



United States Senate

WASHINGTON, DC 20510-4705

March 14, 2006

Senator Arlen Specter
Chairman
Committee on the Judiciary
224 Dirksen Senate Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Specter and Senator Leahy,

Thank you for scheduling today's Judiciary Committee hearing regarding the impacts of oil industry mergers and consolidation on fuel prices. I have been watching with interest your Committee's activities in this area, and wholeheartedly applaud your efforts to more fully explore this pressing issue. I write to offer some of my own perspectives, as well as some initial comments on the draft Petroleum Industry Antitrust Act of 2006.

In summary, I believe the draft legislation takes critical steps forward, particularly by creating a Clayton Act prohibition on "unilateral withholding" of supply from the marketplace. It is my hope that you will continue to pursue this effort, as well as potentially expand it to touch on a number of the other factors contributing to the prolonged periods of fuel price volatility we have recently witnessed.

I also continue to believe that the Senate's work in this area would be greatly aided by a comprehensive investigation of current dynamics in petroleum markets. In the very least, such an investigation would serve as a baseline by which to evaluate the prevalence of the withholding activities the draft legislation is designed to prohibit. But in addition, it would help inform our debate about other important issues related to the petroleum sector, which may also require a legislative response. Among these issues:

- the need for enhanced transparency or some real-time reporting mechanism that would allow federal authorities to monitor compliance with the underlying Act's withholding prohibition;
- a determination of whether current industry practices regarding fuel inventories are exacerbating recent volatility in petroleum prices and/or enabling a form of unilateral withholding;¹

¹ At last November's joint hearing of the Senate Commerce and Energy Committees regarding energy pricing and profits, the Attorney General of the State of Arizona offered compelling testimony on this point. General Terry Goddard argued that the petroleum industry has "moved to a 'just-in-time' delivery system, vastly reducing the numbers of refineries nationwide, and minimizing inventories at storage sites ('tank farms'). The effect is a constant and precarious supply/demand balancing act, which is exceedingly beneficial to industry in lowered operating costs, but very harmful to consumers as supply vulnerability sets the stage for price spikes." A review of fuel inventory data, disaggregated by Petroleum Administration Defense District (PADD), is part of a recent Government Accountability Office request I submitted jointly with Commerce Committee Co-Chairman Inouye.

- whether it is appropriate for Congress to also address trade practices related to certain controversial pricing policies used by the petroleum industry, such as “redlining” and zonal pricing; and
- the role that speculative trading in spot and financial futures markets may play in contributing to energy price volatility.

It is worth noting that at the November 9, 2005, joint hearing of the Senate Commerce and Energy Committees, a number of Senators asked questions of the petroleum industry witnesses on hand, designed to probe these issues. It was disappointing indeed that, despite commitments made during their appearances before the Committees, most of the companies represented have thus far declined to provide the necessary information related to their energy trading activities, disaggregated data detailing their exports and fuel inventories. It is my hope that your Committee’s work in this area will provide an additional opportunity to press for these details, which have significant implications for policies critical to the energy security of the United States.

Finally, as you may also know, I have authored legislation (S. 1735) currently pending in the Senate Commerce Committee, designed to crack down on price gouging in times of national energy emergencies. I believe this legislation is complementary to your efforts, as it provides new tools for state authorities to prosecute suspected instances of price gouging—but also recognizes the fundamentally interstate nature of fuel markets, by providing backstop federal authority to pursue profiteering across state lines, with a focus on the largest interests in the petroleum markets.

Again, thank you for convening today’s Judiciary Committee hearing and for the opportunity to make some initial comments on the draft Petroleum Industry Antitrust Act of 2006. I sincerely appreciate your efforts in this area, and hope we may work together to craft sound policies that will help curb the tremendous price volatility that has been the recent hallmark of domestic fuel markets, to the detriment of the American economy and consumers across the nation.

Sincerely,



Maria Cantwell
U.S. Senator

Cc: Judiciary Committee Members