on a comprehensive study of gasoline temperatures throughout Australia concluded that there would be no net benefit to consumers from temperature adjustment. Additionally, when legislation was recently proposed in the state of Missouri to redefine a gallon for different geographic zones to account for temperature variations, a legislative study concluded that the proposed legislation would have a negative impact on consumers due to costs to retailers and the added cost of inspection and enforcement.

More Information Will Be Available.

Shell hopes that the Subcommittee will endorse the request of Congressman Gordon, Chairman of the Committee on Science and Technology, to the National Academy of Sciences study this issue requesting that they assess important factors concerning automatic temperature adjustment. Taking this route would also be consistent with recent actions of the NCWM, the state legislature in California, and the Department of Agriculture in Maryland, all of which have decided to make detailed studies of various issues relating to temperature adjustment. Ultimately, Shell believes that this issue is best dealt with by the NCWM and the state

governments, the entities that have regulated wholesale and retail sales of gasoline for many decades.

In conclusion, Shell believes that any perceived benefit from mandatory or permissive temperature adjustment would be greatly outweighed by the costs. We thank you for your time and attention.

Mr. KUCINICH. I thank the gentleman.

We are going to go into questions right now. I am going to begin the first round with 5 minutes, and then we will go to my colleagues, and then we will come back for a second round and a third round, if necessary.

I would like to begin with Mr. Cooley. When new pumps are ordered, who determines which pumps with what specifications may be bought? You, the oil company, or the dealer?

Mr. COOLEY. Our requirement is that the dispensers, we meet all legal requirements, so we do not specify specific manufacturers for dispensers. We do specify that they meet the legal requirements by different States and Federal authorities.

Mr. KUCINICH. If pumps equipped with temperature compensation were to be installed at your branded stations, wouldn't you have to agree to that?

Mr. COOLEY. If they were installed in any stations in the United States today, we do not believe that the State weights and measures people would allow them to utilize temperature correction at this time. All the State weights and measures are still based on a volumetric gallon.

Mr. KUCINICH. I understand that, but if the pumps equipped with temperature compensation were to be installed at your branded stations, wouldn't you have to agree to that?

Mr. COOLEY. If they were not activated I would agree with that. That is correct.

Mr. KUCINICH. And wouldn't you probably specify which pump and which pump maker would get the business? Wouldn't that be up to Shell to determine?

Mr. COOLEY. No. We would not determine which pump manufacturer gets the business. I think, as the gentleman from Gilbarco testified last time, the majority of their purchases or sales are to third-party independents, not to the major oil companies.

Mr. KUCINICH. Now, at our last hearing on this hot fuels issue we heard from the president of a manufacturer of pumps and automatic temperature compensation equipment. He said that after his company applied for and received certification to sell his equipment from the State of California, there was no demand from the industry for the automatic temperature compensation device. So, just so that I am clear, would the decision to purchase ATC have been effectively made by or required your approval?

Mr. COOLEY. No, sir.

Mr. KUCINICH. I am going to ask Mr. Soraci, would that decision have been effectively made by or required your approval?

Mr. SORACI. The purchase decision is the independent retailers' decision.

Mr. KUCINICH. And was your company in any way involved, ExxonMobil in any way involved in that kind of decisionmaking?

Mr. SORACI. No, sir.

Mr. KUCINICH. Now, what about the case of stations which are company owned and operated? I will ask the question again: would the decision to purchase ATC have been effectively made by or required your approval?

Mr. SORACI. Yes, it would. For company-owned and operated locations it would be.

Mr. KUCINICH. Mr. Cooley.

Mr. COOLEY. No. It would have required my concurrence, which is very similar to approval under our authorities.

Mr. KUCINICH. So is your answer yes or no?

Mr. COOLEY. No.

Mr. KUCINICH. So you say, Mr. Soraci, yes; and Mr. Cooley says no, it wouldn't apply.

Mr. COOLEY. Right.

Mr. KUCINICH. Whose approval would it have required?

Mr. COOLEY. We have a global engineering group, network group, and that is the group that technically has the responsibility for developing the order standards and would approve that or disapprove it. They would ask for my concurrence.

Mr. KUCINICH. Let me be more specific. I don't mean you, personally. I mean your company.

Mr. COOLEY. Yes. I am sorry. You said you.

Mr. KUCINICH. Right. We will accept in your capacity, you are representing Shell, so would it have required Shell's approval?

Mr. COOLEY. Yes.

Mr. KUCINICH. OK. So now we are in concurrence here. OK. So, Mr. Cooley, the reason that Shell's branded stations in California don't have ATC is because Shell decided they shouldn't have them?

Mr. COOLEY. I don't know how many dispensers have been installed in southern California since the period which you reference which a State official said they could be allowed. We would not order that equipment unless the State weights and measures folks said that we could utilize that equipment to dispense gasoline. They have not said that is allowable.

Mr. KUCINICH. But as far as a policy decision with respect to Shell, the reason your branded stations in California do not have ATC, you are saying that is because of the State, or is that because of Shell?

Mr. COOLEY. The State weights and measures officials have not changed their certification to allow temperature corrected devices on dispensers as a measure that you use. It is a cubic inch, 231 cubic inch, measure which they use.

Mr. KUCINICH. I am going to come back to Mr. Cooley and Mr. Soraci on the same question, but my 5 minutes have elapsed, and so, in keeping with the fairness that we have in this committee, I am now going to go to Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. Hopefully, as we go back and forth, we will pick up each other's questions and answers and get a fuller understanding.

Staying on the core subject of 231 cubic inches—which always reminds me of an engine, but I guess in this case we are only talking about fuel, although if we could change it to a 289 it would be popular in Ford families—if we take the temperature from 60 degrees to 80 degrees we go up to, what, 232, 233 cubic inches?

Mr. COOLEY. Roughly.

Mr. ISSA. OK. So less than 1 percent from a typical ground fuel to a truly hot fuel. We are going to go up less than 1 percent.

Well, let me just understand something here today, because I want to put it in perspective for the record. If temperature compensation achieves one thing, it achieves fair amounts of BTUs

being delivered at different temperatures. It is not about how much fuel you get; it is about how much benefit you get. So if we compensate as the temperature rises, then is there a device today that either one of you are aware of—and I am assuming in your capacities you would at least be aware of them—that would allow us to compensate when we go from 5 percent ethanol to 10 percent ethanol, depending upon summer and winter? Obviously, that is a drop of far greater than 1 percent of effective BTUs for the purpose of moving vehicles. Is there any device that can make those kinds of differences?

Mr. COOLEY. I am not aware of one.

Mr. SORACI. I am not aware of any, sir.

Mr. ISSA. Now, you both do business in California. We have, what, 28 boutique fuel mixtures?

Mr. COOLEY. A large number.

Mr. ISSA. OK. Well, we will just use 28 as a number that is thrown around. So those 28 different fuel mixtures, depending upon time of year, temperature, depending upon the micro-climate you are in, the Los Angeles Basin where the full committee chairman is, or San Diego, each of those has a different effective value of BTUs, doesn't it, as you mix fuels, they don't have the same amount of fuel capability if you are talking about how many miles per gallon you would get over 100,000 miles?

Mr. COOLEY. Yes.

Mr. ISSA. And we don't have any way of compensating. Do you deliver to your retailers when you change mixtures? Do you deliver any kind of an analysis that this fuel isn't as good, or it is better?

Mr. COOLEY. No, sir. All our Shell quality fuels are good fuels, but we do not differentiate them.

Mr. ISSA. And I appreciate the fact that you don't determine the mixture except as to meet compliance, and that those boutique fuels are directly as a result of certain compliance issues.

So let me just put this in perspective. You have less than 1 percent difference between 60 degrees and 80 degrees, but we have far more than 1 percent difference based on government-mandated changes to the fuels just in driving distance, just in 100 miles of southern California, and there is no effective way to determine that, so the consumer may be getting a 2, 3, 4, 5—Lord knows, with E85 he is getting a 30 percent cut in the effective BTUs, and we don't have any warning, do we, in California?

Mr. COOLEY. Not that I am aware of.

Mr. ISSA. Mr. Chairman, I am hoping that we can expand this. If the goal is to make sure that the consumer gets the fair share, we can look. Maybe we can have that gentleman back that developed the device and he can develop a device that would calculate the BTUs, so that when I buy E85, which I think is great, it is a clean-burning, renewable fuel, but I only get 30 percent less in miles per gallon off of E85, then I understand that I am not getting 231 cubic inch equivalent of gasoline. Is that right?

Mr. COOLEY. Yes, sir.

Mr. ISSA. OK. Now let me go through one more analysis, because I think this is important. I have a dollar bill here. I know it is not much any more, but we can still use it. It has a breakup, and it really goes—it was designed, really, to talk about the earnings of

retailer. I know these guys want this really badly. Hopefully, you have it. It shows 19 percent is taxes.

I am just fixating on the part the State and the Federal Government gets. If you move your fuel average temperature, or your temperature for base compensation, if you moved it from 60 degrees to 68 degrees or 70 degrees or 80 degrees and said this is it, and the consumer got 80 degrees, 233 cubic inches, and then we go the other direction so that you give them 1 percent extra, since the Federal Government taxes based on a gallon of gasoline, if you gave everyone an extra two cubic inches, even if you charged them more, wouldn't the revenue to the Federal Government drop off pretty precipitously by that ratio, that 1 percent? In other words, the billions of dollars that we take in in highway taxes would, by definition, drop off if you recalibrated to a higher temperature? Isn't that roughly right, because we only collect on gallons?

Mr. COOLEY. If you sell fewer larger gallons, on a gallon tax you would collect less revenue.

Mr. ISSA. Perhaps we can score that but, Mr. Chairman, my time has expired.

Mr. KUCINICH. We can pursue that later. I thank the gentleman.

The Chair recognizes Mr. Bilbray.

Mr. BILBRAY. Yes. I would just like to correct the gentleman from California that ethanol may be beneficial for tailpipe emissions, but it is a gross polluter from evaporative emissions because of its vapor pressure problems. Since 1992, our Resources Board in the State of California has formally requested a waiver from the mandate of ethanol use for environmental reasons and haven't been able to get as much response on that. We have been able to lower our percentage. But I just think we need to make it clear that when we talk about ethanol's environmental benefits, it is a tailpipe emission reduction but a gross polluter from evaporative emission problems.

My question is this: we are talking about the possibility of a 1 percent reduction to the consumer. According to the Harvard study that came out a few years ago, ethanol had a carbon chain problem to the fact that you need almost—is it a gallon and a half of ethanol to every gallon to get the same mileage?

Mr. COOLEY. It is 30 percent less energy content, and E85 would——

Mr. BILBRAY. So 70, 75 percent?

Mr. COOLEY. Right.

Mr. BILBRAY. Mr. Chairman, in California, with the ethanol mandate, the consumers are required to have to basically pay what is comparable to $6 for a comparable amount of ethanol to match what they would rather could have gotten with gasoline. So I think we have to say quite sincerely, if we are looking at consumer protection here, this is a huge hit, especially when you talk about the wholesale price of gasoline in California is about $2.20, when the comparable ethanol price in California would be about $6. That is something that no one has talked about. If we want to talk about protecting the consumer, we need to reconsider a terrible mistake we have made and be willing to address this issue.

Ethanol is costing the consumers around this country through the nose. They are getting ripped off by it. It is not helping the en-

vironment. And when they talk about going to green fuels, it is interesting that the U.S. Government taxes imported ethanol at $0.54 a gallon to be imported. Why? Because we don't want imported ethanol? If it is such a great fuel, why don't we import that rather than gasoline?

The fact is, where the consumer is being shafted is by a mandate by the Federal Government that says you, the oil company, cannot sell gasoline in many parts of this country without putting 10 percent of a boutique fuel that causes evaporative emissions, causes operational problems, and rips the consumer off, and then we wonder why the price of gasoline is up.

I would just say: how many cities and how many regions are we talking about right now aren't using ethanol in their gasoline?

Mr. ISSA. It is a national mandate.

Mr. BILBRAY. It is a national mandate, right? Can you legally sell gasoline in California or in Arizona without ethanol?

Mr. SORACI. To my knowledge not in those States, but there are States or areas where there is not an ethanol mandate.

Mr. BILBRAY. I think the air pollution regs were changed recently to where you got into it.

Here is the sad part about it: nobody forces that gasoline be in the fuel, but the Federal Government is mandating that ethanol be in the fuel.

For us to be looking at a 1 percent reduction, Mr. Chairman, when those kind of numbers have grown, so I would ask you to join with us in saying, when it comes to this kind of mandate, it has been a terrible mistake that not only may be hurting the environment, according to the Air Resources Board in California and the EPA, but is ripping off the consumer for a certain, small special interest group. I don't think we want to change a monopoly by one industry with a monopoly from another industry, and I don't think we want to be able to justify the fact that we are looking at reduction to the consumer of 1 percent when we are talking about maybe we ought to be reducing some of the cost by mega-times over that by just changing our mandates and our regs.

But I appreciate the information, gentlemen.

Mr. ISSA. Would the gentleman yield?

Mr. BILBRAY. I would yield to the gentleman from California.

Mr. ISSA. You know, the gentleman kept saying 1 percent, but to get 1 percent isn't that only if the fuel is incredibly hot? If the average fuel is 67 degrees, which is the Chair's assertion, and I very much take him at his word, what reduction would that be? In other words, how much would fuel expand? You may have to get it back for the record. How much would fuel expand between 60 and 67 degrees, Mr. Cooley?

Mr. KUCINICH. The gentleman's time has expired, but we will permit the witness to answer the question.

Mr. COOLEY. To me this is the big misconception. People need to be clear. While temperature adjustment will recalibrate the size of a gallon, the consumer who pulls into a service station the day after temperature adjustment is enacted on those pumps, their gas tank is absolutely no larger. The amount of fuel that goes in that car is absolutely the same. It is the same temperature as it was the day before. They get no more or no less BTUs. They get no

more, no less mileage. They get exactly what they got the day before, except the unit of measure is redefined into a smaller or a larger gallon. That is, I think, the most misunderstood part. People actually think they are getting more gallons; it is just the unit of measure that changes.

Mr. KUCINICH. I thank the gentleman. Of course, the purpose of these committee hearings has been to determine whether or not the consumers are actually paying for gasoline they are not getting. Now, what I would like to do is to begin my questions by asking both of the gentlemen here to basically acknowledge that you have both stated that, even if you wanted to use temperature compensation at retail, in many cases State law wouldn't let you. Did you both say that? Did you say that? is that a fair characterization?

Mr. COOLEY. What I stated was State weights and measures regulations have not adopted temperature correction.

Mr. SORACI. And our understanding is that across the United States a gallon is still defined as 231 cubic inches by law.

Mr. KUCINICH. Well, at the request of this subcommittee, the National Institute of Standards and Technology conducted a survey of the 50 States and the District of Columbia. The National Institute of Standards and Technology contacted the lead officials in the States responsible for weights and measures. This is what the National Institute found: by and large, most States permit temperature compensation at both the wholesale and the retail level. In fact, NIST could find that automatic temperature compensation is only expressly prohibited in nine States for retail.

So isn't it correct to state that automatic temperature compensation could be used right now in retail sales in up to 42 States if you only chose to utilize it? I mean, there is no law against it. Mr. Soraci.

Mr. SORACI. Our understanding, Mr. Chairman, is that there aren't any States in the United States that define a gallon of gas as something other than 231 cubic inches, so it would be unlawful for us to sell a gallon on a temperature compensated basis.

Mr. KUCINICH. So are you disputing the findings of the National Institute of Standards and Technology?

Mr. SORACI. Our understanding is different. Yes, sir.

Mr. KUCINICH. And Mr. Cooley.

Mr. COOLEY. We have the same. State weights and measures still, in all but Hawaii, when they come to a station to check the independent retailer's dispensers, they measure 231 cubic inches as a standard gallon.

Mr. KUCINICH. I just wanted it to be made a matter of record that, based on our subcommittee request to the National Institute of Standards and Technology [NIST] that NIST contacted the lead officials in the States who are responsible for weights and measures. These are the people that your colleagues deal with on a regular basis. We are hearing something a little bit different at that State level than what we are being told here, so we need to reconcile that.

Now, our committee has heard from dealers that the cost of installing automatic temperature compensation equipment or pumps built with ATC will be costly to them, but isn't it true—we will start with Mr. Soraci—isn't it true that if you, the refiner, agreed

to pay for it, we have the mechanism and the precedent for doing so through your development funds, image funds, or other supplementary means of financing improvements at gas stations that you may so desire?

Mr. SORACI. The agreements that we have with our distributors and our dealers are arm's length agreements only, contracts. There are certain obligations that the independent retailer has, and there are obligations that we have.

The assets in these cases are owned by independent retailers, and the way the relationship works, it is their responsibility to maintain those assets.

Mr. KUCINICH. I understand in your testimony, "The investment cost of implementing ATC at retail would primarily fall upon independent motor fuel retailers." You just stated it is a contract issue. Now, I would like to ask you then, I understand that it is fairly routine that the refiner would establish a development fund or image fund which would pay for certain alterations and upkeep of a retail gas station; isn't that right?

Mr. SORACI. We do have funds for certain items, and it is primarily around branding of the facility to carry the Exxon and Mobil brands.

Mr. KUCINICH. And what are the kinds of things that a development or image fund would pay for?

Mr. SORACI. Signage, branding-related activities, and sometimes different general investment costs if it is a new location that is being built or location that is being rebuilt.

Mr. KUCINICH. OK. Then who decides what the development fund or image fund may pay for, you or the dealer?

Mr. SORACI. It is the dealer. We would typically agree on a fund, a level of money to be able to secure that business as a supplier, and it would ultimately be their decision outside of the signage and the branding piece. As I understand that would be their decision.

Mr. KUCINICH. And who determines what exactly are the specifications of the materials and equipment that can be bought with the proceeds of the development fund, you or the dealer?

Mr. SORACI. Again, if it is related to our brand, it would be ExxonMobil. If it the equipment at the facility, it would be the independent retailer.

Mr. KUCINICH. Mr. Cooley, I would like to go back to you with this question. Isn't it true that if you, the refiner, agreed to pay for automatic temperature compensation equipment, or pumps built with ATC, that you have the mechanism and precedent for doing so through your development funds, image funds, or other supplementary means of financing improvements at gas stations as you may so desire?

Mr. COOLEY. We similarly have a building incentive fund, which is only utilized each year by a few hundred at the most out of our 14,000 locations that are out there. We also work through wholesalers, so we make this fund available to wholesalers in order to attract new Shell business, but it is not specified down to all the details of what it might be spent for. It would typically be a wholesaler who would be asking us to help them acquire new business. How they form a relationship then with the retailer is up to them. They could or could not elect to utilize that for equipment. It is pre-

dominantly around branding such as signage. Dispensers are not specifically included or excluded for how they spend the money.

Mr. KUCINICH. OK. My time has expired. I have actually gone a minute over, so I would give Mr. Issa 6 minutes.

We are going to have a third round.

Thank you.

Mr. ISSA. Thank you, Mr. Chairman. I am going to followup on this.

First of all, I would like to ask unanimous consent that Robert Samuelson's column from a couple of weeks ago in the Washington Post be included in the record.

Mr. KUCINICH. Without objection.

Mr. ISSA. Now, Samuelson is an economist. I know the two of you probably are not economists, but I am going to push the window for a second on big financial calculations.

If you spent $1 billion of your corporate money changing over all the pumps and you didn't pass it on in higher fuel prices, then the only two places I can understand it comes from is you wouldn't do research and development somewhere else, you wouldn't do advertising, you wouldn't buy new signs, you wouldn't pay for new buildings, or the stockholders, which include union pensions and other retirement funds and so on, would simply get less money. Your dividend would fall. One of those two things—you would either have to spend less somewhere else, including research, or you would have to pay a lower dividend and, as we always like to say, the widows and orphans would be the losers.

Is that basically the only two places, if you gave away that money, that it could go?

Mr. COOLEY. Some combination of those factors.

Mr. ISSA. So I think what we have to ask is not could somebody pay for this. Somebody could. But if it is not passed on in higher prices, then we have to assume that, in fact, a potentially frivolous expense could lead—because I am calling it frivolous. I am calling it frivolous because we are not going to do the compensation for all the other things that might have an effect. That expense, both initial and ongoing, would be basically passed on to the consumer in all likelihood. I don't expect you to tell your union pension funds that you are going to cut the dividend this year. I don't think that is what they want. They certainly plan on retiring like the rest of us.

Mr. Chairman, I think that we should followup with the NIST and we should go through another round of questioning there and with local municipalities, but my colleague to my right, Mr. Bilbray, has good experience with watching them pump three gallons of fuel out into a fixed container. If we did temperature compensation—and I am looking at it from the county level, because the county would have to certify this—they couldn't just pump three gallons into a container and look at the line; you now would have to read the temperature of the fuel and calculate it. In a sense, you would need your own, independent little computer, which I suspect the automatic machine calibrator would sell to the counties for a lot of money; you, in fact, would need to have a very sophisticated device to check the device which we are asking to be

sophisticated. Isn't that one of the considerations your companies have?

Mr. COOLEY. It is an ongoing more complex procedure that would cost more money for the inspectors in the counties or the States.

Mr. ISSA. And if we are going to spend that much money, would you say that we ought to figure out what the offset is for ethanol and everything else? In other words, if we are going to go to a BTU value based and we are going to have an expensive computer to figure out whether you are, as a barkeeper might say, watering down your liquor—because ethanol and other additives at times could be watering down your gasoline because of value—then wouldn't we need to have that? Wouldn't we need to have sort of the burn test, the way you figure calories where you actually burn some and you find out the value? That would be the only fair way to find out whether a fuel at one station, and across the corner selling for the same price, who was giving a better value? Is that pretty well agreeable? Is there any research you know of that would lead to that capability?

Mr. COOLEY. I hate to say it. I think it is actually more complex, because even if you had that, you would have to have the ability to look at the price and factor it in and understand which is the best value. So you couldn't just look at the sign price and look at an energy content; you would have to take the combination of the two to understand what the best value is.

Mr. ISSA. So when Senator Schumer suggests that if we break up your companies into lots of little companies that would benefit us, is that going to go anywhere toward us developing that very complex BTU capability and understanding exactly how much value we get in the fuel by the milliliter we receive?

Mr. COOLEY. I don't believe so.

Mr. ISSA. OK. I just want to understand, because I remember at the start of this Congress the first and most important hearing that was held by this committee, we started off on global warming, and it is amazing to me that we have completely left global warming and we are now trying to make sure that people get another tenth of a gallon into their tank at whatever the cost is, and we seem to have lost track of a lot of other issues related to this.

I guess we haven't given you much time to make your statements fully, but let me just ask——

Mr. KUCINICH. Excuse me. Are we not providing them——

Mr. ISSA. No, sorry, Mr. Chairman. What I wanted to say was: are there areas that we should be getting out here, because from what I can tell today we are arguing over 1 percent and we are not dealing with any of the others. Are there issues we are not talking about altogether, like what would happen if ANWR and two million barrels of oil a day were coming down? Would that reduce the likely cost of fuel in America by 1 percent or more? Just a guess. I mean, I know you are not experts on that, but would two million barrels a day more coming into America be favorable in knocking that $74 a barrel down?

Mr. COOLEY. Well, I am here to talk about ATC. I will tell you on supply and demand and my understanding of economics, more supply and/or less demand would absolutely do that.

Mr. SORACI. And, again, on the issue of ATC, I think there are a lot of complexities in that area and a lot more has to be looked at, and that is why we are suggesting that we look at it in a comprehensive way to make sure that we make the right decision on ATC.

Mr. ISSA. Thank you both. If we have a third round, I will be back for more clarification.

Thank you, Mr. Chairman.

Mr. KUCINICH. We will. I thank the gentleman.

Mr. Bilbray.

Mr. BILBRAY. Thank you.

Mr. Issa, I am sure that when the chairman joins with us in eliminating the rip-off of the consumers by the Federal mandate to burn alcohol in our gasoline we will have more than enough savings to be able to investigate all kinds of devices.

For the record, I want to make it clear that I didn't sit and watch somebody do this. As chairman of the county, I went out and worked 1 day a month in the different departments, small county of three million people. There were a lot of different departments, but one of them was to go out to every gas station and pour the three gallons and make sure that it is at least more than three gallons.

The concern there is that, as a supervising agency, if we have now I show up in February and I pour the three gallons, and because of the temperature drop—it gets cold in San Diego. It actually gets down in the 50's sometimes. [Laughter.]

Mr. KUCINICH. Back in Cleveland they will be really mourning that news.

Mr. BILBRAY. Yes. But the fact is, during the February period it might show below, and that would trigger our enforcement on the retailer. So then I am trying to figure out, do we now have to have each county—and we did do it State by State. Actually, the counties do this directly. How do we regulate a measurement device and how do we tool up for that?

I am sure with our local government background you recognize that the oversight by the local agencies is something we have to figure into this in how we do it, and right now we are not tooled up for this.

I look forward to talking to my Department of Weights and Measurements to specifically see that, because right now it is a simple system based on averaging three gallons. As long as you make sure the consumer gets more than the gallon on that day of whatever the temperature is, it qualifies. We can measure that. We start getting into a hard formula, my question is: is there a portable device that we could purchase, that we could acquire for local government to be able to do this monitoring?

Mr. COOLEY. I don't know if there is a portable device today. I am sure one could be put together. As previously stated, it would be a factor of changing the calculations, understanding the temperature of the fuel that was being dispensed, to then make the calculation of what that would represent in cubic inches.

Mr. BILBRAY. So it looks like we are going to have to have a much more sensitive measurement, a larger volume, and then try to then have a fixed financial management that probably could be

fed into a hand-held computer that would calculate what measurement equates to what at a certain temperature, because you would have that all Federal in.

In all fairness to the men and women I work with, they might be very good at what they are doing, but I am not so sure that higher calculus is one of their strong points in school. I know it definitely wasn't for myself.

One of the things, Mr. Chairman, in this is we see a problem or a perceived problem, we perceive that there may be an answer, but the practical execution of the answer is one of the places that Washington falls down flat on its face for so long. I mean, where do we go? Thirty years on war on poverty, and after billions of dollars we have more poverty than we had when we started out. I want to make sure that the end result reflects the stated goal as we start reviewing this process.

Gentlemen, I appreciate your time and your dollar.

Mr. KUCINICH. If I may respond to my good friend, Mr. Bilbray, I am not a mathematician, but the kind of calculus that I am familiar with is the kind that produces pain if consumers are paying for gasoline they are not getting, which is why we called this hearing.

I also want to say that, with respect to the gentleman, both of you have spoken of the need for a comprehensive study regarding the use of ATC at retail. Has ExxonMobil ever done such a study of what that would cost?

Mr. SORACI. Not that I am aware of, Mr. Chairman. But, as I mentioned earlier, from an ExxonMobil perspective, less than 2 percent of our stores are company owned. Historically, while we felt as though the costs associated with this would be significant, it is not something that would impact us.

Mr. KUCINICH. But you are saying the cost would be significant, but you have never really done a study to determine what the costs would have been? ExxonMobil has no such studies?

Mr. SORACI. We have not done a study. What I am referring to is the other testimony that we have heard that is $8,000 to $12,000 per store, and we think for an independent retailer that is fairly significant.

Mr. KUCINICH. Mr. Cooley, has Shell ever done a study of the cost of ATC at either the wholesale or the retail level?

Mr. COOLEY. Not that I am aware of.

Mr. KUCINICH. Have you ever done a study of the impact of ATC in Canada with respect to your profits or your taxes?

Mr. COOLEY. We have in the last 2 weeks, preparing for this hearing, looked at what we believe the impacts were for Shell Canada and what we believe they would be here in the United States, which led us to the conclusions that there is no consumer benefit that would come out of this.

Mr. KUCINICH. And Mr. Soraci, have you ever done a study of the impact of ATC on your profits or losses in Canada?

Mr. SORACI. No, sir, not that I am aware of.

Mr. KUCINICH. OK. I would like to have my next question be about Federal excise tax liability. We will begin with Mr. Cooley. Now, as I understand it, you stated in your testimony Shell's choices of where they use temperature compensation, and you chose to use temperature compensation in the south but not the

north. So I want to ask about this Federal tax liability, excise tax liability.

As I understand it, this tax is assessed at the wholesale level and paid by the position holder at the terminal rack; namely, the refiner. The question is: would your tax liability be greater or lesser if the gasoline's volume were determined in gross gallons that are not temperature adjusted versus net gallons, assuming the actual temperature of the gasoline exceeded 60 degrees?

Mr. COOLEY. You have a long question there, so could you just repeat the question one time?

Mr. KUCINICH. About Federal excise tax liability, tax assessed at the wholesale level. It is paid by the position holder at the terminal rack. That is the refiner. Would Shell's tax liability be greater or lesser if the gasoline's volume were determined gross gallons that are not temperature adjusted versus net gallons, assuming the actual temperature of the gasoline has exceeded 60 degrees?

Let me help you a little bit more. You have excise tax assessed on a per gallon basis, and gasoline warmer than 60 degrees occupies a larger volume than the same weight of gasoline at a lower temperature, or adjusted to be as if it was at a lower temperature. So let's say the actual temperature of the gasoline was 90 degrees Fahrenheit. Would a volume of gasoline at 90 degrees be about 2 percent greater than in a temperature adjusted volume? And wouldn't that have an affect on your tax liability?

Mr. COOLEY. If you were in a rack situation where the volume was sold on gross, and if it were in a warmer climate where you sold warmer gasoline on gross, you would have more gallons.

Mr. KUCINICH. So there is a potential of decreasing your Federal tax liability. I just wonder if there was ever a reason you would offer choosing one method of measurement over another.

Mr. COOLEY. Again, Mr. Kucinich, I am not a tax expert, but what I would say is I believe we comply with all State and Federal laws as it relates to taxes on gasoline. A significant number of States mandate how we sell gasoline on the tax bases in which we sell it. I believe it is around half of the States absolutely mandate it and in the other States we actually give our wholesalers the choice of how they purchase the gasoline.

Mr. KUCINICH. Now, it is our understanding that the automatic temperature compensation at the retail level enjoys wide use in Canada. This is from both gentlemen. According to Measurement Canada—that is the government entity that is equivalent to our National Institute of Standards and Technology—the rate of utilization of automatic temperature compensation is about 90 percent. To ExxonMobil, according to your affiliate in Canada, ExxonMobil sells its Esso brand gasoline from 1,960 stations. Now, how many of them use ATC?

Mr. SORACI. I believe all of them.

Mr. KUCINICH. And then, to Shell, according to your affiliate in Canada, you have 1,681 stations in Canada. How many of them use ATC?

Mr. COOLEY. The large majority. I am going to say in excess of 90 percent.

Mr. KUCINICH. Do you know the names of the manufacturers of your pumps in Canada which are mostly outfitted with automatic temperature compensation?

Mr. COOLEY. I do not recall the name off the top of my head.

Mr. KUCINICH. Mr. Soraci.

Mr. SORACI. I believe Krause was the distributor of the equipment in the early 1990's.

Mr. KUCINICH. Does Gilbarco Veeder-Root ring a bell?

Mr. COOLEY. I would expect they are selling that equipment there.

Mr. KUCINICH. And do you have any reason to believe that they are anything but accurate, Mr. Cooley, the ATC? Do you believe they are accurate?

Mr. COOLEY. As far as I know.

Mr. KUCINICH. Mr. Soraci.

Mr. SORACI. That is my understanding, as well.

Mr. KUCINICH. And those manufacturers make a product that temperature compensates accurately; is that correct?

Mr. COOLEY. I believe that is correct.

Mr. KUCINICH. Mr. Soraci.

Mr. SORACI. That is my understanding. Yes.

Mr. KUCINICH. And they voluntarily purchased the equipment which might have cost a little bit more than pumps without automatic temperature compensation; is that correct, Mr. Cooley?

Mr. COOLEY. Yes, sir.

Mr. KUCINICH. Mr. Soraci? I mean, the Canadian government didn't force you to do that? You chose to do it; is that correct, Mr. Soraci?

Mr. SORACI. Imperial Oil in Canada, yes.

Mr. COOLEY. And Shell Canada.

Mr. KUCINICH. All right. So you have a long history with the makers of automatic temperature compensation in Canada, and then in January 2007, the State of California certified a Gilbarco ATC device for sale and use in California, but ExxonMobil and Shell did not purchase it. Why was that, Mr. Soraci?

Mr. SORACI. Well, while the State, as we understand it, certified the equipment, the laws and regulations have not yet changed to define a gallon of gas as anything other than 231 cubic inches. So to the point I was making earlier, it is our understanding it would still be unlawful to sell a gallon of gas on a temperature compensated basis.

To the gentleman's point earlier, if the laws were to change, quite a bit would have to happen to be able to actually implement that change through different inspection protocols, calibration protocols, and all that would need to be done to ensure that it is done correctly.

Mr. KUCINICH. Staff has just informed me that the State director in California who enforces this matter has a difference of opinion with what you just testified to. Do you then acknowledge that you may be at a variance of opinion with the people in California?

Mr. SORACI. I acknowledge that we have a difference of opinion. Our understanding——

Mr. KUCINICH. OK. I just wanted to clarify that for the record.

Mr. SORACI. Yes, sir.

Mr. KUCINICH. Now, did you purchase or specify the purchase of pumps by your distributors and dealers without ATC in calendar year 2007?

Mr. SORACI. I am sorry, sir?

Mr. KUCINICH. Did you purchase or specify the purchase of pumps by your distributors and dealers without ATC in calendar year 2007?

Mr. SORACI. No.

Mr. KUCINICH. I have exceeded my time here. We are going to have one more round, but I am now going to go to Mr. Bilbray for another 5 minutes of questions, and then we will go to Ms. Watson from California.

Mr. BILBRAY. Chairman, the gentlelady hasn't had a round, so I would yield at this time.

Mr. KUCINICH. The gentleman is correct, and I thank the gentleman for yielding that time, or not yielding the time, but for acknowledging that. With Mr. Bilbray's indulgence, we will go to Ms. Watson, the distinguished gentlelady from California.

You may proceed.

Ms. WATSON. Thank you, Mr. Bilbray, for allowing me to go before you. I appreciate that. And thank you, Mr. Chairman, for holding this hearing that will provide, I hope, very essential information, because I find it alarming that, due to gasoline's hotter temperatures, consumer losses in one State, such as my home State of California, can be $30 to $50 a car for gasoline. In California, the average temperature of gas is 75 degrees, 15 degrees about the industry standard. A 25-gallon fill-up at 75 degrees of gasoline equates to a loss of nearly one quart. The inaccuracy equals about $0.03 per gallon. However, those pennies add up.

As you know, California consumes most gasoline in the Nation, and we judge our success by the number of cars we have. So everyone has one, two, three. Our Governor has six Hummers, Mr. Chairman. [Laughter.]

The cost of consumers for not adjusting gasoline volumes for temperature is more than $500 million per year. Just recently Canada moved quickly to adopt automated temperature compensation at the retail pump, but in the United States, where temperatures are often considerably warmer than the in standard of 60 degrees, the auto industry has resisted equipping gas stations with temperature compensating technology.

I would like to read several relevant quotes and show you a slide and ask that you tell the committee, both of you, if you agree with them or if you disagree with them. They are up on either side.

"Compensating for temperature in the sale of petroleum products ensures that the energy content of a gallon of gas is the same, regardless."

Now, would you agree or disagree with that statement, Mr. Soraci, and then Mr. Cooley?

Mr. SORACI. Representative Watson, I would not agree with that statement because no two gallons of gas have the same energy content. There are a number of factors that influence energy content, and while temperature could be one it is also items such as the type of crude that was used to make it, the manufacturing process, what the formulation is, whether there is ethanol in that product

or not. So there are not two gallons of gasoline that have the same energy content.

Ms. WATSON. Mr. Cooley.

Mr. COOLEY. Ms. Watson, I would say the same thing. We would not agree with that statement. There are a number of factors that are much more significant than the temperature that impact the energy content, particularly ethanol.

Ms. WATSON. We have an authority on this issue, and we have written testimony, and we had it before our subcommittee on June 8, 2007, by Mr. Richard Suiter. I am going to go on to the next one.

"Selling fuel adjusted to the volume at 15 degrees centigrade or 60 degrees fahrenheit through the distribution system is the most equitable way fuel can be sold without the buyer or seller gaining a competitive advantage."

Would you agree or disagree with that statement? Let's start with Mr. Cooley and back with Mr. Soraci.

Mr. COOLEY. I do not agree that is the most equitable way a fuel could be sold. I would refer to the earlier questions regarding BTU content as the value of a gallon. This takes none of that into consideration.

Ms. WATSON. Well, this information comes from the National Conference on Weights and Measures, and would you say that they are incorrect?

Mr. COOLEY. Yes, ma'am.

Mr. KUCINICH. What about you, Mr. Soraci?

Mr. SORACI. I have some trouble with the statement a little bit because it is by itself, and maybe I have a bit of context. I think what it may assume is that, whether you sell a gallon of gas on the volumetric basis or you sell that volume of gas on a temperature-adjusted basis, the price is constant. We don't believe that would be the case.

Ms. WATSON. This is a direct quote from the National Conference on Weights and Measures, the CWMA and LNR Committee. It was their 2005 Interim Report of September 19, 2005. So you would have a disagreement with the Weights and Measures Report?

Mr. SORACI. I would. Yes.

Mr. KUCINICH. The gentlelady's time has expired. We will come back for another round.

Ms. WATSON. I just wanted to ask this, Mr. Chairman. Could we have these statements sent to the two witnesses and have them respond in writing and date it, please.

Mr. KUCINICH. The Chair will take the prerogative of asking the witnesses, would you be willing to respond in writing to the gentlelady's question?

Ms. WATSON. Give your justification.

Mr. SORACI. Yes, ma'am.

Mr. COOLEY. Yes.

Ms. WATSON. And then I would like to send it to Weights and Measures and Mr. Suiter.

Mr. KUCINICH. The committee thanks the gentlemen for their cooperation.

The Chair now recognizes Mr. Bilbray for his question. Thank you.

[The information referred to follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

The Honorable Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515-6143

FEB 0 5 2008

Dear Mr. Chairman:

This letter follows up an inquiry from Mr. Jaron Bourke, Staff Director, Domestic Policy Subcommittee, Committee on Oversight and Government Reform, regarding the November 14, 2007, hearing held by your Committee on the "Environmental Risks of and Regulatory Response to Mercury Dental Fillings."

During the hearing, Representative Diane Watson asserted that the Food and Drug Administration (FDA or the Agency) violated the National Environmental Policy Act of 1969 (NEPA), section 102, as it applies to FDA's proposed reclassification of dental mercury from Class I to Class II. Representative Watson quoted NEPA section 102 as follows:

"...all agencies of the Federal Government shall –

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action..."

Mr. Bourke requested that FDA respond to Representative Watson's inquiry with the Agency's interpretation of NEPA as it applies to FDA's proposed reclassification of dental mercury from Class I to Class II. The Agency's response is as follows:

The quoted language from Title 42, *United States Code* (U.S.C.) § 4332(2)(C) of NEPA refers to actions that "significantly" affect the quality of the human environment. The detailed

statement referred to in that provision is an environmental impact statement. Not all major Federal actions "significantly" affect the quality of the human environment, and therefore, not all such actions require the preparation of an environmental impact statement.

The Council on Environmental Quality (CEQ), which was established under NEPA, promulgated regulations to implement NEPA. These regulations (found in Title 40, *Code of Federal Regulations* (CFR) Parts 1500-1508) are given "substantial deference" by the Supreme Court. CEQ defined "categorical exclusion" in 40 CFR § 1508.4 as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." FDA promulgated regulations implementing the CEQ regulations in 21 CFR Part 25. The Agency established certain categorical exclusions for classes of actions for devices in 21 CFR 25.34. The actions in such section are those that the Agency determined ordinarily do not require the preparation of an environmental assessment or an environmental impact statement.

In the Notice of Proposed Rulemaking (NPRM) issued in 2002 (67 *Federal Register* 7620; February 20, 2002), FDA: 1) proposed the classification of encapsulated amalgam alloy and dental mercury, a pre-amendments device, as Class II (special controls); 2) proposed to amend the classification for amalgam alloy, a Class II pre-amendments device, by adding special controls; and 3) to reclassify from Class I (general controls) to Class II the pre-amendments device dental mercury intended for use as a component of amalgam alloy in the restoration of a dental cavity or broken tooth.

In the 2002 NPRM, FDA determined its proposed actions to classify all amalgam products into Class II were not the type of actions that required an environmental assessment or environmental impact statement and could be categorically excluded under 21 CFR 25.34(b). Specifically, the Agency had no basis to suggest that changing the classification of mercury would increase or decrease the current level of use of amalgam products subject to the classification and/or reclassification. Therefore, the Agency utilized the existing categorical exclusion in 21 CFR 25.34(b) to meet its NEPA obligations in the proposed rule.

Consistent with CEQ's regulations on public involvement (40 CFR § 1506.6), FDA published its determination of the application of 21 CFR 25.34(b) in the proposed rule for public comment. The promulgation of a proposed rule is not final Agency action. FDA reviews comments to the proposed rule, including, when applicable, its use of the categorical exclusion in 21 CFR 25.34(b), in the normal course of rulemaking. Thus, FDA respectfully disagrees with the assertion that it is in violation of NEPA because it has not prepared an environmental impact statement. The Agency must consider what action to take in response to the comments to the proposed rule, e.g., whether to finalize the proposed rule or consider a different course of action. Whatever course the Agency chooses, it will evaluate what, if any, obligations it has under NEPA for the specific course of action it chooses.

Thank you for allowing us the opportunity to testify on this important subject. If we may be of further assistance, please let us know.

Sincerely,

Stephen R. Mason
Acting Assistant Commissioner
for Legislation

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Chairman, I am just going to close my part of this hearing by requesting that, as we address this issue and the possibility of up to 1 percent of the consumers' dollars being led astray, that we do a hearing about the Government regulations that are impacting the consumer by much larger percentages. Maybe this committee will be able to bring some reason to Washington, DC, about the fuel mandates and the way we are doing oversight with fuel mandates.

As pointed out before——

Mr. KUCINICH. Would the gentleman yield?

Mr. BILBRAY. Go ahead. I yield.

Mr. KUCINICH. I just want the gentleman to know that your ranking member, Mr. Issa, and I are continuing to cooperate on all topics that relate to hearings that are appropriate to this subcommittee, just as he and I worked together, even though I wasn't a ranking member, in talking about some of the hearing topics in the past, so let's work together to figure out how we can satisfy the concerns that you just addressed. I thank you for bringing it up. Thank you. I appreciate that.

Mr. BILBRAY. Mr. Chairman, I really got involved in the fuel issue from the environmental point of view, working on the Air Resources Board. It was the central part of our California policy of trying to fulfill the Federal mandates for clean air, and was frustrated with the fact that the same agency that was mandating that we clean up our air was forcing us to use material that was contrary to the environmental clean air strategy.

Hopefully, with your help and your type of leadership, we will be able to shine some light on this.

I would also like to point out that the ethanol mandate is not only affecting the consumer at the gas station, but at the grocery store. Just in last May, directly tied to the ethanol increase, seeing that production of livestock is 40 percent tied to corn production, you actually had in 1 month the increase in food prices by 5 percent. This hits the most needy, and it is all part of a strategy to subsidize one small group with a huge windfall that is hurting the environment, hurting the consumers who buy gasoline, and now hurting the consumers who buy food.

With your leadership, I think that we will be brave enough to say about this issue that, though we want to find a speck in the oil company's eye, that we need to find the log in the Federal Government's eye that has created impacts far beyond what any private sector has done. Hopefully, we will be able to, as the saying says, physician heal thyself—correct this mistake and move forward with it.

With that, Mr. Chairman, I appreciate it and yield back.

Mr. KUCINICH. Thank you.

The Chair recognizes the distinguished gentleman from Illinois, Mr. Davis.

Mr. DAVIS OF ILLINOIS. I know, I will go to California.

Mr. KUCINICH. I know that. I have everybody else from California here.

Mr. ISSA. We are confident in time you will retire in California.

Mr. KUCINICH. Mr. Davis.

Mr. DAVIS OF ILLINOIS. I had better stay in Illinois.

Thank you very much, Mr. Chairman. Let me thank you for holding this hearing, as well as express my appreciation to your efforts, your unrelentless efforts, I think, to try and give all of us a better understanding of this issue and the problems which confront us.

I would like to engage both the gentlemen at the same time and talk a little bit about the retail sales of branded gasoline. Retailers, whether they are dealers or distributors, are long-term contracts with refiners like yourselves. My staff and I have learned that these contracts are multi-year, and it is not unusual for these contracts to be of four to five, even 10 years in duration. Is that correct?

Mr. COOLEY. Essentially, yes.

Mr. DAVIS OF ILLINOIS. These contracts do not specify the wholesale price of gasoline, though they do tie retailers and distributors to buying exclusively from you; is that correct?

Mr. COOLEY. Not exactly.

Mr. DAVIS OF ILLINOIS. Could you explain the difference or the variation there?

Mr. COOLEY. Sure. The contractual arrangement between us is predominant with our wholesalers. That is the largest portion of our network. About 85 percent of our network is wholesale supplied. We have a relationship with the wholesalers—some people call them distributors. That is our relationship. And then they go out and sign up, build, develop individual service stationsites, so the individual locations or the vast majority of the network relationship is between the wholesaler we supply and the retailer, not a contract with us.

Mr. DAVIS OF ILLINOIS. Mr. Soraci, is that——

Mr. SORACI. Congressman, ExxonMobil also has both distributors and dealers as independent retailers, and our distributor class of trade could own and operate their own facilities and also sell on to a dealer of their own.

Mr. DAVIS OF ILLINOIS. Thank you. I also understand that you would typically inform dealers of wholesale price changes, usually by e-mail, and that price variations are not the result of negotiation; is that correct?

Mr. COOLEY. In the case of our wholesalers, the bulk of the network, they are notified of price changes via e-mail, and then they have the responsibility to communicate that to their dealers. For dealers, then we would have the responsibility to communicate that, and that would be by electronic means, over the Web or e-mail.

Mr. DAVIS OF ILLINOIS. I also understand that in some cases the refiners are able to exert control over the retail price of gasoline, and that you might tell the dealer what price he is to charge on a daily basis. I understand that is not always the case, but that it does happen sometimes. Can you tell us in what circumstances you would tell the dealer what price to charge on the retail basis?

Mr. COOLEY. I am not aware of any circumstances where independent dealers are told what to price.

Mr. SORACI. Congressman, independent dealers make the pricing decision on an independent basis. We do not direct them in that area.

Mr. DAVIS OF ILLINOIS. What if they are company-owned and operated dealers?

Mr. SORACI. If they are our company-owned and operated stores, they would not be dealers, they would be store managers and employees of the company, and we set the retail price at the company-owned and operated locations.

Mr. DAVIS OF ILLINOIS. And if there is a commission relationship, does that still hold?

Mr. SORACI. In the case of ExxonMobil, we do not have a commission relationship with any of our independent retailers that I am aware of.

Mr. DAVIS OF ILLINOIS. Mr. Cooley.

Mr. COOLEY. We don't have a commission relationship. We do have some locations where an independent contractor operates the location and they sell our gasoline for us. In those cases, we set the price of the gasoline and they receive a flat fee, a cents-per-gallon type fee, for selling our gasoline.

Mr. DAVIS OF ILLINOIS. My time is about to run out, but let me just ask, Mr. Chairman, one additional question. This is for either one of you. Have you ever reimbursed a dealer for inventory loss if a dealer is not making money?

Mr. COOLEY. That is an extremely broad question. Have we ever reimbursed a dealer for inventory loss? I am aware in situations where someone has had an equipment malfunction where we own the equipment, that we may have made someone reimburse someone for that loss of product. I am not aware of circumstances other than that.

Mr. SORACI. I am not aware of any circumstance where we have reimbursed for inventory loss relating to an operator not making money.

Mr. DAVIS OF ILLINOIS. Thank you, gentlemen, very much.

Mr. Chairman, I see that my time has ended, so thank you.

Mr. KUCINICH. The Chair recognizes Mr. Issa. Thank you.

Mr. ISSA. Thank you, Mr. Chairman. I appreciate the fact that this is going so well and so quickly. We are getting a lot of information.

You know, I was looking over the National Conference of Weight and Measures votes on automatic temperature compensation, and as I read it, 16 States voiced their support for eventual compensation, but felt that further development of this issue was needed for successful implementation. Is that your understanding, from what you know of their meeting? And Ms. Watson I think has very aptly asked for more detail in your answer, and I would like you to also give us the detail, because I am interested in sort of over the long horizon. We are talking, and I have made a little bit of fun of what would you do about ethanol, what would you do about every mixture, how would you deal with our 28 boutique fuels, but I would like, with your continued indulgence, Mr. Chairman, ask when you are answering Ms. Watson's question to include my concern of over two decades do you see that we would be able to deliver fuel based on BTU value potentially, and is that, in the long run, if we are going to have lots of different fuels—and, by the way, let's include in our minds hydrogen, something that is talked about but is not practical because, to be honest, taking natural gas and turning it

into hydrogen isn't all that much of an improvement today because of the source stock being so rare. But that basic concept that two or three decades from now we are going to be delivering on a BTU basis rather than on a gallon basis.

I would like your thoughts on that for the long run, the leap, because, as somebody who wants to have value, I am personally insulted every time I go to the grocery store and I am comparing two products and there are two different sized packages and they are both selling me based on pack rather than based on ounce or some other common unit.

I realize that today, from the hearing today and from June 8th, that we are dealing with an effective standard unit that we have become comfortable with that works for us pretty well, that even on a 90-degree fuel day a $3.50 gallon of gasoline is only $3.57 effectively, and we are dealing in pennies, and that may not be worth the dollars to save the pennies that occur only on the hottest day once in a while.

I do have two other things I want to followup on on this round. One of them, quite frankly, is double tanking, double hull tanking that you have underground now. Is it your understanding that when we had the classical metal fuel tanks in the ground, that the temperature probably was cooler for the fuel than when they are sitting in the thermos bottle? I know you are not scientists, but that is my understanding, that, in fact, we mandated that you put two sets of hulls of fiberglass to make sure the fuel doesn't leak and that we don't contaminate groundwater, but hasn't that, in fact, potentially warmed the fuel by putting it in the thermos instead of in a heat sink?

Mr. COOLEY. That is the influence it would have.

Mr. SORACI. That is my understanding, as well. Yes.

Mr. ISSA. OK. So I think for the chairman who found a six or seven degree difference, it may very well be that we mandated that difference without ever looking at a compensation.

And then last, but not least, Canada. Canada is kind of an interesting place for me that they went to this, and I just want to deal with this. They were approached by the manufacturer, who had a patent. It was an exclusive company that could provide these temperature compensation devices, and he said, Boy, this is a great idea. And they went to the government, and the government said, Yes, we want you to do that.

Now, let me just ask you a question. I know this is conjecture, but Canada is a cold country, so isn't it true that his product actually increased the government's tax revenues as a result of that? They were often below that temperature, and, in fact, the government benefits by having temperature compensation for their revenue. Isn't that, in your understanding, part of why Canada thought this wasn't a bad idea, that they could get more tax revenue on cold days?

Mr. COOLEY. I can't say that was their idea, but, in fact, you would sell more smaller gallons with that situation.

Mr. ISSA. You know, I would suspect that if it was colder in the United States, that Members on this side of the dias would probably be much more enthused at the idea of more revenue without having to do a tax increase. Mr. Chairman, I think we are known

for that on a bipartisan basis. Ronald Reagan called it revenue enhancement.

I just want to make it clear that, between the manufacturer wanting something and the Canadian government getting a benefit, even if it was unintentional, that may have contributed to their benefit.

In our case, we would get overall no such thing. You would gain it in one part of the country and lose it in the other part of the country; is that correct?

Mr. COOLEY. From a tax revenue perspective?

Mr. ISSA. From a tax revenue perspective.

Mr. COOLEY. I don't know how the balance would work. You would have to do a weighted average of all the sales and the different taxing authorities probably.

Mr. ISSA. My time has expired, and so I guess I will just make a prediction: that once that study is done, if it increases revenue to the Federal Government without a tax increase, you probably will be asked to put these devices on. And I am quite sure that if it doesn't, we will lose interest.

Mr. Chairman, I yield back.

Mr. KUCINICH. Let me say to my good friend that when you were out of the room I did raise the issue of decreasing the oil companies' Federal tax liability as being one of the potential reasons why they would choose one form of measurement over another. So it could be that, on the one form of measurement, their tax exposure is more favorable to them, as opposed to another form of measurement. That is one of the many issues that has come up here.

I also want to say that I think that you and I have found agreement on this topic. If I heard you correctly, you said that you are tired of not being able to compare products because of different packaging, and that you like products to be sold by weight. So I hope this means that you and I agree, since ATC ensures that, no matter the actual temperature of gasoline, a given quantity will always weigh the same.

Mr. ISSA. You know, Mr. Chairman, I would certainly agree with you up to a point, and the point where I change is I was talking about, when I am buying a gallon of milk, I want it in ounces. It is really hard to figure all those different new ones.

No, in all seriousness, it is the fact that they don't use the same standard, and if they use ounce rather than package, then at least you can compare ounces, but ounces aren't always weight, sometimes they are volume.

Mr. KUCINICH. But what I understand is that milk is actually temperature compensated at 40 degrees.

Mr. ISSA. So what happens if I get milk that is a little warm, besides it goes bad sooner, Mr. Chairman? [Laughter.]

Mr. KUCINICH. Being a vegan, I can't help you on that one. [Laughter.]

Mr. ISSA. Thank you, sir.

Mr. KUCINICH. Now, what I would like to do is to go back to the question that I asked about Canada. Just to refresh the witnesses' memories about their answers, both of you agree that you are using ATC in Canada. Both of you agree that most of your stations in Canada use ATC. Both of you agree that the manufacturers are

making a product that temperature compensates accurately. And both of you agree that you voluntarily purchased the equipment and that you have a history, a long history, with the makers of automatic temperature compensation in Canada. That essentially is what you have testified to.

Now I want to get back to this point. To start all this, you chose not to buy ATC in California from the same company you bought ATC from in Canada. Can you tell the committee why you might do one thing in Canada and another in the United States? Mr. Soraci.

Mr. SORACI. I think the first comment there, Mr. Chairman, is that there is a fundamental difference between the United States and Canada, and that is in the United States a gallon of gas, with the exception of Hawaii, our understanding is it is still defined as 231 cubic inches. So if we were to sell a gallon of gas on a temperature-compensated basis in the United States, we would be breaking the law.

In Canada the laws changed in the early 1990's, as you have mentioned, and selling temperature-compensated product in Canada is permissive.

Mr. KUCINICH. Mr. Cooley.

Mr. COOLEY. I would say the same statement. As I understand, the question was why we might have gone there in Canada and why we did not in the United States. With the understanding that the Canadian law changed in the early 1990's to allow temperature compensation on a permissive basis, for several years no one put in temperature compensation, and then some retailers started installing temperature compensation.

As locations started putting in temperature compensation, now there was the potential for them to gain an advantage over locations that did not have temperature compensation. They were actually selling smaller gallons, but the gallons on the street just showed a per liter in Canada, so, in fact, the consumer had no way to know. In fact, if they were paying the same price for a temperature-corrected gallon than someone's non-temperature-corrected gallon, then that individual or location could make more money. Or they could lower their price and keep the same margin and appear to have a better price than a non-temperature-corrected location.

This caused the industry, as we would see it, to start to swing toward temperature correction. Once the majority, most of the locations in the industry had shifted to temperature correction devices, then everyone was back to competing on an equitable basis then.

Mr. KUCINICH. Did anyone from corporate ever come to you and say, Mr. Cooley, we are losing a lot of money on this temperature correction device in Canada?

Mr. COOLEY. Mr. Chairman, we have operated as totally separate companies. Shell Canada was a separate entity on the Toronto Stock Exchange. We did not correspond on those type items. We are, at this time, changing and that company is coming into the Shell group, but we were not involved and they would not have come to me.

Mr. KUCINICH. So I am sure you have had a chance to talk to them about it at some point. I want to go back to Mr. Soraci's answer. Mr. Issa had talked about maybe another hearing where we

go into the NIST. I really am having trouble understanding where the National Institute of Standards and Technology conducts a study, surveys 50 States and the District, talks to the lead officials in all the States who are responsible for the weights and measures, and they are saying that most States permit temperature compensation at both the wholesale and the retail level.

Now, this is what I am having trouble understanding. Here are the enforcers. They are saying one thing and your testimony is saying something to the contrary as to why, for example, in California you can't implement it even though our staff has talked to people in California and they are saying, you know, the oil companies don't want to do this.

We are trying to see if this is a decision made by the oil companies that is really frustrating the introduction of temperature controlled devices at the pumps in some of the States that say that we permit it, most of the States. Mr. Soraci.

Mr. SORACI. Congressman, I am not sure if the enforcers that you are talking to, the officials, are the same ones that actually vote in NCMM and are the same ones that actually change the law. Our understanding of the law, as I stated earlier, is that the laws and regulations in California have not changed to allow for a gallon of gas to be sold on something other than a volumetric volume, and for them to do so would be unlawful.

Mr. KUCINICH. Sir, I just want to say this before I go back to my friend, Mr. Issa. I looked at your testimony, and Mr. Soraci's testimony says, ExxonMobil's sale of motor fuel to consumers is fully compliant with the law, and selling temperature-compensated motor fuel at retail would violate current laws and regulations. That is your testimony.

Mr. SORACI. Yes, it is.

Mr. KUCINICH. Now, as you know, an activity that is not expressly prohibited is permitted by law. I am quoting NIST. They find, first of all, that "States do permit this compensation, temperature compensation, both at the wholesale and retail level." I just want to point that out.

Now, I do think again, Mr. Issa, that it is important that we get NIST up here and go over this, and we will. So to Mr. Issa, it is now your——

Mr. ISSA. Mr. Chairman, I am looking forward to that. As Mr. Bilbray said, and I very much agree when you responded, you know, you and I have worked together for 4 years very, very well. It has been a real pleasure. Ms. Watson was the ranking member, but you were every bit as in attendance and supportive, and I believed then as now if something is of interest to one of us it is of interest to all of us, so I do expect that we will followup on that, and I hope we will bring in, perhaps as a suggestion, the person responsible for doing that in my county, in San Diego County, because in California, although you can make something legal, the counties have to administer it, and they have the ultimate decision.

I think it is important to do, and I want to followup specifically on——

Mr. KUCINICH. Would the gentleman yield for a response?

Mr. ISSA. Yes, Mr. Chairman.

Mr. KUCINICH. I would absolutely cooperate with you in holding our next hearing there. Thank you.

Mr. ISSA. Thank you.

I want to followup because I want to look long run for a moment, because you are young men, you are at the top of your game, and you are going to be around in 20 years just like the chairman and myself. I am predicting it here today. [Laughter.]

Now, which one of us is chairman in 20 years is somewhat in doubt. [Laughter.]

But we are going to have both of you back as chairmen of your corporations. Twenty years from now do you believe that, in fact, further refinements of how we deliver fuel as to its value, potentially including temperature compensation, potentially considering alternate fuels, all of which go into a single gas tank, do you believe that is likely on the horizon? This is looking forward as oil companies.

Mr. SORACI. It would be obviously speculation, but I think it is fair to say that further refinement would continue to happen. Yes.

Mr. COOLEY. When you say that, I think of my grandchildren, and they are small and young. Twenty years from now they are going to be in their twenties. I think it is a little more complex. I don't disagree with what you said, but I think we as a government, as an institution, have to understand not just energy content but the environmental tradeoffs, the impacts on our economy.

It is very complex, as this committee knows. I don't disagree that BTU content and more specific labeling could be helpful. At the same time, this committee and others may be making tradeoffs environmentally and in other ways that you would have to take into consideration.

Mr. ISSA. Mr. Cooley, I appreciate that, and I am going to followup by saying I believe that your point is one that will be very futuristic, which is the greenness of a fuel should and will, I hope, be something that is available to us at the pump so that we can weigh comparative fuels, even comparative fuel mixtures, to find out. When I bought my last automobile, they told me exactly what the U.S. content was. It didn't have as much as I would have liked, but at least I was informed. I hope that we will do both BTU content and the green factor that goes into the entire process.

I want to make another thing clear for the record, because I am looking at this 1 percent or less that occurs 20 percent of the time, 10 percent of the time, and we know on the average, according to the staff's work, we are dealing with 67 degrees, so it is pretty de minimis in expansion between 60 and 67, and the rest of the time it is above or below that. So we are dealing with the fraction of that fraction of 1 percent.

But is it your understanding—and this came out of last month's hearings—that the fees paid by Americans, by the station but passed on in way of the cost of gasoline, is running better than 2 percent to Visa and MasterCard, which the committee next door has identified as a likely monopoly, that they are making more by far than we are talking about here to day, aren't they?

Mr. COOLEY. Merchant service fees on a credit card sale is 2 percent or slightly more, around 2 percent.

Mr. ISSA. You know, the amazing thing I find here today is that we are not really thinking in terms of the fact that the consumer has no awareness of that unless they happen to be watching C–SPAN today, that there is 2 or more percent hidden cost in the credit card they are using in that gallon of gasoline.

Mr. COOLEY. Our wholesalers and retailers are very aware of it.

Mr. ISSA. They have come to see me, too. That is not a surprise. [Laughter.]

And I am concerned and I know the chairman would be concerned because both of us have real concerns about monopolies.

I just want to close by saying, you know, would I like to see 100 little oil companies be able to deliver a better product less expensively? If I thought it would, we would be talking. It is clear that we do have real competition in the oil and natural gas industry. There are plenty of independents. There certainly are globally lots and lots of players. But it is also clear to me here today, and I just want to make this for the record, even though it is tangential to what we are talking about here today, that there is only Visa and MasterCard. For all purposes they work in unison. Their fees have been growing while their costs of delivering the product have been going down.

Although this hearing is going to be followed up with lots of other considerations looking forward on how we deliver fair weights and measures, I hope that the chairman and I can find ways to also bring in what we are doing over on the Antitrust Committee in Judiciary, bring it over here and start looking at whether or not monopolistic forces such as Visa and MasterCard are affecting the consumer in hidden ways every day.

Mr. KUCINICH. I want to respond to my colleague. I think that you have raised an issue that is worthy of this subcommittee. As we discussed before we took over our respective duties on this subcommittee, this is the one subcommittee that has the broadest jurisdiction of any subcommittee in the entire U.S. Congress. The only others that we do not have jurisdiction over are Department of Defense and Department of Homeland Security. Every other single department, agency, board, commission we have jurisdiction.

So, Mr. Issa, I just want to say that you raise a point that needs to be looked at, and I personally thank you for doing that. Let's do this. Let's get into that issue, because that is something that this committee has the ability to do, and I think we can work together well on that.

Mr. ISSA. Excellent. Thank you, Mr. Chairman. Thanks for holding this hearing today.

Mr. KUCINICH. I thank the gentleman.

We are going to go to Ms. Watson.

I want the committee members to know that after Mr. Davis concludes asking his questions, we will have one final round and then we will have concluded the business of this committee for today.

Mr. ISSA. Mr. Chairman, I apologize, but I will be going over to Judiciary, so this is going very well. I apologize I won't be there for the close, but I very much appreciate your holding this hearing on a bipartisan basis.

Ms. WATSON. Would you yield for a minute, Mr. Issa. I just want to thank you, because when he chaired, we agreed that we would

followup. I am very pleased that the chairman has, and I am pleased that you have continued your interest in this subject matter and that you are applying that interest to our inquiries, so thank you very much.

Mr. ISSA. Thank you.

Mr. KUCINICH. We are grateful for having such a dedicated ranking member here, and we are going to work together. Thank you, Mr. Issa.

The Chair recognizes Ms. Watson.

Ms. WATSON. Thank you, Mr. Chairman.

I just want to make this comment. I am really puzzled at your earlier disagreements with weights, measures, and so on, so that is the reason why I asked that you put it in writing. I think we need to have further debate so that we can be sure of the accuracy of what they are doing, too. If you find information that we mention here inaccurate, we need to discuss that if we are really going to get to the bottom of this and suggest some policy.

I would like to, Mr. Chairman, continue on. I think that you have the quotes up. This is information that was published by Canada's measurement, and it comes from the government of Canada. This is the statement. I will read it: "Our consumers benefit from the knowledge that temperature compensation is a more accurate system of measurement, which ensures that the amount of energy they purchase is not affected by the temperature of the fuel. ATC allows consumers to make meaningful price comparisons between retailers. Posted prices at the non-ATC-equipped retailers can be misleading because of variations in product temperatures."

I think it—and we are talking about temperature compensation—is working quite effectively in Canada, and probably, as you have responded before, you probably would respond the same way, so let's start with Mr. Cooley and see what you feel about that statement.

Mr. COOLEY. And the question is do I agree with this statement?

Ms. WATSON. Yes.

Mr. COOLEY. No, ma'am, I do not.

Ms. WATSON. OK. And Mr. Soraci.

Mr. SORACI. I don't agree with the statement, either.

Ms. WATSON. OK. And, again, Mr. Chairman, I would ask that we add these questions to our letter that we send them for a response.

Mr. KUCINICH. So ordered. The gentlemen indicated that they will cooperate and respond, and we appreciate that.

Ms. WATSON. And, "The use of temperature compensation to a common-reference temperature allows retailers to sell product on the same basis as if it was purchased. This common basis of measurement eases the reconciliation, of product inventories, and permits the early detection of smaller leaks from storage."

Would you agree or disagree with that statement? We will start with Mr. Soraci.

Mr. SORACI. I would disagree with that statement.

Ms. WATSON. OK.

Mr. COOLEY. I would disagree with that statement, also.

Ms. WATSON. All right. We are pulling out what we feel is pertinent information from these reports that are required, and there

has been scientific research, and so since you disagree with it we had better continue these debates.

I would think that——

Mr. KUCINICH. Would the gentlelady yield?

Ms. WATSON. I certainly will.

Mr. KUCINICH. The ranking member and I are both agreed that we have some of these regulatory agencies and boards that have had certain findings that appear to be at a variance to the understanding of the gentlemen representing Exxon and Shell, so we are going to call them in on a subsequent hearing in order to achieve that kind of reconciliation.

Ms. WATSON. Yes. And I would hope that the witnesses would come to that hearing, too, because I think we need to have this dialog going on.

Mr. KUCINICH. I am sure they will be represented.

Ms. WATSON. OK, because in Canada they feel that it is working effectively, and so if you want to dispute it I think we ought to have you sitting face to face and allow for that dialog.

Mr. KUCINICH. That is an excellent suggestion, Ms. Watson. I think what we will do in structuring the next hearing, our staffs will get together and provide that there would be representatives from the oil companies to respond and testify under oath on any matters that appear to be at variance for the NIST and others, just to make sure that we have some kind of understanding about how we would like to proceed.

Thank you, Ms. Watson.

Ms. WATSON. If I can just have one last quote, these slides are from the NIST presentation of 2004. "Effective temperature change on product." You can see that what is depicted here in this slide prepared by the National Institute of Standards and Technology is that 100 gallons of fuel occupies different volumes, depending on temperature. I would imagine that you disagree with these statements?

Mr. COOLEY. I do agree.

Ms. WATSON. You do agree? OK. Mr. Soraci.

Mr. SORACI. I agree that there is——

Ms. WATSON. We got an agreement. With that, thank you very much, gentlemen, for your patience and your input, and thank you, Mr. Chairman.

Mr. KUCINICH. Thank you.

The Chair recognizes Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. Gentlemen, let me ask you, is it true that each one of your companies produce liquefied petroleum gas?

Mr. COOLEY. Shell produces LPG gas.

Mr. SORACI. ExxonMobil produces gas, yes.

Mr. DAVIS OF ILLINOIS. And how about propane?

Mr. SORACI. I believe we produce propane, as well.

Mr. COOLEY. And the same for Shell. We also have propane.

Mr. DAVIS OF ILLINOIS. Could you tell us how volume is measured in retail transactions of those hydrocarbons? And is temperature compensation used or not?

Mr. COOLEY. I would have to give this not as an expert on LPG or propane. When I buy propane at retail myself, I buy it by weight.

Mr. SORACI. And in the case of ExxonMobil, Representative Davis, I don't believe that we sell propane gas at retail at our company stores.

Mr. DAVIS OF ILLINOIS. Well, let me just read from the NIST Handbook 130, Section 2.21. "Liquified petroleum gas: all liquified petroleum gas, including but not limited to propane, butane, and mixtures thereof, shall be kept, offered, exposed for sale or sold by the pound, liter, cubic foot, or vapor, defined at one cubic foot at 60 degrees fahrenheit, or the gallon defined as 231 cubic inches as 60 degrees fahrenheit. All metered sales by gallons shall be accomplished by use of a meter and device that automatically compensates for temperature."

So when temperature compensation is used in measuring LPG, is it true that a result is that the seller and buyer are both assured that neither one has an advantage, and that, regardless of the actual temperature of the gas, both are assured of accuracy? Would you agree with that statement?

Mr. COOLEY. I would agree that when selling gasses that is correct and it is essential.

Mr. DAVIS OF ILLINOIS. Good.

Mr. SORACI. I would agree with that portion of it, but I would also go back to a comment I made earlier, which is you have to be careful not to assume that if we sell a gallon on a volumetric basis and we sell it on a temperature-compensated basis, that necessarily means that the price will remain constant. So we introduce what is the value to the buyer versus the seller. That is hard to determine.

Mr. DAVIS OF ILLINOIS. Can you tell the committee when propane started being sold on a temperature-compensated basis?

Mr. SORACI. I am not aware of that, sir.

Mr. COOLEY. I do not know.

Mr. DAVIS OF ILLINOIS. My understanding is that it was in 1986.

Mr. Chairman, I would like to suggest for the record that LPG is a hydrocarbon product, as is gasoline. When the oil industry sells liquified petroleum gas and propane to retail customers, they do so in temperature-compensated volumes, but when the same industry sells gasoline to retail customers, they refuse to sell in temperature-compensated volumes.

I would like to ask if the witnesses would explain what appears to be a double standard. I mean, why would it make sense to do one and perhaps not do the other?

Mr. COOLEY. As I said, I am not a propane or LPG expert. I am wholesale gasoline in the United States. I do believe I can explain. It is the fact that one is a liquid. Gasoline is a liquid at the point we are selling it. The other is a gas that is compressed. A consumer buying a 5 pound container of propane would not know if someone had put 2½ pounds, 2 pounds, or 5 pounds in there unless it was done by weight. So that is a calibration that has to be done by weight, which is the density measure that we are talking about.

A gas I believe would have to be done that way versus a liquid, as has been defined as 231 cubic inches.

Mr. DAVIS OF ILLINOIS. Mr. Soraci, would you agree essentially with that statement, or would you have other?

Mr. SORACI. Well, I can say that from the retail standpoint for motor fuel we sell on a volumetric basis the 231 because, as I stated, that is our understanding of what the law requires. I am not familiar enough with our gas business to be able to comment about that.

Mr. DAVIS OF ILLINOIS. Is it true that both liquids and gas expand with temperature? So if one is expanding, then the other one also would expand?

Mr. SORACI. I believe that both products would experience both thermal expansion and thermal contraction.

Mr. COOLEY. That is my understanding, also.

Mr. DAVIS OF ILLINOIS. Well, would it seem reasonable to treat both the same way in terms of what you are buying and what you are selling, or what you are actually getting?

Mr. COOLEY. I would say it is—and this is with all respect—it is almost like apples and oranges. You know, for all propane sales I agree they should be calibrated on the same basis. For all fuel sales, if they are calibrated on the same basis of 231 cubic inches, then I don't see that it applies.

Mr. SORACI. You know, our belief on this is that, again, when we look at retail it is done a certain way because it is what is required by law today. Wholesale and other products, it is permissive to sell in a temperature-compensated basis. Our position has been that we need to look at it in a comprehensive study to determine whether or not the laws ought to change at retail.

Mr. DAVIS OF ILLINOIS. I thank the gentlemen.

Mr. KUCINICH. The gentleman's time has expired.

Mr. DAVIS OF ILLINOIS. Thank you very much. Mr. Chairman, I won't be here for your finish, but again thank you for raising this issue and continuing to pursue it.

Mr. KUCINICH. I thank Mr. Davis.

The Chair will recognize the gentleman from Maryland, Mr. Cummings. I just want to say Mr. Cummings' questions will be the last of this particular hearing, and then I will have a brief concluding remark, and then we will adjourn.

Mr. Cummings, you are recognized.

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

Gentlemen, first of all thank you for your testimony. I was very disappointed to learn that the National Conference on Weights and Measures held its annual meeting, and a proposal to issue a rule on automatic temperature compensation at retail gasoline pumps narrowly failed to garner the necessary super majority. As a matter of fact, at the last hearing that we held on this issue, the chairman and I and other Members strongly urged them to take that vote as soon as they possibly could.

During that last hearing, we talked about lobbying the conference. Chairman Cooley talked a bit about that. I am just curious about something. Did either of your companies have representatives at the conferences here?

Mr. SORACI. ExxonMobil did not.

Mr. CUMMINGS. You did not?

Mr. COOLEY. I believe Shell Pipeline Co. had a representative at the last conference.

Mr. KUCINICH. All right. And you are talking about the one where they voted; is that correct?

Mr. COOLEY. Yes, sir.

Mr. CUMMINGS. Did you have a position on that vote? Did Shell take an official position on which side you came out on on that?

Mr. COOLEY. Not with the Conference on Weights and Measures, no.

Mr. CUMMINGS. So you all were just there just hanging out?

Mr. COOLEY. I can't represent what the pipeline representative—he is not from retail. He works in the measurements division of our pipeline entity.

Mr. CUMMINGS. Was this person being paid? Was he being paid by you all?

Mr. COOLEY. He is on salary. He is a Shell employee, yes.

Mr. CUMMINGS. Well, let me ask a different way. Did you all sponsor any official events at the conference?

Mr. COOLEY. No, sir. None that I am aware of.

Mr. CUMMINGS. And did you purchase any meals or did you have any give-aways?

Mr. COOLEY. No, sir. None that I am aware of.

Mr. CUMMINGS. And do you know whether your company has ever financed any of those type of activities at the conference?

Mr. COOLEY. I do not know and I do not believe we have.

Mr. CUMMINGS. Well, I am going to give you some written questions, and I would like for you to followup on that.

[The information referred to follows:]

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August 14, 2007

Mr. Hugh Cooley
Vice President and General Manager
National Wholesale and Joint Ventures
Shell Oil Company
Post Office Box 2463
Houston, Texas, 77252-2463

Dear Mr. Cooley:

Thank you for your testimony on July 25, 2007 before the Domestic Policy Subcommittee of the Oversight and Government Reform Committee. As you know, we have taken particular interest in the National Conference on Weights and Measures' consideration of automatic temperature compensation, and we were disappointed to learn that a proposal to issue a rule on automatic temperature compensation at retail gasoline pumps narrowly failed to garner the necessary supermajority. As we indicated during our hearing, we are interested in knowing what role lobbying by the petroleum industry might have played in this decision and in previous similar decisions.

To help shed some light on this process, we request that you provide the Subcommittee with detailed answers to the following:

- In your testimony you indicated that you would submit, for the Hearing record, documentation on all food, money or other "giveaways" donated to the National Conference on Weights and Measures by your corporation or any trade association to which your company belongs as a member, this year and in past years. We have yet to receive this information. Please provide it to the Committee no later than the stated deadline.

- You indicated that your corporation did not have representatives at this year's Conference or at past conferences. Please clarify whether any representative from Shell Oil Company, or any of its subsidiaries, affiliates or partner companies, has ever participated in a meeting of the National Conference on Weights and Measures. If so, please provide detailed information on the time(s), date(s) and purpose of their participation.

- Have any representatives from your company, or its subsidiaries, affiliates or partner companies, ever met with members of the National Conference of Weights and Measures outside of the conference itself? If so, please provide detailed information on the time(s), date(s) and purpose of these meetings.

Please provide the Subcommittee with your responses no later than 5 PM on Thursday August 27, 2007. Thank you for your ongoing participation in this investigation. For additional information on these requests, please contact Mr. Jaron Bourke, Staff Director at (202) 225-6427.

Sincerely,

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

Elijah E. Cummings
Member of Congress

Mr. CUMMINGS. Now what about you, Mr. Soraci? Same questions. I know you didn't have a representative there, but do you all sponsor—what is your relationship with the National Conference on Weights and Measures, because I was shocked, to be honest with you, that we had a very good hearing and it seemed as if things were moving in the right direction, said they were going to vote, they voted, and it was narrowly defeated. I am just wondering, just trying to figure out what part you all play in all this.

Mr. SORACI. I am not aware of any sponsorships of funding that we have done with the National Conference on Weights and Measures.

Mr. CUMMINGS. And so you all basically don't have any opinion that you get to the voting folks of the conference? They don't hear from you? Is that it? You don't take a position?

Mr. SORACI. At this particular conference we did not participate.

Mr. CUMMINGS. Any of them that are dealing with this issue, this kind of issue.

Mr. SORACI. I am not aware of any positions advocated in——

Mr. CUMMINGS. I will provide you with some written questions, also, because we would really like to know.

[The information referred to follows:]

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August 16, 2007

Mr. Ben Soraci
U.S. Retail Sales Director
ExxonMobil Fuels Marketing Company
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

Dear Mr. Soraci:

Thank you for your testimony on July 25, 2007 before the Domestic Policy Subcommittee of the Oversight and Government Reform Committee. As you know, we have taken particular interest in the National Conference on Weights and Measures' consideration of automatic temperature compensation, and we were disappointed to learn that a proposal to issue a rule on automatic temperature compensation at retail gasoline pumps narrowly failed to garner the necessary supermajority. As we indicated during our hearing, we are interested to know what role lobbying by the petroleum industry might have played in this decision and previous similar decisions.

To help shed some light on this process, we request that you provide the Subcommittee with detailed answers to the following:

- You indicated in your testimony that you would submit for the Hearing record documentation on all food, money or other "giveaways" donated to the National Conference on Weights and Measures by your corporation or any trade association to which your company belongs as a member, this year and in past years. We have not yet received this information.

- You indicated that your corporation did not have representatives at this year's Conference or at past conferences. Please clarify whether any representative from ExxonMobil Corporation, or any of its subsidiaries, affiliates or partner companies, has ever participated in a meeting of the National Conference on Weights and Measures. If so, please provide detailed information on the time(s), date(s) and purpose of their participation.

- Have representatives from your company, or any of its subsidiaries, affiliates or partner companies, ever met with members of the National Conference of Weights and Measures outside of the conference itself? If so, please provide detailed information on the time(s), date(s) and purpose of these meetings.

Please provide the Subcommittee with your responses no later than 5 PM on Monday, August 27, 2007. Thank you for your ongoing participation in this investigation. For additional information on these requests, please contact Mr. Jaron Bourke, Staff Director, at (202) 225-6427.

Sincerely,

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

Elijah E. Cummings
Member of Congress

Mr. CUMMINGS. I understand that it is routine that the dealers' underground tanks are monitored by you electronically for the purposes of scheduling tanker deliveries; is that correct?

Mr. SORACI. In the case of ExxonMobil, yes, it is.

Mr. COOLEY. For those small number of stations that are operated on that basis, you essentially.

Mr. CUMMINGS. Now, isn't it also true that the monitors report the temperature of the gasoline in the tanks as well as the levels; is that right?

Mr. COOLEY. That is my understanding.

Mr. CUMMINGS. Is that yours also?

Mr. SORACI. That is my understanding, yes.

Mr. CUMMINGS. So you are in a strong position, are you not, vis-a-vis your dealers, to monitor their inventory and to give them a wholesale price which they are bound to pay as long as the contract is in force; is that right?

Mr. COOLEY. We do establish the price that we sell to them under.

Mr. CUMMINGS. And what about you, sir?

Mr. SORACI. I would like to hear that question again, please.

Mr. CUMMINGS. Well, what I said was that you are in a strong position, vis-a-vis, your dealers to monitor their inventory and to give them a wholesale price which they are bound by long-term contract to pay; is that right?

Mr. SORACI. Well, if we are talking about our dealers——

Mr. CUMMINGS. Yes.

Mr. SORACI [continuing]. Our dealers are typically on a 3-year contract. Yes, we do manage inventories at our dealer locations and we know what the inventory levels are. But I would add that the dealer population, the lessee dealer population of our business is a very small percent of our business.

Mr. CUMMINGS. I see my time is up, but just one last question. When you price your wholesale gasoline, do you have in mind a target margin that you want your dealers to be earning, Mr. Cooley?

Mr. COOLEY. When we price our wholesale gasoline, when we price to wholesalers we are competing at a rack, and at that rack we always would like to make the margin, but the marketplace determines if there is a margin there or not. But we do establish the rack price.

Mr. CUMMINGS. All right. And what about you, Mr. Soraci?

Mr. SORACI. We are in a very competitive market and the market sets the price based on a number of different factors.

Mr. CUMMINGS. How many?

Mr. SORACI. A number of different factors: supply and demand, competitive landscape.

Mr. CUMMINGS. All right.

Thank you very much, Mr. Chairman.

Mr. KUCINICH. All right.

I want to thank the gentleman and just say that I would ask the representatives of ExxonMobil and Shell to be responsive to Mr. Cummings' written questions so that the committee will feel that your cooperation is continuing.

I also want to thank you for your participation here today. I hope that you both feel that the process of this committee has been respectful and has been inviting for you to be able to get your testimony on the record so that the opinions, as well as the position, of both Shell and ExxonMobil have had a hearing.

The purpose of this hearing is to and has been to examine the views of Shell and ExxonMobil on what appears to be a double standard in the measurement of gasoline; namely, how do they justify opposing temperature compensation at retail while conducting wholesale transactions with temperature compensation, and how do they justify opposing temperature compensation for retail sales in the United States while universally embracing temperature compensation at retail in Canada. We have had an extensive discussion here. It has been a bipartisan discussion.

This committee will continue to delve into this matter. We will do so in cooperation with the industry, regulatory bodies, those who are involved in weights, measures, and standards.

I want to thank Mr. Issa. I want to thank the staff of the minority as well as the majority for the work that they have done on this and all my colleagues for participating.

I am Dennis Kucinich, Chairman of the Domestic Policy Subcommittee of the U.S. House of Representatives. This has been a subcommittee hearing on Hot Fuel, and I want to thank all of you for participating.

This committee stands adjourned. Thank you.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

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BILL SALI, IDAHO

July 27, 2007

Mr. Rex W. Tillerson
Chairman of the Board & CEO
ExxonMobil Corporation
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

Dear Mr. Tillerson:

At a hearing of the Domestic Policy Subcommittee on July 25, 2007, Mr. Ben Soraci, testifying for ExxonMobil, made a number of assertions for which the subcommittee requests clarification and, where appropriate, substantiation.

Assertion 1: ExxonMobil asserted that state law and regulations proscribe the use of automatic temperature compensation at the retail point of sale.

As you know, a NIST survey of weights and measures officials in all 50 states and the District of Columbia concluded that in the majority of states, automatic temperature compensation is permissible at retail. The subcommittee requests a written legal justification, in which the Company identifies the relevant provision(s) in each state's law, substantiating the Company's assertion that automatic temperature compensation is not legal in that state.

Assertion 2: ExxonMobil disagreed with the statement, "The use of temperature compensation to a common reference temperature allows retailers to sell product on the same basis as it was purchased. This common basis of measurement eases the reconciliation of product inventories and permits the early detection of smaller leaks from storage." That statement was made by Measurement Canada in "Information sheet 1999-03-01." The subcommittee requests a written explanation for the Company's basis for disagreement. As this statement contains two propositions, please specify which of the two the Company disagrees with and the basis for its position.

Assertion 3: ExxonMobil disagreed with the statement, "Consumers benefit from the knowledge that temperature compensation is a more accurate system of measurement which ensures that the amount of energy they purchase is not affected by the temperature of the fuel. ATC allows consumers to make meaningful price comparisons b0etween retailers. Posted prices at non-ATC equipped retailers can be misleading because of variation in product temperatures." That statement made by Measurement Canada in "Information sheet 1999-03-01." The subcommittee requests a written explanation for the Company's basis for disagreement. As this statement contains three propositions, please specify which of the three the Company disagrees with and the basis for its position.

Assertion 4: ExxonMobil disagreed with the statement, "Selling fuel adjusted to the volume at 15° C (60° F) throughout the distribution system is the most equitable way fuel can be sold without the buyer or seller gaining a competitive advantage." That statement was made in National Conference on Weights and Measures, CWMA L&R Committee 2005 Interim Report, September 19, 2005. Please explain the basis for the Company's disagreement.

Assertion 5: ExxonMobil asserted that there is no double standard in measuring LPG in temperature compensated volumes but not gasoline. The Subcommittee notes that LPG is a liquid, as is gasoline. Please explain the basis for why ExxonMobil would deem it appropriate to measure one liquid hydrocarbon product, LPG, in temperature compensated volumes, but not gasoline.

Assertion 6: ExxonMobil asserted that there is no double standard in the company's choice to temperature compensate at retail in Canada, but not in the United States. Please explain the basis for ExxonMobil's position.

Assertion 7: ExxonMobil asserted that it employs temperature compensation for some but not all wholesale transactions.

The Subcommittee seeks answers to the following questions:

Where the Company is legally permitted to choose between a net or gross measurement in wholesale transactions, is the actual temperature of gasoline in a given transaction ever a factor in the Company's decision to employ or not employ temperature compensation for measuring the volume of a particular transaction? Under what temperature-related circumstances would the Company choose to employ temperature compensation? What temperature related circumstances would favor the choice of gross measurement of gasoline? Has the Company's choice of one method of measurement over another ever varied on a seasonal basis? Monthly basis? Daily basis? Load-by-load basis?

Where the Company is legally permitted to choose between a net or gross measurement, would the Company's choice to employ or not employ temperature compensation affect the dollar amount of its federal excise tax liability? If so, would the Company generally choose the method of measurement (gross or net) that would result in the smaller federal excise tax liability?

Please provide your reply to this request no later than Monday, August 13, 2007.

Sincerely,

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc: Darrell Issa
Ranking Minority Member

Ben Soraci, ExxonMobil
Jeanne Mitchell, ExxonMobil

Daniel Nelson
Vice President
Washington Office

August 22, 2007

Rep. Dennis J. Kucinich
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Rep. Kucinich:

I am writing in response to your letter to Mr. Rex Tillerson of ExxonMobil requesting clarification of certain positions taken by Mr. Ben Soraci, who represented ExxonMobil at the hearing of the Domestic Policy Subcommittee on July 25, 2007. Following are ExxonMobil's responses:

Statement 1: ExxonMobil asserted that state law and regulations proscribe the use of automatic temperature compensation at the retail point of sale.

There are several legal barriers preventing the use of automatic temperature compensation ("ATC") at the retail level. While, as recognized during the hearing, some states expressly prohibit the use of temperature compensation at the retail level, other states effectively prohibit its use based on regulations and laws in effect in those states. This is accomplished by regulating both the dispensing devices and the method of sale.

Dispensing Devices

All states regulate the types of dispensing devices that can be legally used in commercial transactions. This is accomplished through two set of regulations, one governing the approval of commercial devices within the state, and the second governing the specifications, tolerances and user requirements for those approved commercial devices.

Based on data compiled by the National Institute of Standards and Technology ("NIST"), virtually all states prohibit the use of a motor fuel dispenser at retail without a state issued certificate of approval or a Certificate of Conformance issued by the National Conference on Weights & Measures ("NCWM") National Type Evaluation Program ("NTEP").[1] The state approval or the NTEP Certificate of

[1] See NIST Handbook 130 at pp. 9-13 (identifying the forty-four jurisdictions requiring type evaluation and five jurisdictions that use the NCWM as a guideline).

Conformance is issued only after testing confirms that the device conforms to the specifications, tolerances and user requirements set forth in NIST Handbook 44, which has been adopted in some form by all states.[2] The specifications, tolerances and user requirements of Handbook 44 do not include provisions for use of ATC at the retail level. Accordingly, it is our understanding that a state-issued certificate of approval or NTEP certificate is unavailable for a retail fuel dispenser having ATC capability.[3] Without such a certificate the use of such equipment would be unlawful.

Method of Sale

Under current laws and regulations, with the exception of Hawaii, every state defines a gallon of motor fuel volumetrically as 231 cubic inches without reference to temperature. Some states have adopted laws expressly stating this. For example, New Jersey law provides that *"All liquid fuel shall be sold by volume. The unit of volume shall be the standard United States gallon."* N.J. Stat. Ann. § 51:9-3 (2001). *"The standard gallon shall contain two hundred and thirty-one cubic inches."* N.J. Stat. Ann. § 51:1-9 (2001). Other states have incorporated the measurements adopted by NIST as the standard for commercial transactions See, e.g., Va. Code Ann. § 3.1-943 (liquid commodities must be sold by liquid measure); Va. Code Ann. § 3.1-920 (adopting the units of liquid measure adopted by NIST as the standard for commercial transactions). NIST Handbook 44 defines a *"gallon"* as *"231 cubic inches (exactly)"* without reference to temperature. See Appendix C to Handbook 44.

Therefore ExxonMobil believes that, as a matter of law, retail sales of motor fuel in the U.S. must be measured in volumetric gallons of 231 cubic inches. Further, state inspection protocols are tied to this volumetric definition of a gallon. If ExxonMobil sold temperature compensated motor fuel at retail, meaning that the amount of fuel dispensed varied with temperature, it would risk failing inspections, incurring fines and facing possible closure of its retail outlets. See, e.g., N.J. Admin. Code § 13:47B-1.1 (1994).

It is ExxonMobil's view that all of these laws and regulations -- governing both commercial devices and the method of sale -- would need to be amended, and new inspection protocols would need to be established, before temperature compensated sales of motor fuel would be legally permitted at retail.[4] The fact that state laws and

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[2] See id. (showing that all jurisdictions in the United States have adopted Handbook 44 in some form).

[3] The one exception is California, which recently became the first state in the country to issue a certificate under its own certification program approving a single vendor's retail fuel pump having ATC capability. California has not approved any kits to retrofit existing pumps.

[4] Although, as noted, California has certified a single piece of equipment with ATC capability, other laws and regulations, including the definition of "gallon," would need to be amended, and inspection protocols would need to be established, before such equipment could lawfully be used.

regulations proscribe the use of ATC at the retail point of sale has long been acknowledged by NCWM, which recently considered but failed to pass a proposal to permit the use of ATC at the retail level. Similar proposals have failed to pass several times since the 1970s. Such proposals and votes would not have been necessary if the existing laws and regulations permitted the use of ATC at the retail level.

Statement 2: ExxonMobil disagreed with the statement, "The use of temperature compensation to a common reference temperature allows retailers to sell product on the same basis that it was purchased. This common basis of measurement eases the reconciliation of product inventories and permits the early detection of smaller leaks from storage."

We disagreed with this statement for a number of reasons, most notably because it is based on a presumption regarding the sale of motor fuel at wholesale that is incorrect. In the United States, ExxonMobil does not sell motor fuel on a temperature compensated basis at wholesale in all instances. Thus, contrary to both sentences, the sale of motor fuel on a temperature compensated basis to consumers would not always result in a sale of product on the same basis that it was purchased. In addition, the statement suggests that retailers are allowed to sell motor fuel on a temperature compensated basis at the retail level in the United States, which as discussed above, they are not.

Statement 3: ExxonMobil disagreed with the statement, "Consumers benefit from the knowledge that temperature compensation is a more accurate system of measurement which ensures that the amount of energy they purchase is not affected by the temperature of the fuel. ATC allows consumers to make meaningful price comparisons between retailers. Posted prices at non-ATC equipped retailers can be misleading because of variations in product temperatures."

ExxonMobil sells motor fuel by the volumetric gallon, as it has done for decades, and as is required by current law. This is a very accurate system of measurement, as confirmed by the certificates attached by state inspectors to our dispensers confirming that our current system is accurate. The use of ATC at retail would result in the sale of variable gallons of motor fuel whose size would change depending on temperature. It is our belief that a variable volumetric measurement, if approved and regulated by state authorities, would be neither more nor less accurate than a fixed volumetric measurement. It would simply be a different unit of measurement. Thus we do not agree with the first sentence of the above statement.

Regarding the second sentence, changes in law to permit the use of ATC at the retail level could result in different retailers using different systems of measurement, which would make it more difficult for consumers to make value

comparisons. Furthermore, there are many factors other than temperature that impact the energy content of fuel, such as the crude used in the refining process and particularly the ethanol content. This statement assumes that only temperature impacts the energy content of motor fuel. As such, even if ATC is permitted, consumers will not know whether one gallon of motor fuel contains more or less BTUs than another gallon of motor fuel.

We disagreed with the third sentence because retailers in the United States sell motor fuel by the volumetric gallon, not by energy content. There is nothing misleading about selling motor fuel in the very units posted at the pump or about complying with the law.

Statement 4: ExxonMobil disagreed with the statement, "Selling fuel adjusted to the volume at 15° C (60° F) throughout the distribution system is the most equitable way fuel can be sold without the buyer or seller gaining a competitive disadvantage."

We disagreed with this statement for a number of reasons. First, it assumes that the use of ATC at retail would not result in additional costs to consumers. The retail motor fuel market is very competitive, and there are a multitude of factors that impact a retailer's pricing decisions. Depending on the temperature, the use of ATC at retail may raise or lower a retailer's cost of goods, which he may choose to reflect in his retail price. Second, this statement also implies that motor fuel is sold at all parts of the distribution chain in the U.S. on a temperature compensated basis, which it is not, as discussed at the hearing and in the explanation above. Third, the current system, where all retailers sell motor fuel on a volumetric gallon basis, is inherently equitable, since all retailers sell on the same basis, allowing consumers to easily make price comparisons. In fact, permitting the use of ATC might be less transparent to consumers, potentially making it more difficult to make price comparisons if different retailers elected to sell on different bases. This is yet another reason why ExxonMobil believes this issue requires further study and careful consideration by regulators.

Statement 5: ExxonMobil asserted that there is no double standard in measuring LPG in temperature compensated volumes, but not gasoline.

NIST Handbook 130 § 2.21 provides that *"all sales of Liquefied Petroleum Gas shall be in units of gallons defined as 231 cubic inches at 60° Fahrenheit."* However, as discussed above, ExxonMobil is not permitted to sell motor fuel at retail on a temperature compensated basis under current law. There is no double standard since the laws and regulations prescribe what is permissible and what is not.

investment cost of implementing ATC at retail would primarily fall upon independent motor fuel retailers.

Respectfully submitted,

R. D. Nelson
Vice President
Exxon Mobil Corporation

cc: Rex W. Tillerson, Chairman & CEO, ExxonMobil Corp.
Darrell Issa, Ranking Minority Member

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BILL SALI, IDAHO

July 27, 2007

Mr. John Hofmeister
President
Shell Oil Company
Post Office Box 2463
Houston, Texas, 77252-2463

Dear Hofmeister:

At a hearing of the Domestic Policy Subcommittee on July 25, 2007, Mr. Hugh Cooley, testifying for Shell Oil, made a number of assertions for which the subcommittee requests clarification and, where appropriate, substantiation.

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The Subcommittee seeks answers to the following questions:

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Please provide your reply to this request no later than Monday, August 13, 2007.

Sincerely,

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc: Darrell Issa
Ranking Minority Member

Mr. Hugh Cooley, Shell Oil
Ms. Elizabeth Stolpe, Shell Oil

Shell Oil Company
John D. Hofmeister
President
US Country Chair
One Shell Plaza
P. O. Box 2463
Houston, TX 77252-2463

August 23, 2007

The Honorable Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee of the
Oversight and Government Reform Committee
United States House of Representatives
Washington, D.C. 20515-6143

Dear Chairman Kucinich:

Shell Oil Company ("Shell") submits the following responses to the questions set forth in your letter of July 27, 2007.

1. The subcommittee requests a written legal justification, in which the Company identifies the relevant provision(s) in each state's law, substantiating the Company's assertion that automatic temperature compensation is not legal in that state.

The National Institute of Standards and Technology ("NIST") publishes model laws and technical specifications having to do with weights and measures in Handbooks 44 and 130. According to NIST Handbook 130, at pages 10-13, all states except North Dakota have adopted NIST Handbook 44 as state law. NIST Handbook 44 states as follows at Section 3.30, paragraph S.1.2.1:

> **Retail Motor-Fuel Devices.** - Deliveries shall be indicated and recorded, if the device is equipped to record, in liters or gallons and decimal subdivisions or fractional equivalents thereof.

Appendix C of Handbook 44 defines a gallon as "231 cubic inches" at pages C-3 and C-9 and as "231 cubic inches (exactly)" at page C-16.

Although North Dakota has not adopted Handbook 44, it requires that liquids be measured by a gallon consisting of 231 cubic inches (same as Handbook 44). *See* N.D. Code §64-01-02. In addition, although

Hawaii has adopted NIST Handbook 44, Hawaii has defined a gallon of gasoline as 231 cubic inches at 60 degrees Fahrenheit. *See* Haw. Rev. Stat. §486-50. We understand Hawaii has adopted a reference temperature of 80 degrees Fahrenheit which would translate to a gallon equaling 233.8 cubic inches.

In contrast to its rules about Retail Motor-Fuel Devices, NIST Handbooks 44 and 130 require or allow temperature adjustment in the sale of a number of liquids, including liquefied petroleum gas (NIST Handbook 130, §2.21 and NIST Handbook 44, §3.32, ¶S.2.6), anhydrous ammonia in the liquid state (NIST Handbook 44, §3.32-A.1, §3.32-S.2.6 and §3.32-N.4.1.1), cryogenic liquids (such as, but not limited to oxygen, nitrogen, hydrogen, and argon) (Id., §3.34-A.1, §3.34-S.2.4, §3.34-S.4.3, §3.34.N.7, §3.34-UR.2.6), natural gas as a motor vehicle engine fuel (Id., §3.37-S.3.6), and liquid carbon dioxide (Id., §3.38-S.2.4, §3.38-N.4.4, §3.38-UR.2.4.1).

For the subcommittee's convenience, Shell has attached copies of the cited sections of NIST Handbooks 44 and 130, the North Dakota statute and the Hawaii statute.

2. Shell Oil disagreed with the statement "The use of temperature compensation to a common reference temperature allows retailers to sell product on the same basis as it was purchased. This common basis of measurement eases the reconciliation of product inventories and permits the early detection of smaller leaks from storage." That statement was made by Measurement Canada in "Information Sheet 1999-03-01." The subcommittee requests a written explanation for the Company's basis for disagreement. As this statement contains two propositions, please specify which of the two the Company disagrees with and the basis for its position.

By law, some states require temperature adjustment in wholesale transactions, some states allow it but do not require it, some states prohibit it altogether, and some states give the buyer the right to choose whether sales will or will not be adjusted for temperature. Since, by state law, some wholesale transactions are not adjusted for temperature, temperature adjustment for retail sales would not necessarily result in retailers selling gasoline on the same basis as they purchased it.

Although temperature adjustment may provide data that could be used for inventory reconciliation, a variety of techniques may be used to manage inventory and to monitor system integrity that do not require temperature adjustment at the dispenser.

3. Shell disagreed with the statement, "Consumers benefit from the knowledge that temperature compensation is a more accurate system of measurement which ensures that the amount of energy they purchase is not affected by the temperature of the fuel. ATC allows customers to make meaningful price comparisons between retailers. Posted prices at non-ATC equipped retailers can be misleading because of variation in product temperatures." That statement was made by Measurement Canada in "Information sheet 1999-03-01." The subcommittee requests a written explanation for the Company's basis for disagreement. As this

statement contains three propositions, please specify which of the three the Company disagrees with and the basis for its position.

The current system of measuring gasoline for sale at the retail level accurately and consistently measures volumetric gallons of 231 cubic inches. Many factors other than temperature affect the energy content of gasoline, including seasonal blends, the percentage of ethanol it contains, the grade of crude oil from which it was refined, and the processes used at the refinery.

Temperature adjustment would not allow customers to make meaningful price comparisons if some stations used the devices but others did not. Even if there were a way to easily distinguish a temperature-adjusting station from one that did not adjust, a consumer driving down the street and comparing the prices on the signs would have no practical way to know the current temperature of the gasoline or the impact of other factors (e.g., ethanol) in order to determine which station had the better price.

4. Shell disagreed with the statement, "Selling fuel adjusted to the volume at 15° C (60°F) throughout the distribution system is the most equitable way fuel can be sold without the buyer or seller gaining a competitive advantage." That statement was made in National Conference on Weights and Measures, CWMA L&R Committee 2005 Interim Report, September 19, 2005. Please explain the basis for the Company's disagreement.

Shell believes that the current method of distribution allows intense and fair competition in the gasoline market at the wholesale and retail levels. The standard required by the state weights and measures authorities for fuel sales to consumers has long been the volumetric gallon -- a standard that is easy to understand and easy for state regulators to enforce. When a consumer purchases a gallon of gasoline, the consumer is assured, each and every time, winter or summer, that a true volumetric gallon of gasoline is received. Consumers understand and depend on this methodology, and local weights and measures officials easily and uniformly enforce regulations requiring that a gallon is indeed a gallon. Since all sellers use the same unit of measure in a given local market, the market will settle on the most competitive price in that place, time, and circumstances, such that neither the buyer nor the seller has any competitive advantage. In addition, many factors other than temperature affect the energy content of gasoline, including seasonal blends, the percentage of ethanol it contains, the grade of crude oil from which it was refined, and the processes used at the refinery. Thus, automatic temperature adjustment in retail sales would not guarantee that consumers would get the same amount of energy in every gallon of fuel.

5. Shell Oil asserted that there is no double standard in measuring LPG in temperature compensated volumes but not gasoline. The Subcommittee notes that LPG is a liquid, as is gasoline. Please explain the basis for why Shell Oil would deem it appropriate to measure one liquid hydrocarbon product, LPG, in temperature compensated volumes, but not gasoline.

With respect to retail sales, the rules for measuring liquefied petroleum gas ("LPG") and gasoline are different.

With respect to liquefied petroleum gas ("LPG"), NIST Handbook 130, Section 2.21 states:

> All liquefied petroleum gas, including but not limited to propane, butane, and mixtures thereof, shall be kept, offered, exposed for sale, or sold by the pound, metered cubic foot of vapor (defined as 1 cu ft at 60° F), or the gallon (defined as 231 cu in at 60° F). All metered sales by the gallon, except those using meters with a maximum rated capacity of 20 gallons per minute or less, shall be accomplished by use of a meter and device that automatically compensates for temperature.

Similarly, NIST Handbook 44 states with regard to LPG in Section 3.32, Paragraph S.2.6, that "a device may be equipped with an adjustable automatic means for adjusting the indication and registration of the measured volume of product to the volume at 15 °C (60 °F)."

By contrast, with respect to retail sales of motor fuels, NIST Handbook 44 states as follows at Section 3.30, paragraph S.1.2.1:

> **Retail Motor-Fuel Devices.** - Deliveries shall be indicated and recorded, if the device is equipped to record, in liters or gallons and decimal subdivisions or fractional equivalents thereof.

Appendix C of Handbook 44 defines a gallon as "231 cubic inches" at pages C-3 and C-9 and as "231 cubic inches (exactly)" at page C-16.

6. Shell Oil asserted that there is no double standard in the company's choice to temperature compensate at retail in Canada, but not in the United States. Please explain the basis for Shell Oil's position.

All but one of the states in the United States has adopted NIST Handbook 44, which states that motor fuel is to be sold at the retail level by the volumetric gallon, which is defined as 231 cubic inches exactly. *See* Response to Question 1. In contrast, the Canadian government made automatic temperature adjustment permissive for motor fuel at the retail level approximately fifteen years ago. Once a number of retailers had installed automatic temperature adjustment devices, Shell Canada followed suit to avoid being competitively disadvantaged.

7. Where the company is legally permitted to choose between a net or gross measurement in wholesale transactions, is the actual temperature of gasoline in a given transaction ever a factor in the Company's decision to employ or not employ temperature compensation for measuring the volume of a particular transaction? Under what temperature-related circumstances would the Company choose to employ temperature compensation? What temperature related circumstances would favor the choice of gross measurement of gasoline? Has the Company's choice of one method of measurement over another ever varied on a seasonal basis? Monthly basis? Daily basis? Load-by-load basis?

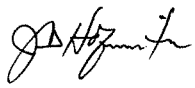
Where the Company is legally permitted to choose between a net or gross measurement, would the Company's choice to employ or not employ temperature compensation affect the dollar amount of its federal excise tax liability? If so, would the Company generally choose the method of measurement (gross or net) that would result in the smaller federal excise tax liability?

The actual temperature of the gasoline in a given transaction is not a factor in the company's decision to sell gasoline at the wholesale level on either a gross or net basis. In states where the law permits but does not require gross or net gallons in wholesale transactions, Shell's practice generally responds to wholesaler and retailer preferences and industry practices, rather than a choice by Shell. The inter-company exchange agreement context is an example where Shell uses temperature adjustment in wholesale transactions due to the large volumes of gasoline exchanged between terminals that often are very far apart, often are in markedly different climates, and often are at varying times of the year. In Shell's experience, the method of measurement in wholesale gasoline transactions with a given wholesaler or retailer does not normally vary by season, month, day, or load.

From a federal excise tax perspective, Shell is indifferent whether gross or net gallons are used in wholesale transactions because the terms of the agreements between Shell and the independent wholesalers and retailers who sell over 90% of Shell gasoline in the United States uniformly make the wholesalers and retailers responsible for federal and state taxes on the sale of gasoline. The Internal Revenue Service regulations specifically provide that "[v]olumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit." Treas. Reg. §48.4081-8. Shell generally uses the same method for federal and state taxes in a given state. Some states require, some forbid, and some permit temperature adjustment for state tax purposes. In states where state tax law permits but does not require gross or net gallons, Shell responds to wholesaler and retailer preferences and industry practices.

For the subcommittee's convenience, Shell has attached a copy of the cited Treasury Regulation.

Sincerely,



John D. Hofmeister

Attachments

cc: Mr. Darrell Issa, Ranking Member

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Congress of the United States
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
FACSIMILE (202) 225–4784
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July 27, 2007

Mr. Dennis Johannes
Director
California Division of Measurement Standards
6790 Florin-Perkins Road
Suite 100
Sacramento, California 95828

Dear Mr. Johannes:

The Subcommittee on Domestic Policy requests an opinion from the California Division of Weights and Measures as to the legality of automatic temperature compensation for motor fuel under state law, and the accuracy of measurement with automatic temperature compensation compared to standard volumetric measurement of motor fuel.

The Subcommittee on Domestic Policy is conducting an investigation into 'hot fuels.' It is a subcommittee of the oversight and Government Reform Committee, the principal oversight committee of the House of Representatives.

The Subcommittee would greatly appreciate a reply by August 13, 2007.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc: Darrell Issa
Ranking Minority Member

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FOOD AND AGRICULTURE
LEGAL OFFICE
1220 N Street, Suite 400
Sacramento, CA 95814
Phone: (916) 654-1393
FAX: (916) 653-1293

August 16, 2007

The Honorable Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee
Congress of the United States
House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D. C. 20515-6143

SEP 2 6 2007

Dear Chairman Kucinich:

Dennis Johannes, Director of the Department's Division of Measurement Standards ("Division"), referred your letter dated July 27, 2007 addressed to him pertaining to the Domestic Policy Subcommittee's investigation into "hot fuels" to the Department Legal Office since it requested a legal opinion. You asked about "the legality of automatic temperature compensation for motor fuel under state law, and the accuracy of measurement with temperature compensation for motor fuel under state law, and the accuracy of measurement with automatic temperature compensation compared to standard volumetric measurement of motor fuel."

California State law does not ban automatic temperature-compensated motor fuels in California. On the other hand, there are no regulatory standards for same, without which such fuels may not be sold in California under California law. There is no one asking California to promulgate regulations on this topic at this time.

However, the Division is working with the National Conference on Weights and Measures ("NCWM"), which is currently working on two proposals dealing with the retail sale of temperature-compensated motor fuel. The Specifications and Tolerance Committee is working on pump testing guidelines and the Laws and Regulations Committee is working on a uniform method of sale model proposal. If adopted by the NCWM and added to the various handbooks, the states *could* choose to adopt these proposals as local regulations.

Since the Division of Measurement Standards has not been called upon to assess the accuracy of this form of measurement in a regulatory setting and may be called upon to do so in the future, the Department has no comment at this time on the accuracy.

Respectfully,

John C. Dyer
Chief Counsel

c: George Gomes, Undersecretary, CDFA
Eric Stein, Deputy Secretary, Legislation and Policy, CDFA
Dennis Johannes, Director, Division of Measurement Standards, CDFA
Linda Berg-Gandara, DAG, DOJ

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VIRGINIA FOXX, NORTH CAROLINA
BRIAN P. BILBRAY, CALIFORNIA
BILL SALI, IDAHO

July 27, 2007

Mr. Robert Atkins
Commissioner
San Diego County Department of Agriculture and Weights and Measures
5555 Overland Avenue, Suite 3101
San Diego, California 92123

Dear Commissioner Atkins:

The Subcommittee on Domestic Policy requests an opinion from the San Diego County Department of Agriculture and Weights and Measures as to the legality of automatic temperature compensation for motor fuel, and the accuracy of measurement with automatic temperature compensation compared to standard volumetric measurement of motor fuel.

The Subcommittee on Domestic Policy is conducting an investigation into 'hot fuels.' It is a subcommittee of the oversight and Government Reform Committee, the principal oversight committee of the House of Representatives.

The subcommittee would greatly appreciate a reply by August 13, 2007.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc: Darrell Issa
Ranking Minority Member

ROBERT G. ATKINS
AGRICULTURAL COMMISSIONER/ SEALER OF WEIGHTS AND MEASURES

County of San Diego

DEPARTMENT OF AGRICULTURE, WEIGHTS AND MEASURES
5555 Overland Avenue, Suite 3101, San Diego, CA 92123-1256
http://www.sdcawm.org

AGRICULTURE
(858) 694-2739
FAX (858) 498-5012

WEIGHTS & MEASURES
(858) 694-2778
FAX (858) 505-6484

COUNTY VETERINARIAN
(858) 694-2838
FAX (858) 571-4268

SAN MARCOS OFFICE
(760) 752-4700
FAX (760) 752-4703

August 22, 2007

Honorable Dennis J. Kucinich
Chairman, Domestic Policy Subcommittee
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Kucinich:

Your letter of July 27, 2007, requests our opinion as to the legality of automatic temperature compensation of motor fuels at retail sales in the State of California. California Business and Professions Code (B & P Code) Section 13520 makes it unlawful for a distributor or broker to sell 5000 or more gallons of gasoline or diesel fuel without invoicing the purchaser on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit. There are no similar regulations relating to sales of less than 5000 gallons of fuel. With regard to such sales, California has adopted the National Institute of Standards and Technology (NIST) Handbook 44, which regulates the use and testing of commercial scales and meters, (B & P Code Section 12107). This statute allows the director to establish tolerances and specifications and other technical requirements for commercial weighing and measuring beyond those included in Handbook 44. Therefore, in our opinion, automatic temperature compensation of motor fuels at retail sales could be required by regulation adopted in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Regarding the accuracy of temperature compensation versus uncompensated measurements, the expansion coefficient of gasoline and ethanol are very similar and for every change of 15 degrees Fahrenheit, the volume of each changes approximately one percent. Diesel fuel changes approximately one percent for every 22 degrees F. At the July 2007 Annual National Conference on Weights and Measures, two of the speakers characterized the inclusion of temperature compensation as "more comprehensive" and "more representative" of the true volume of fuel.

The discussion of the physical properties of the fuel and the existence of a "California type approved" dispenser leads me to conclude that automatic temperature compensation is feasible and desirable.

ROBERT G. ATKINS
Agricultural Commissioner/
Sealer of Weights and Measures

RGA:mp

cc: D. Johannes, CA Division of Measurement Standards
C. Wallar, Deputy CAO, County of San Diego
S. Aghassi, Strategy, Intergovernmental Affairs, County of San Diego