S. HRG. 117–427

ENSURING TRANSPARENCY IN PETROLEUM MARKETS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

APRIL 5, 2022

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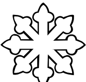

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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ENSURING TRANSPARENCY IN PETROLEUM MARKETS

TUESDAY, APRIL 5, 2022

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SR–253, Russell Senate Office Building, Hon. Maria Cantwell, Chair of the Committee, presiding.

Present: Senators Cantwell [presiding], Blumenthal, Markey, Peters, Baldwin, Tester, Rosen, Hickenlooper, Warnock, Cruz, Thune, Fischer, Moran, Sullivan, Blackburn, Lee, Capito, Scott, Klobuchar, and Lummis.

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

The CHAIR. The Commerce Committee will come to order. The Senate Committee on Commerce, Science, and Transportation today is having a full committee hearing on ensuring transparency in the petroleum markets. We will hear from Mr. Robert McCullough, Principal of McCullough Research from Portland, Oregon, and Ms. Kathleen Sgamma—is that right, Sgamma? President of Western Energy Alliance from Denver, Colorado. Welcome to you both.

The committee—I want to welcome our witnesses because I think this issue of ensuring transparency in petroleum markets is of the utmost importance. Surging petroleum prices are wreaking havoc with American households' budgets and threatening our Nation's post pandemic recovery and global competitiveness.

In the State of Washington, many of my constituents are still paying close to $5 a gallon at the pump and even though prices have fallen 11 percent last month. For some mysterious reasons, the sticker shock of California is even worse. Many drivers in the Golden State—can you just—thank you so much. I guess we have chart issues here. For some reason, the sticker shock in California is even worse. Many drivers in the Golden State are shelling out $6 or more a gallon to fill up their cars and trucks.

Diesel fuel, the bedrock of our Nation's supply chain, is also having great impacts. A few weeks ago, we saw the highest diesel prices ever. Prices dropped a bit recently, but nationwide, they are still recovering from an overall five gallon, where we are today. This means it can cost a trucker over $1,000 to fill up their rig. As Senator Cruz knows from the Aviation subcommittee, jet fuels have also climbed to record levels, hitting air carriers and travelers

with steep increases just as the industry is starting to recover from the pandemic shut down.

I would like to acknowledge up front that the world oil prices are at record levels. There are a lot of compounding reasons for that—Russia's despicable attack on Ukraine, a post pandemic demand surge, and an atrophied supply chain, and OPEC's cartel refusal to help boost production. Speaking of OPEC, I hope everyone on this dais knows that it has monopolies and that it will be able to dictate how much we continue to pay for oil. That is as long as we remain addicted to that oil.

As President George W. Bush concluded back in 2006, cartel members like Saudi Arabia, Russia and Iran will continue to have America by the throat, no matter how much more we produce at home, even if we drill in every last inch of our country.

But this hearing today is not about world oil prices. It is about how much oil or how much oil we could have been producing, or canards about supposed impact of transcontinental pipelines never built, or red herrings about bypassing environmental laws. None of those are the issues of the hearing, or even really in our jurisdiction. And that is why we are trying to focus on our Committee's jurisdiction.

What this hearing is about is the mysterious middle of the gas market. This is what is shown on the chart behind me. So, we are not—we are not talking about the world oil price, or we are not talking about what happens at the individual retailers. This is not about the crude oil, or what—that does account for about half of the cost of a gallon of gas. That is set at world markets. Nor are we talking about local gas stations, because many of them are small businesses who are owners who take a lot of heat from the angry drivers. Because the reality is the gas stations are price takers and operate on thin margins, no matter what the retail price of petroleum is.

This hearing is about this mysterious middle of the supply chain, how we can shine a light on the black box to expose any anti-competitive dark trading, making sure there are not a bunch of smart guys in the room hurting consumers because they think we cannot figure out what is happening when there is a lack of transparency.

We have seen this show before. Americans have the right to know why one of our most important commodities does not have the right amount of proper transparency and oversight. It does not seem right to me that we should have more transparency on a product like wheat or corn than we would on oil. There is, of course, nothing new about bad actors artificially impacting shortages or supplies. The Grain Futures prohibited manipulation of grain prices as early as 1922. And there are many schemes about this throughout our history. One of our witnesses, Robert McCullough, played a key role in blowing the whistle on Enron's trading energy schemes during the West Coast energy crisis.

Congress took action after that crisis. In 2005, we empowered the Federal Energy Regulatory Commission, FERC, with the same—with the authority to make electricity and natural gas markets more transparent. And we continued to push that. We see today that there are still bad actors doing these activities—a billion dollars in fines and disgorgements from return of these ill-gotten

gains to help consumers. My opinion is we now need to do the same thing on opaque petroleum markets.

Congress nearly—Congress, in 2007, gave this identical authority to the FTC. So today, I hope to ask our witnesses about this. This is something that we would like to see the FTT—FTC be the watchdog on this issue and be more aggressive in protecting consumers.

I want to thank Ranking Member Wicker for pushing the FTC to try to find out what they have been doing on this issue. That is why today we are also sending a letter from my West Coast colleagues urging the commission to investigate abnormally high West Coast prices. And we are working on legislation to give the FTC more authority and access to data so that we can properly police these markets.

The bottom line is fair markets are not mysterious. Fair markets are transparent. And I hope that we can have these issues discussed today, as members of the Committee know how important these prices are to their consumers.

I will now turn to my colleague, Senator Cruz, for his opening statement.

STATEMENT OF HON. TED CRUZ,
U.S. SENATOR FROM TEXAS

Senator CRUZ. Thank you, Madam Chair. Over the past 15 months, we have seen inflation grow higher than at any time in the last 40 years. Perhaps the most painful driver of inflation has been the skyrocketing cost of gasoline at the pipe—pump. When Joe Biden took the oath of office, the average retail price of gasoline was $2.38 a gallon. Today, it is $4.23 a gallon. In some parts of the country, the price has crossed $6.90 a gallon.

This was not an accident. It was not an unintended side effect. Nor was it principally the result of the war in Ukraine. This was the result of the Green New Deal zealots in the Biden Administration. They told the American people they would do this, and they kept their promise. And now, the Democrats have discovered they have a problem.

That is why we are having this hearing. It is not to discuss how President Biden launched a war on American energy and would rather buy gas from the Maduro regime or from Vladimir Putin than from Americans making money here in America. Rather, it is that people do not like paying $4 and $5 and $6 and $7 a gallon to fill up their tank. This is a political problem. And for them, political problems require a political solution.

Just like with inflation for this Administration, where they have had five separate explanations in 15 months—at first it did not exist. The White House told us there is no inflation. Then, we were told it was transitory. Yes, it exists but just for a brief moment. The third explanation was it is a high-class problem. This came from the White House Chief of Staff. This one, in particular, I have no idea what it means.

The fourth explanation was, yes, inflation exists. No, it is no transitory. High class is not working. But it is a good thing. That was the White House's pitch. Inflation is a sign of just how fan-

tastic the economy is doing. And cannot you wait until it does better, and inflation goes even higher.

And then, there is explanation number five that the White House has grasped onto, and I am going to predict that every Democrat on this committee is going to echo, which is Putin, Putin, Putin. The inflation you are seeing, the gas prices, it is all Vladimir Putin, don't you know? Does not have anything to do with the domestic policies here. Now, the war in Ukraine was caused by mistakes from this Administration, notably President Biden waiving sanctions on the Nord Stream 2 national pipeline, which enabled Putin to complete that pipeline. And President Zelensky told us that is the reason why Putin invaded Ukraine. But virtually every Democrat—44 Democrats voted with the Biden White House, against Ukraine and against sanctions on Putin and Russia and Nord Stream 2, because it seems the only pipeline in the world that our Democratic colleagues like, is a Russian pipeline that benefits Putin. And the war in Ukraine, before the war started—before Putin invaded Ukraine, gasoline prices had already risen 48 percent, before the first tank rolled in.

Second, the political solution is to blame the oil companies. Apparently, these big, bad oil companies, they do not want to sell you oil. They are secretly sitting there saying, "We do not want any oil. We do not want to sell any. That whole profit stuff, we are not for it." It could not be that those nice fellows in the White House enacted policies to cause this to happen.

This is world class gaslighting. Only a political operative would try to sell you something so absurd. Even President Obama's White House Economic Advisor, Steve Rattner, recently stated, "This is Biden's inflation, and he needs to own it". That is exactly right.

The Biden Administration's assault on oil and gas production began during his campaign, when he pledged, during the debate—and I want you—I want you to look at what he said. He said, "No more drilling on Federal lands. No more drilling, including offshore. No ability for the oil industry to continue to drill, period, ends." That is what he promised the American people. And you know what? He delivered on that promise. His first day in office he canceled the Keystone pipeline. The next week he halted all Federal oil and gas lease sales, stopping development on the part of the economy that produces 24 percent of America's energy.

On May 7, Biden's Interior Department announced plans prohibiting oil and gas production on 30 percent of U.S. Federal land. On June 1, Biden revoked leases on the north slopes of Alaska, totally 16 billion barrels of oil in stranded production. On October 7, Biden eliminated Trump's permit streamlining regulations. On October 29, Biden's Interior began using the "social cost of carbon" in permitting, which is a new kind of analysis, never enacted by Congress, designed to get to know and deny permits. And then, on March 21, just a few weeks ago, Biden's Security and Exchange Commission announced a new regulation aimed at reducing investment in oil and gas, cutting off capital for drilling.

Supply and demand has been how prices have been set from the dawn of time. Supply and demand still operates. The Biden Administration has waged a war on supply and prices have skyrocketed. This is not an accident. This is not Putin. This is Joe Biden and

the Democrats and the Green New Deal, and they're desperately looking for a political excuse to blame somebody else for the consequences of what they promised they would do to the American people.

The CHAIR. Thank you, Senator Cruz. Now, we will turn to our witnesses. I guarantee you we are here to find out about transparency in oil markets and protecting our consumers from dark markets. We would like to welcome Mr. Robert McCullough, who is a principal of McCullough Research. And Kathleen Sgamma, who is with the Western Energy Alliance, from Denver, Colorado.

Welcome, Mr. McCullough. You are welcome to make your opening remarks. You need to hit a button there, sir.

STATEMENT OF ROBERT F. McCULLOUGH, JR., PRINCIPAL, McCULLOUGH RESEARCH

Mr. McCULLOUGH. Sorry. Thank you very much, Chairman, and thank you very much to the Committee members for the invitation.

The CHAIR. Maybe pull the microphone a little bit closer, too. Thank you.

Mr. McCULLOUGH. I am going to talk more narrowly on transparency, but I am also going to talk a little bit about drilling and windfall taxes.

Let us start with transparency. Our commodity markets started with the Chicago Board of Trade in 1848. It has always been an area of challenges and price manipulation, a variety of other games, have been prevalent. This does not mean that those markets are not valuable. They are exceedingly valuable. It does mean that the best way to avoid mugging is to erect streetlights. I grew up in a rough neighborhood in Chicago. I can tell you streetlights work very well.

We have three major energy commodities fueling the U.S. economy—electricity, natural gas, and oil. Nothing fancy about that. Electricity and natural gas are growing rapidly. Oil is gradually shrinking in importance, but it is still a major component of the U.S. economy.

After Enron's fiasco, we enabled very good transparency rules for electricity and natural gas. I was part of that. The 2003 final study by the FERC identified 100 different schemes and set out rules and regulations to keep those in check. Those have largely worked. The CFTC has authority and has adopted similar regulations. Those work reasonably well for futures markets.

There is, however, one gaping hole. That gaping hole is spot oil, spot gasoline. Those do not have a clear assignment. The FTC has been, to a degree, assigned that, but it has never been enabled. It has never been really driven to the same level of authority that we see at the FERC and the CFTC.

Now, I am not here to explain why I think the rapid rise of oil this spring was due to Putin's war. Nor do I think there is anything we can do about that in the short run. They are the world's largest oil exporter. Uncertainties in the market show up in the world's foreign markets. That is simply a fact.

We also know that, for most U.S. states, the correlation between the Brent and WTI oil prices and retail gasoline prices is close to absolute. That is not true everywhere. And I have spoken before

Congress before, and I have certainly written often on the problem we have in California. Now, why is California a problem? We really do not have pipelines across the Rockies. So, it is an island. It has special conditions and taxes, understood. But even when those are corrected for, in a statistical sense, we see the California prices diverge from the fundamentals we count on. Case in point, last month, when the price of gasoline began to fall, as the price of oil began to fall, in the other U.S. states, the price of gasoline continued to increase in California.

Why is that? Well, in part because we do not have much understanding, in the public eye, of where those prices come from. Central role in all of the contracts are prices set by a price reporting agency called OPIS. I am not saying that anything they do is wrong. But I am saying that it is—as far as I understand, no Federal agency has a subscription to that newsletter. So, until you know what is happening with that index, you do not know what is happening with gasoline prices. And when we went through and looked at this, in detail, it indicated to us that consumers in California paid $500 million extra last month than what they would have paid if they had been in any other state.

Now, to drilling. It is critical for the U.S. to expand its output, not because I want to see more people buy gas-fuels cars, but because we need to reduce Russia's exports. Our drilling rates are down. That is because our foreign market is not active. We need to actually enable small drillers to actually drill. That means they have to either sell their product forward or be able to borrow money. That is a Commerce Commission issue.

And finally, windfall taxes. A lot of enthusiasm for that. But when you are considering that, please also consider that any windfall tax has to have an incentive to drill more. The last thing we want to do is discourage people from producing oil and gasoline.

Thank you very much.

[The prepared statement of Mr. McCullough follows:]

PREPARED STATEMENT OF ROBERT F. MCCULLOUGH, JR., PRINCIPAL, MCCULLOUGH RESEARCH

> I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it.
>
> The Wealth of Nations, Adam Smith, 1776, Book IV., Chapter 11.

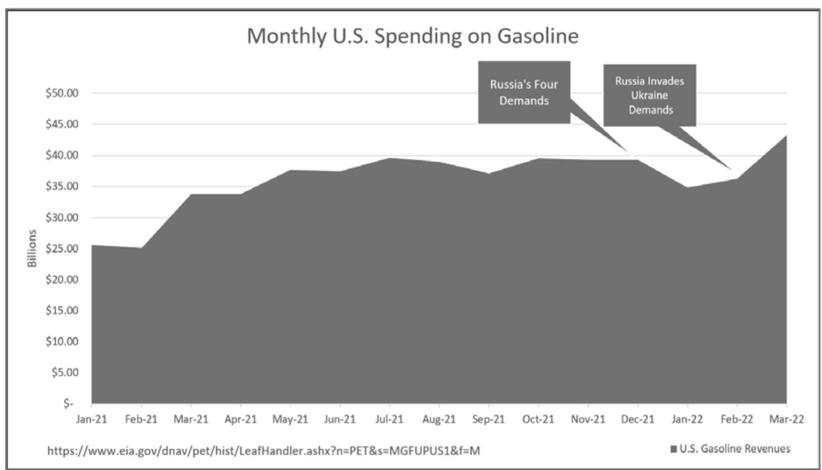
> Trust, but verify
>
> Remarks on Signing the Intermediate-Range Nuclear Forces Treaty, Ronald Reagan, 1987.

The economic impacts of the Russian Federation's war on Ukraine have surprised many. The rapid increase in oil prices reflect a legitimate concern that the world's largest oil exporter—Russia—may restrict exports or be subject to international boycotts or embargoes. However, in many cases, public perceptions of the United States and its energy balance have lagged behind market developments. This has led to unfounded fears of a 1970s style energy crisis.

In reality, the United States is now roughly able to supply its own requirements and is not in any risk of reliving the painful days of the 1972 oil boycott. As the world's largest oil producer, the U.S. buys and sells petroleum and natural gas products on an ongoing basis. Mexican cars and trucks run on U.S. refineries that, in turn, rely on Canadian crude. This means that potential shortages in Europe and China can affect prices in Akron, Ohio and Spokane, Washington.

To a lesser extent, the expansion of liquified natural gas exports from the U.S. to international markets has also begun to link prices in U.S. and foreign natural gas markets.

The war is having massive impacts on the U.S. economy. National gasoline prices have increased 38 percent since last March. Combined with the recovery from the pandemic, spending on gasoline has increased 44 percent:



The most effective policy to curb Russian aggression in Ukraine is to displace Putin's oil exports with enhanced U.S. production while protecting U.S. consumers from unnecessary price increases at the pump.

I have conclusions and recommendations in three areas: transparency, drilling, and windfall taxes:

Transparency:

1. Transparency is the least expensive and most effective tool in guaranteeing efficient markets. U.S. Oil and gasoline markets are less transparent than almost any other commodities—and vastly less transparent than competing fuels like electricity and natural gas. A database of wholesale transactions for oil and gasoline similar to FERC's database for electricity is critical to discourage anomalous trading.
2. Pivotal price reporting agencies need to provide pricing information to at least one of the relevant Federal agencies—the FTC, FERC, or the CFTC. Assigning this critical function to the Federal Trade Commission is appropriate.
3. The well-known "up like a rocket, down like a feather" phenomenon needs to be explored. This form of pricing is neither equitable nor efficient. In volatile times—like today—it penalizes consumers and benefits suppliers.
4. Certain markets, like California, are prone to mysterious price excursions. In the second week of March, as oil and gasoline prices fell across the U.S., California's gasoline prices continued to increase. There is some evidence that trades which caused this increase may have been doubtful.

Drilling:

1. The duration of the war between Russia and Ukraine is impossible to forecast and the unpredictability of its scale and duration appears to be making it difficult for smaller oil producers to expand capacity as rapidly as in earlier years.
2. The Federal government's existing oil inventory could be "loaned" to the market and replaced by forward purchases in 2023. This would allow drillers with financing constraints to guarantee revenues for wells drilled today. President Biden took first steps down this path just a few days ago.
3. Replacement of draws from the strategic reserve should be undertaken by purchases of crude in West Texas Intermediate forward markets. This will ex-pand liquidity and provide broad incentives for additional production in

the Anadarko, Appalchia, Bakken, Eagle Ford, Haynesville, and Permian basins.

Windfall Profits:

1. It is logical to believe that first quarter 2022 earnings are going to be enormous. However, impacts on consumers and other businesses from higher cost fuels may also be enormous.
2. This is a case where a "windfall" tax, with proceeds specifically targeted to benefit at risk individuals and businesses, may be beneficial for society as a whole.
3. Adding an incentive to increase oil production to the windfall tax—perhaps by adding a credit against the windfall tax based on additional investments in oil production—would be helpful in speeding recovery of U.S. production.

Overview:

Transparency is the simplest and cheapest way to lower energy prices. Since the Chicago Board of Trade commenced operations in 1848, commodity traders have created hundreds of variants on commodity pricing schemes. As the traders evolved new versions, the law and regulatory agencies have evolved with them. The collapse of the Insull empire in the 1930s brought into existence FERC, the SEC, and the CFTC. The collapse of the Enron empire twenty years ago also increased awareness of just how fragile commodity marks can be.

In 2003, FERC released a virtual encyclopedia of market manipulation schemes in electricity and natural gas.[1] This described many, many different energy commodity "games" that had created rolling blackouts, bankruptcies, and massive overcharges in California.

Many of these "games" are still in place today—although less so in electricity and natural gas. The ability to manipulate price reporting agencies—exchanges and industry newsletters—by wash trades did not go away since they are now prohibited at FERC and the CFTC.

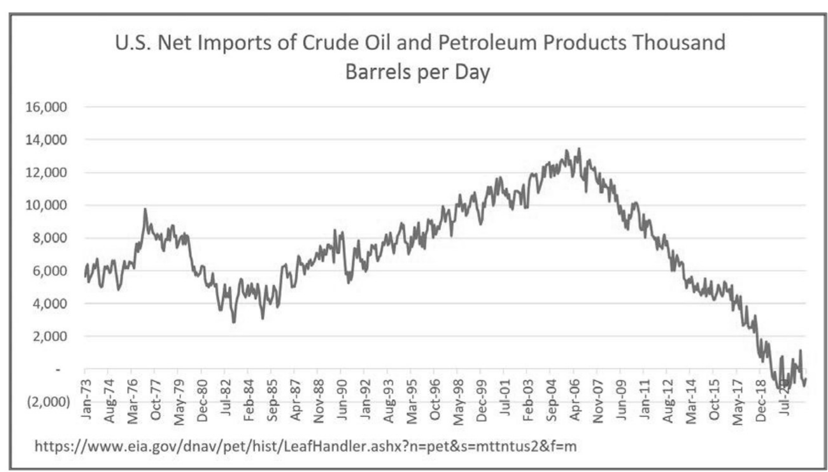
Some years ago in Texas, my staff identified a disgraced Enron trader from Portland, Oregon who had simply moved to Dallas, Texas to take up his old manipulations. Below, I will identify a possible manipulation of a price reporting agency in California who may well be a victim of exactly the same techniques—at a cost of $500 million to California gasoline customers last month.

These are easily discouraged when the indexes that drive markets are calculated transparently. When the calculations are opaque, this is a continuing temptation to take advantage of consumers and make our economy less efficient.

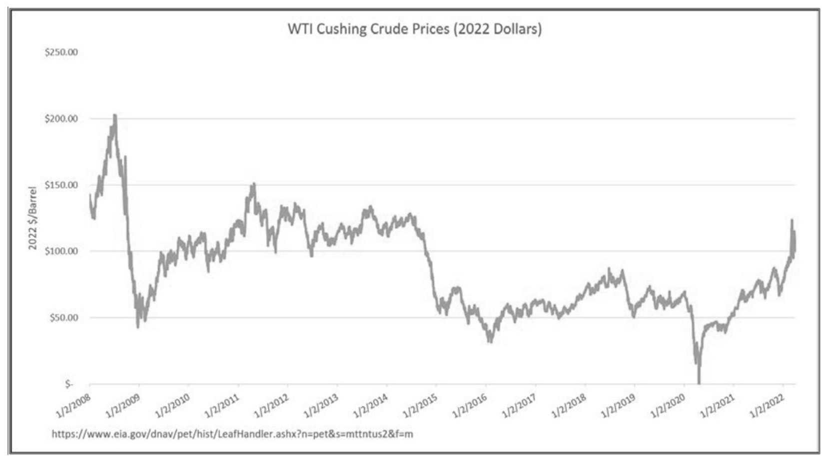
The last peak in oil prices took place in 2008. At that time, the U.S. imported a significant portion of its needs. Since then, crude prices and U.S. imports have declined, although they continue to reflect shifts in global supply and demand. In the recent years, the U.S. exported more petroleum products than it imported.[2]

[1] Final Report on Price Manipulation in Western Markets, Docket No. PA02–02–000, Donald J. Gelinas Associate Director—OMTR, Federal Energy Regulatory Commission, March 26, 2003.

[2] Supply and Disposition Total Crude Oil and Petroleum Products at *https://www.eia.gov/dnav/pet/PET_SUM_SND_A_EP00_MBBL_M_CUR.htm*



In real and nominal terms, crude prices have remained below the July 2008 peak, but the increase in prices over the past three months have nonetheless been significant:



Below, I address three basic issues in the current crisis: transparency, drilling, and windfall profits.

Transparency:

While competing fuels like natural gas and electricity are reviewed for market manipulation at the Federal Energy Regulatory Commission and futures are reviewed by the Commodity Futures Trading Commission, no specific agency has jurisdiction over spot oil and gasoline transactions. This is surprising since firms that are active in oil and gasoline trading have often faced investigations and penalties at both FERC and the CFTC.

To a degree, some state attorney generals have attempted the daunting task of deconstructing petroleum industry pricing, but have always been hampered by a lack of resources and data.

The one exception to this unfortunate state of affairs was with the Interagency Task Force on Commodity Markets Interim Report on Crude Oil in 2008.[3] The task

[3] Interagency Task Force on Commodity Markets Interim Report on Crude Oil, CFTC, July 2008.

force issued a useful interim report in June 2008, soon after oil prices peaked. However, following this, the final report and the entire interagency task force was never heard from again.

Data transparency is the least expensive and most effective method of regulating market manipulation. Unfortunately, oil and gasoline has only a fraction of available information compared to competing fuels. A case in point is the public release of electric transaction data by the Federal Energy Regulatory Commission. The Electric Quarterly Report provides the vast majority of wholesale electric transactions including buyer, seller, price, location, and many other details.[4]

Adam Smith's famous study on the wealth of nations addresses the benefits of such trans-parency measures:

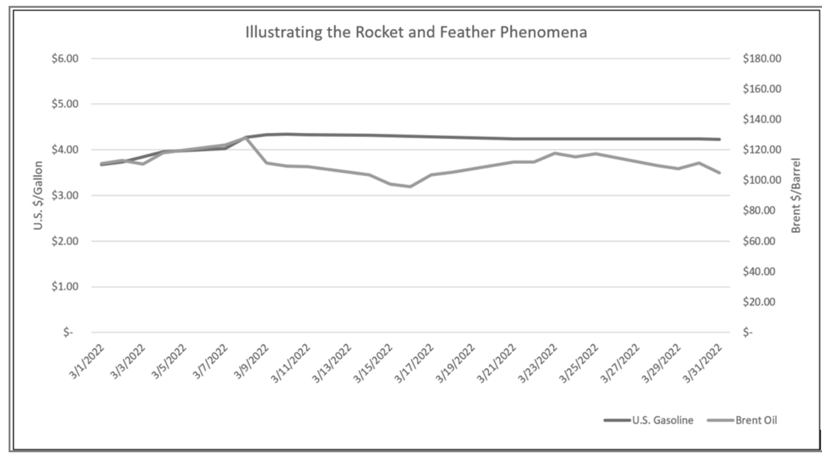
> The landlord and tenant, for example, might jointly be obliged to record their lease in a public register. Proper penalties might be enacted against concealing or misrepresenting any of the conditions; and if part of those penalties were to be paid to either of the two parties who informed against and convicted the other of such concealment or misrepresentation, it would effectually deter them from combining together in order to defraud the public revenue.[5]

Wash trades (FERC's term) or prearranged trades (CFTC's term) are trades without an underlying economic purpose. Such trades are often used to create a false impression of quantities or prices.

A similar database for wholesale oil and gasoline transactions meeting reporting definitions would be considerably smaller than the current electric database maintained by FERC. The advantage of such a database is that prohibited transactions like wash trades can easily be reviewed.

Anomalies in oil and gasoline markets are not unusual. One continuing mystery concerns the inconsistent response of gasoline markets to changes in the price of feedstocks. For example, the phrase "up like a rocket, down like a feather" has often been used to describe the rapid increase in retail gasoline prices when oil prices rise, but the very slow decrease in gasoline prices when oil prices fall.

The rocket/feather effect occurred recently when the price of oil increased markedly in the first week of March and then fell even more dramatically in the second week of March:



There is nothing mysterious in the rapid response of gasoline prices to oil price increases. The contracts between refineries and downstream customers often specify specific wholesale market prices. Such contracts should also reduce the price of gasoline when oil prices fall—unless transactions are affecting the indices used in the contract.

The mystery lies in the "feather" pricing—what transactions are affecting market indices and why these transactions are at odds with economic theory.

In a volatile oil market, as is present today, the rocket/feather pricing is an undue burden on consumers. It also misprices oil and gasoline throughout the entire econ-

[4] *https://www.ferc.gov/power-sales-and-markets/electric-quarterly-reports-eqr*

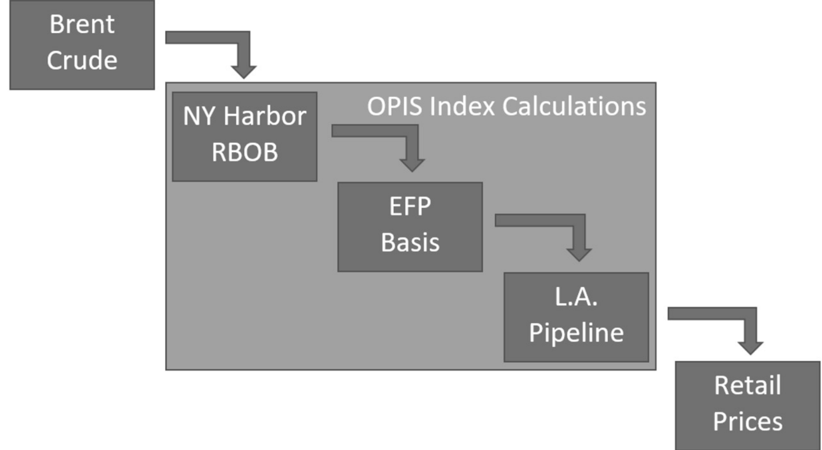
[5] The Wealth of Nations, Adam Smith, 1776, Ch. II, Pt. II.

omy with significant negative impacts on inflation and employment. Put more simply, a sudden increase and following decrease in oil prices should not be creating a prolonged rise in downstream prices.

North America is largely separated into two market areas: the West Coast and the states and provinces east of the Rockies. While oil and gasoline are produced in both areas, the West Coast tends to rely more on world markets—priced at the Brent market price—than the area east of the Rockies which receives much of its supplies at the slightly lower Cushing or WTI market price.

As with other major commodities, wholesale oil and gasoline can be purchased in the bilateral market and on one of the commodity exchanges. For the West Coast, there are fewer options and, significantly, a single industry newsletter dominates pricing.

For example, many transactions specify indices published by the Oil Price Information Service (OPIS) newsletter. OPIS staff collect transactional data from industry participants and calculate indices for a variety of products and services from California to Washington.

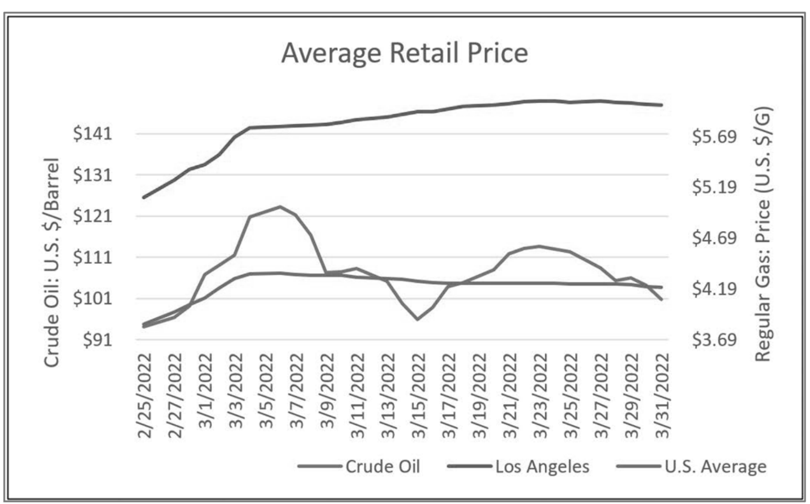


The center of this diagram is the “EFP Basis”. This is an industry term for Exchange of Futures for Physical where oil or gasoline is exchanged for a futures contract. In the case of California, the forward market of gasoline at the NY Harbor is a common choice for the futures contract. OPIS staff assemble the index from transactions submitted to them by traders.

These transactions are not easily understood. Moreover, there is very little transparency concerning the identity of the traders making these transactions, the quantities transacted, and whether the transactions are consistent with rules normally enforced in commodity markets which are nearly impossible to monitor. This is a continuing problem in California and needs to be addressed by a formal investigation.

There has been considerable interest in explaining why Los Angeles prices continued increasing after oil prices began declining on March 8, 2022.[6] National prices decreased during the same period. There were no major events on the 8th of March that would explain the different directions in California and elsewhere in the United States.

[6] U.S. Gas Prices Are Coming Back Down, but Not in California, Soumya Karlamangla, New York Times, March 24, 2022.



California is a very complex market with high taxes and expensive carbon programs borne primarily by the consumer.[7] Unfortunately, the market is both highly concentrated and even more opaque. As Enron's chief West Coast trader remarked twenty years ago: "California Market Structure ISO and PX have a complex set of rules that are prone to gaming".[8] This is still true today for petroleum products in California.

It is not unusual for trades used in the index to be very few in number. This has created the potential for market manipulation in the past and a similar situation exists today.

In the case of California's gasoline prices in March, the prices in the transactions reported to OPIS apparently increased markedly after oil prices started to fall.

A second factor in the opaque California market is an unexplained increase in gasoline prices that occurred in 2015.

Severin Borenstein, a respected professor at UC Berkeley, has identified an unexplained surcharge on California prices that began in February 2015.[9] This curious situation is currently under investigation by state authorities.[10]

We have used a simple scoping model over the past decade to look for periods when California gasoline prices are anomalous. The week of March 6, 2022, for example, had high prices while our scoping model would have indicated a substantial reduction:

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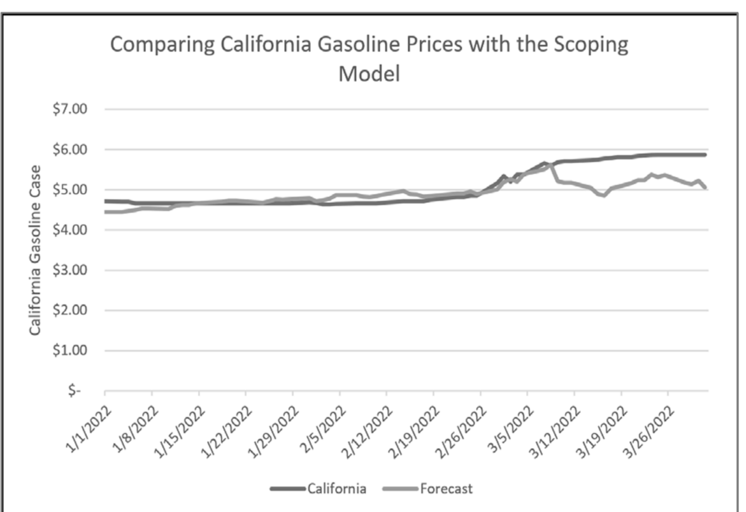
[7] See Fuel Tax Incidence and Supply Conditions, Justin Marion and Erich Muehlegger, M–RCBG Faculty Working Paper Series | 2010–02, for example.

[8] Western Power Markets, Tim Belden, May 3, 2000, Slide 12.

[9] Calculation of California's Mystery Gasoline Surcharge, Severin Borenstein, May 20, 2019.

[10] Why California gas prices are so high and vary so widely: 'Mystery surcharge' and more, Connor Sheets, L.A. Times, March 14, 2022.



What happened in mid-March to increase prices in California even after oil prices fell? While inventive minds may hypothesize a sudden increase in driving just before the spring school break or the anticipation of a strike that took place a week afterwards, the reality is even simpler. The basic index of transactions in California—used in contracts between refiners, middlemen, and retailers—took a sudden leap to almost one dollar per gallon.

The appendix to this report provides the statistical evidence from the simple scoping model.

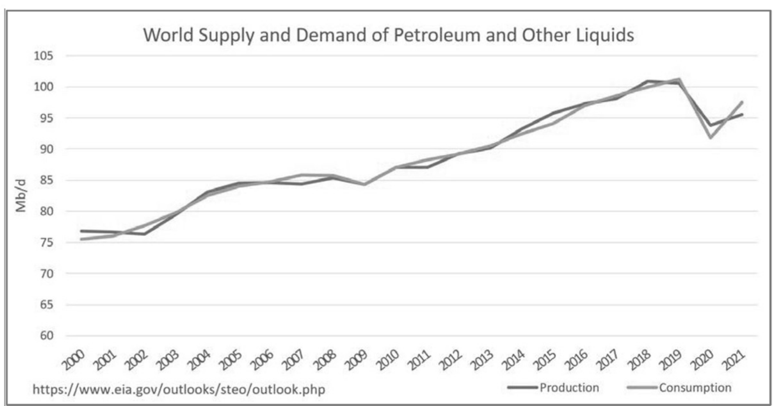
If gasoline sales in California are comparable in March 2022 to those that took place in March 2021, the impact on consumers was on the order of $500,000,000 last month.

In passing, it also indicates that the mystery surcharge identified by Professor Borenstein added an additional $0.4471/gallon.

We used a similar scoping model to look for anomalies in neighboring states—Washington and Oregon—and major market states like Illinois, New York, and Texas. The situation in California in March stands out compared to the prices elsewhere in the United States.

Drilling:

Declines in consumption during the pandemic triggered a decline in prices and a corresponding decline in oil discovery.



Seeking more oil production and a reduction of sanctions against Venezuela and Iran has been suggested. Unfortunately, neither of these countries is likely to act against the interest of the Russian Federation.

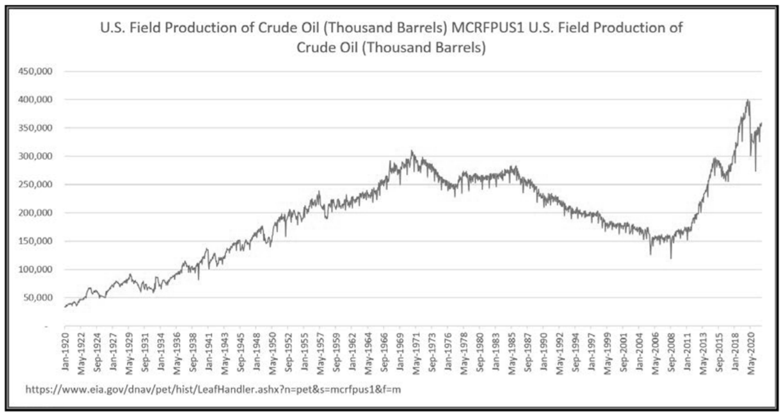
Other possible sources include increased production by OPEC and/or a reduction in the disruption of the Libyan oil fields. There are a variety of reasons why this might be problematic as well.

The most straightforward solution is to increase production from existing fields in the U.S. and Canada. This has two major benefits:

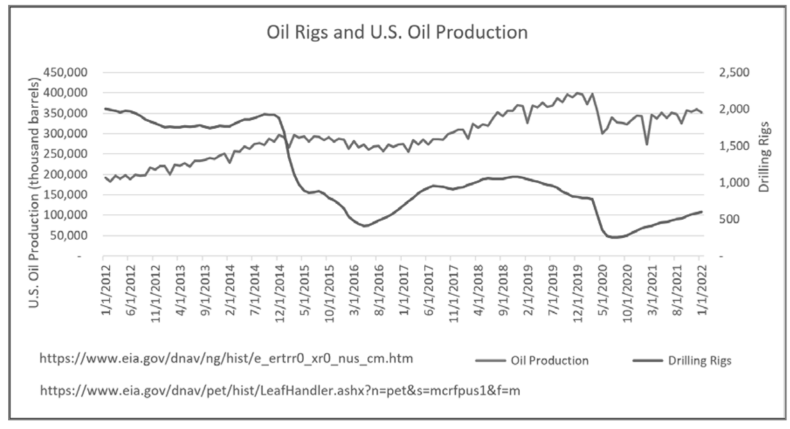
1. U.S. shale production is easily expanded
2. Additional North American exports can be directed to allies in need—especially in Europe.

Successful oil sanctions against Russia will cause less harm to the world economy if U.S. oil production ramps up. Unfortunately, the U.S. response to high oil prices has been slow and cautious. To meet needs in Europe, the U.S. may need to consider financing support for independent wildcatters in mid-continental oil fields to accelerate U.S. oil production.

The still unexplained spike in oil prices on July 3, 2008 had momentous impacts on U.S. oil production. The high prices spurred innovation in three areas—discovery, access, and extraction. Put more colloquially, supercomputers have allowed a high degree of precision in finding oil, while horizontal drilling allows a broader access per well, and fracturing (aka fracking) has accelerated oil recovery. The resulting oil production for the United States was striking:



U.S. oil production is roughly based on the number of drilling rigs in operation—particularly over the past decade:



The shift in technology also changed the business considerably. Using older technologies, a virtual forest of wells could occupy an oil field. Today, a single well exploits a much larger area. This is reflected in the continuing downward slope of the number of drilling rigs even as U.S. oil production has increased.

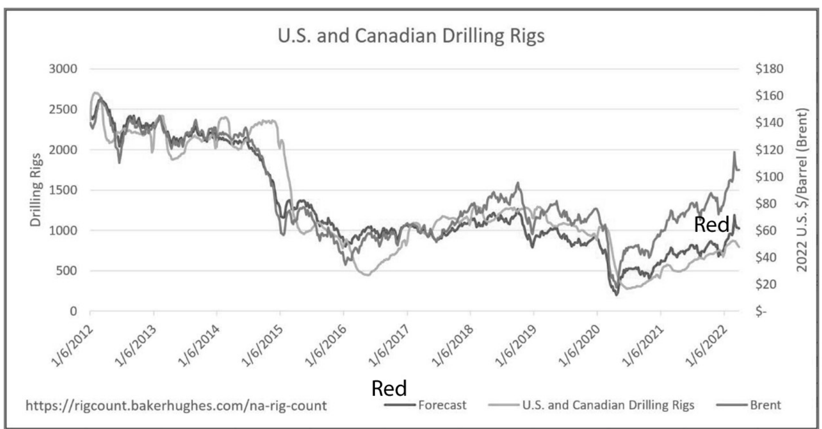
Mathematicians describe the point on a curve when it changes direction as an inflection point. For drilling rigs, the inflection point is approximately $60/barrel. Below $60/barrel, the number of active drilling rigs falls. When the prices are above $60/barrel the number of active rigs increases.

We are currently in a period of increase. Since the price of oil passed $60/barrel one year ago, the number of active rigs has increased by 17 per month. During the previous period in which drilling increased, as can be seen in the chart above, the number of active rigs increased by 31 active rigs per month, nearly twice as many.

A more scientific approach is to construct a simple mathematical model as a function of the real oil price and the date. The oil price represents the incentive to increase or decrease drilling. The date variable is a rough representation of the greater efficiency of modern drillings—finding more oil while drilling fewer wells:

Active Drilling Rigs = Constant + 13.0 Rigs/$1 increase in the WTI price
–0.03 Rigs per day

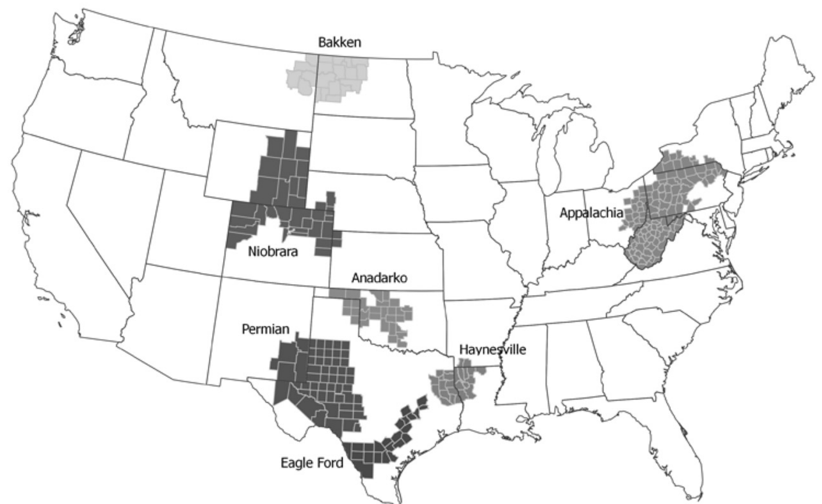
This simple model is statistically significant at the 99.9 percent level and explains 84.2 percent of the explanatory variable.



The area highlighted in red reflects a much slower pace of added drilling rigs than in previous high oil price periods.

Given current incentives, we would expect approximately 300 more rigs to be active as we see today. Based on the relationship between active oil rigs and oil production, this would increase U.S. production by 2 percent—a sizable increment in world oil production.

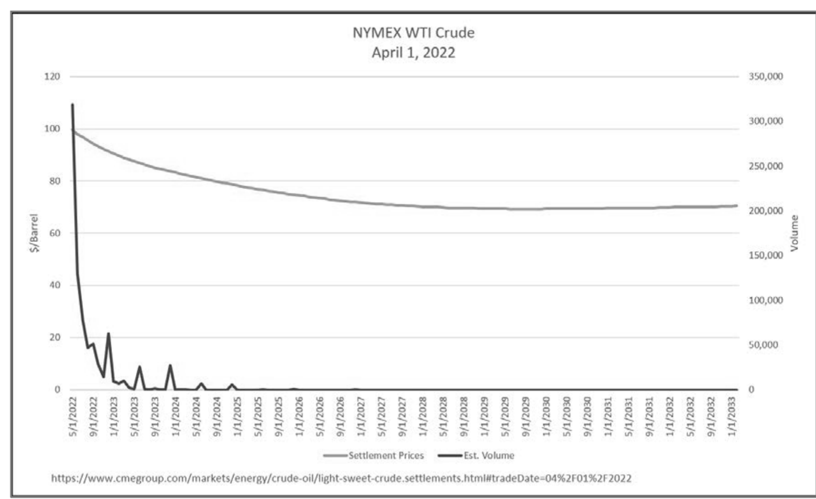
While market structure in some areas—such as California—have raised market power concerns over the years, oil drilling in U.S. mid-continental basins are highly competitive. The map below illustrates a variety of basins where the constraint may well be financing for smaller companies:



eia Source: U.S. Energy Information Administration

Short term financing guarantees may provide needed relief for oil price increases while displacing Russian oil exports.

An important part of the problem may be explained by the forward curve for WTI crude. The NYMEX curve shows a surge of prices in the short run, but a gradual decline to long term historical levels:



Thin trading in later months may prove a challenge to smaller drillers. In a perfect world they could depend on forward markets to finance their projects. In the current environment there is relatively little volume past September and a steady decline to long-term break-even prices in the $60 to $70/barrel range.

There is an industry model for solving this problem that might be useful. When a commodity is needed earlier in the market than can easily be produced, the product can be "borrowed" from existing inventories and "returned" later. The U.S. government maintains a large inventory of oil which made more sense when the U.S. was a net importer. One approach to make financing current product easier would

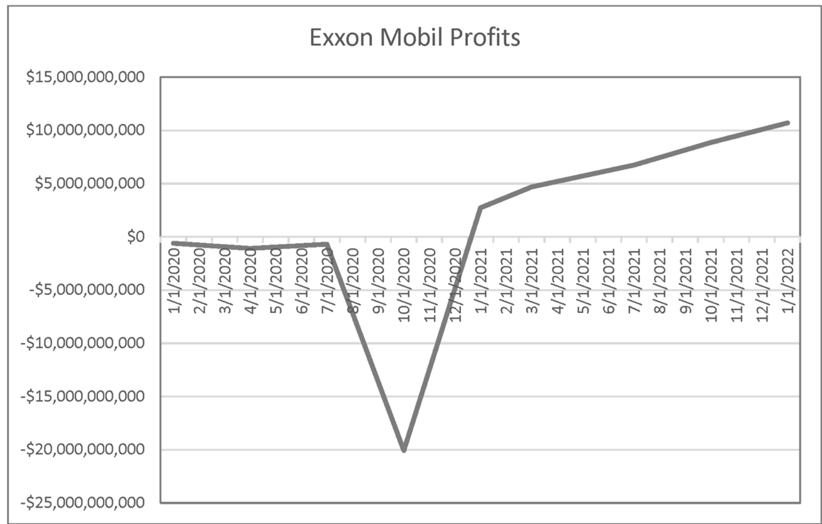
be for the U.S. government to contract for forward supplies of oil from U.S. producers. This would free up existing stocks for needy European allies.

It should be noted that nothing in this proposal will increase global emissions. Increased oil production will simply reduce Russian oil sales—and Russian oil revenues—as U.S. production provides supplies to European allies.

Windfall Profits:

An unjust foreign war raises many complex ethical questions. Most of these go far beyond the scope of this testimony. However, the sheer scale of dollars involved make this an important policy question—what is the appropriate response to massive windfall profits? This is also important when, as the United States is the largest consumer of petroleum products, much of the windfall profits come from transactions that affect U.S. consumers businesses.

Exxon-Mobil, for example, has the potential to earn over $10 billion in the first quarter of 2022. This estimate is based on changes in market prices and has—very conservatively—assumed that costs will increase by the same margin.



The following table shows comparable estimates for eight other major participants in the industry:

Company	First Quarter 2021	First Quarter 2022	% Change
BP	$ 4,667,000,000.00	$ 6,985,417,380.18	50%
Chevron	$ 1,377,000,000.00	$ 8,815,047,585.41	540%
ConocoPhillips	$ 982,000,000.00	$ 2,953,606,092.59	201%
Equinor	$ 1,854,000,000.00	$ 3,503,407,667.03	89%
Exxon-Mobil	$ 2,730,000,000.00	$ 10,605,047,399.46	288%
Marathon Petroleum	$ 64,000,000.00	$ 3,182,164,319.77	4872%
Occidental Petroleum	$ (346,000,000.00)	$ 3,591,071,365.41	N/A
Phillips 66	$ (654,000,000.00)	$ 719,023,744.88	N/A
Shell	$ 5,660,000,000.00	$ 13,249,651,986.97	134%

[11]

These are remarkable levels of earnings.

The previous oil price peak—on July 3, 2008—lasted for a very short period. Given the current news from Ukraine, it is conceivable that the high level of profits may extend beyond just one quarter.

[11] The rate of increase for Occidental and Phillips are not reported since the growth rate from loss to profit does not yield a meaningful percentage.

This unprecedented situation will soon be showing up throughout the supply chain—potentially reducing production and employment for commercial and industrial customers. This is even more important. In addition, there will be significant inflationary impacts.

As noted in the previous section, the most important issue is to increase oil production. This will alleviate supply issues in Europe as well as lower prices.

A windfall tax might also be a useful tool. A windfall tax can be constructed to provide incentives for expansion of output as well as to recapture windfall profits. If the windfall tax was calculated on the basis of earnings/barrel, rather than just earnings, it would create a major incentive to resume drilling and producing.

Here is one possible formulation:

The windfall tax would only be paid on profit levels—as a percentage of oil and natural gas producing assets—higher than the 2021 level. Additions to oil and gas producing assets will lower the taxable percentage.

$$\text{Taxable Profit Rate} = \frac{\text{2021 Earnings}}{\text{2021 Producing Assets}} - \frac{\text{2022 Earnings}}{\text{2022 Producing Assets}}$$

Our primary objective is to increase oil producing investments. This would be poorly served if we did not add incentives to increase production while, at the same time, raising revenues to offset the impact of inflationary pressures on U.S. consumers.

Conclusions:

Our conclusions reflect the three primary areas addressed in this report.

Transparency:

Transparency is the least expensive and most effective tool in guaranteeing efficient markets. Oil and gasoline are less transparent than almost all other commodities—and vastly less transparent than competing energy products, like electricity and natural gas. The easiest and least complicated solution to anomalous market outcomes in oil and gasoline would be to implement a database similar to that of FERC's Electric Quarterly Reports, for transactions recorded by price reporting agencies.

Critical price reporting agencies need to provide pricing information to at least one of the relevant Federal agencies—FTC, FERC, or CFTC—on transactions used to implement market indices.

The well-known "up like a rocket, down like a feather" phenomena needs to be explored. This form of pricing is neither equitable nor efficient. To the degree that the "feather" reflects anomalous trading behavior, a formal investigation is appropriate.

Certain markets, like California, are prone to mysterious price excursions. In the second week of March as oil and gasoline prices fell across the U.S., California's gasoline prices continued to increase. Our scoping model indicates that prices in California reflected very different trading patterns in gasoline than elsewhere in the United States.

It also appears that Professor Borenstein's gasoline surcharge concerns are supported by the data.

Drilling:

The duration of the war between Russia and Ukraine is impossible to forecast and the unpredictability of its scale and duration appears to be making it difficult for smaller oil producers to expand capacity as rapidly as in earlier years.

To the degree oil production is subject to financing constraints, this needs to be addressed directly and solved in the short run.

The Federal government's existing oil inventory could be "loaned" to the market and replace by forward purchases in 2023. This would allow drillers with financing constraints to guarantee revenues for wells drilled today.

Windfall Profits:

It is logical to believe that first quarter 2022 earnings are going to be enormous. How-ever, negative impacts on consumers and businesses from higher fuel costs may also be enormous.

This is a case where a "windfall" tax specifically targeted to at-risk individuals and businesses may be beneficial for society as a whole. A windfall tax need not be restricted to a tax on earnings. It is possible to structure a tax that both recaptures some of the profits and provides an incentive to increase production. A good

choice would be a tax on earnings above previous levels—based on the ratio between earnings and producing assets.

I would close with one more quote from Adam Smith:

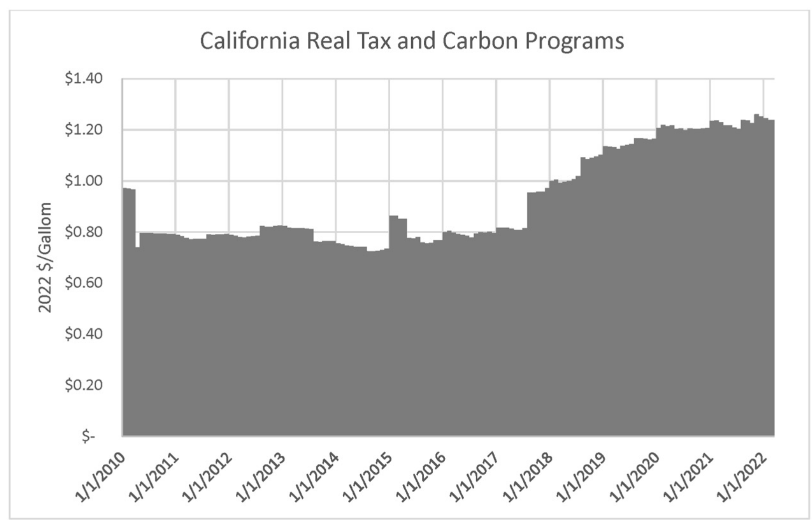
> People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.[12]

Statistical Appendix:

For the past decade, we have used a simple scoping model to see if specific states and cities have departed from fundamentals. The basic theory is straightforward—in an efficient market, gasoline prices should track closely to feedstocks. The primary feedstock, of course, is crude oil.

California is a special case in the United States because of the size and complexity of gasoline taxes. The standard analysis of gasoline tax incidence was formulated in a study by Justin Marion and Erich Muehlegger.[13] They found, not surprisingly, that such taxes are primarily paid by consumers.

In California, real taxes over the past decade have increased dramatically:



Professor Borenstein's observation that gasoline prices increased sharply in February of 2015 is now being investigated by state authorities.[14]

Given the scale of this unexplained gas price increase, we have added a "dummy variable" for February 2015 to the present.

The analysis uses the standard tool of the economic analyst, linear regression. This method identifies the quality of the regression (also known as its significance) and the impact of its explanatory variables.

The dependent variable is the real retail price of California CARBOB reduced by the level of gasoline taxes. The independent variables are Brent and WTI crude plus a dummy variable for Professor Borenstein's unexplained retail price increase post February 2015.

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[12] The Wealth of Nations, Adam Smith, 1776, Chapter X, Part I

[13] Fuel Tax Incidence and Supply Conditions, Justin Marion and Erich Muehlegger, M–RCBG Faculty Working Paper Series | 2010–02.

[14] Why California gas prices are so high and vary so widely: 'Mystery surcharge' and more, Connor Sheets, L.A. Times, March 14, 2022.

```
. tsset datenumber
        time variable:  datenumber, 1 to 2500
                delta:  1 unit

. reg california brent wti borenstein

      Source |       SS           df       MS      Number of obs   =     2,500
-------------+----------------------------------   F(3, 2496)      =   4508.32
       Model |  883.029344         3  294.343115   Prob > F        =    0.0000
    Residual |  162.960932     2,496  .065288835   R-squared       =    0.8442
-------------+----------------------------------   Adj R-squared   =    0.8440
       Total |  1045.99028     2,499  .418563536   Root MSE        =    .25552

------------------------------------------------------------------------------
  california |      Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
       brent |   .0201464   .0009573    21.04   0.000     .0182691    .0220236
         wti |   .0041536   .0010849     3.83   0.000     .0020263    .0062809
  borenstein |   .4470857     .02229    20.06   0.000     .4033769    .4907946
       _cons |   .8456218   .0416732    20.29   0.000     .7639042    .9273395
------------------------------------------------------------------------------

. dwstat

Durbin-Watson d-statistic(  4,  2500) =  .0318818
```

As with all time series regressions including prices, there is a substantial degree of auto-correlation. This does not affect the estimated coefficients, but it does overstate the statistical significance of the results.

A standard solution to the problem of autocorrelation is to re-estimate the model using the Cochrane-Orcutt procedure:

```
. prais california brent wti borenstein, corc

Iteration 0:  rho = 0.0000
Iteration 1:  rho = 0.9848
Iteration 2:  rho = 0.9993
Iteration 3:  rho = 0.9993
Iteration 4:  rho = 0.9993

Cochrane-Orcutt AR(1) regression -- iterated estimates

      Source |       SS           df       MS      Number of obs   =     2,499
-------------+----------------------------------   F(3, 2495)      =      4.81
       Model |  .009339112         3  .003113037   Prob > F        =    0.0024
    Residual |  1.61595506     2,495  .000647677   R-squared       =    0.0057
-------------+----------------------------------   Adj R-squared   =    0.0046
       Total |  1.62529417     2,498  .000650638   Root MSE        =    .02545

------------------------------------------------------------------------------
  california |      Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
       brent |   .0011037   .0003484     3.17   0.002     .0004206    .0017868
         wti |   .0001011   .0002523     0.40   0.689    -.0003937    .0005958
  borenstein |   .0051877   .0255125     0.20   0.839    -.0448402    .0552155
       _cons |   3.100217   .7147603     4.34   0.000     1.698633    4.501801
-------------+----------------------------------------------------------------
         rho |   .9992868
------------------------------------------------------------------------------
Durbin-Watson statistic (original)    0.031882
Durbin-Watson statistic (transformed) 1.755452
```

The model is highly significant after correction for autocorrelation, although the WTI and Borenstein variables are not significant. This is not unexpected. WTI crude—priced at Cushing, Oklahoma—is not a primary feedstock for West Coast refineries. The dummy variable for the Borenstein variable is hardly exact and is likely to vary over time.

The CHAIR. Thank you, Mr. McCullough. Ms. Sgamma, thank you for being here.

STATEMENT OF KATHLEEN SGAMMA, PRESIDENT, WESTERN ENERGY ALLIANCE

Ms. SGAMMA. Thank you, Chairwoman and—Chairwoman Cantwell and Ranking Member Cruz, and members of the Committee. Appreciate being here today.

And that was a great segue for me because I agree we should be producing more here in the United States. Western Energy Alliance represents about 200 companies engaged in all aspects of environmentally responsible oil and natural gas development in the Rocky Mountain West.

And I would agree with the Ranking Member that the policies that have been put in place since day one, were definitely designed to suppress American production and those policies continue today. Those policies, in the name of climate change, are ignoring the fact that the oil and natural gas industry is a partner in addressing both climate change and high energy prices.

We can do both. We can produce more here in the United States, where we do it under very strict environmental regulations. We produce fewer greenhouse gas emissions. We—natural gas is the number one reason the United States has reduced more greenhouse gas emissions than any other country. That is through the replacement of coal with natural gas in the electricity sector. And so, we are a partner in climate change. So, these climate change policies that are meant to suppress oil and natural gas production are counterproductive to those climate change goals, as well as contributing to higher energy prices.

So, we indeed want to be part of the solution in increasing production in the United States. I have outlined several policies, in my testimony, that should be reversed, in order to enable us to produce more here, in the United States, rather than advantaging Iranian and Russian producers.

And so, some of those would be, we would love to develop on these 9,000 leases/permits. We are very glad that the White House has changed its tune and does want us to develop on Federal lands, because the messaging, from day one, was no Federal oil. So, we are glad that that has been reversed.

That messaging is important, but it needs to—that rhetoric needs to be backed by policy changes. Some of those policy changes would be to actually enable us to move forward on those leases and permits, to reverse policies like the SEC regulations that are meant to defund, decapitalize the oil and natural gas industry. I had the pleasure, on my plane trip over here, reading through the 500 pages of the SEC rule and the scope is truly—is truly staggering. So, if we want to produce more in the United States, I would say that trying to decapitalize my industry is not a good way to do that.

So, I have outlined several different policies. The Interior Department is sitting on leases and permits, redoing analysis. The National Environmental Policy Act process, which should be a good process, whereby we can get to information that will enable us to operate in a more environmentally responsible manner, is simply used as a weapon now. It is used to delay projects. And so, I think, moving forward with policies—to continue the Trump policies to modernize that and not overturn those would be very helpful, because we know that roads, bridges, pipelines are being held up through NEPA analysis.

And then, simply, we cannot develop wells if we do not have pipelines to put that product into. So, the Administration backing off on policies meant to decertify, or get to an answer of "no" on natural gas pipelines would be extremely helpful, reversing that type of policy. So, we would—we in American oil and natural gas industry definitely want to produce more. We would ask that the Administration work with us and reverse some of those policies that are designed to get in the way of American production.

Thank you.

[The prepared statement of Ms. Sgamma follows:]

PREPARED STATEMENT OF KATHLEEN SGAMMA, PRESIDENT, WESTERN ENERGY ALLIANCE

Since before taking office, President Biden has been clear that his climate change agenda is a zero-sum relationship with the American oil and natural gas industry; action on climate change meant a diminishment of American oil and natural gas. From day one with the cancelation of the Keystone pipeline followed a week later by the leasing ban, this administration was intent on restricting American oil and natural gas. On Federal lands and waters where the Federal government has the most control, he has pledged eliminating it altogether.

But a funny thing happened. Climate change policies meant to make energy prices "necessarily skyrocket" actually achieved their intentions. Energy prices started to rise last summer and the administration started to feel the heat. The first reaction was to ask Russia and OPEC to increase their production. The policies meant to overregulate American oil and natural gas production continued.

When Russia and OPEC failed to heed that request, we in the American oil and natural gas industry made the case that we'd be happy to increase production, but for policies specifically designed to prevent us from doing so. Still the policies continued.

Fast forward to February of this year when Russian tanks rolled across the border of Ukraine and prices jumped even higher. The reality of how Europe and the United States rely on the stable sources of reliable, 24/7 energy that oil and natural gas provide became crystal clear. The fallacy of an agenda meant to constrain American energy was exposed. Rather than backing down on policies purposefully meant to hinder American oil and natural gas, the White House pivoted to blaming my industry for high energy prices.

One of those lines of attack involves 9,000 outstanding leases/permits. Frankly, I'm going to take it as a positive. After spending the last two years talking about "no Federal oil", the president now wanting us to develop on these Federal leases and permits is a positive sign. But it's not just a question of rhetoric. Even while blaming us for not moving forward on these leases and permits, his own Interior Department was taking actions which specifically block us from developing on them. Last week as he requested that Congress fine us for unused leases—as if increasing the costs to develop on them would lead to increased development—the Interior Department informed us that it would not be moving forward with the approvals necessary to do so. Please allow me to elaborate.

First the 9,000 leases. There are about *37,496 leases in effect and actually just 12,068* nonproducing leases, which amounts to a 66 percent utilization rate. That is quite high historically, well above the normal 50 percent rate. My industry continues to produce more on less Federal land. Why aren't we developing on all those "9,000 leases"?

- Many leases are held up in litigation by environmental groups. Western Energy Alliance has been in court for over five years now defending about 5,900 leases representing over 7.3 million acres, or basically every lease sold since 2016 with few exceptions. One case alone in Idaho involves over 2,200 leases. Many of these leases cannot be developed while the cases wind their way through the courts.
  - Because of Western Energy Alliance's intervention in these cases, we have enabled some development to move forward. We were victorious in one case in New Mexico, where we helped defend the record $972 million lease sale in the Permian Basin. Yet despite that victory and the lack of a court order requiring it to do so, the Bureau of Land Management (BLM) has colluded with environmental groups to do yet more greenhouse gas (GHG) analysis on the leases. At least 150 permits for wells that companies wish to drill in the near future are being held up as BLM conducts that extraneous analysis.
  - Likewise, BLM is doing additional climate change analysis on 64 lease sales covered by litigation and does not intend to approve drilling permits while that analysis takes place. BLM is projecting 90 days to complete it, but rarely meets such deadlines and could take much longer. The analysis involves 3,800 leases.
- Companies must put together a complete leasehold before moving forward, particularly with the long laterals we drill that can cut across multiple leases. Sometimes a new lease is needed to combine with existing leases to make a full unit. Since *the Biden leasing ban* remains in effect with no onshore lease sales held since 2020, some wells and leases are held up waiting for new leases or for the government to combine them into a formal unit.
- Before allowing development on leases, the government conducts environmental analysis under NEPA (the National Environmental Policy Act), which often takes years to complete. Many leases can be hung up by NEPA for years or awaiting other government approvals.
- Finally, not all leases will be developed because, after conducting exploratory work, companies may determine there are not sufficient quantities of oil and natural gas on them. The country still benefits from the leasing revenue paid on the leases. We do not develop leases for the sake of the numbers; drilling locations are chosen only after complex geological, engineering, financial, environmental, and other analyses that indicate it is prudent to do so.

Turning to the 9,000 permits: there are currently *4,766 permits to drill* awaiting approval. The government could approve these permits now, enabling companies to move forward with development they are more likely to do in the near term than permits that were approved years ago. There are 8,825 outstanding approved permits to drill, but there are factors that cause companies to wait to drill those wells, if at all.

- Because of the uncertainty of operating on Federal lands, companies must build up a sufficient inventory of permits before rigs can be contracted to ensure the permits stay ahead of the rigs. We drill wells in a matter of days and rigs are very expensive, so it's a delicate balancing act. The Federal government's permitting system is much less efficient than state permitting, taking months to years to complete whereas states take generally weeks to a few months. Since the Federal process is more bureaucratic and has many more obstacles, there is no certainty that Federal permits are forthcoming. For that reason, a large inventory must be acquired on federal lands before proceeding. Were the system more efficient, companies would not have to build such a large inventory with the greater likelihood that many of those permits will not ultimately be drilled.
  - Market conditions can change months to years later. Obviously, if the price of oil and natural gas goes down, many wells on Federal lands may become uneconomic.
  - Even with today's high commodity prices, the economics of a Federal well can change. Since the cost of operating on Federal lands is generally higher than on nonfederal lands, companies with Federal permits may decide to invest their capital in nonfederal areas that enable them to increase their production more efficiently in today's marketplace.
  - Each well drilled provides valuable information on where to drill next. With an efficient permitting system, the next permit can be acquired on an as-needed basis. On Federal lands where permitting is uncertain and inefficient, drilling a few wells may render many other permits superfluous. Again, it's

not about raw numbers; it's about what makes sense to drill given complex engineering, spacing, and geological factors.

- A BLM drilling permit is not the only government approval required. Rights of way (ROW) can take years to acquire before companies can access their leases and put in natural gas gathering systems. With the pressure not to flare from regulators and investors, most companies cannot drill before gathering lines are in place. Timely approvals of ROWs would enable companies to develop sooner.

Fortunately, the country can be very thankful that just under a quarter of oil production is on Federal lands and waters where the president has the most control. Most of our production comes on private and state lands. But even here the administration can cause mischief.

- The administration has worked with anti-oil-and-gas activists to slow pipeline infrastructure. Without pipelines to move the oil and natural gas produced, wells cannot be developed.
- Capital must be acquired. Activist investors, encouraged by an administration intent on expanding its financial regulatory powers, have worked to de-bank and de-capitalize the industry. Many companies, particularly the small independents who drill the majority of Federal wells, are having difficulty acquiring the credit and capital necessary to develop. By calling off bureaucratic efforts to deny financing to the industry, the president could send a strong signal to the market that investments in oil and natural gas are safe and new production could move forward.
- The Biden Administration has embarked on an agenda of regulatory overreach with extensive new regulations in the works. The uncertainty of all the new red tape puts a damper on new investment and development today, especially on Federal lands where the burden is highest.

Western Energy Alliance encourages the administration to work together with our industry to reverse many of these policies. Climate change is not a zero-sum game. We can be partners in both reducing GHG emissions and high energy prices. After all, American oil and natural gas provide a net benefit to the environment. Countries like the United States with greater access to reliable, affordable energy not only have higher standards of living, but also cleaner environments and healthier populations.

Increased use of natural gas electricity generation leads to lower levels of air pollution and decreased GHG emissions. We have enabled the United States to reduce GHG emissions 10.2 percent below 2005 levels through a market-driven increase in natural gas electricity generation.[1] Intermittent wind and solar energy are not possible without backup, with natural gas being the best backup source. Fuel switching to natural gas in the electricity sector has reduced more GHG emissions than have wind and solar energy combined.[2]

More exports of Liquefied Natural Gas (LNG) to Europe and Asia will likewise export the GHG reductions of natural gas. We applaud the Biden Administration for approving two LNG export licenses recently and backing off Federal Energy Regulatory Commission (FERC) policies on natural gas infrastructure intended to get to an answer of "no." The administration should quickly approve all outstanding LNG export licenses and ensure the FERC policy is not resurrected through rulemaking.

But in order to export LNG, we need pipelines to supply those export terminals. There are numerous natural gas pipelines being held up or already canceled, particularly on the East Coast. Unrealistic energy policies that block pipelines in the name of climate change only block real, tangible GHG reductions made possible by natural gas. Lack of pipelines has led to the absurd result of New England at times importing LNG from Russia. Not only does that increase energy costs for consumers, but it increases GHG emissions from the transport. Likewise, the State of Oregon denied a pipeline permit for the proposed Jordan Cove LNG export facility that would have supplied gas from Colorado, Utah, and Wyoming to Asia. The administration should use its emergency powers to expedite pipelines, thereby helping our allies in Europe and Asia to likewise reduce GHG emissions from their electricity sectors.

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[1] *Inventory of U.S. Greenhouse Gas Emissions and Sinks,* Environmental Protection Agency (EPA), April 2020, p. ES–4.

[2] *U.S. Energy-Related Carbon Dioxide Emissions, 2018,* U.S. Energy Information Administration (EIA), November 2019, p. 13.

The administration should halt the Securities and Exchange Commission proposed rule on climate change disclosure. Like other misguided policies intended to address climate change, it will have the opposite effect. It is designed to elevate climate change measures above material financial factors in investment decisions as a means of denying capital to oil and natural gas projects. Denying access to capital to an industry that provides reliable, affordable energy while being a partner on climate change is simply unrealistic.

Of course, I would urge the administration to move forward with leases sales and back off on policies intended to make it harder for us to develop on those "9,000 leases/permits." Besides ignoring the president's call to fine producers for not developing on their leases, Congress should pass legislation such as Senator Cruz's *Energy Freedom Act,* which mandates lease sales and pipeline and export approvals; the *House Natural Resource minority's six bills* introduced last week to move forward with permitting and leasing on Federal lands and waters; and Senators Sullivan, Cramer, and Lummis' *American Energy, Jobs and Climate Plan.*

The CHAIR. Thank you very much. We will now go to questioning of the witnesses. And Mr. McCullough, I want to drill down on what you are saying about this gaping hole. Because, you know, we in the West, obviously, have always looked at this issue—Washington, Oregon, and California, just because we are, as people have said, always an isolated West Coast market. So, we have tracked these issues for a long time and during the Enron crisis, a lot of people have blamed it, for a long time, on environmental issues. They kept saying it is all about environmental issues when in reality, it did not turn out to be about environmental issues. It turned out to be about a lack of transparency and energy traders who took advantage of schemes to manipulate supply.

So, we just, in very tight markets, obviously, this is when you have to be concerned about these issues. You are saying you see something now in West Coast prices that are not about supply and demand. And you are saying that this benchmark price index is a very important tool to settling the price. Could you explain that and why there is not a lack of transparency?

Mr. MCCULLOUGH. Well, first of all, the West Coast's gasoline prices relate to the Brent price, not to the U.S. WTI price. WTI, for people who are new to this, simply means our heartland. And that is—Cushing, where it is in the Anadarko Basin. And we are now talking about wildcatter companies, generally smaller and, at the moment, difficult to finance further drilling. But the reality in the West Coast is that we buy our oil on the world markets. It is processed by refineries in Washington State and California.

Now, I gave a lecture on this at the university last year, on where do prices come from. And unfortunately, prices are not issued magically the way they appear in a textbook. They have to be reported. And we report our commodity prices in world markets in two different ways. We either have them in very well-regulated exchanges, like the Chicago Board of Trade, NYMEX, ICE, etc. A lot of surveillance there, the rules are well understood. Everything is generally properly reported and works efficiently for the U.S. economy. That is not true everywhere.

We also rely on newsletters. Now, these are actually quite often very well run. It is not as if the newsletters are a den of evildoers. They are not. But this is a voluntary process. The algorithms are often not public. The newsletters collect transactions, generally by voluntary submissions, and then generate an index. Now, that index then wanders through an entire economic process. So, the re-

finery price to the middleman, the racks, depends on the index. Quite often the price to the gas station, especially if it belongs to a major producer, depends on that index. It is literally written into the contract.

On the West Coast, we have one major price reporting agency. They are called the Oil Price Information Service. Been there for many years, very effective, very interesting, central to the operation of the industry. In 2012, Ms. Cantwell, certainly Ron Wyden, Ms. Feinstein, looked into that. We wrote reports at that period. I appeared in hearings during that period. And we identified that there were sudden shifts in that that did not seem to match fundamentals at all. October 1, 2012, we had a 50-cent increase in that index. No one ever could understand why that index changed. We had similar results in 2015 and then we had some last month.

Now, in a perfect world, the FTC would subscribe to that newsletter. My information is they do not. In a perfect world, the FTC would have experts that would understand the algorithm that OPIS chooses to go from transactions to prices. And bear in mind, this is not an economics textbook. This is the real world where that algorithm drives real dollars from real consumers' pockets to traders' profits. And that is a serious issue we discovered with Enron and their counterparties in 2003 with a FERC final report.

The CHAIR. Your time is about up, but I just—so you see anomalies? You think, there is, in the information you are looking at in those indexes now, you see anomalies that you do not think are supply and demand?

Mr. MCCULLOUGH. Absolutely. There is a wide differential at the moment.

The CHAIR. Thank you. Senator Cruz.

Senator CRUZ. Thank you, Madam Chair. Mr. McCullough, I was very interested at the end of your opening testimony when you said that we absolutely should not be reducing oil and gas production in the United States and, in fact, we should be producing more and taking customers away from Putin and Russia. I agree with you, and I was encouraged by that. Does that mean—do you agree with President Biden's promise, on the campaign trail, no more drilling on Federal lands, no more drilling including offshore, no ability for the oil industry to continue to drill, period, ends? Do agree with that sentiment?

Mr. MCCULLOUGH. Actually, I do. But I need to warn you, I come from a wildcatter family.

Senator CRUZ. So, you want no more drilling, but you want production to increase? How does that work?

Mr. MCCULLOUGH. I actually like those small guys——

[Crosstalk.]

Senator CRUZ. But no, hold on. He said no more drilling, period. How do you have production increase with no more drilling?

Mr. MCCULLOUGH. I would actually drive to North Dakota and make sure they had financing to start drilling tomorrow. But those are little guys.

Senator CRUZ. OK. So, you disagree with President Biden when he says no more drilling. If you want financing for drilling, then those two are incompatible.

Ms. Sgamma, March 8, 2022, White House Press Secretary Jen Psaki said about gas prices, "There have been some who have claimed this is an issue of having access or funds. The oil and gas industry has a lot of permits, onshore alone more than 9,000 unused approved permits to drill." So, according to the Biden White House, the oil industry has all these permits. They are sitting around. They could drill anywhere they want, anytime they want, 9,000 permits and they just do not want to drill for oil. I have to admit, I do not understand that argument. Does that make any sense to you?

Ms. SGAMMA. Well, I have been, kind of, taking it as a positive, in that I am glad they do want us to drill on those permits because, as you have pointed out, we have the rhetoric on no more drilling on Federal lands. So, there is a number of reasons that we do not drill permits immediately.

Senator CRUZ. So, there—are there barriers to those 9,000 permits to drilling it? Are there reasons why they are not able to be drilled right now?

Ms. SGAMMA. Well, so, there are about 4,700 permits that have been submitted that have not been approved yet. There is an inventory of 8,800 permits—it is down a little bit from 9,000—8,800 permits that are outstanding, that have not been developed. But there are many reasons a developer—a company might not develop on that permit right away. One reason is—well, one of the big, primary reasons is, the Federal system is very inefficient. So, we have to ask for permits many months to years in advance of when we may use them. Because we want to stay ahead of that drilling rig, because it is very expensive. If you do not have permits to stay ahead of that drilling rig, you might have to lay it down.

Senator CRUZ. So, let me ask you a different question. The Biden Administration, in addition to launching an assault on domestic oil and gas production, has also launched an assault on funding for domestic oil and gas production. The SEC put out a new rule designed to dry up equity capital for oil and gas. Biden's banking regulators and Federal Reserve nominees have promised to dry up debt funding for oil and gas. Can you drill for oil and gas if there is no capital and no funding, and the Biden Administration has cutoff all the cash?

Ms. SGAMMA. That is one of the reasons that is holding up, especially the smaller producers that we were talking about is, it is very hard to get capital right now. And every well is a multi-million dollar well.

Senator CRUZ. And that is not accidental.

Ms. SGAMMA. No.

Senator CRUZ. That is not an unintended side effect. That is what Biden promised. That is what the Democrats promised. And they are doing what they promised, which is cutting off the cash for drilling and if you do not have drilling you cannot have more production.

You know, I have to say, an interesting thing a minute ago, Ms. Sgamma, I want to ask you about. Mr. McCullough had testimony saying California is prone to mysterious price excursions. And this is a particularly curious theory, which is the evil oil companies are

sitting there manipulating prices and it is not connected to anything in the market.

Now, this is a chart of California production and—or California prices and U.S. prices. And what is striking about it is, for the last 12 years, it is almost identically correlated—you can see the identical factors going up, down, up, down, up, down, up, down, all the way through, except for one thing. On every front, California is way, way higher. And we are listening to Democrats saying, “We cannot figure out why. There is a mysterious black box in the middle.” Well, I am going to suggest that mysterious black box is called Democrats. And Californians have elected Democrats who put policies in place—environmental policies that drive up costs. State of California—Californians pay 73 cents per gallon in taxes, compared to the 20 cents per gallon we pay in the State of Texas.

Ms. Sgamma, do you think the environmental regulations and the taxes in California play a part in driving these prices up for millions of California consumers?

The CHAIR. A quick answer, please, because we have to go.

Ms. SGAMMA. Yes, California manipulates its own energy markets through government intervention—through government interference.

The CHAIR. Thank you. A vote has started and so, I am going to turn to Senator Klobuchar, to her questions. But I do want to just point out, only 8 percent of drilling occurs on public lands. So, maybe we can get into another round here, about this.

Go ahead, Senator Klobuchar.

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. OK. Thank you. Mr. McCullough, if you could just answer, like, 1 minute each I can have a little——

Mr. MCCULLOUGH. Yes, ma’am.

Senator KLOBUCHAR.—bit of ground here. In your testimony, you note how oil and gasoline is less transparent than almost any other industry. Why is there less transparency in oil and gas? And how does that hurt American businesses and consumers?

Mr. MCCULLOUGH. Well, number one, we have explicit assignments of electricity and natural gas to FERC. Number two, CFTC only does futures markets. So, there is a hole. There are no boots on the ground for gasoline and oil.

Senator KLOBUCHAR. OK, very good. And how does that hurt businesses and consumers?

Mr. MCCULLOUGH. So, when we do have excursions, which means that the price of gasoline is much higher than it should be—and that is, by the way, responding to Senator Cruz, including the impact of taxes and other factors, then that comes, immediately, out of the pocketbooks of businesses and retail consumers. This has immediate employment impacts, because we close energy intensive industries and, obviously, impact blue collar folks who have to drive to work.

Senator KLOBUCHAR. Exactly. And no agency—you talked about in your testimony how FERC reviews the natural gas, electricity industries for market manipulation, CFTC reviews futures, but no agency reviews oil and gas transactions. Do you think there needs

to be Federal review of oil and gas transactions to protect consumers against price gouging? Again, quick answer, then I have a few more——

Mr. MCCULLOUGH. Absolutely.

Senator KLOBUCHAR. Yep.

Mr. MCCULLOUGH. It is streetlights and muggers. If it is public, the manipulations disappear rapidly.

Senator KLOBUCHAR. Mm-hmm. OK, that is a good answer here. I actually did a bunch on oil speculation, way back in 2008—the Stop Excessive Energy Speculation Act. I worked on CFTC legislation in 2012, but some of it has been discussed. What role has speculation in the oil market played in the recent price increases and what can be done to keep speculators in big oil companies from exploiting the Russia oil ban to increase profit?

Mr. MCCULLOUGH. Well, again, it is transparency. We know that there is some shadowy players in the world markets. And everyone always points to VETAL (phonetic), but we do not have any data, so we do not know whether VETAL is good or bad. But we do know they have a major impact. They have been investigated by both the CFTC and FERC, I believe. And the bottom line is, we need to have more data to find it out.

Senator KLOBUCHAR. OK. Another question, different subject. I see Senator Fischer here, and she and I have worked together on biofuels. Senator Ernst and I introduced the Homefront Energy Independence Act that many people co-sponsored in the Senate. And that would codify into law, full restrictions on U.S. purchases of Russian oil. But it will also make E15, which has been available for a long time—long story about a court case, which was ridiculous and now we no longer have year-round E15. What impact would biofuels have on helping us out here?

Mr. MCCULLOUGH. Well, traditionally, the states with biofuels have the lowest gasoline prices. And certainly, the idea of using our own resources as well, is very attractive.

Senator KLOBUCHAR. OK, very good, thanks. My last question, robust competition brings out the best in companies. And we have seen some—a recent wave of consolidation in this industry, in U.S. oil fracking. Can you speak to how consolidation could impact competition, innovation, and consumers? I do—I am chairing the Anti-Trust subcommittee do a lot in this area.

Mr. MCCULLOUGH. We like little guys. The little guys are faster. They are smarter. They have more risk on the edge. They do more. Our enormous growth in resources in this industry is largely due to little guys, over the last decade.

Senator KLOBUCHAR. All right, very good, thank you. I will turn it over to Senator Fischer.

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Senator Klobuchar and thank you to the witnesses for being here today. But I am disappointed that we are taking valuable committee time to consider a matter that is not on solid jurisdictional footing. We certainly have jurisdiction of the Federal Trade Commission which, in turn, has critical responsibilities to protect Americans from corporate practices that

are unfair or deceptive. This includes fighting pandemic related fraud, protecting children online, creating Federal privacy protections to keep our personal data safe. These are just some of the key consumer harms that this committee can be overseeing, discussing, and advancing legislation for.

Instead, today I guess we can discuss the harms that President Biden's failed energy policies are having on consumers. The list of these failures are long. The President made his anti-American energy agenda clear on the day one of his presidency. He revoked the Keystone XL pipeline's permit and updated the social cost of carbon. Estimates used to justify burdensome regulations, while rejecting infrastructure projects.

During his second week in office, President Biden issued an Executive Order to ban new oil and gas leases on Federal lands and waters. Meanwhile, the Department of Interior has yet to hold the lease sale following that executive order, despite being required to under current law.

The Administration has doubled down on blame shifting, claiming that, "The reason why the price of gas is going up is not because of the steps the President has taken. They are because President Putin is invading Ukraine." His Press Secretary said that. But Americans know that inflation was happening long before Putin invaded Ukraine.

We are here today, not because of some plot by the energy companies. We are here because the President continues to shift the blame on high gas prices to anyone and everyone but himself. It has been disappointing to see this administration look to other countries to increase oil production, instead of turning to domestic, American-made sources. We should be taking an all-of-the-above approach, domestically, to drive down the cost of gas for our families.

Ms. Sgamma, would you please elaborate on the need for domestic production to be the focus of American energy security instead of relying on imports?

Ms. SGAMMA. Appreciate the question. You know, in 2019, we were a net exporter of oil. We are down about 1.1 million barrels a day of American production. We would love to increase production and fill that void. That is certainly a better option than just dispensing from the Strategic Petroleum Reserve.

So, we are ready and able. I represent small producers in the Rocky Mountain West, but all across the country American producers are ready and able to increase production. But we need policies that encourage that production and we are not seeing that from this administration.

Senator FISCHER. And what is—what is your biggest hindrance to increasing that production?

Ms. SGAMMA. Right now, it is access to capital. There is a specific movement afoot, and it started several years ago with activist investors. But it has been encouraged by this administration and would be codified if the SEC rule is finalized.

Senator FISCHER. You mentioned the Strategic Petroleum Reserve. We have seen President Biden announce, at the end of March, the release of one million barrels of oil from that reserve, per day, for the next 6 months. And this move comes only two

weeks after the petroleum reserves hit the lowest level in decades. And it was not that long ago that Democrats celebrated blocking attempts to replenish the Strategic Reserve, when oil prices were at those near record lows.

The continued use of the reserves to combat high gas prices, I believe, is a weak, short-term solution that does not adequately address the issues that we face. So, can you tell us, or can you discuss, what potential impacts could occur if the U.S. continues to empty those reserves?

Ms. SGAMMA. Well, we—under—under the ground we have got reserves about 1,000-fold bigger than the SPR. So, it would be better for us to encourage that production of a million barrels a day, than to drink down our petroleum reserve, which we then have to, at taxpayer expense, fill back up again. Why not just encourage production from the American industry, which we finance that—you know, that is private sector financing. That is not government spend.

Senator FISCHER. Thank you very much.

Ms. SGAMMA. Thank you.

Senator FISCHER. Thank you.

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you very much, Senator Fischer. Thank you both for being here. I will be chairing the Committee until the Senator from Washington State returns. We are in the middle of a vote.

Let me just say, there are some success stories here. My state of Connecticut has suspended its state tax, much as I have recommended that the Federal Government suspend the 18.4 cent per gallon Federal tax. It works. The legislation that I am helping to lead at the Federal level, could have the same effect as the gas tax holiday that Connecticut has implemented at the state level.

A study by the Hearst Media Group found that the day after the state tax was suspended—and it is 25 cent per gallon tax—prices dropped by 24 cents at all but four of 100 gas stations surveyed. Twenty-four cents, real money, back in people's pockets.

There are steps we can take—they are within reach. And suspending the Federal gas tax is only one of them. The Windfall Profits Tax, that we have proposed in legislation, would address the fact that oil companies are making record profits—the big ones. In fact, while hard working families are making sacrifices, 25 top oil and gas companies have announced an astonishing $237 billion in profits in 2021 alone. Fourteen oil companies gave away $35 billion to shareholders, dividends that bump up their income but take away from consumers, including stock buybacks which enrich only the investors. The oil companies clearly want to continue efforts to exploit and profiteer at the expense of consumers.

Releasing from the Strategic Petroleum Reserve, a short-term solution, yes, but worth doing if it reduces the prices of gasoline in the short term. Absolutely, in the long term, we need to rely more on renewables, cut our dependence on the tyrants and the autocrats like Putin, or others around the world in Saudi Arabia and Venezuela that, right now, in effect, hold us hostage. And reducing

dependence on oil and fossil fuels will liberate our economy from them, but also from dependence on those big oil companies that, right now, are profiteering from this crisis.

And I agree with you, Mr. McCullough, the little guys should be spared that Windfall Profits tax. It is the big oil companies that should be hit, and our legislation will hit them with that Windfall Profits tax and only them, not the smaller producers.

I find enormously revealing, Ms. Sgamma, your remark that access to capital is the biggest barrier. And that is the consensus. Access to capital, not government regulation, not the Biden administration—the markets have determined that capital investment will not be profitable in many of these wells, because of the long-term trends toward renewables and the short-term problems with additional drilling and supply.

So, we have a clear agenda here and, Mr. McCullough, I would like you to comment. These kinds of short-term steps make sense, do they not, in order to reduce the excessive burdens on consumers at the pump. They are feeling this pain every day. It adds insult to injury, and it is real injury because these companies are profiteering at their expense. The Federal Government has imposed an unnecessary burden through the Federal tax that can be suspended without any immediate impact on the Highway Trust Fund. We have just passed an infrastructure program that invests hundreds of billions in our highways and roads and bridges. Connecticut alone will be receiving $4 billion. Can we not do those kinds of short-term steps and offer some relief to consumers at this critical time, when Putin's war is imposing Putin's burden, Putin's tax on consumers?

Mr. MCCULLOUGH. Senator Blumenthal, I agree very deeply. Number one, tax incidence goes entirely to consumers. There is a lot of academic research on that. So, 100 percent of your tax gas cut goes right to consumers.

Number two, if we are going to get the best benefit out of the Strategic Reserve, the best thing we could do is to replace the Strategic Reserves by purchasing forward. That gives direct financing to little guys. Because little guys do not necessarily get to go to the Chase Manhattan Bank. They can sell their future production on the forward curve, in order to drill now.

And number three, the fact of the matter is, that we need to have a windfall tax that does not injure production. I put a formula in my testimony here. I am not sure it is the best. But there are ways to structure the windfall tax to give an incentive to start drilling now.

The CHAIR. Thank you. Senator, I do not know if we—I saw a couple of Republicans online. I do not know if anybody is on online to ask questions. If not, we will go to Senator Markey.

STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS

Senator MARKEY. Thank you, Madam Chairman. The American Petroleum Institute has put out so many red herrings that we would need an aquarium to hold them all. And we have heard many of them today coming from the Republican Party.

I just want to clarify a few things for the record. Before COVID, under Trump, the United States peaked at 10.8 million barrels of oil per day, produced in the United States—10.8. That is under Trump. In 2021, under Joe Biden, it went up to 11.2 million barrels per day. Just for the record, it went up under Joe Biden. So, I just do not want to hear that anymore. I mean, I know I am. It is just not true. And I am no big fan of big oil, obviously, but the facts show the administration's policies are not preventing production.

And on top of that, the oil industry has 9,000 unused leases on Federal lands right now. They have 2,000 additional leases offshore in the United States, that they are not using right now. That is hundreds of millions of barrels of oil they are not drilling for, right now. Even as we see their crocodile tears being shed about how they need even more leases. They have not finished what is on their plate, yet. They have not even begun to use what is on their plate right now. And they also have 4,200 drilled but uncompleted wells that Big Oil is sitting on right now. They are not drilling.

Now, Ms. Sgamma says the big issue is access to capital. That is separate from access to land, access to the oil that they could drill for. They already have that. If they cannot find the funding out in the capital markets, well, let us look at that issue. What is going on? And I think one of the issues very well might be that Big Oil has chosen to secure profits for their shareholders over securing protection for American consumers. As gas prices went up 50 percent in 2021, the 25 largest oil and gas companies raked in record profits. And they are squatting on all of these leases, which they are not drilling on and have not been drilling on. Big Oil has been too busy drilling for $237 billion in oil wealth and not on these uncompleted oil wells.

And just for the record, these crocodile tears about the Keystone pipeline, how that would contribute to energy independence in the United States, well, I just took the precaution, back in January 2015, when we had the vote on the Keystone pipeline, that none of that oil could be exported out of the United States. And every Republican voted to export that oil out of the United States, as we brought down that oil from Canada, through a straw, a pipe, down to pour it out to Texas to export it. They could have voted right then, but they did not, to keep the oil here.

So, I hear about energy independence, but when they had a chance to do so, they did not. And when we had, in the House of Representatives, where I served previously, votes on drilling off the coastline of the United States, I would always make them vote, the Republicans, on whether or not that oil could be exported out of the United States and they always voted, oh, no, we should be able to export that oil, as well. Saying to the coastline states, with their fishing industries, with their tourism industries, "Do not worry. Do not worry. The environmental risks are not nearly as big for you as the loss of profits would be for us if we could not find the highest price for American oil on the world market, not in the United States of America".

So, from my perspective, we have tried this over and over again and right now, China is getting 600,000 barrels of oil a day from the United States. Which it turns out, is equal to the 600,000 barrels of oil a day that we were importing from Russia. That is all

part of Big Oil's plan. They have their own international plan, separate from the well-being of energy independence in the United States, this American Petroleum Institute, this American Prevarication Institute.

The CHAIR. Senator Markey, do——

Senator MARKEY. All the lobbying in the world is not going to change that reality. So, Big Oil has had their chance for the last 50 years. They refuse to drill. They refuse to produce the oil. They refuse to protect the American people. They have lost any moral authority to stand here and say they need more Federal lands of the American people.

The CHAIR. Senator——

Senator MARKEY. It is just plain wrong. It is a lie.

The CHAIR. Senator Markey——

Senator MARKEY. They do not drill when they get that Federal land, and it is time——

The CHAIR. Senator Markey.

Senator MARKEY.—for us to just say to the oil and gas industry——

The CHAIR. Senator Markey.

Senator MARKEY.—business as usual is over.

The CHAIR. Senator Lee.

Senator CRUZ. Madam Chair, briefly, I need to correct the record on something Senator Markey said. He just said, a second ago, that gas—oil production under Biden is higher than it is under Trump. That is objectively false. According to the EIA, the Energy Information Industry, oil production under Trump in 2019 was 13 million barrels a day. Today it is 11.2 million. It is 2 million lower.

The CHAIR. OK——

Senator CRUZ. And so, the facts he cited are objectively false and I would like to enter into the record the actual data because, you are entitled to your own opinions, but you are not entitled to your own facts.

The CHAIR. I—Senator, I—I think——

Senator MARKEY. And I—if I am going to be questioned here, I will just say——

Senator CRUZ. Great.

Senator MARKEY. That I will submit the accurate record for—for this committee to put in there, because I have the accurate records from oil companies.

The CHAIR. OK——

Senator CRUZ. So, you are saying that oil production was not 13 million barrels a day in 2019? Is that what you are saying, Senator Markey?

The CHAIR. Gentlemen—no. Gentlemen, let us move on. We can both look at the facts. We will enter them into the record. Senator Lee.

STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH

Senator LEE. Thank you, Madam Chair. The American people are feeling the sting of inflation everywhere they go. They are certainly feeling the weight at the pump of our rising gasoline prices. These prices are more heavily borne, not by the wealthy, but by

poor and middle-class families who are struggling to cope with these difficult prices. And this, on top of an economy that is already causing them to struggle, in many ways.

And in response to these high gasoline prices, the Biden administration has pointed fingers at everyone else but his own policies. But the reality remains, Democrats' crusade against these reliable, clean-burning, domestic energy sources has largely resulted in our current state of affairs with high energy prices disproportionately hurting poor and middle-class families.

Ms. Sgamma, I know you are aware of this, but let us just quickly review some of the signals that the administration has sent. During his campaign, President Biden—then Presidential Candidate Biden, guaranteed "the end of fossil fuels". Then, in January 2021, President Biden issued an Executive Order, the same day he was sworn into office, halting putting a moratorium on oil and gas leasing on Federal land.

The EPA under the Biden administration has denied exemptions from the renewable fuel standard, which are estimated to contribute about 30 cents added to the cost of every gallon of gasoline.

President Biden's SEC has proposed new regulations to weaponize publicly traded companies against traditional sources of energy, that we have in great abundance in this country.

President Biden accused oil and gas companies of price gouging. And he did this without evidence, despite the fact that energy prices have, in fact, as was his plan, skyrocketed during his administration.

Even after all this, the White House has actively lobbied OPEC, rather than looking to the United States to increase oil production. So, can you briefly explain how financial investments in oil and gas companies work? And has this administration's declared war on oil and gas impacted the flow of capital into the oil and gas industry? Tell us—tell us a little bit about that.

Ms. SGAMMA. Yes, I think the political risk injected into the marketplace means that many investors are unwilling to invest in oil and natural gas. And I would take issue with Mr. Blumenthal's characterization of that as a good thing.

You know, the Department of Energy, under President Biden, shows oil consumption rising through the year 2050 and beyond. They just go to 2050, though. So, we are going to need oil. Just denying us access to capital and trying to second guess that kind of investment is having a chilling effect on our ability to produce here in the United States, and so, we have to go elsewhere for it.

Senator LEE. Elsewhere often to countries with poor environmental records and abysmal, horrific human rights records.

Now, the Senate may soon consider whether to conference with the House over differences between the House's version of the America COMPETES Act and the Senate's bill, USICA. While I have grave concerns with the policies contained in both of these bills, the House of Representatives' bill, the America Competes Act, contains a staggering $28 billion over 10 years to fight climate change and, largely, eliminate the use of fossil fuels.

Ms. Sgamma, how does Congress' picking of winners and loser in energy markets influence the market decision—the decisions within the marketplace of oil and gas companies?

Ms. SGAMMA. Well, I am not sure I can really explain that but, you know, we have seen Germany, for example, invest $800 billion in renewables and they are now more dependent than ever on Russian oil and natural gas. We are proud that we supplied more natural gas to Europe then Russia did in January, but these unrealistic policies are—you know, they are not supporting the energy that we actually use every day.

Senator LEE. Then, finally, with the CAFE standards that this administration has recently announced, they are setting in place the regulatory framework to require an industry-wide fleet average of about 49 miles per gallon by 2026, not very far away. I am skeptical that this can be put in place without making the cost of a vehicle completely unaffordable for the average American family. This will disproportionately impact those with children, making life more unaffordable than it always is. So, this not-so-subtle push by the administration to push more electric vehicles and stifle gas consumption, I fear that could have a strange shift. Do you share that concern?

Ms. SGAMMA. I do share that concern. But we are—we are proud, in the natural gas and oil industry, that we have delivered the equivalent reduction in greenhouse gas emissions of 190 million electric vehicles already, over the last decade. And right now, there are only 11 million EVs globally.

Senator LEE. And you did that without——

The CHAIR. Thank you.

Senator LEE.—government forcing you to.

The CHAIR. Thank you.

Ms. SGAMMA. That is right.

The CHAIR. Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Yes, thank you, Madam Chair. And I want to thank you for holding this hearing. I want to thank both of our witnesses for being here today. I appreciate your perspective. It is—we have all been impacted by the spike in gasoline prices caused by, quite frankly, Russia's illegal and immoral war on Ukraine. And I have definitely seen and felt the effects on my farm in Montana. Last weekend, it was not a lot of fun filling the tractor full of diesel fuel. Let us just put it that way.

And we have got two problems right now. How we secure a stable energy production long-term and what we do now to bring the prices of fuel down, to reduce the pain that who have no choice but to buy it, to be able to drive to work or to be able to farm the soil.

The long-term solution has got to include not only ramp up U.S. production and cooperation with our allies, but also building out a renewable capacity and energy storage and researching the next generation of battery technology so that I have options on my farm and so that people have options in their daily lives.

As for the short-term, that is what I am hoping to get perspective on today. I have got constituents who are wondering what is standing in the way of ramping up our domestic production, back to prepandemic levels. And I have got folks who are reading quotes from

the press, from major corporations, celebrating their record profits. And I am hoping we can find sensible solutions today.

But I will tell you, this hearing, as with most hearings, when we are talking about energy production, even though folks say we are not pointing fingers, that is exactly what people are doing. I think it is much more simpler than that. I am in a situation where every day, when I get on my tractor, as I did this weekend, I throw a couple hundred gallons of fuel in that tractor. You can price it out. That is nearly $1,000, OK? But I have got to have it if I am going to farm. On the other side, last year I had the worst crop I have ever cut due to extreme weather conditions, OK? And it is not just North Central Montana. Everything West of the Mississippi was in a drought last year.

So, I think, until we come together and understand that we need to pass policies that work for our energy future, making energy more affordable while we address issues that surround around climate change, we are going to continue to do nothing. And the upshot of this is, people are not going to be able to afford to buy fuel. And the long-term upshot is, people are not going to be able to afford to buy food, and that is even a bigger problem.

So, my first question is for you, Mr. McCullogh. I appreciated hearing your perspective on a need for greater transparency in oil and gasoline markets. You talk about the concept of gasoline prices going up like a rocket and coming down like a feather. And we have seen that exactly last—that exactly, over the last month and it has not helped consumers. And it is understandable if folks get angry at what looks like somebody taking advantage of others.

So, can you explain what is going on here as, when the price of crude goes up, it immediately goes up at the pump. When the price of crude goes down, we do not see that drop nearly as quickly. In fact, sometimes it takes weeks, if not months, to see that drop. Can you tell me what is going on?

Mr. MCCULLOUGH. Well, the first thing is that the price you see in the oil market does not reflect the transactions occurring, both the bilateral and the exchanges in the U.S. So, to get the prices at the pump, we are talking about transactions between players in the U.S. markets. If there is not enough competition in a specific market then, in fact, it is very tempting for people to take advantage of it.

The story in the Enron situation, where we have the advantage of having all the records is, that was not lost on them for 1 second. We do not have those records for oil and gasoline.

I focused on California because we know a lot about California, because we have had a continuing problem. The critical index that drives the California price, did not fall with the price of oil. Now, that is a surprise. The indications are that there were very few transactions filed with the Price Reporting Agency. Now, how could that be? Did they stop trading oil? Did they stop trading gasoline? The answer is no, of course not. But if there was to be manipulation, that is the way it would happen.

Now, we have seen this strange inversion that the prices go up immediately, but they do not go down for quite a while. And that is the sort of thing where we would like to see the reporting of the data, line for line, in your hands and the FTC's hands, and the

CFTC's hands. We do not have it. Until we do have it, you will not know the answer. But I will guarantee that once you have that data, the temptation to take advantage of the consumer goes away very rapidly.

Senator TESTER. Thank you. Thank you, Madam Chair.

The CHAIR. Senator Scott, are you ready?

STATEMENT OF HON. RICK SCOTT, U.S. SENATOR FROM FLORIDA

Senator SCOTT. Yes.

The CHAIR. Go ahead.

Senator SCOTT. Thank you, Chair Cantwell. I want to thank you for hosting this important meeting. Putin's invasion of Ukraine has highlighted the urgent need for American energy independence. From day one, the Biden administration has waged war on American energy by canceling the Keystone XL pipeline and freezing new oil and gas permits on Federal lands. These policies only hurt American families with high energy and gas prices, making it harder to put food on the table.

In response to these high prices, the Biden administration had the audacity to seek oil and gas from our adversaries, Venezuela and Iran. And on top of that, Biden has falsely blamed—placed blame on the oil industry for high gas prices by saying they have not used their 9,000 drilling permits.

Last month, President Biden said, "They have 9,000 permits to drill now. They could be drilling right now, yesterday, last week, last year. They have 9,000 to drill onshore that are already approved." Additionally, White House Press Secretary Jen Psaki said, "There are 9,000 unused, approved drilling permits. So, I would suggest you ask the oil companies."

Ms. Sgamma, are these claims by the Biden administration false or misleading?

Ms. SGAMMA. Well, I think it is more complicated than just—there are actually 8,800 lease—permits that are outstanding, that have not been developed. There are also 4,700 permits that we have requested that have not gone forward.

So, it is—Federal onshore development is a complex system. Because of the inefficiencies in the Federal Government, we have to have an inventory in hand, before we can really start developing. So, even though there—one company may have a permit, another company may be waiting for a permit because they want to develop today.

So, it is—it is true that there are 8,800 permits out there that could be developed on. Companies are moving forward with development on many of them. Many of them will not be developed in the near future, or if at all, because after—sometimes after exploratory work, we determine that that permit is not in an area that has sufficient quantities of oil and natural gas, maybe the spacing was incorrect. And so, some of those permits just will not get developed.

If the government had a more efficient system, we would not have to build up such an inventory of permits. We could do more just in time permitting like we do in the states.

Senator SCOTT. How many permits are being held up at the Department of Interior, right now?

Ms. SGAMMA. Forty-seven hundred permits have been requested and, you know, they take time to get through the process. But there are about 3,800 leases that the Department of Interior is holding up any permitting on while they do more greenhouse gas analysis. Western Energy Alliance has been in court defending about 5,900 leases. And on many of those leases, we cannot move forward with the permitting process because they are hung up in court, or they are hung up doing this additional greenhouse gas analysis.

So, the Federal system is really complex. It is not just a simple one in, one out, and production goes.

Senator SCOTT. So, last week I introduced the Free American Energy Act that would cut the unnecessary government red tape and allow American energy companies to provide for U.S. demand by requiring the Biden administration to act on outstanding permit applications.

Last week, I was talking to a pipe manufacturer in Florida who was building components of the Keystone XL pipeline, who had to lay off about half of his workforce as a result of President Biden's cancellation of that project. So, these were—there is a significant number of really good paying jobs that were lost as a result of the hostility toward the domestic energy industry.

He also told me that there is a lot less investment in the energy industry because the Biden administration's anti-energy polices and rhetoric. So, Ms. Sgamma, how is the Biden administration's rhetoric, such as his plan to end energy from oil and gas by, I think, 2035 impacted investment in domestic energy production?

Ms. SGAMMA. Well, I think rhetoric on climate change policies that is meant to imply that we are not going to need oil and natural gas in the near future is suppressing investment. Biden's own Department of Energy shows that oil and natural gas will continue to rise through—consumption will continue to rise through 2050. So, these polices of de-investing the American industry only serves to shift that production overseas.

Senator SCOTT. So, are their hurdles that the administration has placed that is impacting our ability to get more oil and gas energy production and get gas prices down and oil prices—gas prices down, primarily at the pump?

Ms. SGAMMA. Well, I think the regulatory efforts to decapitalize the industry are having their intended effect now. It is hard for my small producers to get capital right now. And you cannot—if you cannot get capital, you cannot develop a well.

Senator SCOTT. Right. Thank you, Chair Cantwell.

The CHAIR. Thank you. Senator Rosen, then followed by Senator Baldwin.

STATEMENT OF HON. JACKY ROSEN, U.S. SENATOR FROM NEVADA

Senator ROSEN. Thank you. I—thank you, Chair Cantwell for holding the hearing. And this is really an important topic that matters to everybody right at their kitchen table, every single week.

But I want to build upon what Senator Scott said but in a little bit of different way, about oil and gas drilling on public lands because I want to tell you Nevada is home to over 56,000 acres of public lands. Over 80 percent of our state is publicly managed by the Federal Government in some form or fashion. And so, while Nevadans were paying $5.19 a gallon, the second highest price for gas in the country—this is what we are talking about. Big Oil CEOs are hoarding roughly 9,000 unused drilling permits. They are posting record profits. They are pushing for more drilling on public lands.

In addition to the unused permits, oil companies have already stockpiled 12,000 unused leases, across more than 12 million acres of public lands, even as they increase prices on the American people. So, as a result of the Federal Government's broken and outdated oil and gas program, even as rural Americans in Nevada and other states lose out on their fair share of revenue from public lands' drilling, oil companies, we know, just are not passing savings on to consumers, or even using existing permits or leases. And as we have seen, prices just continue to rise to record levels. Outdated royalty rates also allow Big Oil to drill on public lands for just pennies—pennies on the dollar, while still, again, raising prices for consumers at the pump.

I am going to reiterate this one more time. Over 56,000 acres in Nevada of public lands. And it is really important to us. And that is why I have introduced the bipartisan Fair Returns for Public Lands Act, which would reform these royalty rates to provide taxpayers with a fair share of the revenue from public lands drilling and prevent cheap speculation.

So, Mr. McCullough, appreciate all your testimony. We know members of the oil industry have been pushing a false narrative that increasing the oil and gas leases on public lands is what is going to reduce gas prices that Big Oil has increased. However, data shows that lease sales do not do anything. Lease sales do not do anything to drive down consumer prices. And in fact, domestic energy production on public lands is higher than it has ever been.

So, given this, can you explain why oil producers are currently restraining production right now, instead of doing everything they can to lower gas prices? And how do you think reforming those royalty and rental rates would change the equation?

Mr. MCCULLOUGH. Well, number one, I am not an expert on the Federal leasing, but I can tell you it would be very nice if the leasing conditions were the same for farmers in North Dakota as they were on Federal lands.

But number two, we are talking about trying to push more water through a pipe in order to make the flowers grow faster. I am not sure that changing those will do something for us today. What I would like to see today is that we ensure financing for the independent producers, in our core states, that have been the source of so much growth in our production over the last decade.

Quite frankly, the little guys need access to finance. And if that requires new legislation, so be it. As I have said before, we are emptying the Strategic Reserve, but we are not replacing the Strategic Reserve from foreign markets, which would enable a lot of people access to capital. And so, there are some steps we can take

very quickly to help and that is not so far down the path. There is a lot of land ready to be drilled in the United States, and a lot of wells it could be producing within the year.

Senator ROSEN. Well, I would really like to see folks in my state be able to—and other states that have this vast amount of public lands, be able to get their fair share when these leases are taken up.

Mr. McCullough, how do you think Congress can hold Big Oil accountable for continuing to increase the gas prices while they are sitting on these permits?

Mr. MCCULLOUGH. Well, the windfall tax situation comes up every spike. And winners and losers are a problem with worldwide economies like ours. Americans are making money from oil and their stock and blue-collar guys are having trouble getting to work. So, that is something a windfall tax can help with. But I do want to reiterate, if we do put in a windfall tax, we have to do more than simply letting the winners help the losers. We have to critically maintain that there is an incentive for additional drilling there.

Senator ROSEN. Well, I think that you about summed it up. The big guys are profiting while the working folks—working families are the ones paying the brunt.

Thank you, Madam Chair.

The CHAIR. Senator Baldwin.

Senator CRUZ. Madam Chair?

The CHAIR. Let us wait on this one, if you are talking about the previous debate.

Senator CRUZ. Well, Madam Chair, I would like to enter something in the record, please. You are recognizing Democrats. I would like to enter in a government document in the record which Senator Markey incorrectly stated——

The CHAIR. OK, well——

Senator CRUZ.—that production—oil production under Biden is higher than under Trump——

The CHAIR. Senator Baldwin. We are not——

Senator CRUZ. This is a printout from the U.S. Energy Information Administration. It is an official government document. I just want to tell you what the numbers are because this committee should not be hiding the facts from the American people.

The CHAIR. We are not.

Senator CRUZ. I am going to read you the government documents which is——

The CHAIR. Senator——

Senator CRUZ.—in December 2019, in the U.S., the production was 12.966 million barrels a day. That was in 2019. And in 2021—in December 2021, it was 11.587——

The CHAIR. Senator Cruz——

Senator CRUZ.—million barrels a day——

The CHAIR. Senator Cruz——

Senator CRUZ. That is 1.5——

The CHAIR.—a filibuster is not——

Senator CRUZ.—million fewer.

The CHAIR.—going to help consumers.

Senator CRUZ. This is not a filibuster. I ask unanimous consent——

The CHAIR. And you and I——

Senator CRUZ. To enter this——

The CHAIR.—can look at this——

VOICE. Without objection.

Senator CRUZ.—Government document in the record. I ask unanimous consent to——

The CHAIR. Senator Baldwin.

Senator CRUZ. I ask—Madam Chairman, are you going to allow me to enter this in the record, or do you not want this in the record?

The CHAIR. Let us recognize her. Senator Baldwin.

Senator CRUZ. Madam Chairman, I am asking unanimous consent to enter this in the record.

The CHAIR. You know, gas prices effecting consumers are too dramatic to play politics with. Let us hear——

Senator CRUZ. Madam Chairman, are you not going to allow government——

The CHAIR. I am not.

Senator CRUZ.—official government numbers to be in the record?

The CHAIR. OK.

Senator CRUZ. Is that the position of the Chairman?

The CHAIR. Nope.

Senator CRUZ. Is you will not allow the facts in this record?

The CHAIR. No. I am trying to save another debate from you and Senator Markey.

Senator CRUZ. OK. I am asking again for unanimous consent to enter these government——

The CHAIR. I am asking, Senator Cruz——

Senator CRUZ.—documents in the record?

The CHAIR.—for you to pause while we listen to this.

Senator CRUZ. So, you are refusing to enter this in the record?

The CHAIR. No, I am not. I am just——

Senator CRUZ. You are refusing.

The CHAIR. There are other people who have not asked a question.

Senator CRUZ. Are these entered into the record?

The CHAIR. Senator Baldwin.

Senator CRUZ. So, Madam Chairwoman does not want these documents in the record. The good thing is, you can go look at a government document and read them——

The CHAIR. Senator Baldwin.

Senator CRUZ.—because the—what the Democrats are telling you is false, and they know it is false.

The CHAIR. Senator Baldwin. Senator Baldwin.

STATEMENT OF HON. TAMMY BALDWIN, U.S. SENATOR FROM WISCONSIN

Senator BALDWIN. Thank you, Madam Chair. I want to pursue just a little bit longer this issue that Senator Tester was discussing with you, Mr. McCullough. In your testimony you talk about the spikes like a rocket and comes down like a feather. And you gave a little color to that with Senator Tester. This week I am going to be introducing legislation with Senator Warren to just outright prohibit price gouging. And according to recent polling, 60 percent of

Americans believe that price gouging by oil companies is a major cause of the rising prices. Mr. McCullough, your testimony provides evidence that could explain why Americans feel this way.

Our legislation defines price gouging as an unconscionable price increase during an exceptional market shock. So, in your view, Mr. McCullough, are oil and gas companies using a market shock, like we have experienced, to justify keeping these prices high or only seeing them go down like a feather?

Mr. MCCULLOUGH. I cannot comment on all companies or all locations. We did a scoping study of the entire country and we saw one striking example, California. We have seen this very gradual decline in prices in numerous states. We do not have the data to explain why that happens. It is very odd knowing that the contracts define oil prices as a component, that it is not symmetric. It should go up and down at the same price. But until somebody has boots on the ground to actually check the data, we do not know.

Senator BALDWIN. Yes.

Mr. MCCULLOUGH. And for someone who is paying their gas price in Lincoln, Nebraska, I certainly understand why they are suspicious. They might ask, why is it that we know more about corn than oil? That is a pretty good question.

Senator BALDWIN. Mm-hmm. I appreciate that. Your testimony described the lack of transparency in the Oil Price Information Service, which collects and publishes data on oil and gas transactions that, in turn, influence the retail prices that we see.

I have also introduced legislation seeking to increase transparency of benchmark prices in another market, the aluminum market. Does the oil and gasoline market and the reference prices that it relies on need more explicit oversight to ensure that manipulation is not occurring, sort of, as we are looking at in a very different market, but the aluminum market?

Mr. MCCULLOUGH. Well, the aluminum market has been the subject of enormous——

Senator BALDWIN. Yes.

Mr. MCCULLOUGH.—manipulations over the years. In fact, Mark Rich is famous for this. And that is one of the areas where people have investigated and certainly, Mr. Rich is not, as I remember, welcome in the United States anymore for that reason. But that simply underscores. There is nothing new in commodity exchanges for people thinking up clever ways to take advantage of the public.

In my testimony, I quoted Adam Smith. We only think of him as the author of "The Invisible Hand", but he was a canny Scotsman. And he said—and I'll misquote, the first thing merchants do when they have lunch is think of ways to take advantage of the consumer. He said it better, being a genius, than I just did. But he also said, in another portion, just getting everything written down is the right approach. So, we know what the facts are.

That has been the history of our almost 200 years of the Chicago Board of Trade, getting that written down leads to lower prices. And most of all, it leads to confidence in our own economy, which is critical.

Senator BALDWIN. Thank you.

The CHAIR. Senator Capito.

STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM WEST VIRGINIA

Senator CAPITO. Thank you, Madam Chair, and thank the witnesses for being here today. And it is a busy day on Capitol Hill so, you know, we have, kind of, been in and out. And so, as we know, and I know has been the topic of much discussion, is the rising price in gasoline. I represent West Virginia. It is a hardship on a lot of folks, particularly in rural America, where you have to drive sometimes 10, 20 miles to get to a grocery store or to the store or to your job or to school. So, I realize that this is something that everybody has a stake in and that we need to make sure that we are developing policies and that the President is acting forcefully here.

So, Ms. Sgamma, it is nice to see you again. I saw you over at Environment and Public Works Committee last week. And you have thoroughly explained the administration's accusation that the oil and gas industry is sitting on 9,000 outstanding leases and permits. In your testimony, you specifically note the series of aggravating circumstances. You mentioned litigation as one of the issues. What role does the lack of pipeline infrastructure play in limiting the production of oil and gas, since an increase in production means that we would need to get more oil and gas to the market? If you could talk about the pipeline situation.

Ms. SGAMMA. Certainly. There have been many pipelines blocked, either from litigation or via environmental activism. There is the thought that blocking pipelines will stop oil and natural gas development, and all it—it does in this country, but it certainly shifts it overseas. So, we cannot develop on many of our permits if we cannot get a pipeline in place to capture that natural gas.

Senator CAPITO. Well, as you know, in West Virginia we are fighting this. We have the Mountain Valley pipeline that is 95 percent complete. It would get a lot of our natural gas to L&G terminals and also into the southern part of the country, where it is very much needed. And additionally, and probably more importantly even to me, is the economic growth that comes with the expansion of the development of the Marcellus and Utica shales in the plentiful area of West Virginia and the region of Pennsylvania as well.

So, there does not seem to be any change in terms of the regulatory policies, in terms of the ability to try to work these things out. And as you know, investors will leave. People will abandon projects, as we saw in the other pipeline—Atlantic Coast pipeline that we had. Eventually, it just goes away. So, I guess—I do not know if you see any roadway forward, in terms of the regulatory environment for pipelines—what you might suggest there, in order to get this—get these moving and these permits—and these permitted pipelines on the schedules.

Ms. SGAMMA. Well, I was very pleased that the Biden administration announced, and the President encouraged more LNG exports.

Senator CAPITO. Right.

Ms. SGAMMA. But if we do not have the pipelines to get the gas to the LNG export terminals, then you cannot export it.

Senator CAPITO. Right.

Ms. SGAMMA. So, I think the next step is to recognize that permits need to be approved. And I think, if the administration wants us to be able to provide on that LNG export capacity, that it should take steps to approve those pipelines.

Senator CAPITO. Right. And let me go back to the leases, because this is something I have wondered about myself. The administration has called to impose fines on companies who have leases but have idle wells on those property. What kind of impacts does that have and why is that—why does that happen, if it is actually happening? Idle leases on properties and——

Ms. SGAMMA. Well——

Senator CAPITO. If you impose fines because you are not drilling?

Ms. SGAMMA. Yes, the non-producing fines are not going to incentivize more development, certainly, by making something more expensive. There is a variety of reasons that we are not operating on all leases. There are about 37,000 leases and about 12,000 that are non-operating now, or non-producing now. And that could be various things. It could be that exploratory work has determined there is not sufficient quantities of oil and gas on those, some of those leases. We are in court defending about 5,900 leases and it is very difficult to develop on those leases when it is held up in court.

Senator CAPITO. Right.

Ms. SGAMMA. So, various issues like that can hold up leasing. Plus, the Environmental Analysis under NEPA often takes years and years. And so, those leases will be considered non-producing while it goes through that environmental analysis.

Senator CAPITO. So, by saying some of the reasons, and I am sure there are others where this might be occurring, are you—are you discounting the administration's projection to the American people that everybody sitting on these leases, and they will not produce, and it would be so easy if you just turned a switch on?

Ms. SGAMMA. Well, the blame game is not particularly helpful. And trying to say that the reason is because of 9,000 leases is—I mean, it is a red herring.

Senator CAPITO. Right, right.

The CHAIR. Thank you.

Senator CAPITO. Thank you, Madam Chair.

The CHAIR. Senator Peters. Thanks.

STATEMENT OF HON. GARY PETERS, U.S. SENATOR FROM MICHIGAN

Senator PETERS. Thank you, Chair Cantwell, and thank you, Chair Cantwell for convening this very important hearing.

Certainly, I routinely hear from Michiganders about the high gas prices. So, like everybody has been talking about here today—and certainly, I see it when I go home on the weekends in Michigan, as well, currently just over $4 a gallon for regular unleaded gasoline, which is an increase of 42 percent over just a year ago. It is even worse when looking at diesel, which is currently nearly $5 a gallon, which is 62 percent higher than it was this time last year.

And we are seeing folks are topping off their tanks, even if they are 3/4 full, just so it does not cost them more to fill up next time. They are concerned about that. And when you think about that,

even if someone has just a standard sedan with an average-size fuel tank, filling up even 1/4 of the way, now is costing them nearly $20.

The financial impacts on Michiganders are significant. And clearly, in my mind, and I hope you would agree that no family should have to choose between filling up their cars or putting food on the table or paying other bills that come to them.

And underneath it all, it appears that oil and gas companies have been enjoying a massive financial windfall as a result of this. For instance, the largest 25 oil and gas companies raked in $205 billion last year. And oil and gas producers increased their stock buybacks to their shareholders who are very excited about this, by over 2,000 percent.

And while some turbulence in energy markets is certainly understandable and a fact of life, primarily now, we are seeing this increase primarily due to the economic recovery associated with COVID–19 and Russia's unprovoked and murderous invasion of Ukraine. And we are seeing gasoline markets respond by very high increases.

But it also leads us to believe that there are some bad actors out there that are taking advantage of the current situation. For instance, gas prices skyrocketed when the price of crude oil rose to over $100 a barrel last month. But if you look back in 2008, when it was over $125 a barrel, gas prices at the pump barely broke $4 or, generally, below that.

Making matters worse, the prices consumers pay to fill their tank remain high. Even as crude oil prices now are falling, they are still paying that very high price at the gas pump. And so, I believe it is imperative that we ensure oil companies do not exploit this crisis to hike prices and raise their profits. And clearly, transparency is the issue.

Mr. McCullough, you noted in your transparency, and you have mentioned it on several occasions already, that transparency is the least expensive and most effective tool in guaranteeing efficient markets. That is what we are saying, let us have efficient markets here. However, oil and gas is only a fraction of the information that competing fields. So, could you speak a little bit more about the current level of transparency within the oil and gas markets, when compared to other commodities? Let us look at other commodities. What are we—what are we seeing? Let us compare these two, so we get a better sense of it.

Mr. MCCULLOUGH. Well, electricity is the best example. In 2000, we knew nothing about electricity. Coming out of the Enron collapse, we ended up with a database available to any American on the FERC website. You can look at every transaction, in the United States, who from, who to, how much, where, what dollars, etc. This is not rocket science. This is not even a big data base, by database standards. We use it every day for our clients, both for facilitating transactions but also for clients like the Illinois Attorney General when they look at possible market manipulations.

Can we do this for gasoline? Of course, we can do it for gasoline. Gasoline is actually a smaller transaction universe than electricity. And number two, what would we gain from this? Well, the first thing we would find out is who is profiting and why, for Michigan,

and ending up still paying high prices, even though the price of gasoline has fallen. By the way, being from Wisconsin, I would also like to note that a lot of folks up there heat their homes with oil still. So, this is a pretty heavy hit for a blue-collar guy.

So, why have we had do much trouble doing this? Well, we were helped because Enron was so astonishingly evil that everyone agreed that we had to go do this. We have never had a poster child like Enron, but we are getting close. And we really do need to actually get this stuff written down and available to everybody on the web. And literally, something we could do within the year.

Senator PETERS. Very good. Thank you. Thank you, Madam Chair.

The CHAIR. Thank you. I do not know if we have Senator Thune joining us online? If not, Senator Warnock, are you ready to ask your question?

STATEMENT OF HON. RAPHAEL WARNOCK, U.S. SENATOR FROM GEORGIA

Senator WARNOCK. Thank you so very much, Madam Chairwoman, for holding this hearing.

Whenever I am back in Georgia, I hear about rising gas prices, and this is something I am very concerned about. The pandemic supply chain disruptions and the war in Ukraine are all major drivers behind this rise, of course, in prices and market volatility.

While the price of a barrel of oil has fallen by nearly 20 percent from its peak last month, the price at the pump remains high. And this is why I am sending a letter today to President Biden, urging the Federal Trade Commission to increase scrutiny of oil and gas companies for illegal business practices that could be artificially inflating prices.

Mr. McCullough, yes or no, last year did the country's largest oil and gas companies, such as Exxon, Shell, and Chevron, experience billions of dollars in profits?

Mr. MCCULLOUGH. Absolutely.

Senator WARNOCK. Do you think these record setting profits will continue this year?

Mr. MCCULLOUGH. Equally absolutely.

Senator WARNOCK. Do you expect executives at these companies to see their compensation increase or decrease this year?

Mr. MCCULLOUGH. Now, I am guessing, but I am guessing you are entirely correct.

Senator WARNOCK. Will it increase—will their compensation increase or decrease, as consumers are paying record prices at the pump?

Mr. MCCULLOUGH. I suspect it will go through the roof.

Senator WARNOCK. Their compensation?

Mr. MCCULLOUGH. Yes, sir.

Senator WARNOCK. And are ordinary Americans and Georgians who need to fill up their cars to get to school, to get to church, or work, or to temple paying more so these companies can reap these profits?

Mr. MCCULLOUGH. Some of the increase is due, obviously, to Putin's war, but other increases are inexplicable at the moment.

The CHAIR. [Off mic].

Mr. McCULLOUGH. Oh, I am sorry. Let me repeat that. I apologize. Some of these increase we understand, such as Putin's war. But other parts of the increase are inexplicable. And why the gasoline price does not follow the oil price down in Georgia, is something we really do need to get to the bottom of. There is nothing fancy about it. We just need to see the bits and pieces that explain that. If there is a good reason, so be it. But at the moment, we cannot think of a single good reason for it.

Senator WARNOCK. Right. So, we see a multiplicity of factors contributing to the oil—to the price—increasing prices in gas, but you see that corporations are clearly exploiting this moment and are piling on, as it were.

Mr. McCULLOUGH. What I am seeing is a lot of suspicious data. And we do not have enough data to give an absolute answer, but it is within our power to have the FTC go get that data and get us that answer, and pretty quickly.

Senator WARNOCK. It is clear to me that corporate greed is a large part of what is behind these prices at the pump, and I look forward to working with the FTC to hold these companies accountable for taking advantage of Putin's war.

Mr. McCULLOUGH. I think that is a great idea, Senator.

Senator WARNOCK. Thank you so much. Madam Chair.

The CHAIR. OK, I know we are expecting Senator Hickenlooper shortly but, Senator Cruz, if you want to go ahead on your—do you want to go do a second round, then when Senator Hickenlooper is here we will recognize him? Oh, here he is right now. Senator Hickenlooper, we would like to close out, if possible the first round of questioning and get to a second round. And so, I would like to, actually, run and vote if I could, if that would be—so, if you could start your questions and then, we will do five minutes with Senator Cruz.

STATEMENT OF HON. JOHN HICKENLOOPER, U.S. SENATOR FROM COLORADO

Senator HICKENLOOPER. Perfect. Great, thank you, Madam Chair.

First, thank you for your time and your willingness to come here and testify for us. There is certainly no question that families are feeling the squeeze of rising prices and nowhere is that more apparent than they are—in the gas—when they are filling up their gas tank.

We all know that Putin's invasion of Iran has been driving prices higher—ever higher. And I think this committee feels almost united on the role that passing USICA could have on making supply chains resilient, bringing manufacturing home, and ultimately, lowering prices.

So, I think another part of that is getting true energy independence upgoing. I mean, off and running. Let me ask you the first question here. Where is that question? I am on the wrong book. Sorry.

So, I would like to highlight a recent survey by the Federal Reserve Bank, in Dallas. This was last month, 139 oil and gas firms. The question was, why are oil producers restraining growth? Fifty-nine percent said investor pressure, maintain capital discipline. In

other words, they are being told by investors not to drill. The fact that investors would not make enough money was the top response, by far, not concerns about ESG or regulatory barriers.

Ms. Sgamma, your testimony points to a variety of barriers preventing the oil and gas industry's production as a reason for climbing gas prices. Do you agree or disagree with the oil and gas firms surveyed that investor pressure to maximize their earnings is, indeed, a leading factor, keeping oil and gas companies from drilling?

Ms. SGAMMA. Well, I do not think the survey said that. It was about maintaining capital discipline. So, during the last peak in prices in 2014, there is—it is well known that the industry responded and there was a huge uptick in drilling and production. And many companies got overleveraged and many companies went under, as well. So, the market has been restraining that type of growth and capital discipline is one of those market correcting responses to that.

Senator HICKENLOOPER. OK. And I think that we can look at—this looks at the returns, which you can—I think, you can see pretty clearly have been substandard for a lot of those oil and gas firms, for a variety of reasons. I think it is sometimes harder to find prospects. In an earlier life, I worked in that field. And the cost of discovering additional reserves and actually producing additional reserves has gotten more expensive over time. And I think it—that and—well, there are a lot of points.

Anyway, the—I think this is something that we have to recognize is an equal pressure on the industry. And—in other words, I am not criticizing the industry or the operators for trying to make sure that they can be profitable. That has been an issue.

Mr. McCullough, let us take a deeper look at where the industry's lack of desire to invest might come from. And this chart shows—this is from the Payne Institute at the Colorado School of Mines—shows three quantities, the price of crude oil in gray, the return on capital in orange—so, that is the capital employed by oil and gas in orange, and the same quantity for the whole S&P 500 in blue.

Each year since 2013, they really have failed to match the S&P, and many years lose money all together. And this is no different under President Trump, as it—or before President Trump. And I think that is—the challenge, to a certain extent—and I would love your comment on this—is if we give drillers more money, the investors invest, they sometimes wish they had not.

So, if this is right, and oil and gas cannot deliver those returns to investors when it reinvests in its own operations, how does that reflect long-term growth prospects for these companies? And how does it reflect our country's—you know, the necessity to diversify our energy sources?

Mr. MCCULLOUGH. Well, Ms. Sgamma has put it correctly. People are overleveraged in the last cycle. And there were a lot of bankruptcies and that scared investors. And there is no question that we see that. The issue we have to deal with is how do we reassure those investors?

We do not have, in our forward markets, a recognition that Putin's war will go on past the next few months. And we all know that we have no idea what is going through Putin's mind. At least

I do not. But I can tell you, the Russians do not give up. They are formidable. And I think we have to expect that Putin's war will continue for this year.

So, what can we do to help? Well, the first thing, as I have noted, is we can replace the Strategic Reserve by forward purchases. That would give more liquidity to the forward market and aide smaller players in getting possible capital.

But there is no question in my mind that we need to address that investor fear in some active way. I am a price theory economist. I am also an environmentalist. The two do not always go together. But the fact of the matter is that, when we are talking about wildcatters, we are not talking about deep pockets. And so, we need to make sure that they can go on and drill. Wildcatters have produced most of our oil in recent years. And they are a powerful force for states, from West Virginia all the way to North Dakota and Texas.

Senator HICKENLOOPER. Thank you. Can I ask one more question? Is that satisfactory? And then, I will get out of your hair. So, if we are now going to make smart investments in clean energy now, which I think is—we are seeing with more clarity, and reduce our dependence on foreign suppliers, increase our independence and resilience against global disruptions and fight climate change with new technologies, Mr. McCullough, do you agree that diversifying the energy sources long-term is ultimately going to decrease costs for consumers and certainly reduce our vulnerability to oil and gas price shocks?

Mr. MCCULLOUGH. Absolutely. The revolution in technology that has occurred on the electricity side has been unbelievable, between LED lamps, windmills, solar, etc. And the price effectiveness of that has gone through the roof. So, the news, generally, is good. But we are the world's largest economy. We both import and export and, until we actually understand all of this better, we are going to see foreign markets royal American markets.

Senator HICKENLOOPER. Right, exactly. I yield back. Thank you.

Senator CRUZ. Thank you. Senator Thune.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chair. Like a lot of my colleagues, as well as millions of Americans, I too want accountability for why energy and gasoline prices are so high. Because what the American people care about right now, I think more than anything else, is security—national security, economic security, and energy security.

Inflation is at the highest rate in 40 years and pocketbook issues like high gas prices are front of mind for American families. Today, the national average for a gallon of gasoline is $4.17. That according to AAA. One year ago, it was $2.87, but already in a steady march up from the lows of the pandemic, toward the painfully high prices that we are seeing today.

The President has tried to blame high gas prices on Russia's unprovoked invasion of Ukraine, calling it Putin's price hike. But the data is unmistakably clear that energy prices were skyrocketing well before Putin attacked Ukraine. So, now, my col-

leagues across the dais want to blame American energy producers rather than the Biden administration's overt hostility to domestic energy production. Of course, it began the very first day in office, with canceling the Keystone XL pipeline as one of his first official acts as President, followed by a freeze on new leases.

It is unusual for the Senate Commerce Committee to be discussing these issues, but I am glad we are having this discussion and I am glad that my colleagues across the aisle share in Republicans' interest in bringing down energy prices.

Last week, the President announced the administration will release oil from the Strategic Petroleum Reserve at the preprecedented rate of one million barrels per day for 6 months, in hopes it will significantly curb gas prices heading up to the midterm election. And that is certainly, I would say, a better option than turning to Venezuela or Iran for energy.

But there is still one glaring omission from his plan that would not only lower gas prices but could do so without requiring any change in oil supply. I am talking about biofuel, specifically E15. Restoring the year-round sale of E15 for the upcoming summer travel season would offer consumers a lower cost fuel, while curbing oil demand. And if he were to announce that, that could, I think, have an immediate impact.

But giving the lead times for fuel contracts and other supply chain considerations, the administration needs to act now. And I am going to hold the President to his remarks that he will use every tool at his disposal to lower gasoline prices. And what the President has said is the Americans cannot afford that right now, and I could not agree more.

But basically, what this comes down to, more than anything else, like everything else in a free market economy, is supply and demand. And blaming Putin or blaming the oil companies, as if they do not want to produce more energy, is absolutely trying to scapegoat this issue in a way that distracts attention from the fundamental issue. And that is, this administration has taken a hostile approach to oil and gas production in this country. There is just no question about it, starting from the first day in office, and it continues to today.

You have a lot of financial institutions that are being discouraged from making loans to people who are in the energy, oil, and gas production in this country. And the signals that are being sent by this administration to the investor community—the people who would actually increase supply, so we can become energy independent again, which is where we were prior to this administration taking office—the signals that are being sent are do not invest in oil and gas. And these are long-term investments that have long payouts. If people are going to make these investments they have got to have an administration that is not going to be hanging over them with a heavy hand of regulation to try and drive them out of business or discourage them from investing in these—this sector of our economy.

So, let me just ask you, Ms. Sgamma, in your testimony you listed a number of impediments to quickly getting American energy producers back online. In your opinion, what would be the single

most effective step the Federal Government could take, or stop taking, to get the greatest volume of energy back online the fastest?

Ms. SGAMMA. I think backing off the SEC regulation meant to deny capital to the industry would be the biggest signal they could send.

Senator THUNE. OK. Well, thank you. And what would be—let me ask this, if you could please speak to how this onerous ESG or Environmental Social Governance agenda that is being imposed on energy financing affects the pace at which domestic energy production could come back online. And do you think a heavy-handed ESG approach from the government undercuts voluntary ESG targets?

Ms. SGAMMA. It definitely would undercut voluntary disclosures. I think, right now, it is so volatile in that marketplace of climate change disclosure, that to impose the one size fits all approach that the SEC is looking at now, is not going to be helpful. Because there is so much uncertainty in how to report what information is the best to report and I am struck reading through that SEC regulation—the sheer magnitude of what they are requesting and the dampening effect that that will have.

Senator THUNE. The climate Nazis would like nothing more than to see oil and gas completely go away. But we all know, realistically, that liquid fuels are going to be a part of our future, for the foreseeable future. And why not produce it here in the United States? That cannot happen if you have an administration that, on a daily basis, is expressing open hostility to that sector of our economy. And more specifically, by discouraging financial institution and investors from making the long-term strategic decisions that they need to make in order to bring energy independence back to this country.

So, I just think, Madam Chair, we have a fundamental disagreement about what the issue here is. In my view, this is a basic issue of supply and demand and an administration that has been hostile to additional supply in this country.

The CHAIR. Senator Sullivan.

STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Madam Chair. And I want to echo every single word of Senator Thune, all right? You put it very correctly, very factually based, right? I have been watching this issue from day one because it is crushing my state. So, let me—let me just go into build on what he just said.

President Biden said, when he campaigned, we are going to end fossil fuels. It is the one campaign promise he is actually keeping. So, on day one, and it is day one, they started saying we are going to stop producing on American land, including ANWR, which we got done here. Alaskans support that; Americans support that. We are going to strongarm financial institutions. Woke guys like John Kerry, Gina McCarthy going to Wall Street saying, do not invest in American energy. By the way, John Kerry has also gone to Japan—I have heard this from Japanese officials, saying do not buy L&G. I mean, who—who the hell's side is this guy on? I think Xi Jinping loves that stuff. Kill an infrastructure? This is day one.

And begging dictators to produce more energy while shutting it down in Alaska and other places.

It is just—it is unbelievable. The results are very predictable. Higher prices—this is not Putin's gas hike. This is Joe Biden's gas hike. And everybody in the country knows it—everybody. Laying off workers in the energy sector, who are supposedly bad workers. These are patriotic Americans producing what we need. Certain segments of our conference—or not conference, Senators here and they do not like energy workers anymore. They are somehow bad. Ridiculous. They are great Americans. They are heroic Americans.

And empowering dictators. I mean, this is national security—national security suicide that this administration—and they are going to pay, by the way, in November.

So, I have a couple questions for you, Ms. Sgamma. You have done a really good job on—first, the White House comes out with one talking point—one talking point. They have no clue what they are talking about. This 9,000 unused permits. Can you debunk this pathetic talking point, please, once and for all?

Ms. SGAMMA. Well, I do not know if I can because it is a little bit complicated. So, there are about——

Senator SULLIVAN. Give us—give us a shot. Because we know it is a bunch of baloney.

Ms. SGAMMA. Well, I just take it as, kind of, a positive that suddenly the Biden administration wants us to actually produce on Federal lands.

Senator SULLIVAN. But they do not.

Ms. SGAMMA. The 9,000 or the 8,800 onshore permits represent—or Federal onshore represents about 10 percent of our oil production. So, we are really talking about a small amount, but it is—it is illustrative in that, where they have the most control they are definitely making it more difficult for us to move forward.

Senator SULLIVAN. Let me—let me go into a couple more details. And I would really like you to dig deep. The media will not report on this, but I have two memos here. This was order number 3395 from the Secretary of Interior. By the way, at that point, the Secretary of Interior was some guy by the name of Scott de la Vega—never heard of him—Acting Secretary of Interior. But what matters is this. This is January 20, 2021. Day one, right here, shut it all down. The American people should read that memo. Shut it all down. Everything that we could do to produce American energy on Federal lands. This is it, right? Day one, some dude named Scott de la Vega, supposedly the Acting Secretary of the Interior said, "Let us shut it all down". Read it, America.

Now, then, 60 days later, March 19, 2021, this is from the Assistant Secretary at Interior. She is Acting, by the way. She will never get confirmed, also. Good luck, Laura Daniel Davis. She put a memo out saying that, "Every application to drill"—and I want you to explain what that is. But as you know, there is applications to drill that go with Federal leases that make you actually produce on the Federal lease. She said, every application to drill has to go through her, right? Now, normally, applications to drill on Federal lands, it is approved at, like, the regional level—Fairbanks, Alaska, BLM manager or the State of Alaska BLM. She said, nope, we are not doing that, even though we have been doing that for decades.

I am going to approve every single application to drill in America. This memo is still in effect.

This would be like going to get a loan from Bank of America and you are going to go to your local bank, community bank, and they say, "No, you have got to go to Wall Street headquarters". There is 4,600 applications to drill sitting on this official desk. Joe Biden should rescind this memo today if he wants to keep up with doing everything he says he can, which he is not, for bringing down energy prices.

Can you talk to—about the problem with this Laura Daniel Davis memo which is still in existence right now? Unprecedented power grab to shut down American energy. Four thousand six hundred permits.

The CHAIR. Can you quickly? Because we have a couple of other members who want to get their first-round in.

Senator SULLIVAN. Sorry, Madam Chair.

The CHAIR. Thank you.

Senator SULLIVAN. It is an issue that I am very animated by.

Ms. SGAMMA. Yes, there are indeed 4,700 permits. I believe they are now being done at the field office level. However——

Senator SULLIVAN. No, they are not. No, they are not. This is still in—this is—this memo has not been rescinded. I checked on this this morning.

Ms. SGAMMA. I believe it probably has not been rescinded. But they are holding up permits on about 3,800 leases, while they do more greenhouse gas analysis. And that is because of litigation that environmental groups have engaged in.

Senator SULLIVAN. But is it unprecedented that the Assistant Secretary of Interior for Lands and Minerals and Oil and Gas said, I need to approve every single application to drill in America? Is that the way the Department of Interior has worked previously?

Ms. SGAMMA. No, it has not.

The CHAIR. Thank you. Senator Blackburn is online, and then, Senator Lummis.

STATEMENT OF HON. MARSHA BLACKBURN, U.S. SENATOR FROM TENNESSEE

Senator BLACKBURN. Thank you so much, Madam Chairman. I appreciate it. And to our witnesses, thank you so much for being with us today.

Ms. Sgamma, I want to come to you. The—in March, the SEC announced that they were going to mandate this climate risk disclosure by public companies. And that is something that I have heard a good bit about from many of our drilling companies, whether they are the independents, the wildcatters, companies of any different size. And because they know what that means to them, if you have companies that the SEC is going to mandate, they have to disclose their risk—their climate risk.

So, I—what I want to ask you about is the direct impact that you see on that, when it comes to exploration for oil. And then, also, how should the administration reverse course and provide an environment that is going to promote investment into the energy industry, so that we are not going to be dependent on Russia and not

be dependent on some of—like, Venezuela? So, talk a little bit about that and that action and the impact.

Ms. SGAMMA. Well, the climate change disclosure regulation from the SEC is designed to eventually decapitalize oil and natural gas and some other industries, as well. And really, the result would be just to suppress it here in the United States and we would still have to import that from overseas.

I think it well exceeds SEC's authority. That regulation well exceeds SEC authority. I think they will be very vulnerable legally. So, I think one of the things that the administration could do right now is simply back off on that proposed rule. It is just a proposed rule. They do not have to finalize it.

I would say the other thing is, move forward with leasing on Federal lands. That sends a strong signal that they are not going to tie up Federal lands, that they are going to move forward and enable us to move forward on Federal lands. Even though we do have outstanding leases, one lease that you need today could hold up your project, your well, that you want to drill today. So, the leasing system is not just a simple, we develop all these leases——

Senator BLACKBURN. Yes, let us——

Ms. SGAMMA. And then, we move forward.

Senator BLACKBURN. Let me jump in here because we have talked today about the uncertainty that has been interjected into the entire industry because of regulatory overreach, because of the way permits are being handled or not handled, more specifically, for people that have these leases and are ready to drill. And when you look at the energy sector, one of the things that you notice is the amount of attention that is placed on futures—oil and gas futures, and things of that nature.

So, touch on why certainty in the regulatory process is so vital to having access to the fuel we need to really support this economy.

Ms. SGAMMA. Well, that is a good topic, as well, as there are so many different regulations that have been proposed to add on to my industry that it does call into question investments made today, because there is so much regulation coming in through the pipeline that could affect the value of that investment into the future.

Senator BLACKBURN. And one of the questions that Tennesseans will ask me is, how is it that everybody became so dependent on Russia? Was it because the U.S. started to back off of hydrocarbons and off of oil and gas? And is that why now, you have Saudi Arabia and Russia and Venezuela, all that are ruled by really bad actors, is it why the world is now dependent on them?

Ms. SGAMMA. Well, I mean, Russia and Saudi Arabia have been major producers. Luckily, the United States is the number one producer of oil. And so, we were a net exporter in 2019. I think we can get back there if we encourage our production in the United States.

Senator BLACKBURN. And how quickly could we get back there?

Ms. SGAMMA. Well, I mean, it is—I do not know that I have got a clear answer on that. I think analysts are projecting we could reach that—you know, we are down about 1.1 million barrels of production a day and some investors are projecting—or analysts are projecting we will close that gap by another hundred—800,000 this year. So, we are slowly getting back up. But certainly——

Senator BLACKBURN. Sounds good.
Ms. SGAMMA. Thank you.
Senator BLACKBURN. Thank you, Madam Chairwoman.
The CHAIR. Thank you. Senator Lummis.

STATEMENT OF HON. CYNTHIA LUMMIS, U.S. SENATOR FROM WYOMING

Senator LUMMIS. Thank you, Madam Chairman. Ms. Sgamma, who sets gasoline prices at the gas pump? Like, across the street they are, like, $5.50 a gallon. Back in Wyoming they are, like, $4.40 a gallon. Sometimes I go visit my daughter in Texas. They are around $4.10, $4.20. Senator Cruz, is that not right? So, they are cheaper in Texas than Wyoming, way more expensive here. Of course, California is off the charts. Who sets those prices at the gas pump?

Ms. SGAMMA. Well, it is a complex market. It is not one person or one entity setting prices. And certainly, the price of gas at the pump is different in different states and different regions because of different refinery capacity, different state taxes, etc. So, I am not sure I have got a clear answer for you on that, as far as it is not one single person or entity.

Senator LUMMIS. OK, so if the refinery in a region sets prices and only 5 percent—which is not true, of course, but if they set the prices and only 5 percent of the gas stations are owned by refiners, how can that be enforced?

Ms. SGAMMA. Well, the refiners do not set the price.

Senator LUMMIS. Exactly, thank you. So, the price at the pump is set by the person who is selling the gasoline. The person who owns the gas station. Is that correct?

Ms. SGAMMA. There are hundreds of different, if not thousands of different factors that go into why prices are different at different gas stations, etc. But yes, ultimately, the owner of that gas station is going to set the price based on what he or she is paying to get the gas in and to the distributors. There are thousands of transactions that go into this.

Senator LUMMIS. OK, so, who prices oil at Brent or West Texas Intermediate Crude? Who prices that?

Ms. SGAMMA. I mean, that is a global commodity price, so——

Senator LUMMIS. Set by who?

Ms. SGAMMA. I mean, it is set by the market. I am not sure——

Senator LUMMIS. OK, so what factors go into the market? What factors?

Ms. SGAMMA. So, as a producer, we are price takers off of that global commodity price. So, I do not—I mean——

Senator LUMMIS. So, let me ask you this. President Biden took office January 2nd. He halted new oil and gas leases on January 27th and prices went up. Do you think there is a correlation between those two actions?

Ms. SGAMMA. Well, just like any market, I mean, it is hard to say, on any given day, why a stock went up or down or the price of a commodity went up or down. But signals, like, political signals are very important. Obviously, fundamental market factors are important, or are fundamental. Price shocks, like from the invasion of Ukraine—all these things can affect the price of oil.

Senator LUMMIS. Is there a connection between the supply and the price?

Ms. SGAMMA. Absolutely.

Senator LUMMIS. OK. So, we used to be energy independent. We produced more that we needed to consume. And were prices lower then?

Ms. SGAMMA. Yes.

Senator LUMMIS. OK. So, now, all these policies, canceling the Keystone pipeline, take 30 percent of land off limits to oil and gas—Federal land—halting drilling in ANWR, reversing the Trump natural gas regulations, reversing Trump NEPA regulations, DOE hiring 1,000 employees to eliminate oil, Russia invading Ukraine—did these activities affect supply?

Ms. SGAMMA. Absolutely, because our producers are affected by all of those regulatory measures.

Senator LUMMIS. OK, so we are not consuming less. We are producing less. So, it has got to come from somewhere. So, when we used to be energy independent and produce more than we needed, we could export and help other countries, so they are not dependent on bad actors, like Mr. Putin. But now, we are even the ones who are asking other countries to put more oil on the market, to sell us oil, when we used to produce our oil. Is our oil dirtier and more environmentally toxic than their oil?

Ms. SGAMMA. We probably produce the most sustainable and the cleanest oil in the world. I would say the United States and Canada.

Senator LUMMIS. OK, so why do they call climate change global climate change? Because clearly we must have a bubble over North America where we can solve everybody's climate problems by—the whole world's climate problems by quitting producing oil and gas here. Is that the case?

Ms. SGAMMA. Actually, if we produced more natural gas we could export more and we could deliver those greenhouse gas reductions, that we have enjoyed in the United States, to other countries, as well.

Senator LUMMIS. Does India have cleaner air than we do?

Ms. SGAMMA. No.

Senator LUMMIS. Does it produce more greenhouse——

Ms. SGAMMA. Yes.

Senator LUMMIS.—gas emissions than we do? What about Eastern Europe?

Ms. SGAMMA. I do not know off the top of my head.

Senator LUMMIS. I can tell you they produce way more greenhouse gas emissions.

Ms. SGAMMA. I mean, if you are talking about——

Senator LUMMIS. What about China?

Ms. SGAMMA.—their oil, yes.

Senator LUMMIS. Yes.

Ms. SGAMMA. Absolutely. Russian oil is much—has much more emissions.

Senator LUMMIS. OK. What about China?

Ms. SGAMMA. Well, their greenhouse gas emissions are off the charts.

Senator LUMMIS. What about ours?

Ms. SGAMMA. Ours have been going down.

Senator LUMMIS. Because of?

Ms. SGAMMA. Primarily because of increased natural gas use.

Senator LUMMIS. OK. So, we have six L&G terminal permit requests sitting in this administration, ungranted, while Germany is having to buy Russian oil and natural gas. Why? Ours is cleaner.

The CHAIR. Quickly, because I would like to get to second round, quickly. Thank you.

Senator LUMMIS. Excuse me. You know what? My point is global climate change is global. We are producing the cleanest air of any developed nation on Earth. And if climate change really mattered to the people who say it does, we would be spending money to help India and Eastern Europe get their greenhouse gas emissions now, instead of these costly incremental changes that we are producing in this country, when we are the global leader in clear air technology for developed nations. Thank you. I yield back.

The CHAIR. Thank you. Senator Cruz, did you want to go ahead on a second round?

Senator CRUZ. Thank you, Madam Chair. I would like to start with a series of housekeeping matters. I want to start by the two memos that Senator Sullivan referenced. One issued on the very first day of the Biden administration; the other issued in March of last year. Both dramatically reducing domestic energy production. I would like to ask unanimous consent to enter both memos into the record.

The CHAIR. Without objection.

[The information referred to follows:]

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3395

Subject: Temporary Suspension of Delegated Authority.

Sec. 1. **Purpose**. This Order is made for the purpose of implementing a targeted and time-limited elevation of relevant decisions at the Department of the Interior (Department) for the purposes of reviewing the questions of fact, law, and policy they raise. This Order ensures that the Department continues its existing operations—including operations necessary for health, safety, and national security matters—consistent with all legal obligations and policy goals to uphold trust and treaty responsibility to tribal nations and to responsibly steward the Nation's public lands, waters, and resources for current and future generations.

Sec. 2. **Authority**. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and is consistent with 200 DM 1.

Sec. 3. **Suspension of Authority**. The delegations of authority to Department Bureaus and Offices to take any of the following actions are hereby temporarily suspended, but may be approved by leadership identified in Section 4 of this Order:

a. To publish, cause to be published, or aid in the publication of any notice in the Federal Register, including, but not limited to, notices of proposed or final agency action and actions taken in accordance with the National Environmental Policy Act;

b. To issue, revise, or amend Resource Management Plans under the authority of Section 202 of the Federal Land Policy and Management Act, as amended;

c. To grant rights of way, easements, or any conveyances of property or interests in property, including land sales or exchanges, or any notices to proceed under previous surface use authorizations that will authorize ground-disturbing activities;

d. To approve plans of operation, or to amend existing plans of operation under the General Mining Law of 1872;

e. To issue any final decision with respect to R.S. 2477 claims, including recordable disclaimers of interest;

f. To appoint, hire, or promote personnel, or approve the appointment of any personnel, assigned to a position at or above the level of GS 13, but this does not apply to seasonal hires or emergency work force personnel;

g. To issue any onshore or offshore fossil fuel authorization, including but not limited to a lease, amendment to a lease, affirmative extension of a lease, contract, or other agreement, or permit to drill. This does not limit existing operations under valid leases. It also does not apply to authorizations necessary to: (1) avoid conditions that might pose a threat to human health, welfare, or safety; or (2) to avoid adverse impacts to public land or mineral resources.

Sec. 4. **Implementation**. Any and all delegations of authority to take the actions set out in Section 3 are temporarily suspended with respect to individuals other than a confirmed or Acting official in the following positions or a non-career official who has been delegated the authority to exercise the authority associated with the following positions under current law and regulations:

a. Secretary

b. Deputy Secretary

c. Solicitor

d. Assistant Secretary – Policy, Management and Budget

e. Assistant Secretary – Land and Minerals Management

f. Assistant Secretary – Water and Science

g. Assistant Secretary for Fish and Wildlife and Parks

h. Assistant Secretary – Indian Affairs

i. Assistant Secretary – Insular and International Affairs

Sec. 5. **Expiration Date.** This Order is effective immediately and will remain in effect for 60 days, or until any of its provisions are amended, superseded, or revoked.

S. de la Vega

Scott de la Vega
Acting Secretary of the Interior

Date: JAN 20 2021

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

March 19,
2021

To: Bureau Directors (BLM, OSMRE, BSEE, BOEM)

From: Laura Daniel-Davis

Principal Deputy Assistant Secretary
Land and Minerals Management

Laura Daniel-Davis

Digitally signed by LauraDaniel-Davis
Date: 2021.03.19 15:58:44 -04'00'

Subject: Confirmation of Matters for ASLM Review

I appreciate your work over the last 50+ days coordinating implementation of Secretary's Order (S.O.) 3395, and moving forward with us to take a science-based, all of government approach to addressing climate change, conserving 30% of America's lands and waters by 2030, and meetingour trust obligations to American Indian and Alaska Native tribes.

S.O. 3395, which temporarily elevated specific categories of matters for Departmental review, will expire on March 21, 2021. To ensure a continued appropriate level of review, as of March 22, bureaus shall continue to provide the following matters to the Office of the Assistant Secretary for Land and Minerals Management (ASLM) for review prior to taking final action onthe matters or publicly announcing decisions. While we are placing special emphasis on the following items, they do not constitute an exhaustive list of actions requiring review by ASLM. Continue to forward, through DTS, those actions for which your bureau has routinely sought ASLM review and surname, but you need not utilize the S.O. 3395 memo template going forward.

- Draft or Final Resource Management Plans (RMPs)
- Records of Decision
- Coal leasing proposals or plans
- Lease sale notices
- Mining operations plans
- RS 2477 matters
- Land sales or exchanges
- National Environmental Policy Act analysis for final agency action, related to pendinglitigation, and/or in high priority or high conflict areas where it may impact:
  - High priority sage grouse habitat
  - State, Tribal or Federally identified wildlife migration corridors
  - Lands with wilderness characteristics
  - Lands with special designations

  - Where there is consideration of a special management designation in a draft RMP orRMP Amendment that has been issued
- Reinstatement of terminated oil and gas leases
- Extension of Applications for Permit to Drill
- Lease suspensions
- Applications for royalty relief

Reminder: For those matters that have been submitted in accordance with S.O. 3395, but for which you have not received the final ASLM decision, you may not proceed without approval from ASLM. Please also provide early notification on items that are Administration priorities, for example, renewable energy projects or other climate related milestones, "30 by '30" initiatives, or actions related to racial equity, environmental justice, or Covid-19, as well as earlynotification on items that are of high local, state, or regional interest.

Senator CRUZ. Second, I would like to return to the topic you and I discussed before and ask unanimous consent to enter in this document from the U.S. Energy Information Administration into the record.

The CHAIR. Without objection.

[The information referred to can be found at the following link:]

https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrfpus2&f=m

Senator CRUZ. I would note, on this second document, that Senator Markey claimed, in his questioning, that under Biden we are producing more oil than we produced under Trump. That is objectively false. Now, the reason he likely did that is there is a Democratic talking point that is repeated by the White House and many Democrats, which is, under Biden, we are producing more oil than we did the first year of Trump. And Senator Markey may have misread his briefing points and forgotten the first year point.

Now, when Trump came in, we had 8 years of Obama, so production was way, way down. And if you look at, during the Trump administration, we increased and increased and increased and we reached a high point of 12.966 million barrels a day. And that high point was in November 2019.

Now, when the pandemic hit, production went down, and it has gone up slightly. But we are right now, as of December 2021—these are U.S. Government numbers—we are at 11.587 million barrels a day, which is 1.5 million less than the high point under Trump.

And facts matter, so I would like to also introduce into the record, on March 17, Senator Wicker sent a letter to the FTC calling on them to release any information they have on market manipulation leading to higher gas prices. On March 29, the FTC responded with zero evidence of market or price manipulation. And yesterday, a coalition representing over 90 percent of retail motor fuel sales, and employing over 2 million U.S. workers, submitted a letter to the Committee summarizing FTC and EIA studies repeatedly linking the price of gasoline to that of crude oil. And I would ask unanimous consent to enter all three letters into the record.

The CHAIR. Without objection.

[The information referred to follows:]

MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA
RICHARD BLUMENTHAL, CONNECTICUT
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
GARY PETERS, MICHIGAN
TAMMY BALDWIN, WISCONSIN
TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
BEN RAY LUJAN, NEW MEXICO
JOHN HICKENLOOPER, COLORADO
RAPHAEL WARNOCK, GEORGIA

ROGER WICKER, MISSISSIPPI
JOHN THUNE, SOUTH DAKOTA
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TODD YOUNG, INDIANA
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RON JOHNSON, WISCONSIN
SHELLEY MOORE CAPITO, WEST VIRGINIA
RICK SCOTT, FLORIDA
CYNTHIA LUMMIS, WYOMING

DAVID STRICKLAND, MAJORITY STAFF DIRECTOR
JOHN KEAST, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEBSITE: https://commerce.senate.gov

March 17, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Chair Khan:

As you know, recent weeks have seen a dramatic increase in the price Americans have had to pay at the pump. As of this writing, the national average price of regular gasoline is over $4.30 per gallon, nearly two dollars more than the average price a year ago. This increase comes as American families have already had to cope with high prices at the grocery store and for consumer products.

It is clear that gas prices have risen due to the current administration's zealous agenda to reduce domestic oil and gas production combined with surging inflation caused by a significant increase in government spending. These factors have been compounded by Russia's unprovoked and misguided invasion of Ukraine, which has driven up the price of crude oil and fueled market volatility. However, some have proposed that the cause of rising gas prices is not these factors but rather market manipulation or some other type of collusion among members of the oil and gas industry.

If Congress is to properly address the current crisis and provide relief to Americans in need, we must be fully informed of the potential underlying causes of skyrocketing gas prices. To assist the Commerce Committee minority in this effort, I request that you provide any evidence the FTC has gathered showing market manipulation, collusion, or other improper or illegal behavior in the gasoline and crude oil markets. Please provide your response as soon as possible, but by no later than March 25, 2022.

Thank you for your prompt attention to this important matter.

Sincerely,

Roger F. Wicker

FEDERAL TRADE COMMISSION
March 29, 2022, Washington, DC

Hon. ROGER F. WICKER,
United States Senate,
Washington, DC.

Dear Senator Wicker:

Thank you for your March 17, 2022 letter to the Federal Trade Commission.

I share your concern about how American families are facing a dramatic increase in prices at the pump. Americans should never pay higher fuel prices due to unlawful activity in oil and gas markets. The Commission has taken a number of enforcement actions to halt unlawful activity in energy markets, including most recently an enforcement action preventing a private equity fund from eliminating a major competitor in Utah waxy crude oil.[1] Notably, the Commission's scrutiny is not limited to the largest transactions; we recognize that even smaller mergers, if unchallenged, can devastate the pocketbooks of families and small businesses in communities of every shape and size. For this reason, we take an aggressive enforcement stance to prevent competitive harm, whether the merger involves dozens of stations or thousands.[2]

The Commission also continues to vigilantly monitor energy markets for wrongful acts and practices in the wake of Russia's invasion of Ukraine and the ensuing disruption of global energy supply. The FTC will swiftly launch investigations against all manner of law violations, including anticompetitive, unfair, or deceptive business practices as well as energy industry mergers that may substantially lessen competition or may tend to create a monopoly. FTC staff also engage and collaborate with law enforcement partners that share oversight over these markets, including the Commodity Futures Trading Commission and the Federal Energy Regulatory Commission, as well as the Energy Information Administration and state attorneys general.

Thank you again for raising your concerns on behalf of the American public about rising energy prices. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326–2195.

Sincerely,

LINA M. KHAN,
Chair,
Federal Trade Commission.

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[1] Press Release, Fed. Trade Comm'n, FTC Requires ENCAP to Sell Off EP Energy Corp.'s Entire Utah Oil Business amid Concerns that Deal would Increase Pain at the Pump (Mar. 25, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-requires-encap-sell-ep-energy-corps-entire-utah-oil-business-amid-concerns-deal-would-increase.* Additional enforcement activity includes work that led to the abandonment of Berkshire Hathaway Energy's proposed acquisition of the Questar Pipeline in central Utah and a final order requiring 7-Eleven to divest 292 fuel stations to preserve retail gasoline competition in local markets across the Nation.[1] *See* Press Release, Fed. Trade Comm'n, Statement Regarding Berkshire Hathaway Energy's Termination of Acquisition of Dominion Energy, Inc.'s Questar Pipeline in Central Utah (July 13, 2021), *https://www.ftc.gov/news-events/press-releases/2021/07/statement-regarding-berkshire-hathaway-energys-termination;* Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring Divestitures of Hundreds of Retail Gas and Diesel Fuel Stations Owned by 7-Eleven, Inc. (Nov. 10, 2021), *https://www ftc.gov/news-events/press-releases/2021/11/ftc-approves-final-order-requiring-divestitures-hundreds-retail.*

[2] *See, e.g.,* Press Release, Fed. Trade Comm'n., FTC Approves Final Order Imposing Divestitures and Protecting Retail Fuel Customers Following Global Partners LP's Acquisition of Wheels (Mar. 3, 2022), *https://www.ftc.gov/news-events/press-releases/2022/03/ftc-approves-final-order-imposing-divestitures-protecting-retail.*

April 4, 2022

The Honorable Maria Cantwell	The Honorable Roger Wicker
Chair	Ranking Member
Committee on Commerce, Science, and Transportation	Committee on Commerce, Science, and Transportation
U.S. Senate	U.S. Senate
Washington, DC 20510	Washington, DC 20510

Dear Chair Cantwell and Ranking Member Wicker:

Our trade associations represent America's retail fuel community.[1] More than 90 percent of retail sales of motor fuel in the United States occur at our members' outlets. As you convene the Senate Committee on Commerce, Science, and Transportation to examine petroleum markets and rising motor fuel prices, we offer the following information on the retail fuels industry and how fuel is priced for your consideration.

- **Overview of the Retail Fuels Industry**

The retail fuels industry's sole objective is to sell legal products, in a lawful way, to customers who want to buy them. While agnostic as to what types of fuel they sell to satisfy consumer demand, our industry's members do have a bias: they believe it is best for the American consumer and America's industrial position in the world marketplace to have reasonably low and stable energy prices.

The convenience and retail fuels industry employed approximately 2.34 million workers and generated more than $548.2 billion in total sales in 2020, representing more than 3 percent of U.S. gross domestic product. Of those sales, approximately $292.6 billion came from fuel sales alone.

The industry, however, is truly an industry of small business. More than 60 percent of convenience stores are single-store operators. Less than 0.2% of convenience stores that sell gas are owned by a major oil company and about 4% are owned by a refining company. More than 95% of the industry, then, are independent businesses. Although some might bear the name of a large oil company, this is not indicative of any ownership stake in the business or the real estate, but simply of a marketing relationship or announcement to passing motorists that a certain company's product is available for purchase at that location (comparable to a soft drink advertisement in a grocery store window).

Members of the industry process more than 160 million transactions every single day. That means about half the U.S. population visits one of the industry's stores on a daily basis. In fact, ninety-

[1] The National Association of Convenience Stores (NACS) is an international trade association representing the convenience store industry with more than 2,200 retail and 1,600 supplier companies as members, the majority of whom are based in the United States. NATSO, Representing America's Travel Plazas and Truckstops currently represents approximately 5,000 travel plazas and truck stops nationwide, comprised of both national chains and small, independent locations. SIGMA: American's Leading Fuel Marketers represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel (together, the "Associations").

three percent of Americans live within 10 minutes of one of our industry's locations. These businesses are particularly important in urban and rural areas of the country that might not have as many large businesses. In these locations, the convenience store not only serves as the place to get fuel but is often the grocery store and center of a community.

The average time a customer spends in a convenience store is about three and one-half minutes and industry members compete to ensure the customer's needs are met as efficiently as possible – saving them time and money.

- **The Retail Fuels Market is Transparent, Which Creates Competition**

The retail fuels market is the most transparent, competitive commodities market in the United States. As every American knows, customers can see gasoline retailers' price signs from blocks away, or compare prices on cell phone applications.[2] These signs represent more than just pricing information; they are a value proposition to potential customers, both with respect to fuel and also food and other convenience items and amenities that are offered at specific facilities. NACS' surveys of consumers indicate drivers will make a left turn across a busy street to save one cent per gallon on gas and will drive five minutes out of their way to save five cents per gallon. This combination of transparent, competitive pricing with consumers' price-sensitivity exerts a constant downward pressure on retail fuel prices. This benefits consumers. It also forces successful retailers to run efficient and cost competitive business platforms.

Retailers are fundamentally "buyers" of fuel as much as they are sellers of fuel. Given the transparency and competitiveness of fuel pricing, fuel retailers are "price takers" when they buy fuel in wholesale markets: The market sets the price and retailers compete on optimizing purchasing and inventory management as well as speed and quality of service.

Retail fuel margins are generally extraordinarily low; fuel sales are profitable because of the volume of sales that occur every day. The competitive, transparent market in which they operate creates a dynamic such that retailers cannot pass through price increases as fast as they must absorb them. As the wholesale price of motor fuel rises, retail margins contract. In fact, there are times when their wholesale prices rise so rapidly that retailers lose money on their retail gasoline sales in an attempt to maintain market share.

- **Gas Prices Reflect Retailers' Changing Costs**

The cost of crude oil represents the largest single input to retail fuel. As the Federal Trade Commission put it in its 2011 staff study, "Crude oil prices continue to be the main driver of gasoline prices."[3] In 2021, crude oil averaged about 53 percent of the retail price of gasoline and other major costs include taxes (16 percent), refining (16 percent) and transportation and marketing. Each increase or decrease of $1 per barrel of crude oil roughly translates to an increase or decrease of 2.4 cents per gallon of gasoline.[4]

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[2] Retail pricing decisions are made more competitive by the large number of websites and applications that consumers can access which show different gas prices in a given area. These services often get their data directly from individual consumer reporting and there can be reliability issues, nonetheless retailers know that having higher prices than their competitors can lose them business.

[3] "Gasoline Price Changes and the Petroleum Industry: An Update," Federal Trade Commission Bureau of Economics (Sept. 2011) at i.

[4] A barrel of crude oil has 42 gallons.

The full measure of crude oil cost increases and decreases are reflected in retail prices.[5] Although reductions in price take time to be fully realized at the retail level, the Energy Information Administration (EIA) indicates 60 percent of price changes are reflected at retail within two weeks, 80 percent within four weeks, and 100 percent of cost changes were reflected after seven weeks.[6]

The speed at which crude oil price changes are passed through to retail pricing vary some by region. EIA concluded that much of the regional differences in the rate of pass through were attributable to the distance of some markets to refineries – with markets in closer proximity to refineries having price changes reflected at retail more quickly than markets that were more distant from the refineries that supplied them.[7] This dynamic is also present for retailers that are located far away from fuel terminals that receive and store motor fuel. The shortage of truck drivers available to transport fuel has created inflationary pressure in the transportation market as well, which exacerbates these price issues (especially in rural markets).

There are important reasons why the retail industry favors a strong supply of fuel and low energy prices. As the price of motor fuel rises, retail margins get squeezed. Competition creates a dynamic such that retailers cannot pass through price increases as fast as they must absorb them. That compresses margins. At the same time retailers' margins get smaller, costs such as credit card fees – which are a large part of retailers' costs of selling fuel – increase because they are a percentage of sales prices. In fact, there are times when prices rise rapidly that retailers lose money on gasoline sales in order to try to hold onto market share and not lose customers. The inverse dynamic happens as prices fall. Retailers tend to regain margins as reductions in price take time to be fully realized at the retail level. But, as noted, crude oil cost increases and decreases get reflected in retail prices.

Supply agreements can also impact fuel retailers' costs and pricing. Some retailers have long-term agreements to purchase gasoline from a particular supplier while other retailers try to find the best prices they can by making short-term purchases from different suppliers. There are arguments in favor for both business models: long-term agreements can help retailers get priority access to product when supplies are constrained while purchasing on the so-called "spot market" gives retailers more flexibility to find better deals. These different models can lead to cost differences but, ultimately, all of the retailers in a local market must compete on price to attract customers. That intense price competition keeps prices low and, as noted by EIA, over time reflects all of the cost changes that retailers face.

Fuel retailers can also offset higher crude costs by blending renewable fuels into their supply of gasoline. For example, ethanol is cheaper than gasoline. Allowing larger quantities of ethanol to be blended into the fuel supply could offset higher costs of crude oil, help enhance supply, and lower gas prices. The Associations support a legislative change to permit E15 to be sold year-round throughout the country.

- **Replacement Costs Impact Fuel Retailers**

Fuel retailers are sensitive to the prices that consumers pay because, as price takers, they are similarly impacted by fuel costs. Fuel retailers must have the funds available to purchase their next

[5] "Gasoline Price Pass-through," Michael Burdette and John Zyren, EIA (2003) *available at* https://www.eia.gov/petroleum/archive/gasolinepass.htm [hereinafter "EIA Report"]. In one of the most in-depth studies of gasoline price pass-through it conducted, the Energy Information Administration (EIA) found that there is a 100 percent pass-through of both cost increases and cost decreases when examining wholesale and retail pricing.

[6] EIA Report.

[7] EIA Report.

load of gasoline to supply their retail locations. In other words, to maintain their customer base, they need to replace the product that they sell with new product – or risk shutting down for a time and losing their customers due to a lack of reliability. As fuel costs increase, these replacement costs weigh on business owners' minds. At any given time, retailers must try to earn enough from their sales of fuel so they can pay for their next load of fuel. If they are able to do that, they can replace their inventory without having to make the next purchase on credit. This becomes harder to accomplish as prices rapidly rise. And, as those prices rise, retailers can find that they do not have sufficient credit to purchase their next load even if they wanted to do so.

The bottom line is that retailers, in order to be successful going concerns, need to pay attention to their replacement costs and this is an important dynamic that impacts the market for motor fuel sales overall.

- **Fuel Retailers Pay Increased Credit Card Costs**

When retailers' margins get smaller, costs such as credit card fees – which are a large part of retailers' costs of selling fuel – increase because credit card fees are a percentage of sales prices. Credit card swipe fees therefore accelerate as retail fuel prices increase. Retailers pay card fees on more than 75 percent of their motor fuel sales.[8] These fees are levied as a percentage of the total price of the transaction, so the fees rise as the cost of gasoline rises and create additional price pressure on retailers. In fact, these fees are charged on the tax portion of every transaction as well so retailers must pay the credit card industry for revenue that they know they will never see.

If credit card swipe fee costs were the product of a functioning market, they would simply be another factor in the overall cost mix of a gallon of fuel. Unfortunately, Visa and Mastercard control approximately 80 percent of the credit card market and set the prices that the banks that issue their credit cards charge retailers on every transaction. Those banks compete on prices and rates with respect to every other aspect of their businesses – but they refuse to compete when it comes to the fees they charge retailers. Unlike the retail fuels market, the ongoing antitrust violations, price-setting and lack of transparency in the credit card ecosystem ensure that market forces are unable to discipline the credit card swipe fees.

Last year alone, the swipe fees paid by the convenience and fuel retailing industry increased by more than 27 percent. As prices rise and retail margins narrow, in fact, there are times when the credit card fees paid by retailers on fuel transactions exceed their own margins earned on the sales. While the impact of those fees on gasoline prices is dramatic –the fees inflate the costs of nearly everything that Americans buy, not just gasoline.

* * *

As the Committee investigates the petroleum market and increasing gas prices, we urge you to carefully consider this information.

Sincerely,

National Association of Convenience Stores (NACS)
NATSO, Representing America's Travel Plazas and Truck Stops
SIGMA: American's Leading Fuel Marketers

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[8] Swipe fees are fuel retailers' second-highest operating cost, behind only labor. The fees are much more than retailers' costs of utilities and rent, just to take two examples.

Senator CRUZ. Additionally, the Chairman and numerous other Democrats have made references that Federal lands are only 8 percent of U.S. production. At other points, Democratic members have used the figure 10 percent. The problem is, both of those are inaccurate because those are onshore numbers. But if you count offshore production, then Federal lands are roughly 25 percent of U.S. production. I would ask unanimous consent to enter into the record a Reuter's article that makes that point, that 25 percent of U.S. oil and gas production comes from Federal lands and waters.

The CHAIR. Without objection.

[The information referred to follows:]

BIDEN GETS CLIMATE WIN WITH COURT LOSS ON GULF OF MEXICO OIL LEASES

By Nichola Groom and Valerie Volcovici

January 28, 2022 8:30 PM EST

Jan 28 (Reuters)—A U.S. judge's surprise decision this week to annul the Biden administration's first Gulf of Mexico oil lease auction because of its climate change impact has raised questions about the future of the Nation's Federal drilling program—and played directly into the president's hand.

President Joe Biden, a Democrat, made a campaign pledge to end Federal oil and gas drilling to fight climate change, and he quickly announced a suspension of all new lease sales pending a broad review of drilling's impact on global warming after taking office. Some 25 percent of U.S. oil and gas production comes from Federal lands and waters.

But his administration was later forced into the sale after several drilling states successfully sued in Federal court in Louisiana. They argued that U.S. law requires the Federal government to hold auctions on a regular basis to enhance energy independence and generate revenue.

The November auction generated more than $190 million, the highest since 2019, on 1.7 million acres sold, and drew bids from Exxon Mobil *(XOM.N), opens new tab* and Chevron *(CVX.N), opens new tab*.

This week's ruling, from a judge in the District of Columbia who was appointed by former President Barack Obama, came after a challenge by environmental group Earthjustice. The judge vacated the auction entirely, saying the Interior Department failed to properly account for its impact on global warming.

Biden's Interior Department had used an environmental impact statement for the auction that was prepared by the administration of former President Donald Trump, a vocal climate skeptic. It contained an argument that oil production in the Gulf of Mexico would reduce, not increase, greenhouse gas emissions because production is dirtier elsewhere in the world.

Biden's Interior Department must now do what it originally intended: take a fresh look at environmental and climate impacts of drilling. It has not yet said yet whether it will suspend other planned drilling auctions pending review, or how long the review will take.

"CONSIDERING OUR OPTIONS"

The environmental group that sued hailed the court's decision and hopes the administration will stop leasing. A Louisiana state official, meanwhile, accused Biden of sabotaging the auction. The U.S. drilling industry and its backers are likely to appeal the case in the hopes of keeping sales moving.

There are hints that Biden's Interior Department knew its Gulf of Mexico oil auction was on weak legal footing.

In the Record of Decision for the sale, it noted that, months after the environmental review was finalized, a Federal appeals court in 2020 ruled the government must consider foreign oil consumption in its analysis of how such sales impact greenhouse gas emissions.

That ruling had already effectively blocked U.S. approval of Hilcorp's Liberty drilling project in Alaska.

But the Interior Department's sale document said it did not believe it needed to conduct any additional analysis on how foreign consumption affects emissions.

An Interior Department official declined to comment.

Ali Zaidi, deputy White House national climate advisor, said the court decision shows the U.S. oil leasing program needs to be reformed and that the Interior De-

partment should have the space to do that work WildEarth Guardians, an environmental group that has sued the Federal government repeatedly over climate impacts of onshore leasing and won several victories, said this week's ruling raises doubts about whether the administration can proceed with other planned sales early this year.

"We've set a bar. This latest ruling, I think sets an even stronger bar," said WildEarth Guardians attorney Jeremy Nichols. "And it certainly calls into question whether the Bureau of Land Management is going to be able to legally justify more onshore oil and gas leasing at this point."

Last month the group sought a court order from a Federal judge in New Mexico to stop U.S. drilling permit approvals in parcels included in three Trump administration lease sales.

The Bureau of Land Management has approved 118 drilling permits on the challenged parcels.

Scott Lauermann, a spokesman for oil industry lobby group the American Petroleum Institute, said late Thursday the API was reviewing the Gulf of Mexico decision and "considering our options."

Elizabeth Murrill, Solicitor General of Louisiana, which is an intervenor in the case, said the court and the Biden administration were hurting blue-collar workers.

"It is extremely disappointing that the Biden administration continues to sabotage oil and gas lease sales. These actions are crippling consumers, destroying jobs, and jeopardizing our national security," she said.

Chevron CEO Michael Wirth, whose company was one of the high bidders in the Gulf of Mexico sale, said Chevron was reviewing the decision.

"We're disappointed because these lease sales have been conducted successfully in the Gulf of Mexico for decades now and have resulted in us being one of the largest leaseholders out there with over 240 leases," he said.

Additional reporting by Sabrina Valle in Houston; Writing by Richard Valdmanis; Editing by David Gregorio

Valerie Volcovici
Thomson Reuters

Valerie Volcovici covers U.S. climate and energy policy from Washington, DC. She is focused on climate and environmental regulations at federal agencies and in Congress and how the energy transition is transforming the United States. Other areas of coverage include her award-winning reporting plastic pollution and the ins and outs of global climate diplomacy and United Nations climate negotiations.

Senator CRUZ. There is, likewise, an additional article from CSIS.org that makes—that illustrates the same point, that 24 percent of U.S. oil and gas production comes from Federal lands, including offshore. I would ask unanimous consent to enter this into the record, as well.

The CHAIR. Without objection.

[The information referred to follows:]

Biden Makes Sweeping Changes to Oil and Gas Policy

Photo: JIM WATSON/AFP/Getty Images

Critical Questions by **Ben Cahill**
Published January 28, 2021

President Joe Biden has followed through on a campaign pledge by introducing a moratorium on new oil and gas leasing on federal lands and waters. With nearly 25 percent of U.S. oil and gas production coming from federal lands, the policy shift may have significant implications for future investment and production. The backlash from oil and gas producing states will be fierce and lawsuits have already begun, but the Biden administration views this policy as a key part of its climate agenda and is unlikely to change course.

Q1: What changes has Biden made?

A1: In a January 27 executive order that introduced a sweeping, government-wide approach to climate policy, Biden announced several new oil and gas policies. The Biden administration is halting new oil and gas leasing on federal onshore lands and offshore waters "to the extent consistent with applicable law." This pause will not affect existing operations or permits for existing leases, and private lands will not be affected. The Department of the Interior states that Native American tribal lands will be exempted. Biden has also directed the secretary of the interior to consider whether to adjust coal, oil, and gas royalties in order to account for corresponding climate costs, suggesting the possibility of a royalty increase. Biden ordered the Department of the Interior to take steps toward conserving 30 percent of public lands and waters by 2030 and toward doubling offshore wind production in the same timeframe. These moves follow executive orders that halted implementation of a leasing program in the Arctic National Wildlife Refuge and effectively suspended new leases, contracts, or drilling permits for at least 60 days. Biden's January 20 executive order also withdrew the permit for the Keystone XL pipeline and directed agencies to consider new rules to curb methane emissions from oil and gas. Last, Biden has directed government agencies to work toward eliminating fossil fuel subsidies by fiscal year 2022.

Q2: How will this affect U.S. oil and gas production?

A2: Federal land accounts for about 24 percent of oil and gas production in the United States, mainly in the offshore Gulf of Mexico. But since companies with existing leases will not be affected, the near-term impact on exploration and production as well as royalties to states will be limited. With more than 26 million onshore acres and 12 million offshore acres already under lease, there is a deep inventory of exploration opportunities. Companies may have secured more onshore and offshore permits in recent lease sales in anticipation of a policy change by the Biden administration. A more permanent leasing ban would have a significant impact, although visible offshore production declines may not materialize for up to 10 years, given the typical timeframe for planning, exploration, appraisal, and development. Onshore production declines could conceivably show up faster, but leases typically last for 10 years and drilling activity on recently acquired leases may not begin for some time. A permanent ban on new leases would affect numerous states with oil and gas resources. New Mexico–home to the prolific Delaware Basin–is an exception to the

rule that most shale oil and gas resources are found on private lands, and the state accounts for more than 60 percent of existing federal drilling permits. Rocky Mountain states including Wyoming, Colorado, and Montana would take a hit from a permanent leasing ban. The Gulf States would be harmed by declining exploration and production due to lower royalties, as well as the impact on the oilfield services sector and related industries. In general, a leasing ban on public lands would drive more investors to private and state land.

Q3: Will this lead to a permanent leasing ban on public lands?

A3: The leasing moratorium is likely just the beginning of a significant policy shift. The president has asked the Department of the Interior for a comprehensive review of the federal oil and gas program, and directed government agencies to examine the climate impact of future oil and gas activity on public lands. These reviews are likely to generate new rules and guidance. The Bureau of Land Management (BLM) could potentially impose stricter requirements for future resource management plans for onshore areas, perhaps by introducing tougher climate impact assessments in the National Environmental Policy Act reviews of proposed land use plans. Applications for permit to drill (APDs) on federal lands are typically granted for two years and are often extended. In the future, however, the BLM could impose tougher requirements related to gas flaring or water management that will make it harder for onshore operators to secure new drilling permits. The Bureau of Safety and Environmental Enforcement could take the same tack with offshore APDs. The exact rules and guidance that may emerge are difficult to predict. But aside from outright bans on new leasing, there are many ways to raise the regulatory bar so high that it could be difficult for companies to operate on federal lands.

Q4: How are resource states reacting?

A4: Industry associations object to Biden's executive orders, arguing that they will deter investment, kill jobs, reduce state revenues, and shift oil and gas production to other countries. Legal battles have already begun. Lawmakers in states like Alaska, Wyoming, Montana, and the Gulf Coast states have vowed to contest Biden's plans, and may argue that laws including the Mineral Leasing Act require regular lease sales on public lands. Some governors may seek exceptions to the ban on leasing, but such

efforts seem unlikely to succeed. The Biden campaign made these pledges to halt new leasing months ago and knew they would generate a backlash. The administration is determined to push ahead with its climate and energy priorities and emphasizes the number of new jobs that will be created in expanding renewable energy and associated infrastructure.

Energy Revenue Disbursements
FY 2020

	$ million	
NM	707.0	40%
WY	457.5	26%
LA	159.1	9%
TX	99.4	6%
ND	66.7	4%
CO	57.1	3%
UT	53.9	3%
MS	53.1	3%
AL	50.3	3%
CA	36.9	2%
AK	21.0	1%
MT	20.6	1%

Source: U.S. Department of the Interior, "Trump Administration Disburses More than $8 Billion from 2020 Energy Production," December 4, 2020, https://www.doi.gov/pressreleases/trump-administration-disburses-more-8-billion-2020-energy-production.

Note: Includes oil, gas, and minerals. Shows only top 12 states.

CSIS | ENERGY SECURITY AND CLIMATE CHANGE PROGRAM

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Tags

Energy and Sustainability, and Energy Markets, Trends, and Outlooks

Senator CRUZ. I would also note that this last document we just entered into the record, it outlines the states that benefit from oil and gas production on Federal lands and the money—the revenue that they receive from doing so. And it is really striking because these are the states that are hurt the most by the Biden administration's war on U.S. energy production. The state that is hurt the most is New Mexico—$707 million in revenue in Fiscal Year 2020. After New Mexico, you have Wyoming then, Louisiana then, Texas then, North Dakota then, Colorado then, Utah then, Mississippi then, Alabama then, California then, Arkansas then, Montana. It is striking. A number of those states have Democratic senators who

are, nonetheless, not concerned about, or not fighting against, the harm to their states, from the Biden administration's policies, reducing production on those lands, in those states.

You know, I listened to Senator Hickenlooper, and he talked about a survey that showed that capital discipline was leading to less investment in new drilling. And I do not doubt that at all, that any responsible company has to worry about capital discipline. Ms. Sgamma, let me ask you, is it harder to maintain capital discipline when the Federal Government is waging a war on your ability to get equity funding or debt funding, and you cannot get capital? Does that make companies more reluctant to risk what limited capital they have, when they cannot get new capital?

Ms. SGAMMA. I believe there is a factor of that—there is definitely that factor in—it is hard to shake out how much of it is capital discipline and how much of it is ESG risk.

Senator CRUZ. OK. Let me ask a final question, which is, the theory that Democrats are postulating is that the gasoline prices in 2021, then in 2022, that have skyrocketed are because oil companies are manipulating the market and they are not drilling because they want to hoard. If that is true, why did they not do that in 2017 or 2018 or 2019? Did oil companies not want to make profits then? And what has changed from 2019, the high point, to today?

Ms. SGAMMA. I think it is the policies that are discouraging production. And just because I have not had a chance to get this in but, the FTC has looked at price gouging and price manipulation 50 different times in recent years and each time they have found no evidence that the oil and gas industry is manipulating or price gouging. So, thank you.

Senator CRUZ. Thank you.

The CHAIR. So, Ms. Sgamma, you do not see a need for more transparency in these markets?

Ms. SGAMMA. Well, I think with 50 different investigations by the FTC, there has been lots of transparency.

The CHAIR. Let us go to Mr. McCullough because I think that is the very issue, that there isn't transparency in this particular aspect of the market, at the petroleum level, and to Ms. Lummis' line of questioning. So, you are saying that the price discovery that is supposed to be in a market, as it relates to the refinery—post-refinery product, that there is an opaqueness to the market. That we do not actually understand what those trades are. No one is looking at those trades. Is that right, Mr. McCullough?

Mr. MCCULLOUGH. I do, and I think Senator——

The CHAIR. Could you turn on your—can you turn on your button? Thank you.

Mr. MCCULLOUGH. I apologize. I do, and I think Senator Lummis illustrated that very well. She asked a series of completely reasonable questions, all of which indicated that this was a bit of a mystery to her as well. And I do not disrespect her for it. It is a mystery. She asked, where did WTI and Brent come from? Those are worldwide markets. They are dominated by bad actors. Saudi and Russia certainly are two actors who we worry about. So, we do not have much discovery in that. We probably never will. Everyone in the industry believes the Russians and the Saudis are never truthful about their activities. That is fine.

But when we get to our shores, we are benefited by knowing more. And with many citizens wondering where these numbers come from, it is well within our abilities to be able to answer it. I have worked with the FTC on some of the previous investigations. And quite bluntly, they have started from scratch. And that is a terrible place to start. They did not have the data.

I have been told—I cannot prove it, but I have been told the FTC does not get a copy of the OPUS newsletter. That is disgraceful. I do not know why that would be. They certainly need that, any analyst does. So, these are things we can fix very easily, and we can give citizens that answer.

The CHAIR. So, many of the—I am concerned that in the flavor of today's hearing that people are—it reminds me so much of the Enron discussion. It literally took until we had the traders on a tape saying what they had done. People used all the same things that they are saying today. So, the fact is, the FTC does not collect or look at this data, is that correct?

Mr. MCCULLOUGH. Well, they have no way to do it unless they actually go for a full bore investigation and subpoenas. And the fact is that the number of documents is enormous. In other contexts, I have been through 3.5 million documents on some of these issues.

This is not something you pick up one morning in an investigation. This requires ongoing transparency, so you know where to look. The only reason we got through the manipulations on electricity and natural gas, is that Enron employed some of the most incompetent traders known to man. And if they had not been singing songs about raping customers, and burning fires, possibly we would never have had the political will to get the transparency we have in those markets.

Now, I do not believe there is a single major company in America that would employ traders that stupid ever again, for obvious reasons. But the fact is, we need that. We need it in all of our commodities. We have it in almost all of our commodities, except for this gaping hole in the center in oil and gasoline. Not hard to fix, certainly beneficial. If Senator Cruz and the other senators here are doubting that there is any, well, prove it. They will be right, and I will be satisfied. But if, as we expect, we do see anomalies, we should get to the bottom and reassure our citizens.

The CHAIR. And you see some anomalies that concern you now about the West Coast market?

Mr. MCCULLOUGH. We certainly—when the price kept rising in California and the oil price was falling, that was a unique circumstance. And that did not happen just 1 day, that went on for much of March.

The CHAIR. And so, the FERC authority that has existed, basically, I believe, has found something like a billion dollars in fines and disgorgement. Some of them are the very sector that also was involved in this sector of energy. Are you amazed that that still goes on today?

Mr. MCCULLOUGH. Not at all. You know, some of these scams are so tempting to a trader that he is willing to take the risk and the returns are enormous. And we do not disbar traders for having bad acts. Sometimes they will be forbidden by the CFTC to trade for

a while. But it is interesting in Texas, when we were reviewing a market manipulation issue, we found an Enron trader playing the same games years later. So, there is nothing for it. We just need to have the facts out there so that we know what to do with it. And it is not difficult, and we do it everywhere else.

The CHAIR. OK, so, I would like to thank the witnesses for being here today. I thank our colleagues. I had hoped we would have a little bit more discussion on transparency. But I know this is a very important subject to everybody and we would like to get answers about how to move forward. I will submit something on behalf of Senator Markey, in his interpretation of the administration's actions, without objection.

[The information referred to was unavailable at time of printing.]

The CHAIR. We have—let us see. The record will remain open for two weeks. I ask members that they submit questions for the record and witnesses respond no later than April 29. With that, we are adjourned.

[Whereupon, at 12:27 p.m. the Committee adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO ROBERT F. MCCULLOUGH JR.

Gas Prices. Like most of the country, everyday Arizonan families have experienced rising gas prices this year. The American Automobile Association (AAA) reports that the price of a gallon of regular unleaded gasoline in Arizona has hovered around $4.60 per gallon in April 2022, compared to $3.07 per gallon one year ago.

Question. What factors go into the final retail gas price that motorists see at their neighborhood filling station?

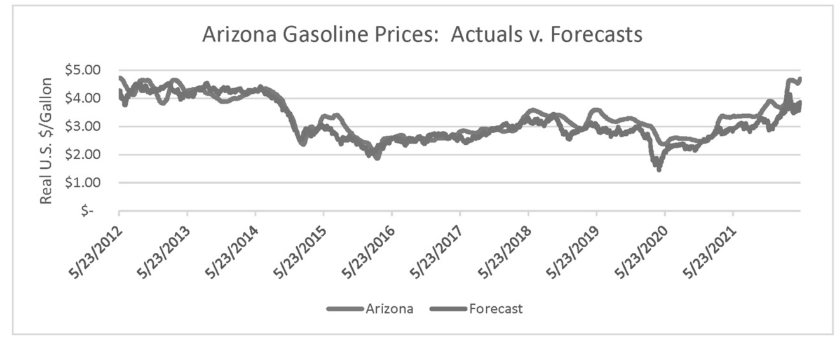
Answer. The primary drivers of gasoline prices are U.S. and world crude prices. Our review of Arizona statistics indicated that 84 percent of changes in retail gasoline prices are explained by the crude oil prices over the past decade.

Arizona's location in the western U.S. is unique in that it can purchase gasoline from either California or Texas by pipelines that meet at Phoenix:

Our simple scoping model indicates that both WTI Cushing and Brent oil prices are significant determinants of gasoline prices in Arizona. However, we believe that Brent oil prices—exported from California to Arizona are the most important.

SUMMARY OUTPUT								
Regression Statistics								
Multiple R	0.915708008							
R Square	0.838521156							
Adjusted R Squa	0.838331032							
Standard Error	0.273115667							
Observations	2552							
ANOVA								
	df	*SS*	*MS*	*F*	*Significance F*			
Regression	3	986.9406657	328.9802219	4410.385595	0			
Residual	2548	190.0608433	0.074592168					
Total	2551	1177.001509						
	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 99.0%*	*Upper 99.0%*
Intercept	1.214099043	0.041087878	29.54883776	2.8857E-165	1.133530009	1.294668076	1.108184344	1.320013741
WTI	0.004360425	0.001171463	3.722204282	0.000201766	0.002063308	0.006657542	0.001340674	0.007380177
Brent	0.018637867	0.001038115	17.95357197	5.82166E-68	0.016602233	0.020673502	0.015961856	0.021313878
Borenstein	0.260444584	0.021932371	11.87489418	1.07802E-31	0.217437498	0.303451671	0.20390819	0.316980978

Unfortunately, dependence on California is costly. California's market is highly concentrated and surprisingly opaque. The presence of few competitors and a complex and largely undocumented market makes exercise of market power very likely:



Our simple scoping model indicates that Arizona gasoline prices would be $.84 per gallon less if based on market fundamentals. Obviously, this is simply an indication—not proof. Proof will require a detailed investigation similar to the investigation currently underway in California.

A significant portion of the unexplained departure from fundamentals in 2022 is due to the departure of retail gasoline prices from fundamentals discovered by University of California professor Severin Borenstein.[1] Our estimate of the Borenstein hypothesis for Arizona is $.26 per gallon of gasoline. Dr. Borenstein's analysis is now the basis of an investigation by California authorities.

The bottom line is that prices are primarily cost based. Unfortunately, the remainder of the prices paid by consumers are caused by market forces that are not transparent and—frequently—as addressed below, highly suspicious.

Given Arizona's connection to the California markets, the large discrepancy between cost factors and retail prices is not surprising.

Federal Government Responses. In response to rising gas prices, the Biden Administration announced the release on March 31, 2022 of one million barrels of oil from the Strategic Petroleum Reserve each day for the next six months. Others have proposed building additional infrastructure to transport oil from wells to refineries, conducting additional oil and gas exploration and production in the United States, including on Federal lands, and temporarily suspending the Federal gasoline tax.

Question. What actions can Congress take in the short term to address rising gasoline prices? Are there additional steps Congress can consider to address this issue in the medium to long term?

Answer. You listed five possible solutions. I would comment on all five and then recommend a sixth—adding competition to isolated areas of the U.S.:

1. Strategic Petroleum Reserve releases. Such releases have a short term impact, but are largely ineffective since the additional supply simply displaces existing oil and adds to oil and petroleum products exports. Since the primary determinant of gasoline prices is the world price of oil, such steps are not effective for long.

   A better approach is for the releases from the SPR to be matched by forward purchases. This not only captures a net gain since the forward market is less than today's prices, but also raises the forward price of oil. This provides a better price signal for oil exploration and development since wildcatters can finance new wells by selling their output in the forward market. For oil shale, approximately 70 percent of the total output of the well occurs in the first year. SPR releases matched by SPR forward purchases will not only provide a short term benefit to consumers, but increase output when it is needed.

2. Additional infrastructure. So long as the primary determinant of gasoline prices in the United States is the world oil price, there is little evidence that the problem is infrastructure. To the contrary, since the primary oil price for much of the U.S. is WTI Cushing which trades at a small discount from Brent

[1] *https://energyathaas.wordpress.com/2019/05/20/the-mystery-gasoline-surcharge-gets-some-respect/*

crude, additional infrastructure is likely to eliminate the small differential and raise U.S. gasoline prices.

3. Additional development. The U.S. oil industry has proven unresponsive to the high price of crude this spring. This is obviously the correct long term answer. Explanations why the industry has not increased drilling and production have been incomplete and unconvincing.
4. Increase drilling on Federal lands. All of the evidence is that the oil is present, the permits are in place, and the owners of the proposed projects are accumulating huge windfall profits. The industry's focus on acquiring more unused permits is perplexing.
5. Suspend Federal gasoline taxes. The academic evidence suggests that tax reductions have a direct impact on gasoline prices. This is an immediate and direct benefit to consumers.
6. Increase competition. The U.S. gasoline market has become more and more concentrated over time. For geographically isolated markets like the west coast, consumers are paying a premium above competitive prices. This is the best long term solution to gasoline price swings not caused by world oil prices. A pipeline from oil producing regions in the upper Midwest or along the southern border from the oil producing basins in Louisiana, Oklahoma, and Texas would have an immediate impact on west coast prices.

Unique Phenomenon of Oil Prices. In your written testimony, you describe the adage that oil prices have been known to go "up like a rocket, down like a feather." This suggests that oil and gas markets respond immediately to market uncertainty by rapidly increasing prices, but lag when conditions improve so consumers do not see lower prices for several weeks or months.

Question 1. What effects would you anticipate seeing if that information were disclosed to Federal agencies, and potentially the general public?

Answer. The evidence from adding transparency to the markets for competing fuels such as electricity and natural gas has been extremely positive. After Enron's predations became known, the Federal Energy Regulatory Commission mandated release of a large variety of market data including transactions, prices, and counterparties. They also set standards for price reporting agencies which had been the subject of extensive manipulation during the California energy crisis.

As discussed below, price reporting agencies have enormous impact on energy markets. The ability of market participants to "game" price reporting agencies, makes information disclosure a necessity.

Market participants often claim that price and transaction transparency will put them at a competitive disadvantage. However, these claims are invalidated by their own release of such data to price reporting agencies—and each other—in the normal course of business. In many cases, the only parties who do not have access to this data are the public, the press, and regulators. Adam Smith, the founder of modern economics commented directly to this issue in 1776:

> The landlord and tenant, for example, might jointly be obliged to record their lease in a public register. Proper penalties might be enacted against concealing or misrepresenting any of the conditions; and if part of those penalties were to be paid to either of the two parties who informed against and convicted the other of such concealment or misrepresentation, it would effectually deter them from combining together in order to defraud the public revenue.[2]

The level of transparency recommended for oil and gasoline would simply bring this industry into conformity with other major energy markets.

Question 2. Do you see any indications of inappropriate activity in petroleum markets?

Answer. Yes. Our allegations of inappropriate activities are currently the subject of an antitrust case in Federal court. While much of the evidence is the subject of a protective order in the case, the complaint in Persian Gulf v. BP West Coast et al cites our studies from 2012 through 2015.[3] A currently active California Attorney

[2] The Wealth of Nations, Adam Smith, 1776, Ch. II, Pt. II.
[3] Case No. 3:15-cv-01749–L–BGS, CLASS ACTION FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE SHERMAN ACT, CALIFORNIA'S CARTWRIGHT ACT, AND UNFAIR COMPETITION LAW, September 22, 2016.

General's case referencing wash trading was filed in 2020 and identifies inappropriate activities by various California petroleum traders.[4]

A variety of activities have been documented outside of the antitrust case. In March, 2022, for example, the most important of the California price reporting agencies posted indices that remained high even after the price of oil fell sharply. The index involved is a pivotal one for west coast markets and impacts directly on Arizona wholesale prices. The nature of price indices is that they normally reflect multiple transactions and vary significantly day to day. In this case, the primary index for CARBOB in L.A. (and also AZRBOB in Arizona) remained unchanged after oil prices fell.

If an agency had market surveillance responsibilities, they would have asked:

1. How can a price index stay constant when the underlying commodity's price has fallen dramatically?
2. How many counterparties filed transactions that set the index over this period?
3. Did any of these counterparties achieve a windfall from the anomalous index report?
4. Were the reported transactions violating wash or prearranged rules as set forth by FERC or the CFTC?

Unfortunately, no market surveillance agency follows spot prices of oil and gasoline in the United States. The significant surcharges borne by consumers in California and Arizona in this case are unlikely to be explored unless a Federal agency explicitly has this authority.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO KATHLEEN SGAMMA

Gas Prices. Like most of the country, everyday Arizonan families have experienced rising gas prices this year. The American Automobile Association (AAA) reports that the price of a gallon of regular unleaded gasoline in Arizona has hovered around $4.60 per gallon in April 2022 compared to $3.07 per gallon one year ago.

Question. What factors go into the final retail gas price that motorists see at their neighborhood filling station?

Answer. Western Energy Alliance represents producers, and as such, we are price takers. In the West where many of our well sites are far from refineries and pipelines and other transportation means can be constrained, we often receive a price lower than the global price. As I don't represent the retail sector, I am not an expert in all the refining, marketing, and distribution costs that go into the price charged at the pump. Of course, state and Federal taxes also figure in a substantial percent of the price of gasoline, although the price of a barrel of oil is the highest component. I defer to the experts such as the American Fuel and Petroleum Manufacturers on that subject.

Federal Government Responses. In response to rising gas prices, the Biden Administration announced the release on March 31, 2022 of one million barrels of oil from the Strategic Petroleum Reserve each day for the next six months. Others have proposed building additional infrastructure to transport oil from wells to refineries, conducting additional oil and gas exploration and production in the United States, including on Federal lands, and temporarily suspending the Federal gasoline tax.

Question. What actions can Congress take in the short term to address rising gasoline prices? Are there additional steps Congress can consider to address this issue in the medium to long term?

Answer. The American producer, in the recent past, has been able to respond to higher prices by increasing production and bringing down prices. We have been doing so since global prices started to climb in 2021, although more slowly than otherwise. We have not been able to react as quickly as in the past for reasons of: (1) government regulation, and (2) concerted efforts to starve our industry of capital. If companies cannot get financing for their wells, which each cost several millions of dollars, we cannot move forward with development.

On the first point, Congress could move forward with legislation to limit the time and scope of National Environmental Policy Act (NEPA) analyses required for Federal projects. NEPA can take several years to complete, holding up projects in the

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[4] COMPLAINT FOR VIOLATIONS OF THE CARTWRIGHT ACT AND UNFAIR COMPETITION LAW FOR DAMAGES, INJUNCTIVE RELIEF, CIVIL PENAL TIES, AND OTHER EQUITABLE RELIEF, California Attorney General, May 4, 2020.

meantime. Even when the NEPA is complete, it is too easy to litigate and convince a judge that the Federal agency must do yet more analysis. Congress could put sideboards around NEPA so that it is focused on the true impacts of projects and not hypothetical or cumulative impacts far downstream or unrelated to the project.

On the second point, Congress should prevent the administration from moving forward with financial regulations meant to de-bank and de-capitalize the oil and natural gas industry. The administration is enacting several regulations, such as from the Securities and Exchange Commission, the Department of Labor, and the Department of Treasury, meant to elevate ESG and climate change above maximizing returns and minimizing financial risk for pensioners, workers, and other investors. The ultimate goal of these regulations is to deny financing to oil and natural gas or at least make the cost of capital so prohibitive that many companies cannot survive. Since 70 percent of America's energy needs are met by oil and natural gas, until there is an alternative that does everything that oil and natural gas do, starving the industry of capital will only reduce American production, requiring either imports from unfriendly nations or higher prices for consumers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN SULLIVAN TO KATHLEEN SGAMMA

Question. Mrs. Sgamma, during the hearing I asked you about the impacts of a March 19, 2021 memo by Acting Assistant Secretary of the Interior for Land and Minerals Management, Laura Daniel-Davis. This memo extends the policy of centralizing leasing, permitting, and NEPA decisions with the political appointees in DC—put in place by yet another unconfirmed official, Scott de la Vega, Acting Secretary of the Interior. Though the de la Vega memo contained an expiration date, the Daniel–Davis memo does not. There was some confusion on that point during our discussion, so with that clarity added, I'd like to pose the question once more. How have these decisions traditionally been made and what is the real world impact of this power grab?

Answer. I apologize for the confusion. I believe I was confusing the memos, recalling the expiration of the de la Vega memo while forgetting that the Laura Daniels-Davis (LDD) memo does not have an expiration. The 60-day halt to all approvals in the de la Vega memo has expired, while the LDD memo indeed remains in effect. However, the LDD memo applies not to Applications for Permit to Drill (APD) approvals, but to APD extensions, reinstatements of leases, lease sale notices, lease suspensions, and NEPA documents, among other peripheral approvals. Despite the LDD memo not applying to APD approvals, in actuality, Bureau of Land Management (BLM) field offices process the APDs but send them to headquarters for final approval. It is indeed concerning that headquarters continues to be a chokepoint in approving drilling permits.

Further, the continued scrutiny by headquarters of lease suspensions and permit extensions, which in the past were routinely granted, is concerning. APDs are valid for two years, after which they can be extended for another two years. Because of the uncertainty of operating on Federal lands, companies must build up a sufficient inventory of permits to stay ahead of their rigs. The Federal government can take many months to years to approve drilling permits. For that reason, a large inventory often must be acquired before proceeding. BLM often asks companies to request many permits at once so that coordinated environmental analysis and plans of development can be prepared. Both situations lead to an inventory of permits that can take a company more than two years to drill. If Interior starts to deny these extensions, it will further sow uncertainty into the system and encourage less coordinated development.

Likewise, headquarters is denying requests for lease suspensions. Leases, which carry a ten-year term, had been routinely suspended in the past when circumstances beyond the control of the company occur, such as the government taking years to complete NEPA environmental analysis or litigation holding up leases. If Interior does not grant lease extensions, the leases could expire before the issue is cleared up. For example, Western Energy Alliance is in court defending 5,900 leases, nearly every one sold since 2016. Development cannot occur on most leases while the litigation winds its way through the district and circuit courts. Interior leadership seems to be pursuing a policy of requiring companies to continue to pay for the leases as they slowly let them expire without the companies being able to develop them and realize a return on their investments. Like the ban on new leases,

the policy of letting existing leases expire is a bureaucratic way to prevent production on Federal lands and circumvent statute.

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