

**STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL**

**Report on Post-Hurricane Katrina
Gasoline Prices in Idaho**

**Consumer Protection Unit
Civil Litigation Division**



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PREFACE

In September 2005, Idaho Attorney General Lawrence Wasden directed the Consumer Protection Unit and Civil Litigation Division to conduct an investigation of retail gasoline prices to determine whether retailers in Idaho following Hurricane Katrina had violated the Idaho Consumer Protection Act by charging consumers “exorbitant or excessive price[s]” during the duration of an officially declared disaster emergency. Hurricane Katrina made land along the Gulf Coast of the United States on August 29, 2005. As a result of Hurricane Katrina, then-Governor Dirk Kempthorne on September 3, 2005, issued a disaster emergency declaration for Idaho effective for 30 days. The Attorney General has statutory authority to enforce the Idaho Consumer Protection Act and to investigate possible violations of the Act.

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EXECUTIVE SUMMARY

Retail gasoline prices throughout the United States were increasing to record levels prior to Hurricane Katrina striking land along the Gulf Coast of Louisiana, Mississippi, Alabama, and Florida on August 29, 2005. By July 11, 2005, the average price for regular grade gasoline in the United States had reached a new all-time high, inflation adjusted, of \$2.33 per gallon. Prices continued to climb upward to new heights. Between August 8 and August 15, 2005, the national average price for regular rose 18.2 cents to \$2.55 cents per gallon, which was the largest one-week increase since the U.S. Energy Information Administration (EIA) began its weekly survey of gasoline prices in August 1990. At the time, the EIA attributed the summer's steep climb in retail gasoline prices to a combination of rising crude oil prices, rising spot prices for gasoline (the price at which refiners and importers sell into the wholesale market), consumer demand increasing faster than additions to refinery capacity, and limited surplus refining capacity to react to supply shortfalls or demand surges due to already high refinery utilization rates and to recent refinery outages.

Consumer demand nationally during the four weeks prior to Hurricane Katrina's landfall was running 1.2 percent higher than the corresponding time period in 2004, but gasoline inventories were near the bottom of their average range. The EIA cautioned on August 10, 2005, that "forecasts calling for an active hurricane season this year" raised the possibility that gasoline prices could remain high following the Labor Day weekend if there were "a major hurricane disrupting supplies in the Gulf of Mexico." The Gulf Coast region produces 55% of the nation's crude oil and its refineries account for 47% of the nation's refined product output; it exports to other states for consumption 65% of the fuel it refines. On August 31, 2005, two days after Hurricane Katrina made land, the EIA stressed that the supply shock caused by Hurricane Katrina's disruption of the petroleum infrastructure in the Gulf of Mexico would be exacerbated because it was occurring at the peak of the summer driving season when retail gasoline prices already were at high levels and when gasoline inventories were tighter than usual.

Retail gasoline prices for regular in the United States, the Rocky Mountain region (Montana, Wyoming, Idaho, Utah, and Colorado), and Idaho all reached their 2005 peaks during the week of September 5: \$3.03 7/10ths per gallon in the United States, \$2.97 8/10ths in the Rocky Mountain region, and \$2.94 9/10ths in Idaho. From those highs, retail prices began to decline and continued to decline throughout the remainder of 2005. Prices reached their lowest post-Katrina levels for 2005 in December, when prices for the month averaged \$2.17 4/10ths per gallon in the United States, \$2.11 3/10ths in the Rocky Mountain region, and \$2.05 3/10ths in Idaho.

On September 3, 2005, five days after Hurricane Katrina made landfall, Idaho Governor Dirk Kempthorne issued a declaration of disaster emergency for Idaho. The declaration was effective for 30 days and was not renewed. President Bush on September 13, 2005, issued a declaration of the existence of an emergency in Idaho retroactive to August 29, 2005. Idaho Code § 48-603(19), which is part of the Idaho Consumer Protection Act, prohibits fuel retailers from knowingly taking advantage of an emergency or disaster declared by either the governor of Idaho or the president of United States by selling fuel to the ultimate consumer “at an exorbitant or excessive price.” The statute only applies for the duration of an officially declared emergency or disaster, and it only applies to retailers who sell fuel to the ultimate consumer. It does not apply to wholesalers or refiners. The attorney general of Idaho has statutory authority to enforce the Idaho Consumer Protection Act and to investigate its possible violation.

In September 2005, Attorney General Lawrence Wasden directed his office’s Consumer Protection Unit and Civil Litigation Division to conduct an investigation of Idaho retailers to determine whether any retailers had charged consumers prices for motor fuel following Hurricane Katrina in violation of the Idaho Consumer Protection Act. The Office of the Attorney General (OAG) examined financial records for the motor fuel operations of ten companies and 184 gasoline stations in Idaho. The focus of the inquiry was on prices during August and September 2005. This time period was consistent with Governor Kempthorne’s 30-day disaster emergency declaration and with the provisions of Idaho Code § 48-603(19) that

limit the statute's reach to prices during the duration of an officially declared disaster or emergency. The OAG also conducted a background inquiry into the nature of retail gasoline and diesel markets in Idaho. The following are highlights of the OAG's investigation and conclusions:

- Idaho motor fuel retailers did not charge consumers "exorbitant or excessive price[s]" in violation of the Idaho Consumer Protection Act.
- The OAG obtained no information suggesting that state antitrust laws had been violated, nor information warranting an investigation of any retailers under the provision of the Idaho Competition Act that prohibits conspiracies to fix prices.
- Idaho demand in 2005 for gasoline, on-road and off-road diesel, and aviation fuel increased 3.5 percent over 2004.
- Idaho has limited petroleum infrastructure, which puts it at a supply disadvantage relative to other states. Idaho is the seventh smallest petroleum market in the United States. Idaho is dependent upon other states for its fuel supply. Idaho has no proven crude oil reserves, produces no crude oil, and has no oil refineries.
- Seventy percent of Idaho's gasoline, diesel, and aviation fuel supplies originate from Utah's five refineries at or near Salt Lake City. These supplies primarily are transported into Idaho through a finished fuel pipeline that originates in Salt Lake City and traverses southern Idaho before continuing on to Pasco, Washington and then to Spokane, Washington. The pipeline is a common carrier operated by Chevron Pipeline Company. Chevron's Salt Lake Products Pipeline System services fuel storage terminals at Pocatello, Burley, Boise, Pasco, and Spokane. Pipeline transportation from Salt Lake City to these terminals takes several days.
- The balance of Idaho's fuel demand primarily is satisfied by production from refineries in Billings, Montana that is transported to fuel storage terminals in Spokane, Washington through the Yellowstone Pipeline System, which is a common carrier operated by ConocoPhillips. Markets in North Idaho are also

served through Washington's petroleum infrastructure. Fuel refined at Washington's refineries along the Puget Sound is transported through a north-south pipeline to Portland, Oregon/Vancouver, Washington. From there, fuel is barged up the Columbia-Snake River System to storage terminals at Pasco, Washington; Umatilla, Oregon; and Wilma, Washington, which is near Clarkston, Washington and Lewiston, Idaho.

- Over the past decade, Idaho has had higher average wholesale prices for regular grade gasoline than Washington, Oregon, Montana, Wyoming, Utah, or Colorado. However, Idaho's higher wholesale average has not translated into the highest average retail prices among this grouping of seven states. Idaho's average retail prices rank fourth among the seven states. The ranking from highest average retail prices to lowest is: Oregon, Washington, Wyoming, Idaho, Montana, Colorado, and Utah.
- Idaho still ranks fourth among the seven when retail prices over the past decade are adjusted for state taxes, but the relative rankings of the other states changes. The tax-adjusted average retail price ranking from highest average price to lowest is: Wyoming, Oregon, Washington, Idaho, Colorado, Utah, and Montana. Wyoming, Oregon, and Washington each had lower average tax rates over the past decade than Idaho.
- Gross retail margins (the difference between the retail price and the wholesale price) in Idaho during the past decade were the second lowest of the seven-state grouping. From highest to lowest, the margin rank is: Oregon, 17.74 cents per gallon; Wyoming, 16.27 cents; Washington, 15.72 cents; Colorado, 15.35 cents; Montana, 12.28 cents; Idaho, 11.47 cents; and Utah, 8.45 cents. The average gross margin for the states in the federal government's statistical grouping known as PADD IV (Idaho, Montana, Wyoming, Utah, and Colorado) was 12.72 cents per gallon. Gross margin is not the same as a net profit margin. Gross margin is

the amount available to a retailer from which to pay operating expenses, replace inventory, service debt, pay taxes, and generate a net profit.

- Gross margins in the Pocatello and Boise markets over a short-run period of two-and-one-half years are below and above, respectively, the decade-long average margin for Idaho of 11.47 cents per gallon for regular. Gross margins in the short-run in the Pocatello market have averaged 9.24 cents per gallon and in the Boise market have averaged 14.28 cents.
- Retail gasoline prices nationally, regionally, and in Idaho follow a pattern of lagging changes in wholesale prices. Rather than being passed through to consumers all at once, both increases and decreases in wholesale prices are passed along by retailers to consumers over a period of time. But there is “asymmetry” in the pass-through rates of wholesale price increases and wholesale price decreases. Wholesale price increases are passed through by retailers to consumers faster than wholesale price decreases. A common metaphorical characterization of this pattern of asymmetrical price lags is that prices “rocket” up but “feather” down.
- Economic explanations for asymmetrical price lags center on consumer “search cost” behavior and competition among retailers within retail markets.
- Price lags are a structural feature of retail markets and are not illegal.
- Gross margins in the Pocatello market in 2005 averaged 9.13 cents per gallon, and averaged 13.26 cents per gallon in the Boise market. But there were wide swings quarterly from these averages. The quarterly averages in Pocatello were 4.248 cents per gallon, 5.035 cents, 2.35 cents, and 24.87 cents. The quarterly averages in Boise were 10.035 cents, 9.486 cents, 7.39 cents, and 27.12 cents.
- Gross margins during the September-December 2005 quarter in the Pocatello and Boise markets were especially volatile. Margins in Pocatello went from their lowest weekly point in September of minus 15.61 cents per gallon to a high of

46.87 cents per gallon the week ending November 10. But from their November height, margins steadily dropped to a low of 1.93 cents as of December 29. Margins reacted similarly in Boise. Margins in Boise went from their lowest weekly point in September of minus 13.07 cents per gallon to a high of 48.41 cents the week ending November 3. From the November high, margins declined to a low of 3.49 cents per gallon as of December 29.

- The OAG found no evidence that the average weekly margins in the Pocatello and Boise markets during the last quarter of 2005 were attributable to anticompetitive behavior or inappropriate price manipulation by retailers
- No region of the country is completely untouched by either crude oil supplies or finished fuel supplies originating from the Gulf Coast region, although the extent of each region's reliance on the Gulf Coast varies. Hurricane Katrina's impact on the Gulf Coast region's petroleum infrastructure had a ripple effect on wholesale and retail prices throughout the country, including in PADD IV (Idaho, Montana, Wyoming, Utah, and Colorado).
- Investigation by the Federal Trade Commission (FTC) of national and regional gasoline pricing following Hurricane Katrina and Hurricane Rita found no evidence of anticompetitive behavior by retailers.
- The historic relationship in Idaho between diesel and regular gasoline prices has inverted. Where diesel prices between 1994 and 2004 tended to be lower on average than prices for regular, the relative relationship has changed since 2004. Diesel prices now tend to be higher on average than prices for regular.
- The change in the relative relationship between diesel and regular gasoline is likely being caused by rapidly increasing world demand for diesel, particularly in Europe and Asia. It also appears to be partially influenced by the effects of a change in the Environmental Protection Agency's (EPA) standard for the maximum sulfur content of diesel.

- Demand for diesel, both on-road and off-road, is increasing in Idaho at a faster rate than demand for gasoline. In 2005, gasoline demand in Idaho increased by 1.1 percent over demand in 2004. However, demand for on-road diesel in 2005 increased over 2004 by 3 percent; and demand for off-road diesel in 2005 increased by 14.7 percent. Consumption of gasoline in Idaho was 1.8 million gallons per day in 2005. Combined on-road and off-road diesel consumption in Idaho was 1.1 million gallons per day.
- It is unclear whether the change in the relative relationship between diesel and regular gasoline prices in Idaho is permanent, or if it is a function of the dramatic increases in crude oil prices since 2004 and will return to the relative relationship that prevailed between 1994 and 2004. Based, however, on economic forecasts for the remainder of 2006 regarding world diesel demand and supply and based on the implementation currently underway of EPA standards, it is likely that the inverted relationship between diesel and regular gasoline prices will continue, at least over the next several months.

INVESTIGATION, RESULTS, CONCLUSIONS

Introduction

The Attorney General's investigation of gasoline prices that Idaho fuel retailers charged consumers following Hurricane Katrina has concluded that these prices did not violate the Idaho Consumer Protection Act.

Hurricane Katrina struck landfall along the Gulf Coast of Louisiana, Mississippi, Alabama, and Florida on Monday, August 29, 2005. On Saturday, September 3, 2005, Governor Kempthorne issued a declaration of disaster emergency for Idaho. The declaration was effective for 30 days and was not renewed. President Bush on Tuesday, September 13, 2005, issued a declaration of the existence of an emergency in Idaho retroactive to August 29, 2005.

The Idaho Consumer Protection Act makes it illegal during the duration of an emergency or disaster declared by either the governor of Idaho or the president of the United States for a retailer to knowingly take advantage of the declared emergency or disaster by selling or offering to sell to the ultimate consumer fuel "at an exorbitant or excessive price." Idaho Code § 48-603(19). The statute, however, only applies for the duration of the officially declared emergency or disaster. Idaho Code § 48-603(19).

The Attorney General has statutory authority to enforce the Idaho Consumer Protection Act and to investigate possible violations of the Act. Idaho Code §§ 48-606 and 48-611. The Attorney General's post-Katrina investigation of gasoline prices focused on the pricing activity of retailers during the months of August and September 2005. This time frame was consistent with Idaho Code § 48-602(19) and with Governor Kempthorne's disaster emergency declaration of September 3, 2005, which was only effective for 30 days. The Attorney General assigned the investigation to Deputy Attorney Generals and staff in his office's Consumer Protection Unit and Civil Litigation Division.

In its investigation, the Office of Attorney General (OAG) examined financial records for the motor fuel operations of ten companies and 184 individual stations. The stations were located throughout the state. Proprietary and confidential financial data from the companies was

obtained by the OAG through voluntary compliance by the companies with OAG information requests. The companies whose records were examined ranged from those owning and operating one station in Idaho to those owning and operating more than 30 stations. Stations included conventional convenience stores, large fueling marts, and stations operated by companies, such as grocery store chains and discount retail merchants, whose primary lines of business are other than fuel.

The OAG interviewed representatives of some of the companies from which financial data was obtained, and interviewed representatives from trade associations within and outside Idaho. It reviewed petroleum industry data and information compiled by state, federal, and private sources. It reviewed economic studies regarding the structure of retail gasoline markets within the United States and within various regions of the country. The OAG also retained an economist to assist it in analyzing financial data and in conducting research into gasoline and diesel pricing patterns in Idaho

Idaho Law and Fuel Prices

Idaho law addresses gasoline and diesel prices in two ways. One is through the Idaho Competition Act, which prohibits conspiracies to restrain commerce in Idaho by fixing prices. Idaho Code § 48-104. The other is through the Idaho Consumer Protection Act, which prohibits the charging of “an exorbitant or excessive price” for fuel during the duration of a disaster or emergency declaration. Idaho Code § 48-603 (19). The Attorney General is responsible for enforcing both Acts and for conducting investigations under both Acts. Idaho Code §§ 48-108 and 48-109; Idaho Code §§ 48-606 and 48-611. It is important to distinguish between the two price-related statutes because their scope is different and so is the nature of the conduct each proscribes. These differences have implications both for enforcement and for public understanding of what the Attorney General can and cannot do when consumers frustrated with price levels for fuel demand that the Attorney General “do something about high prices.”

The Idaho Competition Act and Price Fixing

The anti-price fixing provision of the Idaho Competition Act is part of the state's antitrust laws. Among the legislative policies underlying these laws are "to maintain and promote economic competition in Idaho commerce" and "to provide the benefits of that competition to consumers and businesses in the state." Idaho Code § 48-102 (2). The legislature intends that the state's antitrust laws be construed in harmony with federal antitrust statutes and federal case law interpreting those statutes. Idaho Code § 48-102 (3).

Idaho Code § 48-104 declares that "[a] contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful." Consequently, if prices were fixed as the result of such a contract, combination, or conspiracy, then there would be a violation of state law. Consumer complaints about fuel prices received by the OAG indicate that some consumers have misconceptions about how Idaho's anti-price fixing law functions.

Some consumers assume that if two or more stations owned by different companies charge the same price for fuel, then that must mean the owners have "fixed" prices. Similarly, some consumers also assume prices must have been "fixed" whenever fuel prices among most stations in a local market rise or fall close to each other in time, even though prices among the stations vary. Such assumptions confuse correlation and cause. The fact that two or more acts share some characteristic or characteristics in common does not, by itself, establish any cause, let alone that the acts have a common cause, or that a particular cause is legal or illegal. Federal and state antitrust laws operate on a more complicated level than surface correlations. A key premise of antitrust law is that there is a legally relevant distinction between "independent" and "concerted" action when it comes to determining the existence of anticompetitive conduct resulting in price fixing. Matushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 588 (1986); Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984).

Antitrust law does not prohibit companies from ever charging the same price. Rather, it is concerned with how those companies came to charge that price. Under federal and state antitrust law, it is permissible for two or more persons to "independently" raise or lower their

prices to the same level. Eso Corp. v. United States, 340 F.2d 1000 (9th Circ. 1965); *accord* United State v. International Harvester Co., 274 U.S. 693 (1927). What the law prohibits is two or more parties agreeing in advance to fix their prices at a certain level. Monsanto Co. v. Spray-Rite Service Corp., *supra*. Such conduct is the essence of “concerted” action.

If the conduct of the persons alleged to have engaged in “concerted” action to fix prices is as consistent with permissible competition as it is with illegal conspiracy, then the evidence is insufficient to support an inference of illegality. Matushita v. Electric Industrial Co. v. Zenith Radio Corp., *supra*. To establish an antitrust violation regarding price fixing, the evidence must reasonably exclude the possibility of independent action by the parties. Matushita Electric Industrial Co. v. Zenith Radio Corp., *supra*. “[T]here must be direct or circumstantial evidence that reasonably tends to prove that [the parties] had a conscious commitment to a common scheme designed to achieve an unlawful objective.” Matushita Electric Industrial Co. v. Zenith Radio Corp., *supra*.

The Idaho Consumer Protection Act, not the Idaho Competition Act, triggered the Attorney General’s investigation into fuel prices in Idaho subsequent to Hurricane Katrina and Governor Kempthorne’s and President Bush’s disaster emergency declarations for Idaho. Prior to these disaster emergency declarations, the OAG had not obtained any direct or indirect information suggestive of conduct by retailers in violation of the Idaho Competition Act, or reasonably warranting an investigation of retailers under that Act. Furthermore, in the course of the OAG’s investigation under the Idaho Consumer Protection Act, it did not find any information in the documents it reviewed nor in the interviews it conducted to suggest the existence of price-fixing by retailers, or to warrant expansion of the investigation to include possible violation of the Idaho Competition Act.

The Idaho Consumer Protection Act and “Exorbitant or Excessive” Prices

Generally, Idaho law does not intervene to restrict the price that a business charges consumers for goods and services. The Legislature, however, has enacted a narrow exception to that policy of non-intervention when it involves the price of fuel, food, pharmaceuticals, or water

during an officially declared disaster or emergency. In 2002, the legislature amended the Idaho Consumer Protection Act to add Idaho Code § 48-603 (19). Session Laws 2002, ch. 361, § 2, p. 1019. This subsection declares that an unlawful and unfair method of competition or unfair or deceptive act or practice in the conduct of trade or commerce occurs “where a person knows, or in the exercise of due care should know, that he has in the past, or is:”

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

- (a) A Comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;
- (b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;
- (c) The duration of the disaster or emergency declaration.

Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

The legislature expressed the following intent in enacting Idaho Code § 48-603 (19):

The Legislature finds that during emergencies or disasters, some persons may take unfair advantage of consumers by greatly increasing prices for essential goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited.

Session Laws 2002, ch. 361, § 1, p. 1019.

Idaho Code § 48-603 (19) differs from the prohibition of price-fixing contained in the Idaho Competition Act in that it does not require “concerted” action by two or more retailers. Rather, it looks at retailers individually. Its focus is on the degree of a retailer’s price changes

and whether those prices can be said to be “exorbitant or excessive” in light of all relevant factors.

Idaho Code § 48-603 (19) has several key features. First, it applies only to retail sales to consumers. In the case of motor fuel, that means it does not reach any person or entity up the distribution chain from the station owner from whom the consumer purchased fuel. For instance, it does not reach the wholesaler from whom the station owner purchased fuel, nor does it reach the refiner of that fuel or the petroleum producer from whom the refiner obtained the crude oil that was refined into that fuel.

Second, the statute’s application is narrowly confined in time. It applies only during the duration of a disaster or emergency officially declared by the president or the governor. This feature needs to be stressed because there is public confusion regarding the scope of the statute. Many people erroneously assume that the statute prohibiting “exorbitant or excessive price[s],” which is commonly referred to as an “anti-price gouging” statute, applies generally—i.e., that it applies all the time. This erroneous assumption can, in turn, lead to misunderstanding regarding the Attorney General’s statutory authority to act regarding fuel prices and, therefore, to misplaced expectations of the Attorney General. As noted previously, the Legislature has made the public policy determination that the legally relevant time period during which “exorbitant or excessive price[s]” are proscribed is for the duration of an officially declared disaster or emergency.

Third, the statute does not provide a numerical measure for determining when a price becomes “exorbitant or excessive.” Thus, there is no specific number in the statute that marks for enforcement officials and retailers the point at which a legally permissible price becomes a legally impermissible price - i.e., when a price presumptively becomes “exorbitant or excessive.” Rather, the statute contemplates that what constitutes an “exorbitant or excessive” price will be determined on a case-by-case basis by weighing the relevant “facts and circumstances” referenced in the statute.

Fourth, the statute specifically lists three “facts and circumstances” as relevant in determining when a price is “exorbitant or excessive,” but it also provides that these three factors aren’t exclusive. One specifically referenced factor is a comparison of what the retailer paid for fuel and what the retailer charged the consumer for fuel immediately before the disaster or emergency with what the retailer paid for fuel and charged for fuel during the period covered by the disaster or emergency declaration. A second factor referenced in the statute is consideration of additional costs of doing business incurred because of the disaster or emergency. The third factor referenced in the statute is the duration of the disaster or emergency declaration. The statute, however, expressly provides that consideration of relevant “facts and circumstances” is “not limited” to the three factors specifically listed in the statute. Consequently, the statute has built into it a certain amount of open-endedness regarding other facts and circumstances that might be relevant in evaluating a retailer’s conduct under the statute.

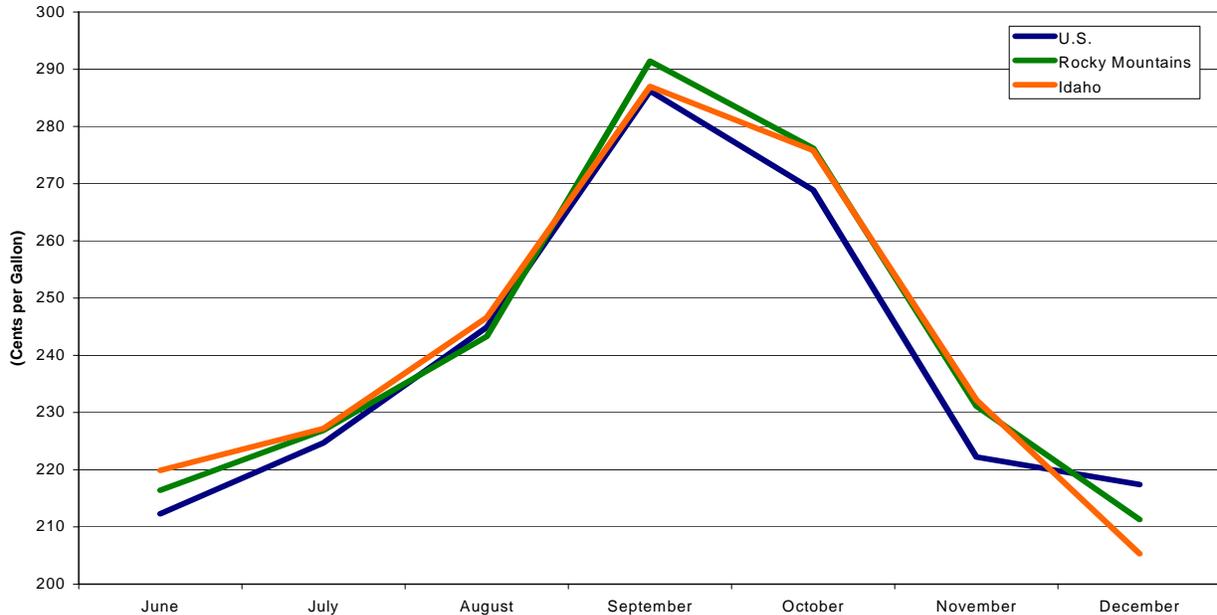
The OAG determined it was pertinent to gather and assess information regarding the general structure of retail fuel markets and the pricing dynamics of those markets. The legislative policy underlying the statute is concerned with “abnormal disruptions of the market” resulting from “a declared state of emergency or disaster.” Thus, it is essential to have an understanding of “the marketplace under ordinary conditions” in order to fairly judge a retailer’s conduct during the disruption.

A Summer of Rising Wholesale Costs and Rising Retail Prices

Retail prices for conventional regular grade gasoline were increasing during the summer of 2005 in the United States, the Rocky Mountain region, and Idaho prior to Hurricane Katrina making landfall on August 29, 2005.¹ Chart 1 below compares average monthly prices for regular among the United States, the Rocky Mountain Region, and Idaho for the period from June 2005 through December 2005.

CHART 1

Retail Prices June - December 2005
Regular



Source: Energy Information Administration

Chart 1 illustrates the run-up in prices of regular grade gasoline that occurred prior to Hurricane Katrina; the spike in prices that occurred as a consequence of Hurricane Katrina; and the descent in prices that occurred as the nation, the Rocky Mountain region, and Idaho worked through the effects of the jolt Hurricane Katrina delivered to the nation's petroleum system. Chart 1 also illustrates that prices in the Rocky Mountain region and Idaho continued to drop after prices nationally had begun to level off.

In June 2005,² the average price in the U.S. was 212.3 cents per gallon. The average was 216.4 cents in the Rocky Mountain region, and 219.9 cents in Idaho. Prices per gallon in July³ averaged 224.7 cents nationally, 226.9 cents in the Rocky Mountain region, and 227.2 cents in Idaho.

The Energy Information Administration (EIA) in its weekly petroleum analysis released on July 13, 2005,⁴ noted that crude oil prices had begun rising again in mid-May following a drop in mid-April and that retail prices had increased as well. The EIA commented that the U.S.

average price for regular gasoline had on July 11 reached a new all-time high, inflation adjusted, of \$2.33 per gallon. The EIA projected that retail gasoline prices would reach an average monthly high of \$2.35 per gallon by September, before declining to \$2.20 per gallon by the end of 2005.

In its next weekly release on July 20, 2005,⁵ the EIA cautioned that there was little flexibility in the petroleum system to react to supply shortfalls or demand surges:

EIA currently estimates that global spare crude oil production is only about 1 million barrels per day. As many as 20 different countries currently produce at least 1 million barrels per day. Downstream capacity is also relatively tight, with refinery utilization rates consistently above 90 percent in the United States and near or above that level in other countries. Recently, oil demand has grown faster than additions to global refinery capacity, making refineries push their utilization rates higher and higher. While it is true that inventories have increased some over the first half of 2005, providing somewhat more cushion than seen over much of the relatively low stock period since 2000, flexibility in oil markets is very limited currently in the sense of capacity to produce significant incremental volumes of crude oil or light products.

Three weeks later, the EIA in its weekly report of August 10, 2005,⁶ noted that the average U.S. retail price for regular gasoline had increased 7.7 cents to 236.8 cents per gallon between August 1 and August 8. It predicted further increases over the next four weeks due to increases occurring in spot prices for gasoline (the price at which refiners and importers sell into the wholesale market.)⁷ The EIA cautioned that although prices often decline after Labor Day as demand drops due to the end of the summer holiday season, that might not be the case in 2005:

With forecasts calling for an active hurricane season this year, it leaves open the possibility that retail gasoline prices could continue to surge beyond Labor Day, but it would likely take a major hurricane disrupting supplies in the Gulf of Mexico or a continuation of the rash of refinery outages experienced lately here in the United States for this to occur.

In its August 17, 2005 report,⁸ the EIA stated that prices for regular gasoline increased by 18.2 cents between August 8 and August 15 to 255.0 cents per gallon. This, said the EIA, was the largest one-week increase since it instituted its weekly retail price survey in August 1990. The increase followed increases in the spot price of gasoline of 40 cents per gallon from July 26

to August 12. The EIA expected continued increases in retail prices because lags occur between increases in wholesale prices and the pass-through of those increases to consumers and because retail prices had only increased 25 cents per gallon during the period when spot prices had increased 40 cents per gallon. The EIA attributed the increase in spot prices to recent increases in crude oil prices and to reduced gasoline supplies caused by recent refinery outages that occurred as demand was increasing during the last few weeks of the summer vacation season.

On August 24, 2005,⁹ the EIA reported a further weekly increase of 6.2 cents to 261.2 cents per gallon in the U.S. average retail price for regular gasoline. This latest average price was 72.8 cents higher than at the same time in 2004.

The EIA's next report was released on August 31, 2005,¹⁰ two days after Hurricane Katrina made land. The EIA stressed that gasoline demand over the prior four weeks was 1.2 percent above the corresponding time period in 2004, but that gasoline inventories heading into the week before the Labor Day weekend were near the bottom end of their average range in absolute terms. Consequently, the EIA warned that the supply shock caused by the disruption of the petroleum infrastructure in the Gulf of Mexico by Hurricane Katrina would be exacerbated because it was occurring at a time when prices were already at high levels and when the gasoline inventory situation was tighter than usual.

Prices for regular over the entire month of August 2005 averaged 244.9 cents per gallon nationally, 243.3 cents per gallon in the Rocky Mountain region, and 246.6 cents in Idaho.¹¹ For September 2005, the national average was 286.2 cents, the Rocky Mountain average was 291.4 cents, and the Idaho average was 287.0 cents.¹²

Labor Day in 2005 fell on September 5. Post-Katrina retail prices for regular peaked in 2005 during the week of Labor Day at 303.7 cents per gallon in the United States, 297.8 cents in the Rocky Mountain Region, and 294.9 cents in Idaho.¹³

Prices Gradually Returned to Pre-Katrina Levels

Average regular gasoline prices for October 2005 declined to 268.9 cents per gallon nationally, to 276.2 cents in the Rocky Mountain region, and to 275.8 cents in Idaho.¹⁴ The

monthly averages for November 2005 declined to levels below the monthly average levels for August 2005: 222.2 cents per gallon in the U.S. compared to August's 244.9 cents, 231.1 cents for the Rocky Mountain Region compared to August's 243.3 cents, and 232.3 cents for Idaho compared to August's 246.6 cents.¹⁵ Prices dropped to their lowest post-Katrina level for 2005 in December, when they averaged 217.4 cents per gallon nationally, 211.3 cents in the Rocky Mountain Region, and 205.3 cents in Idaho.¹⁶

In its weekly petroleum analysis released on November 9, 2005,¹⁷ the EIA explained what had happened to prices since the Labor Day holiday and what it expected to happen in the remainder of 2005:

While retail gasoline prices reached record levels in nominal terms and came close to record levels after adjusting for inflation following Hurricane Katrina, they have dropped precipitously over the last five weeks. Although retail gasoline prices remain significantly higher than year-ago levels, they have tracked spot prices this summer and fall in a manner consistent with previous price run-ups. This relationship can be quantified to the point where we can predict fairly accurately how retail prices will behave given spot prices. This analysis shows that it takes about a week for retail prices to begin to reflect changes to spot prices, and that it takes several weeks before retail prices fully reflect changes in spot prices. This lag explains why retail prices sometimes continue to move higher after spot prices have begun to drop. We also know that, given taxes and expected retail margins, retail prices generally average about 65 cents higher than spot prices, once the full effect of spot price changes are passed through. * * * [P]rior to Hurricane Katrina, which hit at the end of August, though retail prices were rising, they were lagging the increase in spot prices, particularly in the month of August. But, of course, most of the interest in gasoline prices has centered on what happened after the hurricanes affected petroleum infrastructure.

When Hurricane Katrina entered the Gulf of Mexico and made landfall in Louisiana, it dramatically reduced crude oil production and initially shut down over 2 million barrels of refinery capacity. But, perhaps, the most severe damage it did with respect to gasoline markets was the shutdown, due to power outages, of some major product pipelines that transport gasoline from the Gulf Coast to the East Coast. This caused spot gasoline prices to spike dramatically, and although retail gasoline prices rose by a record amount between August 29 and September 5, it was still much less than spot prices jumped. This phenomenon repeated itself to a lesser extent after Hurricane Rita made landfall, and, combined with refinery outages still existing following Hurricane Katrina, nearly 5 million barrels per day of refinery capacity was shut down. However, as refineries gradually came back on line and domestic gasoline production began to increase, and gasoline imports

hit record levels in three successive weeks at the end of September and early October, the gasoline supply situation improved enough to cause spot prices to fall to below pre-hurricane levels, and retail prices have followed suit. While retail prices have not dropped quite as much as spot prices in recent weeks, we would expect retail prices to continue to fall even if spot prices begin to flatten out. . . . This helps explain why EIA's short-term forecast, released yesterday, expects retail prices to continue to drop over the next month or two, absent any sudden upward movement in spot prices.

Chart 1 above reflects, for the U.S., the Rocky Mountain Region and Idaho, what the EIA anticipated on November 9, 2005 would continue to occur: retail prices kept dropping during November and December 2005 from their September highs.

Analysis of Idaho Companies

As noted previously, the OAG examined financial records for ten companies and 184 individual stations pertaining to their motor fuel operations in August and September 2005. Data included fuel inventories, sales volumes, fuel costs, and retail prices. For illustrative purposes, we have described below fuel cost and retail price information for one of the 184 stations examined. The station is identified here as Station G-10.¹⁸ Chart 2-A shows Station G-10's daily wholesale costs, and daily retail prices during August-September 2005, and illustrates how retail prices reacted to changes in wholesale prices.

CHART 2-A

Station G-10 Wholesale & Retail Prices for Regular August-September 2005

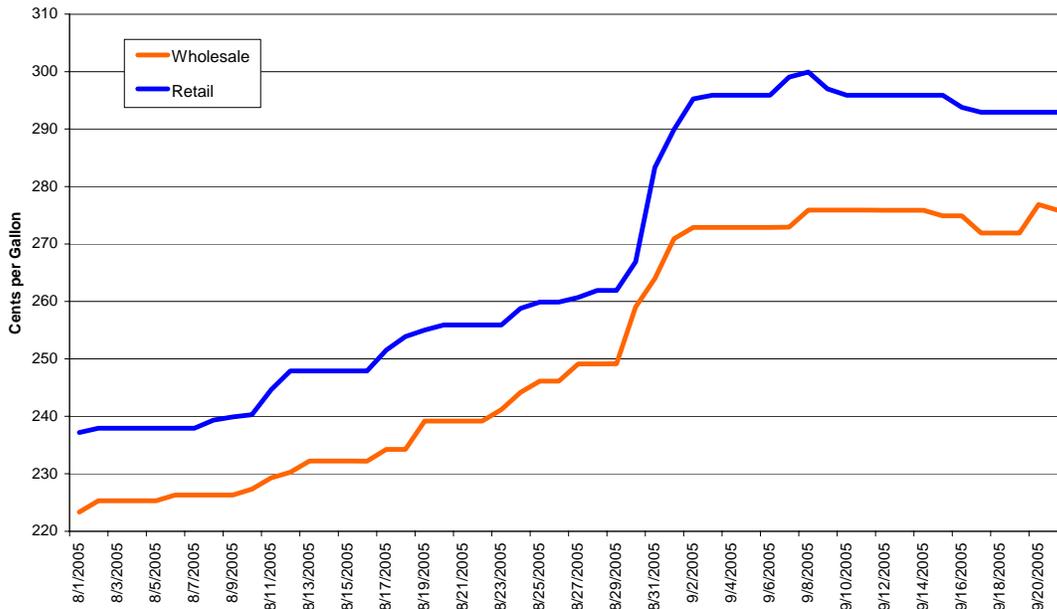
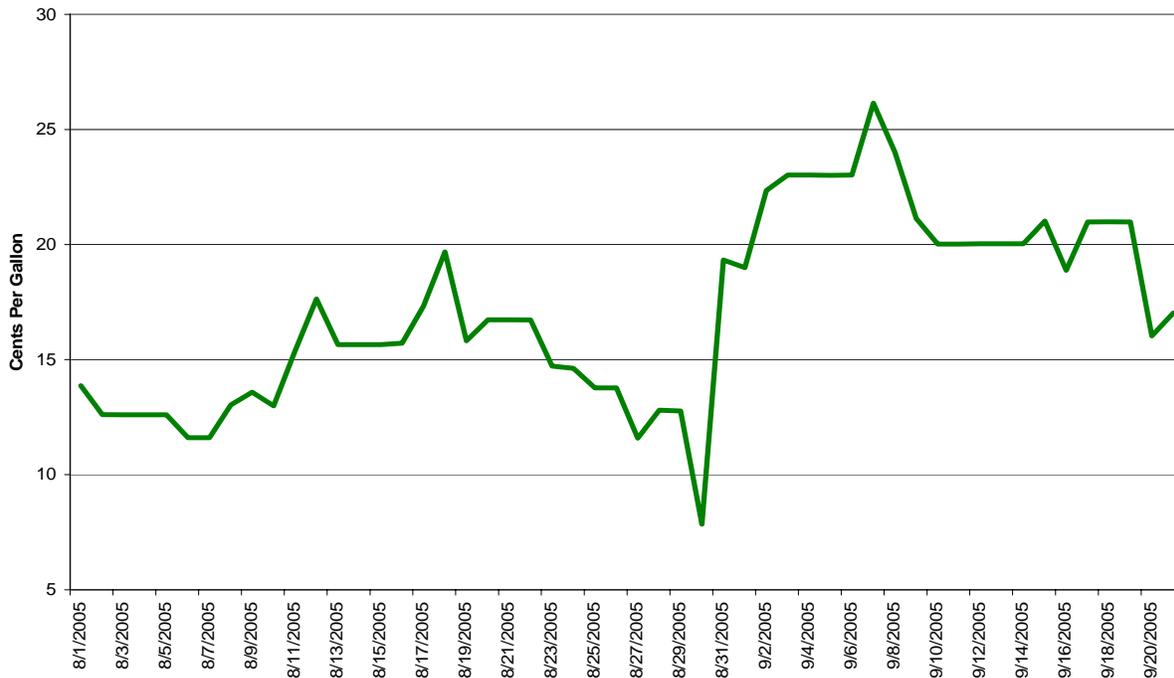


Chart 2-B illustrates the volatility of Station G-10's daily gross margins (the difference between retail prices and wholesale costs) during August-September 2005.

CHART 2-B

Station G-10 Margins August-September 2005



Station G-10 began the month of August 2005 with wholesale costs for regular on August 1 of 223.32 cents per gallon. Over the next 27 days through August 28, the station experienced multiple increases in its per gallon wholesale cost for fuel. Over that time period, its wholesale prices went from 223.32 cents to 225.30 cents, 226.29 cents, 226.31 cents, 227.30 cents, 229.28 cents, 230.27 cents, 232.25 cents, 234.23 cents, 239.18 cents, 241.18 cents, 244.15 cents, 246.13 cents, and 249.10. Wholesale costs went up 25.78 cents per gallon over 28 days.

Retail prices charged by Station G-10 for regular also increased as its wholesale costs increased. Its retail price went up 24.71 cents between August 1 when it was 237.19 cents per gallon and August 28 when it was 261.90. Its largest single day increase in retail price during that period was on August 11 when its retail price went up 4.36 cents to 244.65 cents.

Wholesale costs for Station G-10 went up 9.92 cents per gallon in the seven days prior to August 29. Its wholesale costs then jumped 9.90 cents in a day, going from 249.13 cents per gallon on August 29 to 259.03 cents on August 30. Costs increased another 4.95 cents on August 31 to 263.98 cents. On September 1, costs increased another 6.93 cents to 270.91 cents. Then on September 2 costs increased 1.98 cents to 272.89 cents. In the first four days after August 29, Station G-10's wholesale costs increased 23.76 cents. Its wholesale costs between August 22 and September 2 went up 33.66 cents. The wholesale price paid by the station on September 2 was 49.57 cents per gallon higher than it had been paying on August 1.

After September 2, Station G-10's wholesale costs gradually increased to 275.89 cents on September 9 before starting to decline. Over the balance of September, its wholesale costs moved up and down, touching a high of 279.84 cents and a low of 271.92 cents and finishing out the month at 274.89 cents.

The station's retail price for a gallon of regular on August 29 was 261.90 cents. Its post-August 29 prices peaked in September at 299.91 cents per gallon on September 8 and gradually declined over the balance of the month to 292.91. The station's retail prices were 266.88 cents per gallon on August 30, and 283.31 cents on August 31. The prices respectively for September 1, 2, 3, 4, 5, 6, and 7 were 289.91 cents, 295.24 cents, 295.91 cents, 295.91 cents, 295.90 cents, 295.91 cents, and 299.06 cents.

Carried through September 8 when its retail price peaked, the station's wholesale costs since August 22 increased by 36.71 cents. Its retail price increases over the same period were 44.01 cents.

In the seven days prior to Hurricane Katrina making land, Station G-10's wholesale costs increased 9.92 cents. Thus, wholesale costs were rapidly increasing as the Labor Day weekend approached. Common business practice regarding the setting of retail prices in an environment of rising inventory costs takes into account the cost of replacing inventory rather than simply the historical cost of existing inventory. When replacement costs are rising rapidly, it becomes difficult to form a reasonable expectation regarding future replacement cost. The greater the

degree of uncertainty, the more likely that a portion of the retail price on a given day will reflect that uncertainty. The Energy Information Administration (EIA) in its petroleum report released on August 31, 2005¹⁹ underscored that the supply and price prospects for gasoline following Hurricane Katrina were going to be uncertain:

Hurricane Katrina was a catastrophic event . . . [that] was exactly what oil market analysts feared the most this summer. Analysts contemplated what might happen should a severe hurricane impact oil production and refineries at the height of summer driving season at a time when gasoline inventories were low.

. . .

[w]e will soon see what happens when a supply shock occurs when prices are already at high levels. * * * The path product prices take over the next several days or even weeks will largely depend on how quickly refineries can get back to normal operations.

Taking the overall economic situation into account, along with Station G-10's financial data, the OAG could not reasonably conclude that the prices charged by that station during August and September 2005 constituted "exorbitant or excessive price[s]" within the meaning of the Idaho Consumer Protection Act.

Not every one of the stations examined by the OAG had a price pattern like Station G-10. Some were very similar, others not. Many of the differences appeared to be influenced by the station's local competitive situation and its overall pricing strategy. In some instances, there was evidence indicating that a company's response to retail price increases post-Katrina was being partially shaped by a conscious desire to moderate price increases in order to avoid the possibility that consumers might see the company as trying to take unfair advantage of consumers in a very volatile, uncertain, stressful, and emotional environment, particularly in light of news reports regarding the pricing behavior of some retailers in Gulf Coast and other Southern states. There was also information indicating that some retailers running low on inventories of regular and uncertain as to sure how quickly their supplies of regular could be replenished chose to serve their customers by selling premium grade gasoline at the price for regular. The ultimate conclusion is that the OAG's review of other stations did not show that

these stations charged “exorbitant or excessive price[s]” within the meaning of the Idaho Consumer Protection Act.²⁰

Price Lags Characterize Retail Markets for Gasoline

In the Energy Information Administration’s weekly report for August 17, 2005,²¹ which was referenced earlier, the EIA alluded to the existence of price lags between rates of increase in wholesale prices and rates of increase in retail prices. Price lags are a structural feature of retail gas markets; and, thus, are part of the “ordinary” workings of the marketplace.²² As such, they are of recurring interest and need to be kept in mind for analytical purposes whenever issues arise regarding the level of retail prices. Consequently, additional discussion of price lags may enhance public understanding of the general nature of retail gasoline markets.

Several studies have been done of price dynamics in retail gasoline markets nationally and regionally.²³ The studies reveal a pattern. Changes in wholesale prices are correlated with changes in retail prices, but there are lags between wholesale price changes and the speed with which retailers pass those changes through to consumers.²⁴ What that means, for example, is that if the wholesale price paid by the retailer goes up or down one day one day by, say, 5 cents, the retailer does not necessarily increase or decrease his price the same day by a corresponding 5 cents. Retailers tend to phase-in wholesale price changes over a period of time.

Nationally, increases in the wholesale price of gasoline are passed through by retailers to consumers over two-and-one-half months.²⁵ Generally, about 50 percent of a wholesale price increase is passed through to consumers within two weeks and 80 percent within four weeks.²⁶ Pass-through rates, however, vary among regions of the country.²⁷ Wholesale price decreases also are generally passed-through over a period of time, but the pass-through rate is slower than for price increases.²⁸

The variance in the pass-through pattern between rising and falling prices is called “price asymmetry.”²⁹ Metaphorically, the difference in the speeds with which wholesale price increases and wholesale price decreases are passed through by retailers to consumers is referred to as “rockets and feathers”: retail prices “rocket” up but “feather” down.³⁰

Competition among retailers within retail gasoline markets and consumer behavior are among the factors that economists frequently cite as contributing to price lags and price asymmetry.³¹

Consumer demand for gasoline is inelastic in the short run, meaning that demand over short periods of time isn't significantly affected by increases in gasoline prices.³² That's because there aren't convenient substitutes for gasoline.³³ A person making a daily roundtrip commute to work consumes the same amount of gas for the commute whether the price per gallon is \$2.00 or \$3.00. Changes in consumer demand for gasoline, such as those caused by switching to a more fuel-efficient vehicle or reducing commuting distance by changing jobs or moving closer to work, do not occur immediately.³⁴ Consequently, total consumer demand is not a short-run restraint on prices going up in retail gasoline markets.³⁵ But consumer behavior can have an impact on the rate prices increase within a specific market by causing reallocations of total demand among the retailers in the market — i.e., causing changes in relative market shares.

Retail gasoline prices are the most visibly posted prices of any commodity; they are posted on signs easily seen by passing traffic. When retail gasoline prices increase and consumers realize that prices are increasing among stations as a whole, substantial numbers of consumers will begin to price-shop among stations and will shift purchases to stations with lower relative prices.³⁶ This “search-cost” behavior by consumers puts pressure on retailers to moderate price increases.³⁷

Retailers face a dual dilemma in rising markets. Wholesale price increases squeeze retail gross margins because they increase the replacement cost of inventory. Gross margin is the difference between the retail price and the wholesale price. It is not the same as a net profit margin. Gross margin is the amount available to a retailer from which to pay the operating expenses of the business, replace inventory, service debt, pay taxes, and generate a profit. The retailer's dual dilemma is to balance the economically rational desire to maintain margins by increasing the retail price to reflect the wholesale price increase and the equally economically rational desire to maintain customer base and sales volumes. Both an increase in the retail price

and the magnitude of the increase pose risks to the retailer of market share loss to competitors who have not yet raised prices or who have not raised prices as much. Retailers concerned about losing price-sensitive customers as the result of a price increase perceived to be too high or too sudden may moderate their response to a wholesale price increases by spreading out the pass-through of those increases.

When wholesale prices decrease, retailers rationally hope to restore margins that deteriorated during a period of rising prices.³⁸ A business exists to earn a positive rate of return for its owner. The ability of a business to generate that rate of return for a given fiscal year bears a relationship to the success of the business in averaging for that fiscal year its target gross margin. If margins during part of that year are under the target margin, then the target margin for the year will not be achieved by that business unless the below-target margin is offset by higher margins during another part of the year. Thus, there is an inherent resistance, economically rational in origin, toward passing through wholesale price decreases at the same rate as the pass-through of wholesale price increases.

Consumer behavior also plays a role in influencing the rate of retail price decreases.³⁹ When retail prices begin to decline, many consumers reduce the extent, or abandon altogether, their search for lower relative prices within the market.⁴⁰ That change in consumer “search-cost” behavior puts less pressure on retailers to accelerate the rate at which wholesale price decreases are passed through to consumers, thereby contributing to price asymmetry.

Pass-through lags in rising and declining markets may also be influenced by the pricing strategies of retailers. A particular retailer may decide to position itself in the market by trying to price in a range between the highest priced and lowest priced retailers in that market. Another retailer may decide to be the lowest cost seller in a market. Another may decide to price relative to its own margin targets, even if that consistently makes the retailer the highest priced in its market. As a consequence of these individual pricing strategies, there may be certain retailers who tend to be a price leader in rising markets and other retailers who tend to be a price leader in declining markets. Who an individual retailer views as his competitors and the price behavior of

those competitors can influence how that retailer responds in terms of its own prices, both in rising and declining markets. However, relative pricing strategies such as these do not constitute “price fixing” and are not illegal because they do not involve “concerted action”—i.e., an agreement by two or more retailers to fix prices.

ColoradoBiz magazine in its November 11, 2005⁴¹ edition contained an article about Bradley Petroleum, a Colorado company, and its owner, Bradley Calkins, that helps, in especially colorful terms, to illustrate anecdotally how a retailer’s individual pricing strategy relative to its competitors may influence its pass-through response to changes in wholesale prices. Bradley Petroleum owns 30 gasoline station/convenience stores in Colorado, mostly in the Denver area, and is a 50-50 partner in another 15 stations in Colorado and New Mexico. Bradley’s market strategy is to be the low-price leader. It seeks to set its price at 2 cents per gallon below major oil company brands and at least evenly with large chain stores who sell motor fuel. The ColoradoBiz article further relates that:

On Aug. 28, as Hurricane Katrina neared New Orleans, the Conoco at South Galena Street and East Arapahoe Road [in the Denver metropolitan area] plastered a big white sheet over its price board reading “\$2.99,” a jump of close to 40 cents a gallon in just a couple of hours. At the Bradley-Sinclair convenience store and self-serve gas station at Arapahoe and South Peoria Street, the price was still \$2.58 per gallon. By early October, post-Katrina and post-Hurricane Rita, as Colorado retail gasoline prices slowly came down from record setting highs, Conoco stations still sold unleaded in the \$2.90s. Bradley was selling for \$2.79 (or \$2.789, to be exact). That’s the Brad Calkins way of doing business, and it involves keeping a close eye on Conoco as one of his chief rivals.

“If you aren’t competitive, the consumer doesn’t care anymore whether it is Conoco, Bradley, 7-11, or whatever,” Calkins said. “They go for the cheapest price.”

* * *

“I feel you have to be competitive,” Calkins said, “even if it costs you a lot of money,” sometimes thousands of dollars per week, he says. “This is especially true with this Katrina thing,” he added. “There are times I won’t even look at my costs that day because it scares me.”

But 10 days after Katrina hit, wholesale prices were descending a bit in Colorado, yet retail prices stayed high. Why?

Calkins explained: “Our price has fallen the last four days. That’s not reflected on the street. I know the consumer doesn’t understand why this whole thing has a lag time both going up and going down. Our (wholesale) price changes probably every night, and we are notified before 6 o’clock that your price will go up so many cents or down so many cents.

“So that’s what I pay for every delivery the next day. I can’t run out on the street and say we got a 3-cent increase and can’t run out there and raise my prices 3 cents, or I wouldn’t have any business tomorrow morning. I have to wait until one of the major competitors starts to move. That takes days, and it’s usually Conoco, which is recognized as the market leader here.

“We will get a 3-cent increase tonight, and nothing happens tomorrow while we sit there and we lose money. And maybe three days from now, Conoco will move all their units in Denver up, say 10 cents a gallon. Then it takes a few more days for their competitors to move up to meet all those Conoco prices.

“If we get caught below cost, and the price goes up 3 cents tonight, that’s just another 3 cents I’m losing.” So when Katrina hit, triggering record price spikes, “We went through two weeks there of losing big, big, big-time money.”

Idaho’s Gasoline Market is Also Subject to Price Lags

The OAG did not locate any published studies regarding the price dynamics of Idaho’s retail gasoline market. With the assistance of an economist, the OAG explored the issue of whether or not price lags are characteristic of the Idaho retail gasoline market. The issue was important in terms of understanding the “ordinary” workings of that market.

Data from the Energy Information Administration (EIA) was used in analyzing wholesale and retail prices of regular grade gasoline in Idaho for the period from January 2004 through August 2005. As a proxy for wholesale prices, the OAG used “rack” sales prices reported by the EIA.

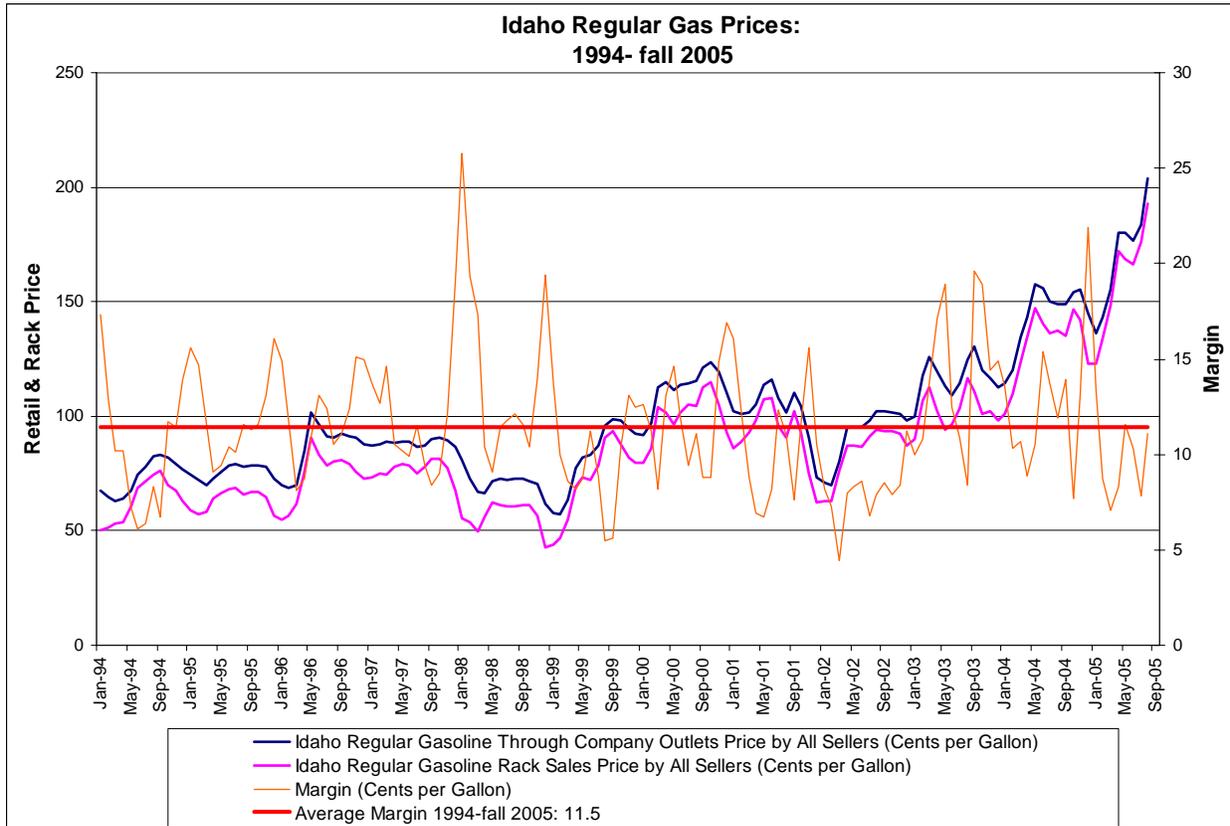
A “rack” sale is a wholesale truckload, or smaller, sale of gasoline or diesel where title to the fuel transfers at a terminal.⁴² “Rack” prices – i.e., terminal prices – are readily available around the country from a variety of sources and are often used as a proxy for wholesale prices for purposes of comparing retail and wholesale prices and the differentials between the two.⁴³ Though useful in that general sense, “rack” prices are not totally reflective of wholesale prices. For instance, reported “rack” prices generally exclude wholesale discounts. Additionally, not

every retailer acts, in effect, as its own wholesaler by maintaining its own fleet of tanker trucks to purchase fuel directly at a terminal, load the fuel at the terminal, and then deliver the fuel to its stations. More commonly, retailers purchase through wholesalers by way of “Dealer Tank Wagon sales” (DTW). A DTW sale is a wholesale sale of fuel priced on a delivered basis to a retail outlet.⁴⁴ Even so, comparing retail prices and “rack” prices is helpful in following what is happening generally to fuel prices in both the wholesale and retail sectors.

The OAG used the difference between the retail and rack price as the gross retail margin. The OAG looked at gross margins in Idaho over the January 1994 through August 2005 period and compared them with rack prices and retail prices to see if, over a reasonable length of time, Idaho appeared to follow a pattern of price lags between wholesale and retail price changes. The OAG concluded that it does.

Chart 3 plots the data for retail and rack prices and gross margins. The horizontal line in the chart represents the average gross margin statewide for regular grade gasoline over the entire period. That average was 11.5 cents per gallon. The chart shows that margins tend to fluctuate up or down from the average over the course of a year, and longer, relative to changes in wholesale prices.

CHART 3



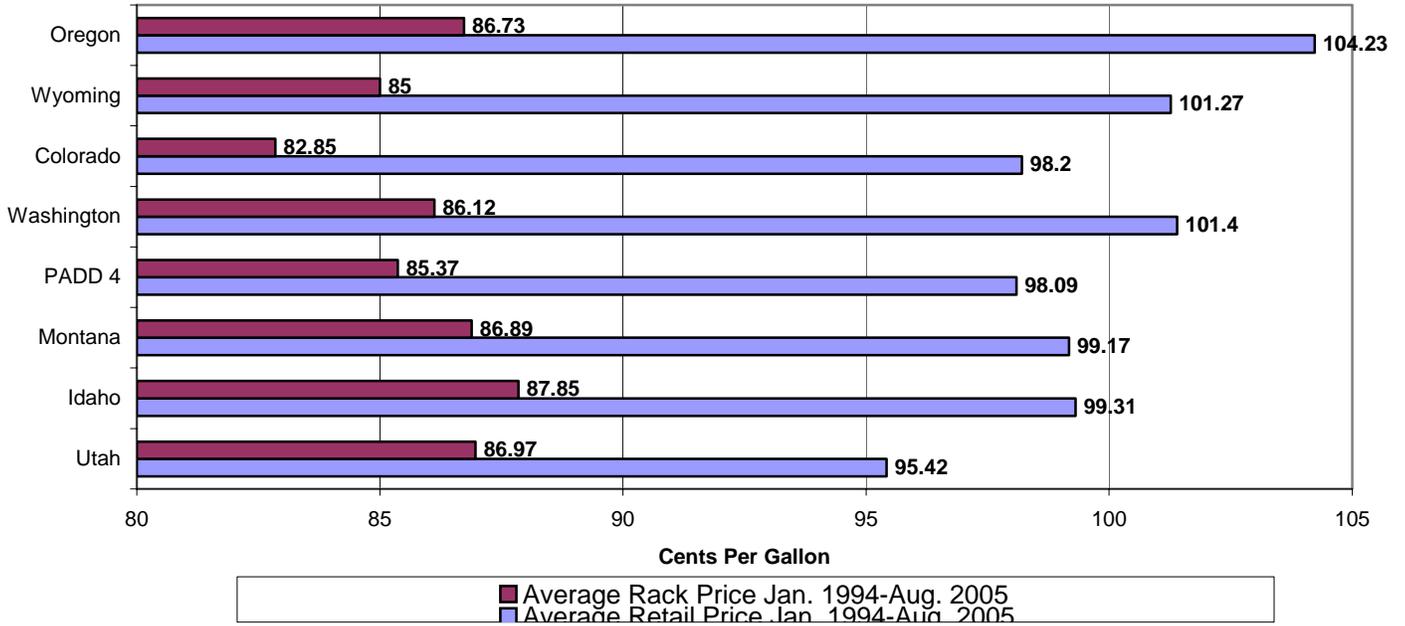
Source: Energy Information Administration

The OAG also compared gross margins in Idaho for the January 1994 through August 2005 period with gross margin data for six other states. This comparison was made for the purpose of obtaining perspective on another facet of Idaho’s retail gasoline market: it’s alleged competitive disadvantage with sister states. One contention frequently made by members of the retail sector whenever asked about the level of gas prices in Idaho is that Idaho has infrastructure disadvantages that impact supply in the state as well as price. In short, the contention goes, Idaho retailers have to pay more for fuel than retailers in other states, thereby resulting in higher relative prices for consumers.

Chart 4 compares average retail and rack prices among Oregon, Wyoming, Colorado, Washington, Montana, Idaho and Utah, as well as the PADD IV grouping of Idaho, Montana, Wyoming Utah and Colorado.

CHART 4

Average Retail & Rack Prices Jan. 1994 - Aug. 2005
Regular

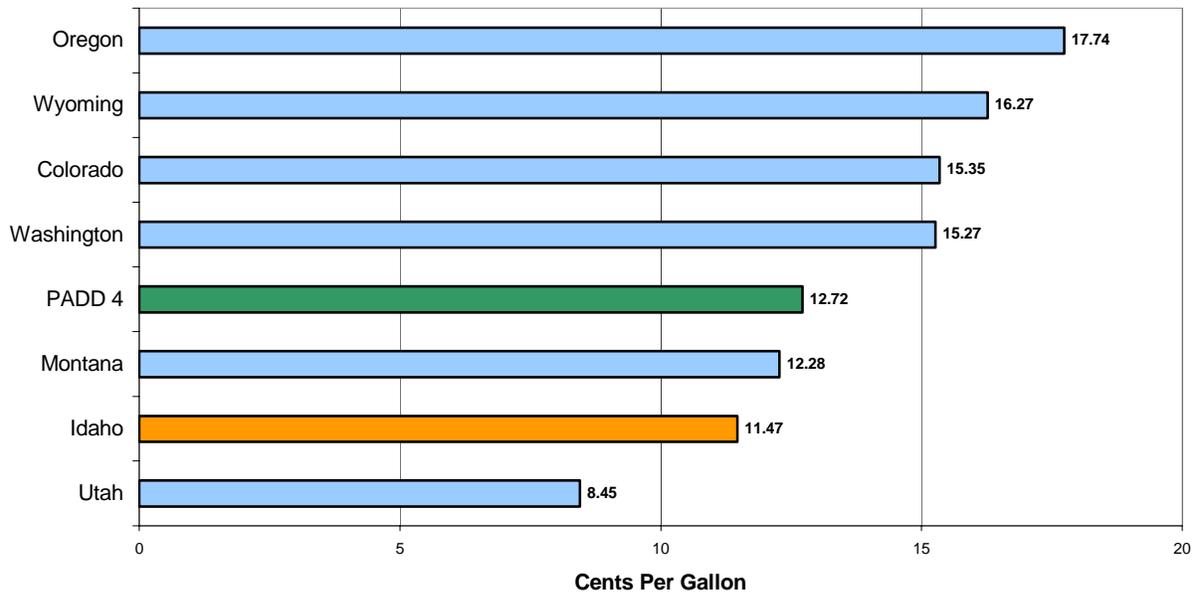


Source: Energy Information Administration

Chart 5 compares average margins for the same states shown in Chart 4, as well as PADD IV.

CHART 5

Average Margin Regular Jan. 1994- Aug. 2005

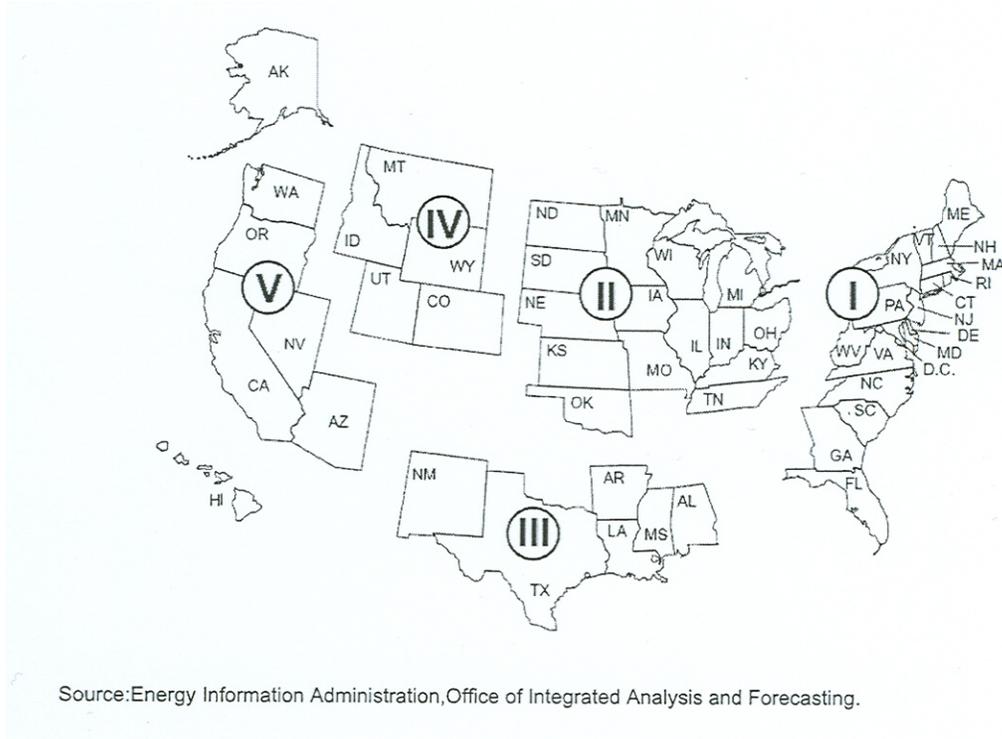


Source: *Energy Information Administration*

Infrastructure Disadvantages Do Appear to Impact Prices in Idaho

For statistical purposes, the federal government places Idaho into a grouping of states called PADD IV.⁴⁵ “PADD” stands for Petroleum Administration for Defense District. During World War II, the federal government divided the nation into five PADDs to facilitate fuel distribution and rationing. The designations were retained following World War II, and are now used by the EIA and other federal agencies for the purpose of reporting comparative petroleum-related statistics. Chart 6 shows the five PADDs.

CHART 6



The states other than Idaho included in PADD IV are Montana, Wyoming, Utah, and Colorado, so the OAG looked at prices in Idaho and those four states. Though the PADD IV states have much in common geographically, Idaho differs from the others in a major respect when it comes to petroleum. Montana, Wyoming, Utah, and Colorado all have proven crude oil reserves, all produce crude oil, and all refine crude oil.⁴⁶ Idaho, however, has no proven crude oil reserves, produces no crude oil, and has no refineries, so it has to import its fuel supplies from other states.⁴⁷

Montana has four refineries, Wyoming five, Utah five, and Colorado two.⁴⁸ Montana, Wyoming, Utah, and Colorado together produce about 327,000 barrels of crude oil per day; but these states augment their supplies for refining by importing more than 300,000 barrels of crude oil per day from Canada.⁴⁹ Imports from Canada have increased slightly more than 53% since 2000.⁵⁰

The OAG also looked at prices in Oregon in order to include in its comparison an adjacent state that, like Idaho, has no crude oil reserves, produces no crude oil, and has no

refineries.⁵¹ Because fuel storage terminals in Spokane service parts of North Idaho, the OAG included Washington in its comparison. Washington, like the non-Idaho PADD IV states, refines crude oil; however, Washington does not produce crude oil nor does it have crude oil reserves.⁵² Washington obtains 68% of its crude oil from Alaska, 12% from Canada, 6% from Argentina, 5% from Saudi Arabia, and 9% from other foreign sources.⁵³

According to the Idaho State Tax Commission, fuel consumption in Idaho for 2005 was approximately 3.0 million gallons per day.⁵⁴ This was made up of approximately 1.8 million gallons per day of gasoline; 695,800 gallons per day of on-road diesel; 402,400 gallons per day of off-road diesel; and 93,300 gallons per day of aviation fuel.⁵⁵ Overall consumption in 2005 increased 3.5 percent over consumption in 2004.⁵⁶ By type of fuel, the 2005 percentage increases were 1.1 percent for gasoline, 3 percent for on-road diesel, 14.7 percent for off-road diesel, and 10.2 percent for aviation fuel.⁵⁷ Idaho is one of the nation's smaller fuel markets, ranking 44th in total petroleum consumption.⁵⁸

Petroleum industry sources estimate that Utah's five refineries collectively supply 70 percent of the gasoline and diesel consumed in Utah and Idaho.⁵⁹ Utah's total refining capacity is slightly less than one percent of nationwide refinery capacity and 28 percent of refinery capacity in the Rocky Mountains.⁶⁰ Utah's crude oil production is declining and crude oil produced in Utah cannot meet the state's refinery demand.⁶¹ Consequently, Utah has to augment its crude oil supplies with imports from Montana, Wyoming, Colorado, and Canada.⁶² Utah also imports refined fuel from other states, primarily from Wyoming through Pioneer Pipeline Company's Pioneer Pipeline.⁶³ The Pioneer Pipeline is jointly owned by ConocoPhillips and Sinclair Oil.⁶⁴ The Pioneer Pipeline connects to the Pioneer Productions Terminal in Salt Lake City.⁶⁵ That terminal connects to Chevron Pipe Line Company's Salt Lake Products Pipeline System.⁶⁶ Chevron's Salt Lake Products Pipeline System originates in Salt Lake City and has the capacity to receive gasoline and diesel from Utah's five refineries and from the connecting pipeline terminal.⁶⁷ Fuel brought into Idaho from Utah primarily makes its way into the state through the Chevron Pipeline.⁶⁸

Chevron has two 8-inch diameter lines that run north from Salt Lake City toward Burley. One is a distillate/gasoline line and the other is a gasoline line.⁶⁹ Near Burley, the main lines meet a lateral connecting line that runs to storage terminals located at Pocatello.⁷⁰ The lateral line connects to both the distillate and gasoline lines and the lateral line's use is cycled between the two fuels for delivery to Pocatello.⁷¹

After meeting the lateral connecting line, the main lines continue toward Burley before moving toward Boise.⁷² Fuel from both the distillate and gasoline lines is delivered to connecting terminals in Burley.⁷³ As the pipelines continue along, fuel is delivered from the distillate line to Mountain Home Air Force Base and to Gowen Field.⁷⁴ Fuel from the two lines is also delivered to storage terminals in Boise.⁷⁵ From Boise, the pipeline system continues to Pasco, Washington but it goes through a series of changes along the way.⁷⁶ Eventually, only a 6-inch diameter distillate/gasoline line is in service as the line reaches Pasco.⁷⁷ Fuel is delivered to storage facilities in Pasco.⁷⁸ A single 8-inch diameter line runs from Pasco to Spokane, Washington.⁷⁹ Fuel is delivered to Fairchild Air Force Base in Spokane and to storage terminals at Spokane.⁸⁰

The length of the pipeline system from Salt Lake City to Spokane is 705.6 miles.⁸¹ System capacity from Salt Lake City to Boise is between 66,000 and 74,400 barrels (42 gallons per barrel) per day.⁸² System capacity averages 13,800 barrels per day from Boise to Pasco. Capacity is 16,800 barrels per day from Pasco to Spokane.⁸³

Movement of product through the pipeline is slow. For instance, it takes about 66 hours on average for fuel transported in the gasoline line to get from Salt Lake City to Boise and it takes about 89.5 hours on average for the fuel in the distillate/gasoline line to make the same trip.⁸⁴

The Chevron Pipeline is operated as a common carrier, meaning that its pipeline has to be made available to any company that wants to ship refined fuel on it.⁸⁵ As a common carrier, Chevron Pipeline Company's pipeline rates are regulated by the Federal Energy Regulatory Commission (FERC).⁸⁶ Pipeline transportation rates, however, account for only a few cents of

the ultimate retail price of gasoline. For example, based on the Chevron pipeline tariff effective July 1, 2005 for the Salt Lake Products Pipeline System, the per gallon cost of transporting gasoline via the pipeline to storage terminals in Burley, Pocatello, and Boise from Salt Lake City was approximately 1.64 cents, 1.78 cents, and 2.6 cents per gallon respectively.⁸⁷ The pipeline tariff to Pasco, Washington was the equivalent of approximately 3.22 cents per gallon.⁸⁸ And the incremental cost of shipment along the pipeline from Pasco to Spokane was slightly more than 7/10ths of a cent per gallon.⁸⁹

South Idaho and North Idaho differ in their sources of fuel supply and in the transportation infrastructure related to delivery of that supply. Though the Chevron pipeline runs from Salt Lake City to Spokane, North Idaho does have sources of supply independent of that pipeline and Utah's refineries.

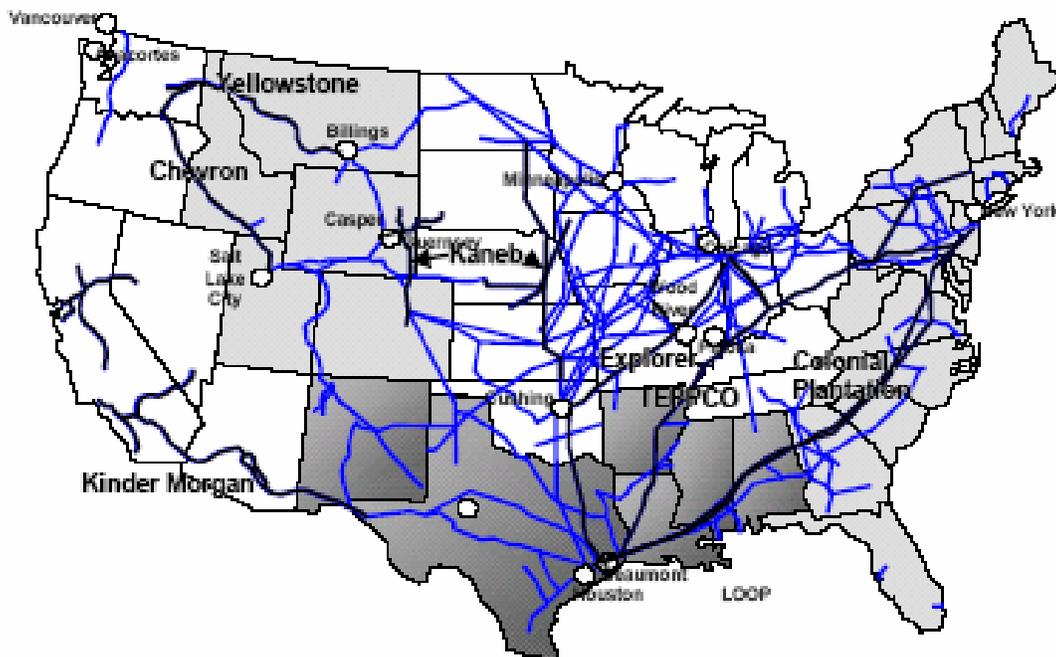
Some of North Idaho's gasoline and diesel supplies originate from refineries in Billings, Montana and is largely transported from those refineries to terminals in Spokane, Washington via the Yellowstone Pipeline system, which is operated by ConocoPhillips Pipe Line Company as part of a joint venture with Yellowstone Pipeline Company.⁹⁰ The Yellowstone Pipeline system is 725-miles long.⁹¹ It is a 10-inch diameter pipeline and has a capacity of 64,000 barrels per day.⁹²

Some of North Idaho's supply comes through Washington's petroleum infrastructure. Fuel refined by refineries along the Puget Sound is transported to Portland, Oregon/Vancouver, Washington via the Olympic Pipeline, a north-south pipeline running from refineries along the Puget Sound.⁹³ It is then loaded on barges and barged up the Columbia River-Snake River System.⁹⁴ Along that system, there are fuel storage terminals for refined petroleum products near Pasco, Washington and at Wilma, Washington, which is near the twin cities of Clarkston, Washington and Lewiston, Idaho.⁹⁵ There also is a terminal on the Oregon side of the Columbia River at Umatilla which can handle diesel fuel.⁹⁶ Besides being served by water, the terminal at Pasco is also served by the Burlington Northern Santa Fe Railroad and the Chevron Salt Lakes

Product Pipeline System.⁹⁷ As noted previously, once the Chevron Pipeline reaches Pasco, it continues on to Spokane.

Chart 7 is a map showing the major refined product pipelines in the United States. The map illustrates the routes of the Chevron Pipeline and the Yellowstone Pipeline and also illustrates the comparative sparseness of pipeline infrastructure in the West compared to other areas of the country.

CHART 7
Major Refined Product Pipelines

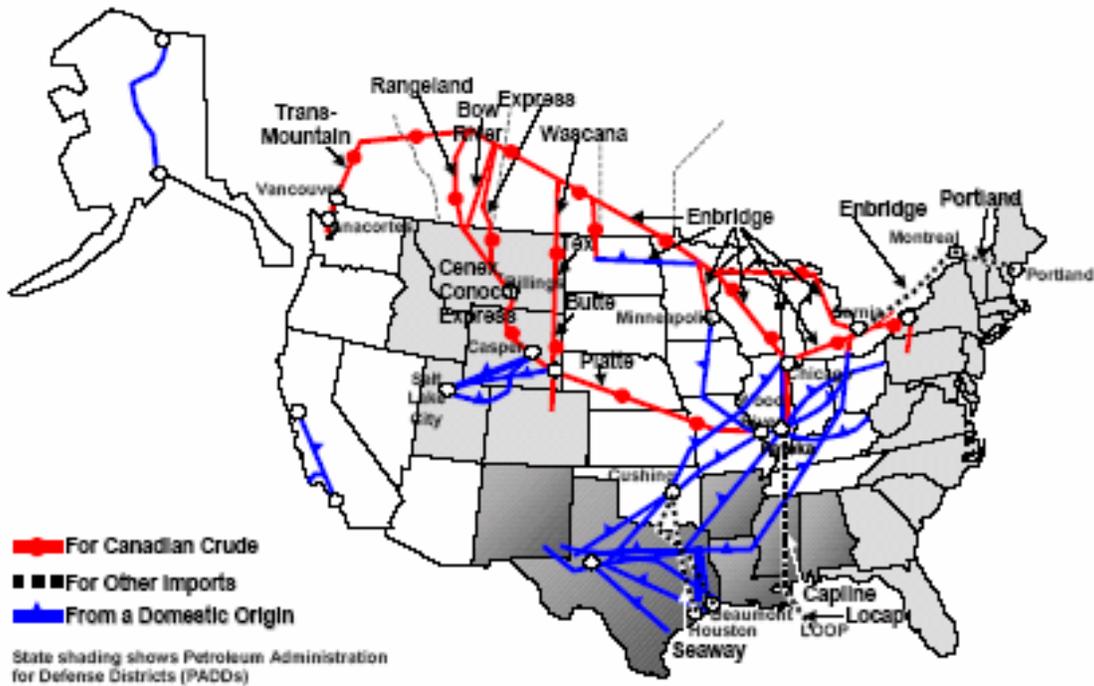


Source: Allegro Energy Group (2001)

Chart 8 shows the major crude oil pipelines within the United States, as well as the pipelines originating in Western Canada and transporting crude oil to refineries in the United States.

CHART 8

Selected Crude Oil Trunkline Systems



Source: Allegro Energy Group (2001)

During the January 1994 through August 2005 period, the rack price for regular was higher in Idaho than the other six states examined. See Chart 4, above. Thus, Idaho retailers are correct when they assert that they typically have to pay a higher price for fuel than retailers in other Western states, which lends support to the contention that Idaho’s comparative infrastructure disadvantages adversely impact wholesale prices.

Though Idaho had higher wholesale prices during the years surveyed, the difference between Idaho and the other states over the entire period was not large. For the entire period, the average rack price in Idaho was 87.85 cents per gallon. Oregon’s average was 86.73 cents. Three other states also had average rack prices over 86.00 cents per gallon: 86.97 cents in Utah; 86.89 cents in Montana; and 86.12 cents in Washington. Colorado had the lowest average at

82.85 cents, and Wyoming was the second lowest at 85.00 cents. The average for all PADD IV states was 85.37 cents per gallon. See Chart 4, above, for comparative rack prices.

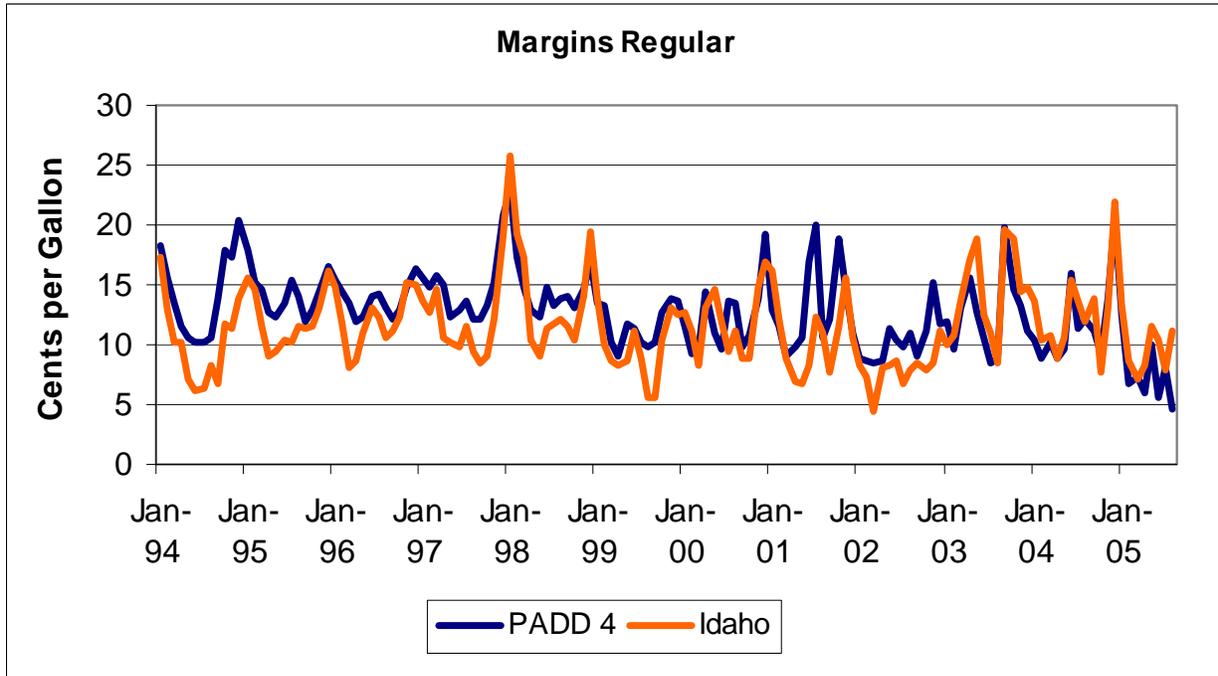
The average retail price for regular grade gasoline in Idaho during the same period was 99.31 cents per gallon. Here, Idaho was roughly in the middle of the entire group, with prices ranging from a low of 95.42 cents in Utah to a high of 104.23 cents in Oregon. The averages for the other states were 101.40 cents in Washington; 101.27 cents in Wyoming; 99.17 cents in Montana; and 98.20 cents in Colorado. The average for PADD IV was 98.09 cents per gallon. See Chart 4, above, for comparative retail prices.

The retail price will reflect the pass-through to the consumer of federal and state gasoline taxes. Federal and state gasoline taxes, however, have remained fairly constant this decade. The federal gasoline tax has been at 18.4 cents per gallon since 1997.⁹⁸ State gasoline taxes nationally averaged 19.29 cents in 2000 and 20.63 cents in 2005.⁹⁹ Idaho's gasoline tax has been 25 cents per gallon since 1996.¹⁰⁰ Idaho's 2005 gasoline tax rate is comparable to that of the other six states surveyed: Washington, 28 cents; Oregon, 24 cents; Montana 27 cents; Wyoming 14 cents; Utah, 24.5 cents; and Colorado, 22 cents.¹⁰¹

Margins can provide some indication of the extent of competition in a market. In terms of gross retail margins for regular grade over the January 1994 through August 2005 time period, Idaho had the second lowest average margin at 11.47 cents per gallon. See Chart 5, above, for comparative margins.

The margin range was from a low of 8.45 cents in Utah to a high of 17.74 cents in Oregon. See Chart Eight, above. The averages for the other states were 16.27 cents in Wyoming; 15.35 cents in Colorado; 15.27 cents in Washington; and 12.28 cents in Montana. See Chart 8, above. The PADD IV average was 12.72 cents. See Chart 5 above for a margin comparison. Thus, on an average basis for the January 1994 through August 2005 period, Idaho's gross margins were in line when compared to six other Western states. Chart 9 below shows a comparison of Idaho's margins with the average margins for all of PADD IV, which excludes Washington and Oregon. Idaho's gross margins were also in line with PADD IV.

CHART 9



Source: Energy Information Administration

Some general conclusions can be drawn from the preceding discussion regarding Idaho's comparative position in relation to other Western states. There does appear to be a correlation over nearly an eleven-year period between Idaho's lack of refineries and its limited pipeline infrastructure and the state's higher average wholesale prices for regular-grade gasoline compared to average wholesale prices in Oregon, Washington, Montana, Wyoming, Utah, and Colorado. Intuitively, one would assume that Idaho's higher wholesale prices would have resulted in the highest average retail prices among the seven states. But that was not the case.

Among the seven states, Idaho can be described either as having the fourth highest average relative prices or the fourth lowest. From highest to lowest, the ranking is Oregon, Washington, Wyoming, Idaho, Montana, Colorado, and Utah. If average prices for each state for the 1994-2005 period are adjusted for each state's average state gasoline taxes for the same period, Idaho's relative ranking remains unchanged.¹⁰² However, there are changes in the relative tax-adjusted price rankings of the other states. The tax-adjusted ranking of the seven

states is Wyoming, Oregon, Washington, Idaho, Colorado, Utah, and Montana.¹⁰³ Interestingly, Wyoming, Oregon and Washington each had lower average taxes for the period than Idaho.¹⁰⁴

Retail Margins in Idaho are Volatile

As noted previously, the January 1994 through August 2005 survey of gross margins for Idaho yielded a statewide gross margin average of 11.5 cents. An average analysis over an extended period of time, however, can mask significant short-term movements in prices and margins. To examine margins over a shorter time frame in order to make a comparison with the longer term average, the OAG used data for June 2003 through December 2005. That data was obtained from the Oil Price Information Service (OPIS), which is a national company that specializes in gathering and disseminating to industry and government petroleum pricing information and petroleum news. The OAG also used OPIS data because it wanted to examine differences between the long-term statewide average and short-term averages within localized markets. The EIA does not break down the numbers it reports for Idaho into numbers for specific local markets within Idaho. OPIS, however, compiles weekly average rack and retail prices for regular grade gasoline, as well as differentials between these average prices, for the Boise and Pocatello markets, which are two of the larger gasoline markets in Idaho. The differential between the rack and retail prices was used as the proxy for average gross margins for those two markets.

Chart 10 compares rack and retail prices in the Pocatello market between June 2003 and January 2006.

CHART 10

Pocatello - Rack vs. Retail - Regular

June 2003-January 2006

Source: OPIS

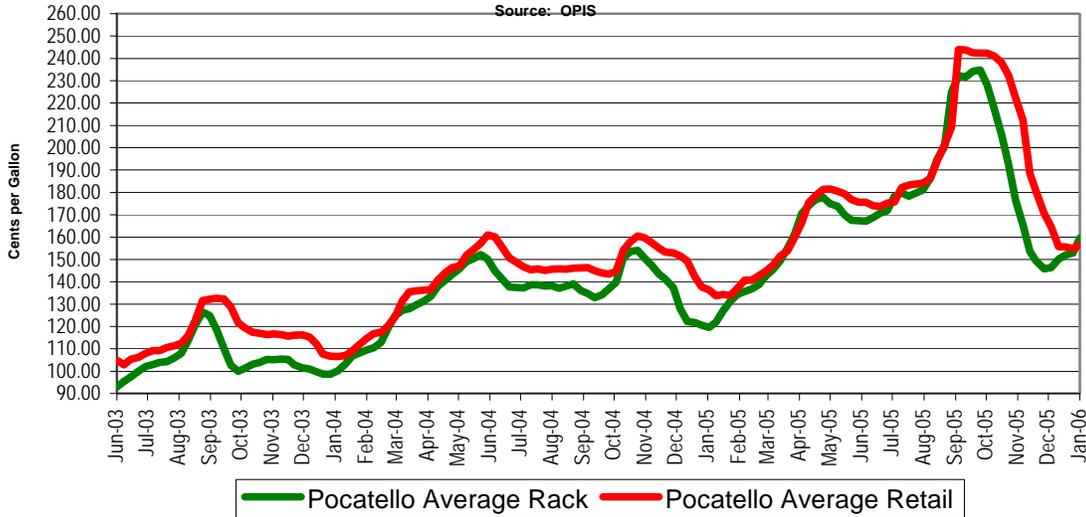


Chart 11 compares rack and retail prices in the Boise market between June 2003 and January 2006.

CHART 11

Boise - Rack vs. Retail - Regular

June 2003-January 2006

Source: OPIS

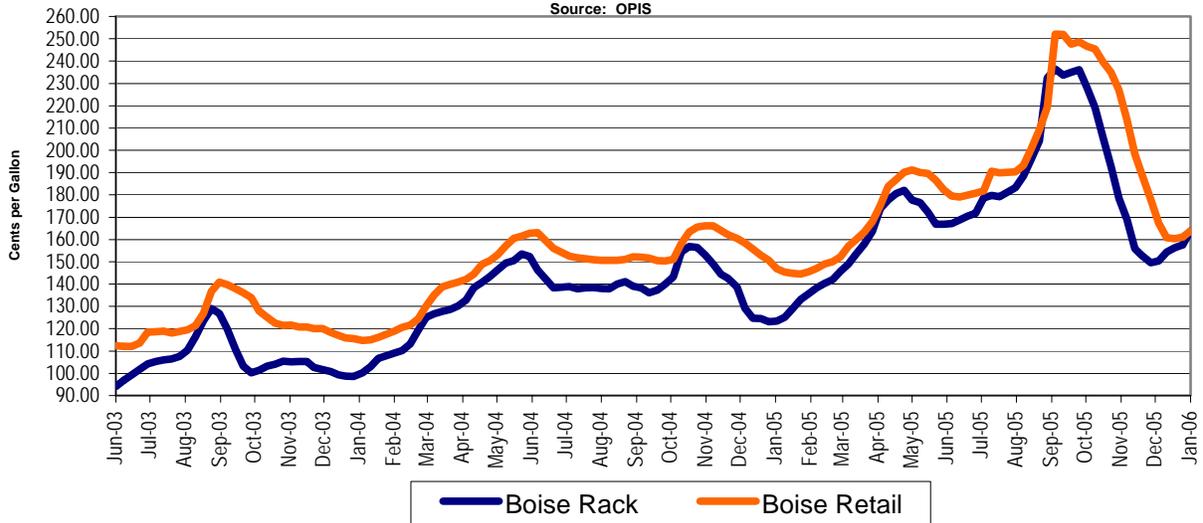
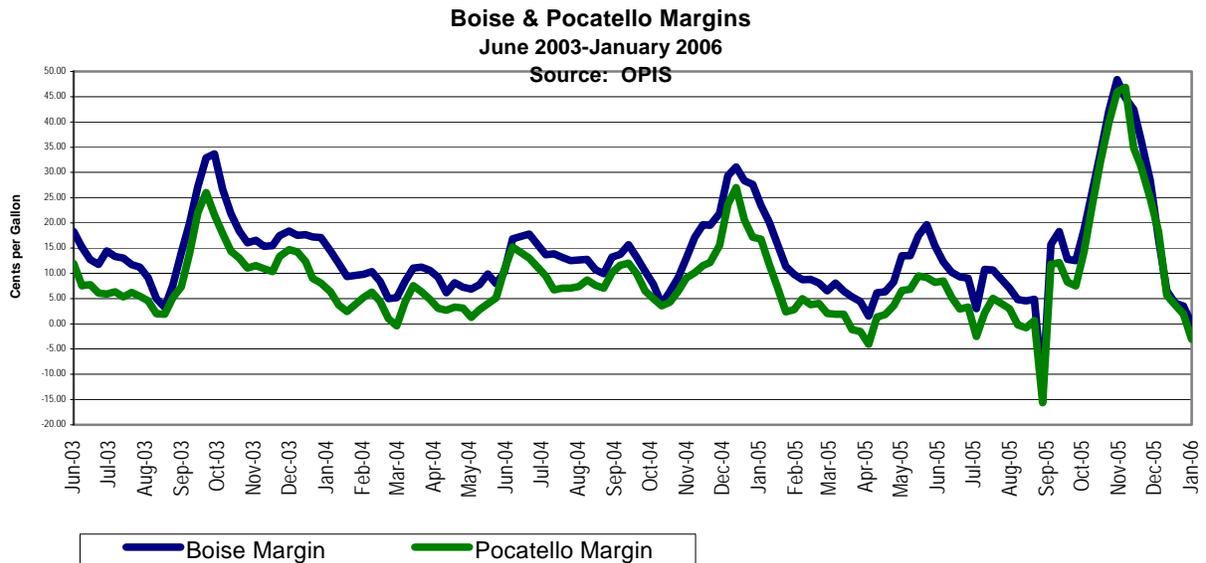


Chart 12 compares gross margins in the Pocatello and Boise markets.

CHART 12



Analysis of the OPIS data from June 2003 through December 2005 revealed that the Boise market had an average margin above the statewide long-term average of 11.5 cents per gallon, while Pocatello's average margin was lower than the statewide average. Over the two-and-one-half year period, the margin in the Boise market averaged 14.28 cents and the margin in the Pocatello market averaged 9.24 cents. Margins fluctuated widely during each calendar year from the averages. For discussion purposes, we have focused below on 2005.

Margins in the Boise market averaged 13.26 cents for 2005 and 9.13 cents in Pocatello. But there were wide swings in margins each quarter. The quarterly averages for each quarter in Boise were 10.035 cents, 9.486 cents, 6.39 cents, and 27.12 cents. In Pocatello, the quarterly averages were 4.248 cents, 5.035 cents, 2.35 cents, and 24.87 cents. Margins were particularly volatile from August through December.

Margins in August were 5.33 cents in Boise and 0.67 cents in Pocatello. During September, margins averaged 9.256 cents in Boise. The lowest weekly average margin for the month was minus 13.07 cents and the high was 18.30 cents. In Pocatello, the average in September was 4.824 cents, ranging from a low of minus 15.61 cents to a high of 12.15 cents.

Margins during October began to expand and continued to expand weekly until peaking in Boise during the weekly period ending November 3 and in Pocatello during the weekly period ending November 10. Weekly average margins in Boise went from 18.66 cents as of October 6 to a high of 48.41 cents as of November 3. In Pocatello, the weekly averages went from 14.32 as of October 6 to 46.87 as of November 10. The October average for Boise was 30.245 cents and in Pocatello the average was 27.498 cents. The November averages for Boise and Pocatello respectively were 43.067 cents and 39.737 cents.

Margins in Boise began to shrink from their November 3 high as of November 10 when they averaged 44.72 cents. Over the next seven weeks, margins in Boise dropped 41.23 cents, reaching a low as of December 29 of 3.49 cents. In Pocatello the decline from the high began as of November 17 when margins dropped to 34.85 cents. They then declined 32.92 cents over six weeks to a low of 1.93 cents as of December 29. The December average in Boise was 11.872 cents and in Pocatello the average was 10.878 cents.

Fluctuating margins in the Boise and Pocatello markets during 2005 were indicative of asymmetry. Because wholesale price increases and decreases generally are passed through to consumers over a period of several weeks, margins at any one period can be somewhat distorted. The pattern of expanding margins that began in the Boise and Pocatello markets in October occurred subsequent to the expiration of Governor Kempthorne's 30-day disaster emergency declaration regarding Hurricane Katrina. As noted previously, the Idaho Consumer Protection Act limits statutory authority over "exorbitant or excessive price[s]" to the period of the declared disaster emergency. Ultimately, the propriety of the margin expansion that occurred subsequent to the expiration of Governor Kempthorne's 30-day disaster emergency declaration is, from a legal standpoint, moot because the time-period after the declaration expired is outside the scope of the Idaho Consumer Protection Act. Nevertheless, though margins after September did expand over a five-week period in Boise by 35.9 cents and over a six-week period in Pocatello by 39.36 cents, they then declined over a seven-week period in Boise by 41.23 cents and by 34.85 cents in Pocatello over a six-week period. Margins continued to decline during the week ending January

5, reaching .02 cents in Pocatello and minus 3.06 cents in Pocatello. The monthly averages for January 2006 in Boise and Pocatello were 4.21 cents and minus 5.38 cents. The OAG found no evidence that would attribute the short-term margin expansion that occurred in the Pocatello and Boise markets during the autumn of 2005 to anticompetitive behavior or inappropriate price manipulation by retailers.

A Look at the Post-Katrina Ripple Effect on Prices in PADD IV

There is no region of the country that is completely untouched by either crude oil supplies or finished fuel supplies originating from the Gulf Coast, although the extent of each region's reliance on the Gulf Coast varies.

The Gulf Coast states in PADD III (Alabama, Arkansas, Louisiana, Mississippi, New Mexico, Texas and the Federal Offshore area) account for 55% of the nation's crude oil production and 47% of its refined product output.¹⁰⁵ The Gulf Coast sends 65% of the fuel it refines to other states for consumption, and consumes within PADD III the other 35%.¹⁰⁶

The Gulf Coast meets 50% of the fuel demand of the East Coast states in PADD I, which is the nation's largest consuming area.¹⁰⁷ The second largest consuming area is the Midwest (PADD II).¹⁰⁸ The Midwest contains several refineries.¹⁰⁹ About 20% of the crude oil refined in the Midwest comes from the Gulf Coast.¹¹⁰ The Gulf Coast also supplements the Midwest's refinery output with shipments of fuel refined by the Gulf Coast refineries and then shipped to the Midwest by refined product pipelines and by barges on the Mississippi River.¹¹¹

The West Coast (PADD V) consists of Alaska, Hawaii, Washington, Oregon, California, Nevada, and Arizona. Refineries in PADD V supply 88% of that PADD's demand for fuel.¹¹² Shipments from the Gulf Coast augment finished fuel supplies in Arizona.¹¹³ Additionally, refined fuel is sometimes shipped from the Gulf Coast to states on the West Coast by tanker.¹¹⁴

The states in the Rocky Mountain region of PADD IV (Idaho, Montana, Wyoming, Utah, and Colorado) collectively make up the smallest consumption area in the nation.¹¹⁵ There is a relative balance in PADD IV between the motor fuel it consumes and between the amount of crude oil refined by the Rocky Mountain refineries from crude oil produced in those states and

imported from Canada.¹¹⁶ There are, however, some inter-PADD transfers.¹¹⁷ Some fuel refined in Montana is shipped into North Dakota and Washington, and some fuel refined in Utah is also shipped into Washington.¹¹⁸ PADD IV's finished fuel supplies, primarily those of the Front Range of Colorado, which includes Denver, are significantly augmented by shipments from the Gulf Coast states in PADD III either directly through shipments from Texas or indirectly by pipeline shipments from refineries in Kansas and Oklahoma, which, in turn, receive crude oil from the Gulf Coast.¹¹⁹

Colorado's gasoline consumption is 5.7 million gallons per day and its diesel consumption is 2.0 million gallons per day.¹²⁰ Colorado's refineries, however, only have the capacity to meet 35% of Colorado's daily gasoline and diesel demand.¹²¹ Consequently, Colorado has a daily shortfall of gasoline and diesel supply of slightly more than 5 million gallons per day that has to be met by imports from other states.¹²² Some of that augmented supply comes from non-PADD IV states.¹²³ In August 2005, shipments into PADD IV attributable to the PADD III, which includes Gulf Coast states that had refinery production curtailed by Hurricane Katrina, totaled about 700,000 barrels.¹²⁴ PADD III shipments of fuel to PADD IV in September 2005 fell by about 100,000 barrels compared to August.¹²⁵ The shipments recovered to August levels in October.¹²⁶

The impacts made by Hurricane Katrina and Hurricane Rita had ripple effects on retail prices of gasoline in every region of the country, though the magnitude of the increases varied. The Federal Trade Commission (FTC) studied prices nationally and within each of the PADDs.¹²⁷ It looked at the size and duration of price increases after Hurricane Katrina and after Hurricane Rita, which made land on September 24, 2005.¹²⁸ On the national level, it sought to determine whether price increases were consistent with behavior in competitive markets, or, alternatively, whether the price increases reflected anticompetitive behavior.¹²⁹ It then examined whether differences in regional prices were consistent with the differences in regional supply reductions and the cost of transporting gasoline to the regions.¹³⁰ Additionally, it looked at market supply responses to higher prices, particularly the behavior of refineries outside the

affected areas in Gulf.¹³¹ The FTC did not find evidence that prices nationally or in any region of the country, including PADD IV, were caused by anticompetitive behavior or improper price manipulation.¹³² The FTC concluded that:

Staff found no evidence of anticompetitive behavior in its review of national and regional gasoline pricing after the hurricanes. Because of the Gulf Coast's critical role in U.S. gasoline supplies, the disruptions of refinery and pipeline operations by Hurricanes Katrina and Rita caused prices to increase significantly throughout the nation. Although prices in some regions went up more than in other areas, the price spikes that resulted in the immediate aftermath of both storms were short-lived. At the national and regional levels, the extent and location of these price increases are more consistent with a competitive outcome, rather than with anticompetitive behavior or inappropriate price manipulation. The relative importance of the Gulf Coast to different regions explains why prices went up in some regions more than in others. To the extent that prices did rise, the increases appear consistent with significantly increased marginal costs of supply. In addition, many of the refineries that were not damaged by the hurricanes were able to increase output in response to the higher prices. Inventories also fell after the hurricanes as suppliers responded to the higher prices with increased sales, and imports by suppliers, including by firms with substantial domestic refining operations, increased significantly. Such behavior is consistent with competitive behavior, rather than anticompetitive or price manipulative behavior.¹³³

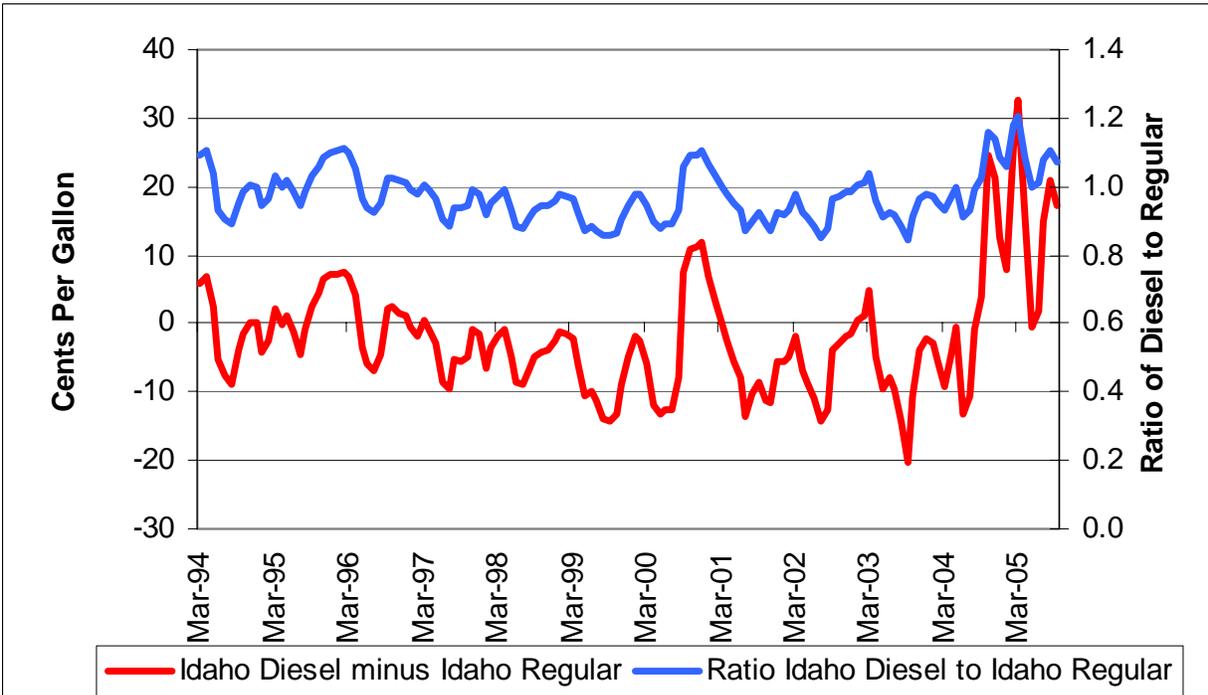
Relative Price Patterns for Diesel Fuel have Changed

One complaint lodged about motor fuel prices in 2005 is that there has been a change in the historic relative-price relationship between regular grade gasoline and diesel. Diesel is a “distillate” refined from crude oil.¹³⁴ No. 2 distillate is the primary source for the motor diesel consumed in the United States.¹³⁵ It is also used by industry and used as a fuel for heating buildings.¹³⁶

An examination of the difference in price between diesel and regular (diesel minus regular) from 1994 through September 2005—the red (bottom) line in the graph in Chart 13 — confirms a change in the relationship between 2004 and 2005.¹³⁷ For the period 1994 through 2004, with the exception of a few brief periods, the price of diesel in Idaho tended to be lower than regular. Since the end of 2004, however, diesel prices in Idaho consistently have been higher than regular. Because both diesel and regular prices were significantly higher in 2005

than 2004, a ratio analysis was done rather than an analysis based just on a simple cents difference. The ratio of diesel to regular also shows a change in the relative price relationship, but the change has not been as dramatic. See the blue (top) line in Chart 13.

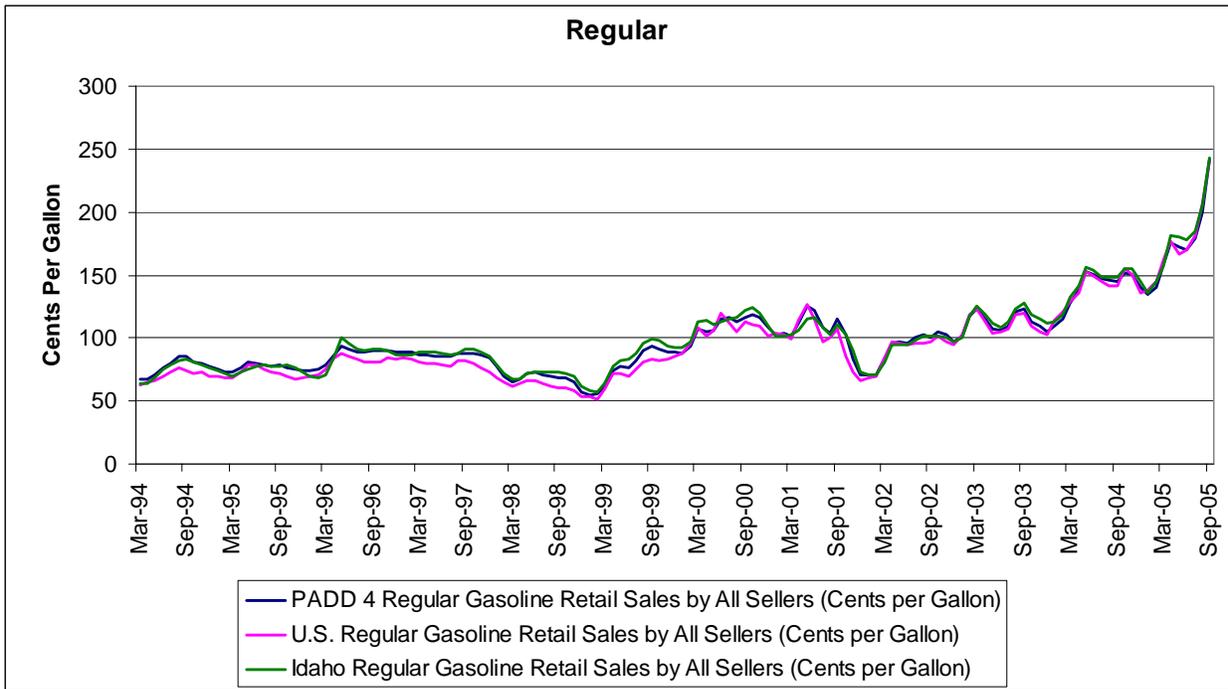
CHART 13



Source: Energy Information Administration

An examination of regular gasoline prices in Idaho when compared to the nation and PADD IV indicates a similar pattern of price changes over the past 10 years.¹³⁸ See Chart 14.

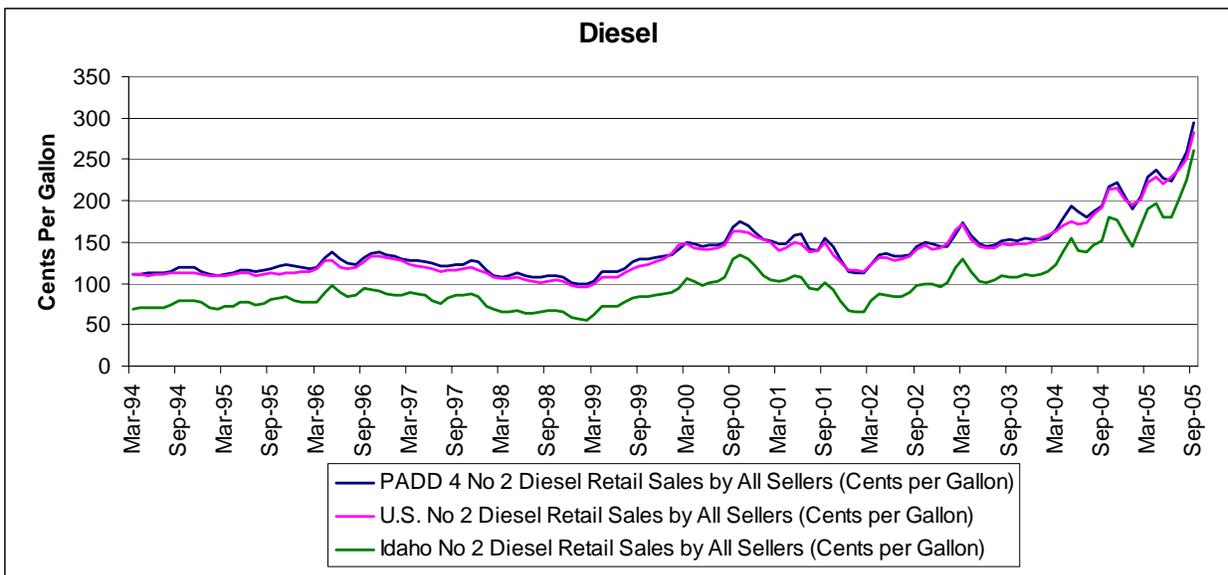
CHART 14



Source: Energy Information Administration

However, the relationship among Idaho, the nation, and PADD IV is significantly different for diesel. Diesel prices in Idaho, until recently, were below diesel prices in either PADD IV or the nation.¹³⁹ See Chart 15.

CHART 15



Source: Energy Information Administration

The EIA examined diesel prices in PADD IV and concluded those prices have had a history of reacting differently than diesel prices nationally.¹⁴⁰ The EIA undertook a statistical analysis of how long it took for retail prices of diesel to react to changes in spot prices. According to the EIA,

Estimates showed that the price pass-through from spot to retail markets is complete by two months, with about 70 percent of the change occurring within 2 weeks and 90 percent within 4 weeks. However, PADD District 4 displayed much slower changes, with only about 50 percent spot price pass-through occurring with the first two weeks.¹⁴¹

It is unclear if the post-2004 change in the relationship between diesel and regular prices in Idaho is permanent, or if it is a function of the dramatic increases in oil prices since 2004 and will return to the historic relationship. However, there are a number of general market factors that strongly suggest that the change in the historic relationship will likely continue for the foreseeable future.

One key factor impacting diesel markets in the United States is an increase in global diesel demand, particularly increases in demand in Europe and in China.¹⁴² When diesel sells at a premium to gasoline, refiners adjust distillate stocks to capitalize on the price difference.¹⁴³ However, although distillate stocks by August 2006 had increased 10 million barrels above the previous 5-year average, diesel prices have not dropped as much as gasoline prices.¹⁴⁴ The EIA projects that global demand for distillate fuels, particularly in Europe and Asia, will continue to keep diesel fuel markets in the United States tight.¹⁴⁵ A continued tight market for diesel in light of growing world demand suggests that the post-2004 relative-price relationship between diesel and gasoline prices will continue.

Diesel demand has also been growing in Idaho.¹⁴⁶ While total demand for all grades of gasoline in Idaho increased in 2005 by 1.1 percent, the demand for both on-road and off-road diesel dwarfed the growth in gasoline demand.¹⁴⁷ Demand for on-road diesel increased in 2005 by 3 percent.¹⁴⁸ The demand for off-road diesel, much of which is used in agriculture, increased in 2005 by 14.7 per cent.¹⁴⁹ Total gasoline consumption in Idaho in 2005 was approximately 1.8

million gallons per day.¹⁵⁰ In comparison, the combined daily average consumption for on-road and off-road diesel was approximately 1.1 million gallons.¹⁵¹

Another significant factor impacting diesel markets throughout the United States is the implementation of new U.S. Environmental Agency (EPA) sulfur standards for No. 2 diesel.¹⁵² Prior to June 2006, the sulfur content of No. 2 distillate, or on-highway diesel, could not exceed 500 parts per million (ppm) by weight.¹⁵³ However, beginning in June 2006, refiners and importers of highway diesel fuel were required to produce at least 80% of their highway diesel fuel with no more than 15 ppm of sulfur.¹⁵⁴ Terminals were to be ready to handle Ultra Low-Sulfur Diesel (ULSD) by September 1, and EPA expects retailers to be ready to handle ULSD by October 15, 2006.¹⁵⁵ The EIA reported in August 2006 that “progress has been good” regarding total ULSD production nationally, and that all PADDs are producing ULSD.¹⁵⁶ But distribution, the EIA also reported, has been challenging:

The main challenge is distributing the product. ULSD moves through the same pipelines and tanks as other petroleum products, including those with very high sulfur content, such as jet fuel, which can have as much as 300 ppm sulfur. In many cases, ULSD is leaving the refineries at 7 to 8 ppm in order to allow for some sulfur increase as it travels through the system. But it takes very little sulfur left in a manifold or other equipment to push this product off specification.¹⁵⁷

Thus, increasing demand for diesel and changes in the sulfur-content requirements for diesel are factors that likely will contribute, at least over the next several months, to a relative price relationship in which diesel continues to exceed the price of regular in Idaho and elsewhere in the nation.

Conclusion

Gasoline prices charged by retailers during August and September 2005 did not violate the Idaho Consumer Protection Act’s prohibition against knowingly charging consumers “exorbitant or excessive price[s]” for fuel during an officially declared disaster or emergency. Furthermore, the OAG obtained no information suggesting that any Idaho retailers conspired to fix prices in violation of the Idaho Competition Act. The OAG found no evidence that post-

Hurricane Katrina price levels in Idaho during 2005 were caused by anticompetitive behavior or improper price manipulation by retailers.

Idaho has petroleum infrastructure disadvantages that impact motor fuel prices in Idaho. Idaho is one of the nation's smaller fuel markets, ranking 44th in total petroleum consumption. The federal government groups Idaho for statistical purposes into the Rocky Mountain region along with Montana, Wyoming, Utah, and Colorado. The Rocky Mountain region is the smallest petroleum consumption region in the nation. Montana, Wyoming, Utah, and Colorado all have proven crude oil reserves, produce crude oil, and refine crude oil. Idaho, however, has no proven crude oil reserves, produces no crude oil, and has no refineries. Seventy percent of Idaho's gasoline and diesel supplies come from Utah's five refineries near Salt Lake City, and is largely transported into the state through a single finished-product pipeline system that traverses southern Idaho before continuing through eastern Washington until it terminates in Spokane. Idaho's average wholesale prices over 1994-2005 have been the highest when compared to six other Western states: Washington, Oregon, Montana, Wyoming, Utah and Colorado. But Idaho's retail prices have not been the highest, nor have Idaho's gross margins (the difference between the retail price and wholesale price) been the highest. Idaho's retail prices have averaged the fourth highest of the seven states, but its average gross margins have been the second lowest of the seven.

Demand in Idaho for gasoline, diesel, and aviation fuel are all growing. Total fuel demand in Idaho increased by 3.5 percent over 2004. However, the demand for diesel and aviation fuel in 2005 grew significantly faster. Gasoline demand increased by 1.1 percent in 2005. The demand for on-road diesel increased 3 percent, but the demand for off-road diesel increased 14.7 percent. The demand for aviation fuel increased 10.2%.

Diesel prices in Idaho since 2004 have changed their historic relationship to regular gasoline prices. Historically, average diesel prices have been lower than prices for regular gasoline, but that relative relationship has inverted since 2004. Rapidly accelerating global demand for diesel, increasing Idaho demand for on-road and off-road diesel, and the

implementation of new EPA standards for Ultra Low Sulfur Diesel (ULSD) likely will cause the inverted relationship to continue for at least the next several months.

ENDNOTES

¹ Source for the retail price data is the U.S. Energy Information Administration (EIA). The Rocky Mountain region is the name given by the EIA to PADD IV. "PADD" stands for Petroleum Administration for Defense District. During World War II, the federal government divided the nation in five PADDs to facilitate fuel distribution and rationing. The designations were retained following World War II, and are now used by the EIA and other federal agencies for reporting petroleum-related statistics on a regional basis. PADD IV consists of Idaho, Montana, Wyoming, Utah, and Colorado. PADD I is the East Coast, and is subdivided into PADD IA (New England): Connecticut, Main, Massachusetts, New Hampshire, Rhode Island, Vermont; PADD IB (Central Atlantic): Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania; and PADD IC (Lower Atlantic): Florida, Georgia, North Carolina, South Carolina, Virginia, and West Virginia. The other PADDs are PADD II (Midwest): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Wisconsin; PADD III (Gulf Coast): Alabama, Arkansas, Louisiana, Mississippi, New Mexico, Texas; and PADD V (West Coast): Alaska (North Slope and Other Mainland), Arizona, California, Hawaii, and Nevada.

² Source of price data for June 2005 is the U.S. Energy Information Administration. See the EIA's monthly tables for "U.S. Regular Conventional Retail Gasoline Prices," "Rocky Mountain Regular Conventional Retail Gasoline Prices," and "Idaho Conventional Gasoline Regular Through Company Outlets Price by All Sellers." All three tables report prices in cents per gallon. The tables for the U.S. and the Rocky Mountain region report prices including taxes. The Idaho table, however, reports prices excluding taxes. The OAG has adjusted the Idaho prices for taxes by adding to the prices reported in the Idaho table both federal and state gasoline taxes. The federal gasoline tax is 18.4 cents per gallon and the Idaho state gasoline tax is 25 cents per gallon. "Conventional" gasoline is defined by the EIA in relation to "Reformulated" gasoline. "Reformulated" gasoline relates to gasoline that has to be specially formulated in order to meet certain air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under section 211(k) of the Clean Air Act. According to the EIA, there are no areas in Idaho that require the sale of reformulated gasoline. The EIA defines "conventional gasoline" as "[f]inished motor gasoline not included in the reformulated gasoline category." "Regular gasoline" for purposes of the EIA's gathering and reporting of statistical information is defined as "[g]asoline having an antiknock index, i.e., octane rating, greater than or equal to 85 and less than 88." "Octane requirements," notes the EIA, "may vary by altitude." The EIA explains that gasoline is classified by octane ratings, and by the grades regular, mid-grade, and premium. The EIA further explains that "gasoline sales are reported by grade in accordance with their classification at the time of sale. In general, automotive octane requirements are lower at high altitudes. Therefore, in some areas of the United States, such as the Rocky Mountain States, the octane ratings for the gasoline grades may be 2 or more octane points lower." Because of altitude-related differences in octane ratings, some states, or certain geographic areas within particular states, may sell regular grade gasoline at an octane rating, 85, for example, that is lower than the octane rating of regular in another state; and may sell mid-grade gasoline at an octane rating, 87, for example, that is the octane rating of regular in another state. Thus, a comparison of the price of "regular" between such states could be off by several cents because the truer comparison, due to the octane rating factor, would be between the higher octane "regular" in the one state and the same octane gasoline that is mid-grade in the other state. Such comparisons, however, are not practical in view of the manner in which statistical information currently is gathered and disseminated by the EIA. It does not make altitude-related adjustments to its statistical price data for individual states and regions, nor does it make altitude related adjustments within individual states and adjust individual state data accordingly. It is unclear to what extent, if any, that price comparisons among the United States, the Rocky Mountain region of PADD IV, and Idaho are impacted by altitude-related differences in octane ratings for regular grade gasoline.

³ Source of price data for July 2005 is the U.S. Energy Information Administration. See note 2 for description of tables used and for description of tax adjustment methodology regarding Idaho prices.

⁴ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, July 13, 2005.

⁵ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, July 20, 2005.

⁶ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 10, 2005.

⁷ The “spot price” for gasoline is defined by the EIA as “[t]he price for a one-time open market transaction for immediate delivery of a specific quantity of product at a specific location where the commodity is purchased ‘on the spot’ at current market rates.” The EIA uses the spot price for gasoline as a proxy for wholesale prices because spot prices are the prices at which refiners and importers sell into the wholesale market. Regarding the use of spot prices as a proxy, see “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 17, 2005; and Burdette, Michael; Zyren, John. “Gasoline Price Pass-Through,” Energy Information Administration, Washington D.C.: DOE, January 2003, available at <http://tonto.eia.doe.gov/FTPROOT/features/gasolinepass.htm>. Burdette notes that changes in the spot price of gasoline explain 80 percent of the changes in retail prices.

⁸ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 17, 2005.

⁹ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 24, 2005.

¹⁰ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 31, 2005.

¹¹ Source of price data for August 2005 is the U.S. Energy Information Administration. See note 2 for description of tables used and for description of tax adjustment methodology regarding Idaho prices.

¹² Source of monthly price data for September 2005 is the U.S. Energy Information Administration. See note 2 for description of the tables used and for description of tax adjustment methodology regarding Idaho prices.

¹³ The price peak for prices in the U.S. and the Rocky Mountain Region was determined from the EIA’s weekly tables for “U.S. Regular Conventional Retail Gasoline Prices” and for Rocky Mountain Regular Conventional Retail Gasoline.” The EIA, however, does not report retail prices for Idaho on a weekly basis. Consequently, the weekly peak for Idaho was determined from weekly price information obtained by the OAG from the Oil Price Information Service (OPIS), which is a private company specializing in gathering and disseminating to government and industry petroleum-related price information and news. Additionally, the OAG utilized price information from AAA’s “Daily Fuel Gauge Report” at www.fuelgauge.com.

¹⁴ Source of monthly price data for October 2005 is the U.S. Energy Information Administration. See note 2 for description of the tables used and for description of tax adjustment methodology regarding Idaho prices.

¹⁵ Source of monthly price data for November 2005 is the U.S. Energy Information Administration. See note 2 for description of the tables used and for description of tax adjustment methodology regarding Idaho prices.

¹⁶ Source of monthly price data for December 2005 is the U.S. Energy Information Administration. See note 2 for description of the tables used and for description of tax adjustment methodology regarding Idaho prices.

¹⁷ “This Week in Petroleum,” Energy Information Administration, Washington D.C., DOE: November 9, 2005.

¹⁸ Station G-10 is an identifier utilized by the OAG. The ten companies examined by the OAG were given letter designations A through I.

¹⁹ “This Week in Petroleum,” Energy Information Administration, Washington D.C., DOE: August 31, 2005.

²⁰ The Idaho Consumer Protection Act’s prohibition against “exorbitant or excessive price[s]” during an officially declared disaster or emergency applies only to prices retailers charged the ultimate consumer. Idaho Code § 48-603(19). The Act does not apply to wholesale prices or refiner prices. Accordingly, this report expresses no opinion as to whether or not prices charged by wholesalers or refiners subsequent to Hurricane Katrina were exorbitant or excessive.

²¹ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August 17, 2005.

²² See Burdette, Michael; Zyren, John. “Gasoline Price Pass-Through,” Energy Information Administration, Washington D.C.: DOE, January 2003, available at <http://tonto.eia.doe.gov/FTP/ROOT/features/gasolinepass.htm>. Also see Ye, Michael; Zyren, John; Shore, Joanne; Burdette, Michael, “Regional Comparisons, Spatial Aggregation, and Asymmetry of Price Pass-Through in U.S. Gasoline Markets, *Atlantic Economic Journal*, 33: 179-192, 2005, available at <http://tonto.eia.doe.gov/FTP/ROOT/features/gaspasssthrough2005.pdf>.

²³ See, for example, Balke, Nathan S.; Brown, Stephen P.A.; Yucel, Mine K. “Crude Oil and Gasoline Prices: An Asymmetric Relationship?” *Federal Reserve Bank of Dallas Economic Review*, First Quarter 1998: 2-11. Brown, Stephen P.A.; Yucel, Mine K. “Gasoline and Crude Oil Prices: Why the Asymmetry?” *Federal Reserve Bank of Dallas Economic and Financial Review*, Third Quarter 2000: 23-29. Burdette, Michael; Zyren, John. “Diesel Fuel Price Pass-through,” Energy Information Administration, Washington D.C.: DOE, July 2002, available at <http://tonto.eia.doe.gov/FTP/ROOT/features/diesel.pdf>. Burdette, Michael; Zyren, John. “Gasoline Price Pass-Through,” Energy Information Administration, Washington D.C.: DOE, January 2003, available at <http://tonto.eia.doe.gov/FTP/ROOT/features/gasolinepass.htm>. Cabral, Luis M.B.; Fishman, Arthur “A Theory of Asymmetric Price Adjustment,” April 2006, available at <http://www.bu.edu/econ/seminars/microeconomics/pdf/fall06/A%20Theory%20of%20Asymmetric%20Price%20Adjustment%20Asset%20submission.pdf#search%22Cabral%20%2B%20Asymmetric%20Price%20Adjustment%22>. Davis, Michael C. “The Dynamics of Daily Retail Gasoline Prices,” Department of Economics University of Missouri-Rolla, available at <http://web.umar.edu/~davismc/dynamics%20of%20daily%20retail%20gas%20prices.pdf>. Deltas, George. “Retail Gasoline Price Dynamics and Local Market Power,” University of Illinois, Urbana-Champaign, Working Paper August 2004, available at <https://netfiles.uiuc.edu/deltas/www/UnpublishedWorkingPapers/GasolinePriceDynamics.pdf>. Ye, Michael; Zyren, John; Shore, Joanne; Burdette, Michael. “Regional Comparisons, Spatial Aggregation, and Asymmetry of Price Pass-Through in U.S. Gasoline Markets,” *Atlantic Economic Journal*, 33: 179-192, 2005, available at <http://tonto.eia.doe.gov/FTP/ROOT/features/gaspasssthrough2005.pdf>

²⁴ Burdette (January 2003); Davis; Deltas (August 2004); Ye (2005). Burdette found that changes in spot prices for gasoline explain 80 percent of the changes subsequently occurring in retail prices. Rather than using

spot—i.e., wholesale—prices, Balke (1998) and Brown (2000) examined crude oil prices and retail gasoline prices and concluded that changes in crude oil prices were predictive of changes in retail prices.

²⁵ Burdette (2003).

²⁶ Burdette (2003).

²⁷ Burdette (2003). In most regions of the country, the pass-through is completed over nine weeks. That includes the Rocky Mountain region of Idaho, Montana, Wyoming, Utah, and Colorado. In two regions, the pass-through takes ten weeks. In one sub-region of the East Coast, the pass through takes eleven weeks.

²⁸ Ye (2005).

²⁹ Balke (1998); Brown (2000); Burdette (January 2003); Cabral (April 2006); Davis; Deltas (August 2004); and Ye (2005).

³⁰ Deck, Cary A.; Wilson, Bart J. “Economics at the Pump,” *Regulation*, Spring 2004: 22-29. Geweke, John. “Issues in the ‘Rockets and Feathers’ Gasoline Price Literature,” Federal Trade Commission, Washington D.C., March 16, 2004, available at www.ftc.gov/bc/gasconf/comments2/gewecke2.pdf.

³¹ Balke (1998); Brown (2000); Cabral (April 2006); Davis; and Deltas (August 2004).

³² “Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases,” Federal Trade Commission, Washington D.C., Spring 2006, pp. 65-66. The entire Federal Trade Commission report is available at <http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf>

³³ Federal Trade Commission (Spring 2006), p. 66.

³⁴ Federal Trade Commission (Spring 2006), p. 66.

³⁵ Federal Trade Commission (Spring 2006), p. 66.

³⁶ Balke (1998); Brown (2000); Davis; and Deltas (August 2004).

³⁷ Balke (1998); Brown (2000); Davis; and Deltas (August 2004).

³⁸ Brown (2000).

³⁹ Balke (1998); Brown (2000); Davis; and Deltas (August 2004).

⁴⁰ Balke (1998); Brown (2000); Davis; and Deltas (August 2004).

⁴¹ Lewis, David. “Bradley Petroleum’s bottom line,” *ColoradoBiz*, 11/11/2005-11/30/2005, available <http://www.cobizmag.com/articles.asp?search=archives&id=288>.

⁴² Source, U.S. Energy Information Administration.

⁴³ One of the leading sources for information regarding “rack” prices is the Oil Price Information Service (OPIS). OPIS is a private company that gathers and supplies petroleum price information and news to industry and government. OPIS updates wholesale terminal prices daily from hundreds of sources around the country. See the OPIS web site at www.opisnet.com.

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- ⁴⁴ Source, U.S. Energy Information Administration.
- ⁴⁵ See note 1.
- ⁴⁶ See “Petroleum State Profiles,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ⁴⁷ See “Petroleum State Profiles,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ⁴⁸ See “Petroleum State Profiles,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ⁴⁹ Source, U.S. Energy Information Administration, “Petroleum,” Rocky Mountain (PADD 4) Crude Oil Production (Thousand Barrels per Day), and Rocky Mountain (PADD 4) Crude Oil and Petroleum Products Imports from Canada (Thousand Barrels per Day), www.eia.doe.gov.
- ⁵⁰ Source, U.S. Energy Information Administration, “Petroleum” Rocky Mountain (PADD 4) Crude Oil and Petroleum Products Imports from Canada (Thousand Barrels per Day), www.eia.doe.gov.
- ⁵¹ See Petroleum State Profiles,” U.S. Energy Information Administration Website: www.eia.doe.gov.
- ⁵² See “Petroleum State Profiles,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ⁵³ See “A Primer on Gasoline Prices in Washington State – 2004,” Washington State University Extension Energy Program, http://qa.cted.was.gov/_CTED/documents/ID_1923_Publications.pdf.
- ⁵⁴ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.
- ⁵⁵ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.
- ⁵⁶ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.
- ⁵⁷ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.
- ⁵⁸ See “Petroleum State Profiles,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ⁵⁹ The estimate is that of Holly Corporation, the owner of a refinery located at Woods Cross, Utah. See “Woods Cross Refinery” at http://www.hollycorp.com/refineries_woods.cfm.
- ⁶⁰ Isaacson, Alan E. “Utah’s Role in the United States Petroleum Industry,” *Utah Economic and Business Review*, Bureau of Economic and Business Research, David Eccles School of Business, University of Utah, Volume 68: July/August 2005, p. 11.
- ⁶¹ Isaacson (July/August 2005), pp. 13-14.

⁶² Isaacson (July/August 2005), p. 11. See also Holly Corporation, “Woods Cross Refinery,” http://www.hollycorp.com/refineries_woods.cfm.

⁶³ Isaacson, (July/August 2005), p. 11. See also Holly Corporation, “Woods Cross Refinery,” http://www.hollycorp.com/refineries_woods.cfm.

⁶⁴ See ConocoPhillips Pipe Line Company, “Pipelines & Terminals Map,” <http://www.conocophillipspipeline.com/operation/map.index.htm> . Sinclair Pipeline Company, <http://www.sinclairoil.com/pipelines.htm>. Federal Energy Regulatory Commission, Docket No. OR03-6-000, Order on Complaint (December 17, 2003), p. 2, [http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%](http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%22). Holly Corporation, “Woods Cross Refinery,” http://www.hollycorp.com/refineries_woods.cfm.

⁶⁵ Federal Energy Regulatory Commission, Docket No. OR03-6-000, Order on Complaint (December 17, 2003), p. 2, [http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%](http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%22).

⁶⁶ Federal Energy Regulatory Commission, Docket No. OR03-6-000, Order on Complaint (December 17, 2003), p. 2, [http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%](http://www.ferc.gov/whats-new/comm-meet/121703/G-34.pdf#search+%22Pioneer%22).

⁶⁷ Information obtained by OAG directly from Chevron Pipe Line Company.

⁶⁸ Isaacson, (July/August 2005), p.11.

⁶⁹ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁰ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷¹ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷² Information obtained by OAG directly from Chevron Pipe Line Company.

⁷³ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁴ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁵ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁶ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁷ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁸ Information obtained by OAG directly from Chevron Pipe Line Company.

⁷⁹ Information obtained by OAG directly from Chevron Pipe Line Company.

⁸⁰ Information obtained by OAG directly from Chevron Pipe Line Company.

⁸¹ Information obtained by OAG directly from Chevron Pipe Line Company.

⁸² Information obtained by OAG directly from Chevron Pipe Line Company.

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- ⁸³ Information obtained by OAG directly from Chevron Pipe Line Company.
- ⁸⁴ Information obtained by OAG directly from Chevron Pipe Line Company.
- ⁸⁵ Federal Energy Regulatory Commission, Oil, Regulating Oil Pipelines, General Information, Regulated Entities, Oil Pipeline Index, <http://www.ferc.gov/industries/oil.asp>.
- ⁸⁶ Federal Energy Regulatory Commission, Oil, Regulating Oil Pipelines, General Information, Regulated Entities, Oil Pipeline Index, <http://www.ferc.gov/industries/oil.asp>.
- ⁸⁷ Chevron Pipe Line Company, Salt Lake Products Pipeline System, Local Pipeline Tariff, Effective July 1, 2005, F.E.R.C. No. 914. The actual tariff rates are in cents per barrel of 42 United States Gallon, but, for purposes of comparison, have been converted in the text to a per gallon equivalent.
- ⁸⁸ See note 86.
- ⁸⁹ Chevron Pipe Line Company, Salt Lake Products Pipeline System, Local Pipeline Tariff, Effective July 1, 2005, F.E.R.C. No. 915. The actual tariff rates are in cents per barrel of 42 United States Gallons, but, for purposes of comparison, have been converted in the text to a per gallon equivalent.
- ⁹⁰ “ConocoPhillips Fact Book” ConocoPhillips: 2006, p.54, <http://www.conocophillips.com/about/Company+Reports/ConocoPhillips+Fact+Book.htm>. “A Primer on Gasoline Prices in Washington State – 2004,” Washington State University Extension Energy Program, http://qa.cted.was.gov/_CTED/documents/ID_1923_Publications.pdf. Cartwright, Paul. “Petroleum and Petroleum Products in Montana,” Montana Department of Environmental Quality: March 2003, p. 7, http://leg.mt.gov/content/publications/lepo/deq_petroleum_report/reporttext.pdf. “Sunoco Logistics Partners agrees to purchase ownership interests in Wolverine, West Shore and Yellowstone pipelines from Unocal,” <http://www.unocal.com/uclnews/2002news/103102.htm>. Cartwright notes that Montana’s four refineries export to other states 50-55 percent of their output of refined fuels. Cartwright, p. 7. Of that, about 12.25-13.75 percent is shipped to terminals at Spokane and Moses Lake, Washington. Cartwright, p. 7. The Montana refineries, Cartwright states, obtain about 6% of their crude oil from Montana, about 22% from Wyoming, and about 73% from Alberta, Canada. Cartwright, p. 3.
- ⁹¹ “Sunoco Logistics Partners agrees to purchase ownership interests in Wolverine, West Shore and Yellowstone pipelines from Unocal,” <http://www.unocal.com/uclnews/2002news/103102.htm>.
- ⁹² “ConocoPhillips Fact Book” ConocoPhillips: 2006, p.54, <http://www.conocophillips.com/about/Company+Reports/ConocoPhillips+Fact+Book.htm>.
- ⁹³ “A Primer on Gasoline Prices in Washington State – 2004,” Washington State University Extension Energy Program, http://qa.cted.was.gov/_CTED/documents/ID_1923_Publications.pdf.
- ⁹⁴ “A Primer on Gasoline Prices in Washington State – 2004,” Washington State University Extension Energy Program, http://qa.cted.was.gov/_CTED/documents/ID_1923_Publications.pdf. Tidewater Barge Lines, “Terminaling Services,” www.tidewater.com.
- ⁹⁵ Tidewater Barge Lines, “Terminaling Services,” “Snake River Terminal,” “Wilma Terminal,” www.tidewater.com.
- ⁹⁶ Tidewater Barge Lines, “Terminaling Services,” “Umatilla Terminal,” www.tidewater.com.
- ⁹⁷ Tidewater Barge Lines, “Terminaling Services,” “Snake River Terminal,” www.tidewater.com.

⁹⁸ Source, U.S. Energy Information Administration, “Petroleum Marketing Annual 2004,” Table EN1: Federal and State Motor Fuels Taxes, p. 379.

⁹⁹ Source, U.S. Department of Transportation, “Highway Statistics 2004,” Section I, Motor Fuel, Rates and Revenues, Table MF-205, State Motor-Fuel Tax Rates 1990-2004 Gasoline, <http://www.fhwa.dot.gov/policy/ohim/hs04/index.htm>.

¹⁰⁰ Idaho Code §§ 63-2402 and 63-2405.

¹⁰¹ U.S. Energy Information Administration, “Petroleum Marketing Annual 2004,” Table EN1: Federal and State Motor Fuels Taxes, p. 379. Tax rates for 2006 are the same for each state with the exception of Washington, its tax rate having increased 3 cents to 31 cents per gallon. See U.S. Energy Information Administration, “Petroleum Marketing Annual 2005,” Table EN1: Federal and State Motor Fuel Taxes, p. 379. The tax rate for Idaho from 1994 to 1996 was 21 cents per gallon before increasing to 25 cents; the tax rate in Colorado was 22 cents throughout the 1994-2005 period; the tax rate in Montana was 24 cents in 1994 prior to increasing to 27 cents; the tax rate in Oregon was 24 cents throughout the 1994-2005 period; the Utah tax rate was 19 cents during 1994-1997 prior to increasing to 24.5 cents; the Washington tax rate was 23 cents during 1994-2003 prior to increasing to 28 cents; and the Wyoming tax rate was 9 cents during 1994-1998 prior to increasing to 14 cents. See U.S. Energy Information Administration, “Petroleum Marketing Annual 2005,” Table EN1: Federal and State Motor Fuel Taxes, p. 379. The gasoline tax rate in Idaho was 18 cents per gallon for the first six months of 1994 before increasing to 21 cents per gallon on July 1, 1994. Session Laws 1994, ch. 166, § 1, p. 373, amending Idaho Code § 63-2405. The rate remained at 21 cents per gallon from July 1, 1994 until April 1, 1996, when it increased to 25 cents. Session Laws 1996, ch. 343, § 4, p. 1149, amending Idaho Code § 63-2405. During the period of January 1994 through September 30, 1999, Idaho fuel distributors were also subject to an additional 1 cent per gallon Petroleum Transfer Fee assessed under the Idaho Petroleum Clean Water Trust Fund Act. Idaho Code § 41-4909. According to the Idaho State Tax Commission, the Petroleum Transfer Fee was suspended as of October 1, 1999, by the administrator of the Idaho Petroleum Clean Water Trust Fund pursuant to Idaho Code § 41-4909(10).

¹⁰² Yearly tax rates for each of the seven states during the 1994-2005 period were averaged and then were subtracted from the retail price averages for each state for the same period. The tax adjusted average prices were then ranked from highest to lowest. The tax rate averages for the seven states from highest to lowest were: Montana, 26.75 cents; Idaho, 24.6 cents; Colorado and Oregon, each at 24 cents; Washington, 23.41 cents; Utah, 22.66 cents; and Wyoming, 11.91 cents. In computing the Idaho average, the adjustment has taken into account that two different tax rates applied during parts of 1994 and 1996, and that a 1 cent per gallon Petroleum Transfer Fee applied during the period of January 1, 1995 through September 30, 1999. The average retail prices from highest to lowest were: Oregon, 104.23 cents; Washington, 101.40 cents; Wyoming, 101.27 cents; Idaho, 99.31 cents; Montana, 99.17 cents; Colorado, 98.20 cents; and Utah, 95.41 cents. The tax-adjusted average prices ranked from highest to lowest were: Wyoming, 89.36 cents; Oregon, 80.23 cents; Washington, 77.99 cents; Idaho: 74.71 cents; Colorado, 74.20 cents; Utah, 72.76 cents; and Montana, 72.42 cents.

¹⁰³ See note 102.

¹⁰⁴ See note 102.

¹⁰⁵ Trench, Cheryl J. “How Pipelines Make the Oil Market Work – Their Networks, Operation and Regulation,” Allegro Energy Group; December 2001, p. 4, available at <http://www.pipeline101.com/reports/Notes.pdf>.

¹⁰⁶ See note 32, p. 68.

¹⁰⁷ See note 32, p. 69.

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- ¹⁰⁸ See note 32, p. 69.
- ¹⁰⁹ See note 32, 69.
- ¹¹⁰ See note 32, p. 69.
- ¹¹¹ See note 32, p. 69.
- ¹¹² See note 32, p. 69.
- ¹¹³ See note 32, p. 69.
- ¹¹⁴ See note 32, p. 69.
- ¹¹⁵ See note 32, p. 70.
- ¹¹⁶ See note 32, p. 70.
- ¹¹⁷ See note 32, p. 70.
- ¹¹⁸ See note 32, p. 70, n. 35.
- ¹¹⁹ See note 32, p. 70.
- ¹²⁰ See “Petroleum State Profiles,” “Colorado,” U.S. Energy Information Administration website: www.eia.doe.gov.
- ¹²¹ “About Suncor U.S.A,” Suncor Energy Inc., <http://www.Suncor.com/default.aspx?ID+2625>. Suncor Energy, Inc. is a Canadian corporation whose U.S. subsidiary, Suncor U.S.A., operates a 90,000 barrel per day refinery in Commerce City, Colorado, which is a few miles outside Denver. On May 31, 2005, Suncor U.S.A. acquired Colorado Refining Company’s 30,000 barrel per day refinery located adjacent to Suncor’s 60,000 barrel per day refinery in Commerce City. Suncor then integrated the two refineries and upgraded the capacity of the integrated refinery to 90,000 barrels per day.
- ¹²² Daily gasoline and diesel consumption of 7,700,000 gallons per day - Colorado refinery production of 2,695,000 gallons per day (7.7 million gallons multiplied by .35 = 2.695 million) = daily supply gap of 5,005,000 gallons per day.
- ¹²³ See note 32, p. 70.
- ¹²⁴ See note 32, p. 70, n. 38. A barrel is the equivalent of 42 gallons.
- ¹²⁵ See note 32, p. 70, n. 38.
- ¹²⁶ See note 32, p. 70, n. 38.
- ¹²⁷ See note 32, Chapter 5, “National and Regional Impact of Hurricanes Katrina and Rita on Gasoline Prices,” pp. 61-81.
- ¹²⁸ See notes 32 and 127.

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- ¹²⁹ See notes 32 and 127, p. 61.
- ¹³⁰ See notes 32 and 127, p. 61.
- ¹³¹ See notes 32 and 127, p. 61.
- ¹³² See notes 32 and 127, pp. 62 and 81.
- ¹³³ See notes 32 and 127, p. 81.
- ¹³⁴ “A Primer on Diesel Fuel Prices,” Energy Information Administration, <http://www.eia.doe.gov/bookshelf/brochures;diesel;dieselprices2006.html>.
- ¹³⁵ See n. 134.
- ¹³⁶ See n. 134.
- ¹³⁷ Source of the data for the prices per gallon of diesel and regular grade gasoline for the 1994 through September 2005 time periods for Idaho is the Energy Information Administration.
- ¹³⁸ Source of the data for Idaho, PADD IV, and national prices per gallon for regular grade gasoline is the Energy Information Administration.
- ¹³⁹ Source of the data for Idaho, PADD IV, and national prices per gallon for diesel is the Energy Information Administration.
- ¹⁴⁰ See Burdette, Michael; Zyren, John. “Diesel Fuel Price Pass-through” Energy Information Administration, Washington D.C.: DOE, July 2002, <http://tonto.eia.doe.gov/FTPROOT/features/gasolinepass.html>.
- ¹⁴¹ See n. 140.
- ¹⁴² “Short-Term Energy Outlook,” Energy Information Administration, Washington D.C.: DOE, September 12, 2006. “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, December 29, 2005. “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, June 22, 2005. “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, March 2, 2005.
- ¹⁴³ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, June 22, 2005.
- ¹⁴⁴ “Short-Term Energy Outlook,” Energy Information Administration, Washington D.C.: DOE, September 12, 2006.
- ¹⁴⁵ “Short-Term Energy Outlook,” Energy Information Administration, Washington D.C.: DOE, September 12, 2006.
- ¹⁴⁶ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.
- ¹⁴⁷ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),” REV. 3/29/06.

¹⁴⁸ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),”
REV. 3/29/06.

¹⁴⁹ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),”
REV. 3/29/06.

¹⁵⁰ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),”
REV. 3/29/06.

¹⁵¹ Source, Idaho State Tax Commission, “Gallons of Fuel Product Received in Idaho (CY 2005),”
REV. 3/29/06.

¹⁵² “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.

¹⁵³ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.

¹⁵⁴ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.

¹⁵⁵ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.

¹⁵⁶ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.

¹⁵⁷ “This Week in Petroleum,” Energy Information Administration, Washington D.C.: DOE, August
9, 2006.