EXHIBIT 3

WILLIAM WHITE, ET. AL.

v.

PACKER COMPANY, INC., ET. AL.

Economic Analysis of Plaintiff's Claims

Expert Report

Prepared by

Frank M. Gollop

March 19, 2009

I am Professor of Economics in the Economics Department at Boston College. I received B.A. degrees in Economics (1969) and Philosophy (1970) from the University of Santa Clara and was awarded the Ph.D. in Economics from Harvard University (1974). I teach both graduate and undergraduate courses in industrial organization and antitrust economics. I also teach undergraduate courses in microeconomic theory and environmental economics. I served as the Department's Director of Graduate Studies from September 1999 through December 2007. More than 35 of my research papers have appeared in academic journals and volumes. I have co-authored a book on U.S. productivity and have served as a senior economic consultant to the U.S. government in its redesign of the U.S. industrial classification structure. My research has been supported by a number of federal research grants. A copy of my academic curriculum vitae is attached as Appendix 1.

I have testified as an expert witness in federal and state courts and have consulted with the U.S. Department of Justice in a number of pre-merger investigations as required by the Hart-Scott-Rodino Act. I have offered expert testimony in the U.S. District Courts for California, Connecticut, Louisiana, Massachusetts, New Hampshire, New York, Pennsylvania, Utah, and Wisconsin and in state courts in California, Louisiana, Massachusetts, New Jersey, and

Wisconsin. A listing of the cases in which I have offered expert testimony at deposition or trial during the past four years is attached as Appendix 2. Appendix 3 lists the documents I have reviewed in preparing this report. I have prepared this expert report at my usual and customary billing rate of $500 per hour plus out-of-pocket expenses.

Counsel for plaintiff has asked me to analyze economic data produced during discovery to determine (1) if the defendants priced their gasoline on Martha's Vineyard at competitive or supra-competitive levels between August 2003 and July 2007, (2) if the data, standing alone, are sufficient for an economist to conclude that the defendants acted independently or cooperatively, (3) whether the data yield any "plus factors" from which cooperative behavior could be inferred, and (4) whether the defendants engaged in price gouging following hurricanes Katrina and Rita. These issues are addressed separately below following a brief section describing relevant background facts about the defendants and their service stations on Martha's Vineyard.

1. Relevant Background

The four defendant stations are located in the heavily populated northeast coastal region of the island. These are connected by the same road which goes along the east coast of the island. The two Vineyard Haven stations are across the street from each other. The two Edgartown Mobils are several hundred yards from each other. The Vineyard Haven stations are approximately eight miles from the Edgartown stations.

Tisbury Shell and XtraMart Citgo are fully integrated with their distributors while the two Edgartown Mobil stations are not. Tisbury Shell and XtraMart Citgo, both in Vineyard Haven, are supplied and owned by the R.M. Packer Co. (hereafter "Packer") and Drake Petroleum, Inc. (hereafter "Drake") respectively. The two Mobil stations in Edgartown are owned by Depot Corner, Inc. Drake supplies gasoline to both.

Regular gasoline for all four defendant stations originates from the wholesale terminals in Providence RI. Packer, Inc. contracts with J.P. Noonan (hereafter "Noonan") for truck delivery from Providence to New Bedford at which point Packer barges the gasoline to its tank farm in Vineyard Haven. The Packer tank farm is a couple hundred yards from Tisbury Shell. Drake contracts with Macera & Martini to transport regular gasoline from the Providence terminals to its wholly owned XtraMart Citgo as well as the independent Edgartown Mobil and Depot Corner Mobil. Drake uses the Steamship Authority ferries departing from Woods Hole to deliver gasoline to Vineyard Haven.

The economic analysis discussed in the following sections focuses solely on regular gasoline—the dominant product sold by the defendant stations.[1] Given this fact and the proportional relationship between prices and costs among gasoline grades, the results reported below for regular gasoline provide a sufficient basis for evaluating the four liability issues listed above.

2. Retail Gasoline Pricing and Costs

I have examined the defendants' pricing data and concluded that gasoline at the defendants' stations was sold at supra-competitive prices. During the period August 1, 2003 - July 31, 2008, average daily prices for regular gasoline at the defendants' service stations exceeded regular gasoline prices at stations on the Cape by 56 cents per gallon.[2] Furthermore, my analysis leads me to conclude that additional costs associated with transporting gasoline, wage premiums paid to employees, higher costs of living, and other costs noted by defendants cannot justify the

[1] Daily sales slips (Edgartown Mobil, Depot Corner Mobil, and Tisbury Shell); Excel Spreadsheet, *XtraMart Citgo, Volume Sales, by Month*.

[2] While I am only analyzing data for regular gasoline in this report, similar conclusions could be reached regarding the prices for mid-level and premium gasoline, which parallel regular gasoline prices.

higher prices charged by the defendants' stations compared to the prices charged at Cape Cod service stations. The bases for my relative price and cost conclusions are presented in the following sections.

2.1. Comparison of Retail Prices at Defendants' Stations and on Cape Cod. Table 1 provides a comparison of monthly pump prices for regular gasoline on Cape Cod with pump prices at defendants' gasoline stations on Martha's Vineyard. The average monthly prices for the Cape are based on a complete day-by-day dataset provided by the Oil Price Information Service (OPIS) for the Towns of Falmouth, Hyannis, and Provincetown, the three Cape Cod towns for which OPIS records data.[3] The Table 1 data for XtraMart Citgo in Vineyard Haven are based on charts supplied by Drake providing pump prices for every day from August 1, 2003 through July 31, 2008.[4] Packer and Depot Corner, Inc. provided daily sales slips showing volume and total sales of gasoline on individual dates.[5] Gasoline prices were calculated by dividing daily sales by daily gallon volume.[6] The Tisbury Shell data span the entire August 1, 2003 through July 31, 2008 period. The data for the two Edgartown Mobils run from August 1, 2003 through June 30, 2007.

The results reported in Table 1 display a consistent pattern. Defendant prices for regular gasoline were higher than corresponding prices on the Cape in every month from August 2003

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[3] Oil Price Information Service (OPIS), Excel Spreadsheet, *Regular Unleaded History (Falmouth, Hyannis, Provincetown (8/1/2003 – 8/1/2008).* The Cape averages reported in Table 1 are simple averages taken over the daily data reported for Falmouth, Hyannis, and Provincetown.

[4] Spreadsheet, *Vineyard XtraMart Pump Prices 8/1/03 – 6/30/08.*

[5] Daily sales slips (Edgartown Mobil, Depot Corner and Tisbury Shell).

[6] For certain dates, the Packer and Depot Corner sales slips were illegible. For these dates, price data were imputed. In the majority of cases, prices derived from actual sales slips were identical at the dates just before and after the date of the missing observation. In these instances, the missing value was given the value at its neighboring dates. When before and after prices differed, the missing prices were imputed as the simple average of observed before and after prices. Altogether, hard data taken from Packer and Depot Corner, Inc. sales slips and Drake charts account for 93.6% of the daily price observations underlying the summary data reported in Table 1 for the defendants.

through July 2008. The difference rose from 44 cents per gallon over the last five months of 2003 to an average 61 cents in calendar 2006 and 62 cents per gallon in the first half of 2007, then fell to an average 52 cents per gallon in the second half of 2007 before turning higher to an average 58 cents per gallon during the first seven months of 2008. The average over the full 60-month period is 56 cents.

2.2. Comparison of Costs at Defendants' Stations and on Cape Cod. A set of cost accounts for regular gasoline is constructed for each defendant station on Martha's Vineyard focusing on those per gallon costs that might conceivably differ from costs experienced by retail stations on Cape Cod. The task is to determine the aggregate difference in per gallon costs between Cape and island stations. Tables are developed for each of the defendants' stations showing its station-specific cost components and quantifying any cost differences from mainland stations.

Both Packer and Drake, in their responses to Interrogatory No. 5, identified additional costs incurred in selling gasoline on Martha's Vineyard compared to selling gasoline on the mainland. The interrogatory answers list ferry charges and ground transportation costs on the island, higher wages and cost of living, insurance premiums associated with selling gasoline on the island, and, in the case of Packer, "terminal and storage costs associated with the distribution of gasoline."[7]

A comparative analysis of per gallon gasoline costs on Martha's Vineyard and Cape Cod is described below. Cape Cod is chosen as the relevant mainland benchmark not only because of its proximity to the island but also because Cape and island stations experience the same seasonal business fluctuations and, equally important, receive their gasoline from the same Providence RI terminals.

[7] Packer's Supplemental Answer to Interrogatory Question No. 5 and Drake's Answer to Interrogatory Question No. 5. Also see R Packer's deposition (January 16, 2009), pp. 31-35.

Wholesale Gasoline Prices. Building a set of cost accounts for the defendants' stations begins with the wholesale cost of gasoline. Tables 2, 3, 4, and 5 display in their first columns monthly averages of the wholesale prices for gasoline delivered, respectively, by Packer to Tisbury Shell[8] and by Drake to XtraMart Citgo,[9] Edgartown Mobil, and Depot Corner Mobil.[10] Given that Packer and Drake purchase their gasoline for island stations at the same Providence RI terminals used by distributors to the Cape, the wholesale prices reported in Tables 2 through 5 apply equally well to deliveries destined for Cape Cod stations. No cost difference is assessed.

Federal and State Taxes on Wholesale Purchases. Cumulative federal and state excise taxes plus *Superfund Amendments and Reauthorization Act* (S.A.R.A.) taxes paid by Packer on behalf of Tisbury Shell and by Drake for both XtraMart Citgo and the two Mobil stations in Edgartown are reported in column 2 of Table 2-5. The data are taken from documents provided by the defendants during discovery.[11]

Taxes certainly enter the calculation of the defendants' station costs but, since these taxes are per gallon rates, they are considered identical to the tax-related costs incurred by Cape Cod stations and therefore do not contribute to any observed cost spread between Cape and island stations.

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[8] Wholesale prices for regular gasoline delivered to Tisbury Shell are taken from Packer's Motiva Enterprises and Mutual Wholesale invoices.

[9] Wholesale prices for regular gasoline delivered to XtraMart Citgo are taken from the Excel spreadsheet prepared by Drake Petroleum *MV Selling Prices*, "Vineyard Haven" Tab, "Rack Cost" column.

[10] Wholesale prices for regular gasoline delivered to both Edgartown Mobils are identical. They are taken from the Excel spreadsheet prepared by Drake Petroleum *MV Selling Prices*, "Cost" tab, "Gross Price" column.

[11] Per gallon taxes paid by Packer are taken from Packer "Price Schedules" for regular gasoline submitted during discovery. The corresponding regular Citgo gasoline tax data are taken from Drake's Excel spreadsheet *MV Selling Prices*, "Vineyard Haven" tab, "Taxes" column. The regular Mobil gasoline tax data are taken from the same Drake spreadsheet *MV Selling Prices*, "Costs" tab, "Taxes" column. Tables 2 through 5 report monthly averages over these data.

Freight. Gasoline destined for Tisbury Shell during the relevant time period was trucked by Noonan from the wholesale terminals in Providence to Packer's barge in New Bedford. Monthly averages of this trucking cost, taken from Noonan invoices, are reported in column 3 of Table 2. From 2003-2008, this trucking cost has been quite constant, ranging from 3 to 4 cents per gallon.

Packer utilizes Tisbury Towing Company to barge its gasoline and oil to Martha's Vineyard. According to Tisbury Towing invoices, it bills Packer Co. one cent per gallon for barging. This charge is shown in column 4, Table 2.

Ralph Packer, at his deposition, identified one additional ground transportation cost, the expense of moving gasoline from his tank farm in Vineyard Haven, via 2,500 gallon trucks, to Tisbury Shell which he acknowledges is approximately two hundred yards from the tank farm.[12] Mr. Packer testifies that neither he nor anyone at Packer has an estimate of that cost.[13] Given that Noonan only charged Packer 3-4 cents/gallon to load larger 10,000 and 12,000-gallon tank trucks in Providence and deliver gasoline to New Bedford, it is fair to assume that the cost of loading the smaller trucks to travel several hundred yards is minimal. Nonetheless, Table 2 assigns in column 5 a one-cent per gallon expense to this activity.

The over-water and on-island delivery expenses borne by Tisbury Shell and other island stations clearly are not part of delivery costs incurred by stations on Cape Cod and therefore explain part of the cost difference between island and Cape stations. However, Cape stations incur overland delivery expenses from the Providence terminals to final destinations. Noonan charges Packer 3 to 4 cents per gallon for the approximate 30-mile trip from Providence to New Bedford. Stations in Falmouth, Hyannis, and Provincetown (the three locations covered by the OPIS data underlying the price spreads shown in Table 1) are 70, 75, and 120 miles, respectively, from the wholesale terminals in Providence—distances ranging from two to four

[12] R. Packer deposition (January 16, 2009), pp. 32-34.
[13] R. Packer deposition (January 16, 2009), p. 34.

times the mainland distance to New Bedford trucked for island deliveries. The incremental cost for Cape stations is not known but there can be little doubt that it is positive. For present purposes, this incremental cost for the Cape is simply noted, making conservative the ultimate cost comparison between island and Cape stations.

This analysis of Tisbury Shell's freight costs leads me to conclude that the barge and local Vineyard Haven delivery costs shown in Table 2, columns 4 and 5, respectively, are incremental costs borne by Tisbury Shell relative to its Cape Cod counterparts. An asterisk is placed at each column heading to note this.

Macera & Martini (M&M) delivered gasoline to Drake's XtraMart Citgo as well as both Mobil stations in Edgartown. M&M picked up the gasoline at Providence terminals and trucked the gasoline (utilizing Steamship Authority freight boats) to Martha's Vineyard. Drake paid the Steamship Authority directly and paid invoices issued by M&M for the trucking costs. Monthly averages of Drake's total freight payments to the Steamship Authority and M&M for transporting Citgo gasoline to XtraMart Citgo are reported on a per gallon basis in the XtraMart financial statements produced by Drake and are presented in the third column of Table 3.[14]

The treatment of the two Mobil stations owned and operated by Depot Corner, Inc. is, by necessity, a bit different. While Tisbury Shell and XtraMart Citgo are, for economics purposes, fully integrated with their suppliers, Packer and Drake, respectively, this is not the case for the Mobil stations in Edgartown. They are independent economic entities from their supplier, Drake. The relevant cost to each Mobil station therefore is the price paid to Drake for the gasoline and transportation services rendered. This price is computed from data produced by Depot Corner, Inc. and Drake[15] and, as an accounting identity, includes the rack price of the

[14] See Vineyard Haven XtraMart Financial Statements for August 2003 through June 2008.
[15] The prices for regular gasoline paid by Depot Corner, Inc. to Drake are taken from delivery invoices produced by Mr. Paciello plus per gallon taxes calculated by Drake on regular Mobil gasoline as shown in the Drake-produced Excel spreadsheet *MV Selling Prices*, "Costs" tab, "Taxes" column.

purchased gasoline, taxes, freight, and, some profit margin for Drake. The Mobil rack price and corresponding taxes already have been discussed and are presented in Tables 4 and 5. Fortunately, for the purposes at hand (i.e. quantifying the incremental costs island stations incur relative to their Cape Cod counterparts), there is no need to distinguish between Drake's freight cost and profit on its deliveries to the two Depot Corner, Inc. stations. Both are incremental costs to the purchasing Mobil stations relative to their Cape counterparts and, as an aggregate, can be quantified as the simple difference between the price paid to Drake by Depot Corner, Inc. and the sum of the rack price and taxes. This freight plus profit aggregate is identical for both Mobil stations and is found in column 3 of Tables 4 and 5.

Asterisks indicating incremental cost appropriately are placed at the headings of the freight column in Table 3 for XtraMart Citgo and the aggregate freight/profit column in Tables 4 and 5 for both Edgartown stations, but with this caveat. Part of freight costs attributable to M&M includes fees for trucking island-destined gasoline from the Providence terminals to Woods Hole, mainland freight costs that also would be incurred by Cape Cod stations. Noonan's fee to Packer for transport to New Bedford (Table 2, column 3) provides an appropriate base estimate for mainland trucking. It is increased by 50% to reflect the greater distance from Providence to Woods Hole.[16] This mainland cost reduces the spread between Cape and island costs and therefore is shown as a negative entry in the fourth column of the XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil Tables 3 through 5.

Margins on Freight Services (Tisbury Shell and XtraMart Citgo). Packer and Drake report the costs each incurs in purchasing and transporting gasoline to Tisbury Shell and XtraMart Citgo, respectively. Given the vertical ownership relationship in each instance, supplier costs

[16] The distance from Providence to Woods Hole is approximately twice that from Providence to New Bedford. Noonan's trucking charge to New Bedford is increased by 50% rather than doubled because the set-up, loading and unloading time and cost are not a function of distance.

become the transfer prices to the "purchasing" stations and no profit is recorded or reported for the services offered by either supplier. Nonetheless, proper accounting for incremental costs to island stations requires that an estimate of profit per gallon be imputed to each supplier for services rendered. After all, Cape Cod stations do not require the freight services provided by the likes of Packer and Drake and, therefore, just as over-water and local island freight services reflect incremental costs to island stations, so too do profits on these services.

Drake's monthly financial statements for XtraMart Citgo provide the per gallon freight costs incurred by Drake on behalf of XtraMart Citgo. Given the common use of M&M to deliver gasoline to XtraMart Citgo and the two Mobil stations in Edgartown, and given the fact that gasoline for the three stations is delivered, in most instances, on the same truck traveling on the same ferry, it is reasonable to assume that the per gallon freight charges recorded in the Drake financial statements for XtraMart Citgo apply equally to Edgartown Mobil and Depot Corner Mobil. As a result, the imputed profit per gallon in each month is calculated as the simple difference between each month's freight plus profit cost component calculated for the Mobil stations, as described in the previous section and reported in columns 3 of Tables 4 and 5, and Drake's freight cost reported in the XtraMart Citgo financials.

The 60-month average of this imputed profit is $0.05001 per gallon. This is added to the XtraMart Citgo cost accounts in Table 3. The same per gallon profit is assumed relevant to Packer and is likewise added to Tisbury Shell's cost accounts reported in Table 2. Both columns are marked with asterisks indicating costs unique to island stations.

Flood Insurance (Tisbury Shell). Ralph Packer testified at his deposition that one additional cost factor for Tisbury Shell relative to stations on the Cape is that "we are below the 10-foot contour, therefore, we have a higher rate of flood insurance which might not be experienced in a

normal service station on a large highway in a metropolitan area."[17] Among invoices provided by Packer for Tisbury Shell is one from Fidelity National Property and Casualty Insurance Company indicating a $1,973 premium for flood insurance for the period November 2, 2007 through November 2, 2008.

Tisbury Shell sold approximately 939,853 gallons of gasoline from August 19, 2007 through August 18, 2008, the most recent 12-month period for which there are sales volume data.[18] This yields an incremental cost for Tisbury Shell equaling $0.002 per gallon—assuming no like cost is incurred by Cape stations. This incremental cost, identified with an asterisk, is shown for Tisbury Shell in Table 2.

Labor Costs. Publicly available data suggest that labor costs for service station personnel differ between Cape Cod and Martha's Vineyard. Quantifying this differential becomes an integral part of the comparative cost analysis. Attention initially focuses on Tisbury Shell since detailed employee-specific payroll data necessary to calculate the "wage premium" earned by station attendants on Martha's Vineyard were provided during discovery only for this station.[19] Given well-defined employment and compensation parameters reported for all four stations, the wage premium calculated for Tisbury Shell becomes the template for employees at the other stations.

Tisbury Shell. Ralph Packer testified at his deposition that Tisbury Shell is open 16 hours each day. During the June-September period, two attendants are present during the peak 8 hours while a single attendant works during the other 8 hours. During the off-peak months, one

[17] R. Packer deposition (January 16, 2009), p. 35.
[18] Packer *Daily Sales Reports* for regular and premium gasoline and diesel.
[19] The financial statements for XtraMart Citgo report total payroll data for all employees including managers and managerial trainees. Unlike Tisbury Shell, however, no payroll records were provided for XtraMart Citgo. The calculation of the wage premium described below in the text requires station attendant (non-managerial) hourly wages as a benchmark base onto which a comparably defined wage premium can be applied using data compiled by the Bureau of Labor Statistics for relative station attendant wages on Martha's Vineyard and Cape Cod. As a result, the Tisbury Shell data serve as the basis for the wage premium calculation.

attendant works during each 8-hour shift.[20] In addition, two individuals hold management positions at the station.[21]

Payroll records for Tisbury Shell indicate that hourly wages for station attendants (excluding the two managers) were $12.75 for calendar 2006, $11.48 during the last week of 2007, and $11.30 for calendar 2008, respectively.[22] The U.S. Bureau of Labor Statistics (BLS) reports that the mean hourly wage for service station attendants on Cape Cod in May 2006 was $9.50.[23] The corresponding BLS estimate for May 2007 is $10.69.[24] Until and unless payroll data for calendar 2007 are made available, I estimate Tisbury Shell's 2007 hourly attendant wage at its December 2007 rate, $11.48. The station's 2006-2007 average hourly wage for attendants is then $12.12. The corresponding BLS average for 2006-2007 is $10.10, implying that wages for service station attendants at Tisbury Shell earn a 20% premium over their counterparts on Cape Cod.

The 20% wage premium must be applied to a payroll base and converted to a per gallon basis. Tisbury Shell's payroll records for calendar year 2006 (the only year for which the defendant has provided payroll and gasoline gallon data) indicate that total payroll (regular pay) to both attendants and station managers totaled $185,615.64. Total 2006 gasoline volume equaled 869,702 gallons, indicating a labor cost of 21.3 cents per gallon and, at a 20% premium over station attendant wages on Cape Cod, 3.55 cents (21.3/1.2) per gallon incremental cost relative to the Cape.

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[20] R. Packer deposition (December 11, 2008), pp. 90-92.
[21] R. Packer deposition (January 16, 2009), pp. 67-70.
[22] Packer submitted Tisbury Shell payroll records for calendar 2006, calendar 2008, and the last week of 2007.
[23] The data officially are reported for the nonmetropolitan area titled "Town of Barnstable" but defined to include a geographic area from Sandwich to Truro. See bls.gov/oes/current/msa_def.htm#M. The hourly wage data are reported at bls.gov/oes/2006/may/oes_70900.htm. "Service station attendants" and "wages" are defined to exclude managerial personnel. See bls.gov/oes/2006/may/oes536031.htm.
[24] See bls.gov/oes/2007/may/oes_70900.htm.

Given that the 21.3 and 3.55 cent estimates are formed over 2006-2007 data, these estimates are used directly in the "Labor Costs" and "Wage Premium" columns, respectively, in Table 2 as appropriate monthly averages in 2006 and 2007. For 2003-2005, the 21.3 and 3.55 cent estimates are recalibrated according to the percentage relationship between hourly wages for Cape Cod station attendants in each year and the same hourly wage in 2006 as reported by BLS in the same data set used above to calculate the 20% wage premium.[25] The results are reported in Table 2. This procedure guarantees a fixed 20% relationship between Tisbury Shell's attendant wages and corresponding hourly wages at stations on the Cape.[26] Since BLS has not yet published its results for 2008, the 21.3 and 3.55 cents estimates are used for 2008 entries in Table 2. The incremental cost column is noted with an asterisk.

XtraMart Citgo. Mr. McCarthy, the XtraMart station manager, testified at his deposition that the station is open 17 hours per day. In the off-peak season (Labor Day to Memorial Day), XtraMart Citgo employs one gas attendant per shift plus Mr. McCarthy and a manager trainee. In the peak summer season, an additional gas attendant works from 4-8 pm on Thursday, Friday, and Saturday evenings. The gas station attendants are paid $11/hour. The manager trainee is paid $13/hour and Mr. McCarthy earns $1,035/week.[27]

The labor parameters for XtraMart Citgo and Tisbury Shell as presented by deponents are very similar in terms of hours of operation, staffing, senior and junior managers, and hourly compensation levels. Consequently, Tisbury Shell's per gallon labor costs and wage premium

[25] See bls.gov/oes/2006/may/oes_70900.htm as a representative BLS web site for 2006 hourly wages for "Town of Barnstable" which BLS uses as a name for a "metropolitan" area spanning the Cape. Service station attendants are identified by occupation code 53-6031. The 2003-2006 hourly wage estimates for Cape Cod service station attendants are $9.11 (November), $9.65 (May), $8.92 (May), and $9.50 (May), respectively.

[26] There is no need to adjust for the changing number of gallons sold since, as seen from Table 6, there was little variation in the gallons sold by Tisbury Shell, or by other stations for that matter, over the relevant time period.

[27] J. McCarthy deposition (December 9, 2008), pp. 14-22.

provide an appropriate base for XtraMart Citgo's labor costs and wage premiums. The only necessary adjustment is one to reflect XtraMart Citgo's smaller gallon volume relative to Tisbury Shell, thereby implying a proportionately higher labor cost and wage premium per gallon than reported in Table 2 for Tisbury Shell. Tisbury Shell's volume over the four calendar years 2004-2007 is 1.156 times the corresponding volume for XtraMart Citgo. (See Table 1.) The proportionately adjusted labor costs and wage premiums for XtraMart Citgo therefore equal 1.156 times the corresponding labor costs and wage premiums reported in Table 2 for Tisbury Shell. The resulting per gallon labor costs and wage premiums for XtraMart Citgo are reported in Table 3.

Edgartown Mobil. This station is open from 6:30 am to 10 pm in the off season (October - April) and from 6:30 am to 11 pm on season (May-September). In the off season, one attendant works per shift. In the on season, one attendant works 8 hours/day, and two attendants work the rest of the day. According to Louis Paciello, the attendants are paid approximately $12/hour.[28]

The monthly per gallon labor costs and wage premiums calculated for Tisbury Shell apply well to Edgartown Mobil. First, the employment and compensation parameters reported by Mr. Paciello for Edgartown Mobil are identical to those reported by Mr. Packer for Tisbury Shell. Second, Edgartown Mobil's gallon sales volume is remarkably like that at Tisbury Shell. For the three-year period 2004-2006, total gallon sales averaged 845,995 at Tisbury Shell and 840,742 at Edgartown Mobil, respectively.[29] It follows that per gallon labor costs and wage premiums relative to the Cape are near identical for the two stations. The respective per gallon labor costs

[28] L. Paciello deposition (December 17, 2008), pp. 26-29. Mr. Paciello also testifies that he manages the station and is paid $71,000/year. Given the considerably lower market-driven managerial compensation reported at both Tisbury Shell and XtraMart Citgo, part of the $71,000 is best viewed as station profits distributed to Mr. Paciello. Managerial compensation like that observed at Tisbury Shell or XtraMart Citgo is a better benchmark.

[29] The Tisbury Shell and Edgartown Mobil sales volumes are calculated from daily sales slips.

and wage premium data for Tisbury Shell (Table 2) are inserted into Table 4 for Edgartown Mobil.[30]

Depot Corner Mobil. Depot Corner is unique among the four stations in that it has no employees. It is a self-serve gasoline station. The building on the property owned by Depot Corner, Inc. is rented to a mini-market. According to Mr. Paciello, the cashier at the market collects cash payments made for gasoline at the station. The cashier is not an employee of Depot Corner, Inc.[31] Consequently, no labor cost entries are made in Table 5 for Depot Corner.

Terminal and Storage Costs (Packer). Packer claims terminal and storage costs associated with the distribution of gasoline as one factor explaining the higher cost of Tisbury Shell's gasoline on the island. Quantifying this incremental cost first requires recognizing that Tisbury Shell is only one of a number of claimants on Packer's terminal and storage facilities. It is my understanding that Packer still delivers gasoline to Menemsha Shell as well as Tisbury Shell. In addition, Packer's above ground tank farm stores mostly home heating oil and not gasoline.

A considerable portion of Packer's income in the relevant years was realized from the sale of oil, the distribution of gasoline, and the wholesale sale of gasoline by Packer to large users (i.e. towns and farms to whom gasoline was delivered) rather than from the sale of gasoline by Tisbury Shell. Ralph Packer testified at his deposition that Packer does not break down its profits and losses by profit centers and has no separate set of records for Tisbury Shell.[32] In lieu of such data, Table 7 compares annual total revenue realized by Packer to estimated annual revenue realized by Tisbury Shell's gasoline sales.[33] Table 7 indicates that approximately 12.5%

[30] This assumes Edgartown Mobil is staffed with a manager and managerial trainee as is the case at both Tisbury Shell and XtraMart Citgo.
[31] L. Paciello deposition (December 17, 2008, p. 35.
[32] R. Packer deposition (December 11, 2008), p. 45.
[33] The information in Table 6 is derived from the *Consolidating Statement of Operations and Retained Earnings for R.M. Packer Co., Inc*. for FY 2003-2007 and a spreadsheet compiled from daily sales slips provided by Packer showing revenue realized from sales of gasoline. In

of Packer's revenue was realized from the sale of gasoline at Tisbury Shell during fiscal years 2005-2007.

Mr. Packer provided sufficient information at his deposition to quantify the total costs associated with Packer's terminal and storage facilities. There are eight above ground tanks at the Packer "tank farm".[34] Currently, only one of the eight tanks is used for storing gasoline (Tank No. 4).[35] It was built in 1947, and is fully paid for and fully depreciated.[36] Prior to the summer of 2008, Packer utilized two of the eight tanks for storage of gasoline (Tank Nos. 1 and 4).[37] Since August 1, 2003, Packer has had to undertake the following maintenance and repair costs relating to tank Nos. 1 and 4. In 2008, the vapor seal was replaced on Tank No. 4 at a cost of $30,000.[38] The vapor seal had last been serviced approximately 20 years earlier.[39] Both tank Nos. 1 and 4 were entered twice by government inspectors.[40] The total cost of opening the tanks for inspection was $9,500 per inspection for both tanks (i.e. a total cost of $19,000 since August 1, 2003, as two inspections took place during this period).[41] Both tanks were opened to inspect the floors when Packer switched to gasoline utilizing ethanol at a total one-time cost of $10,000.[42] Thus, the total maintenance and repair costs on the two tanks utilized for gasoline in the five years since August 1, 2003 was $59,000 ($30,000 + $19,000 + $10,000).

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instances of unreadable price or volume data on any daily sales slip, revenue estimates were formed from data on neighboring days. At his December 2008 deposition, Ralph Packer was asked if he believed the annual revenues estimated by plaintiffs and shown on the above-mentioned spreadsheet were reasonable estimates of annual revenue for Tisbury Shell. Packer indicated that he believed the estimates to be reasonable. R. Packer deposition (December 11, 2008), pp. 112-115.

[34] R. Packer deposition (December 11, 2008), p. 147.
[35] R. Packer deposition (December 11, 2008), p. 147.
[36] R. Packer deposition (December 11, 2008), p. 147.
[37] R. Packer deposition (December 11, 2008), pp. 154-155.
[38] R. Packer deposition (December 11, 2008), pp. 151-152.
[39] R. Packer deposition (December 11, 2008), pp. 151-152.
[40] R. Packer deposition (December 11, 2008), pp. 152-153.
[41] R. Packer deposition (December 11, 2008), pp. 152-155.
[42] R. Packer deposition (December 11, 2008), pp. 154-155.

Mr. Packer also noted homeland security costs related to operating a marine terminal in justifying the higher costs of gasoline on Martha's Vineyard. Mr. Packer testified that Packer Co. paid $200,000 in recent years to bring his marine terminal into compliance with Homeland Security Requirements.[43] However, as is true for the tank farm maintenance and repair expenses, Mr. Packer acknowledges that the $200,000 Homeland Security cost related to all of Packer's products, and not solely gasoline.[44]

Adding the $59,000 tank maintenance and repair costs and the $200,000 upgrades required by Homeland Security yields $259,000. Even amortizing this expense over only a five-year period, this averages out to a cost of $51,800/year. Multiplying this $51,800 total by Tisbury Shell's 12.5% share yields $6,475. Given that Tisbury Shell sold an annual average total of 885,193 gallons of gasoline from August 1, 2003 to July 31, 2008,[45] the per gallon cost of maintenance and repair at the tank farm plus Homeland Security mandated expenses attributable to Tisbury Shell's gasoline sales is only $.007/gallon (seven tenths of one cent per gallon) over a five-year period. This total is shown in Table 2 for Tisbury Shell and is noted with an asterisk to denote an incremental cost.

Cost-of-Living Adjustment. The cost entries in Tables 2-5 cover the main cost categories for the defendants' stations but certainly some costs are excluded, as is the return to owners. In lieu of a category-by-category comparison of remaining costs, an overall cost-of-living (COL) adjustment for Martha's Vineyard relative to Cape Cod is applied to the difference between each station's monthly average retail price of regular gasoline (Table 1) and the sum of its actual costs as reported in the station's respective table (Tables 2-5). It is important to note that treating this

[43] R. Packer deposition (January 16, 2009), pp. 12-13.
[44] R. Packer deposition (January 16, 2009), pp. 12-13.
[45] Calculated from gallons sold as reported on Tisbury Shell's daily sales slips provided by Packer.

COL adjustment as an incremental cost is conservative because the price-cost differential to which the adjustment is applied includes station costs as well as returns (profits) to owners. Any dollar profits that flow to off-island owners or are invested by on-island owners in off-island investments should not be COL adjusted.

City-data.com provides relative COL indexes for various cities and counties in the U.S. Among these are Barnstable County on Cape Cod and both Edgartown and Vineyard Haven. The 2008 COL indexes according to city-data.com for these three locations are 105.9, 118.6, and 119.9, respectively. The ratio of the average index for Edgartown and Vineyard Haven (119.25) to the index for Barnstable County is 1.126. Each station's price-cost difference calculated as described above at each month in Tables 2-5 is adjusted by the COL adjustment factor 1.126.[46] The results appear in Tables 2-5 in columns titled "Cost-of-Living Adjustment" and noted with asterisks. The adjustments across months and stations range from 1.1 to 8.4 cents per gallon. Note, once again, these adjustments are upward biased because they are applied to owner profits as well as cost categories not already considered.

Total Incremental Cost Relative to Cape Cod Stations. Table 8 displays the dollar value of price differences that are not explained by cost differences between the four defendant stations and their Cape Cod counterparts. The station-month entries in Table 8 equal the difference between each station's price of gasoline relative to the average Cape price shown in Table 1 and the station's incremental cost as reported in the last column of the station's corresponding cost account table among Tables 2-5.

The unexplained excess in price differences is positive for every defendant station in every one of the 60 months examined. The unexplained differences are persistent over time and across

[46] The actual adjustment factor is (1-1/1.126) to reflect the fact that the Martha's Vineyard COL is 1.126 times the Cape Cod COL.

stations and are considerable in magnitude. The full 60-month per gallon averages of unexplained price differences are 38, 31, 38, and 36 cents for Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil, respectively. The average unexplained differences over all four stations run from a low of 27 cents per gallon in the last five months of 2003 to a high of 38 cents per gallon in the first half of 2007 and the first seven months of 2008.

These unexplained price differences are considerable not only in absolute terms but also in relative terms. Average daily prices for regular gasoline at the defendants' gasoline stations over the 60-month period exceeded regular gasoline prices at stations on the Cape by 56 cents per gallon. (See Table 1.) The corresponding cost difference across all stations averaged 21 cents.[47] This represents only 38% of the observed price difference leaving 62% unexplained.

Interpreting retail gasoline prices on Cape Cod as representative of prices set in competitive markets and finding that such a substantial portion (35 cents or 62%) of price differences at the four defendant stations on Martha's Vineyard cannot be explained by cost differences leads me to conclude that gasoline at the defendants' stations was sold at supra-competitive prices during at least the August 2003 through July 2008 period.

3. Inferences Regarding Cooperative Behavior

I have examined the defendants' daily price and cost data underlying the analysis described in the preceding section with the objective of determining whether the data, standing alone from any circumstantial evidence indicating cooperative behavior, are consistent with cooperative behavior and/or are inconsistent with non-cooperative behavior. The results of my investigation are mixed. There are instances that, apart from circumstantial evidence and the "plus factors"

[47] The 21 cent average equals the simple average over the "incremental cost" column entries in Tables 2-5.

described in the following section, are not inconsistent with either cooperative or non-cooperative behavior. However, there are instances in the data time series when cost trends and coincident defendant pricing patterns are inconsistent with independent, non-cooperative behavior.

Three episodes, shown in Tables 9 through 11, illustrate the basis for my conclusion. All three deal with data for regular gasoline. The entries in the tables reflect data taken directly from defendant documents. As evident from the tables, defendant records provide a near complete day-by-day time series of pump prices for each defendant. Corresponding cost data are shown in the table only for those days for which there are data in the case record for at least the wholesale rack price of the gasoline purchased.[48]

May 1—September 15, 2004. Basic economic theory predicts that, in the face of declining costs, non-cooperating competitors' prices would decline. This is especially the predicted outcome for rivals selling perfectly homogeneous products (i.e., indistinguishable, perfect substitutes). This is not the observed pattern during the May 1 —September 15, 2004 period. Per gallon costs to the defendants decline but defendant prices rise and do so in parallel fashion.

The pricing pattern in May 2004, standing alone, is not inconsistent with non-cooperative behavior. Between May 1 and May 25, Tisbury Shell's cost-of-goods sold (the sum of the wholesale rack price, taxes, and freight) increased by 30 cents per gallon. Over the same 25 days, the station's per gallon pump price for regular increased by 27 cents. During the same May period, XtraMart Citgo's cost-of-goods sold increased by 28 cents per gallon and its pump price for regular increased by 30 cents per gallon. Between May 1 and May 25, the cost-of-goods sold at the two Edgartown stations increased by 26 cents per gallon. Prices for regular increased by 29 cents per gallon at each station. Putting aside the supra-competitive margins earned by the

[48] In some instances, imputations for freight costs were made from data available for nearby days.

defendants, these May trends in prices and costs are not inconsistent with non-cooperative behavior.

The patterns change significantly, however, beginning late May 2004. Tisbury Shell's cost per gallon between May 25 and September 15 had a clear and continuous downward trend, falling by 24 cents per gallon over the full period. A similar pattern emerges for both Drake's XtraMart Citgo where per gallon costs declined by 22 cents, and for both Edgartown Mobil and Depot Corner Mobil where costs per gallon fell by 22 and 23 cents, respectively.

The significant and rapid decline in costs experienced by stations selling homogeneous (in this case identical) products (regular grade gasoline) and thereby facing highly if not perfectly elastic inter-station demand is the economic basis for the expectation that price competition would break out. However, not only did prices not fall, they increased at each station and by near identical amounts. Per gallon prices at Tisbury Shell and XtraMart Citgo each increased by 10 cents per gallon. Prices at Edgartown Mobil and Depot Corner Mobil increased by 8 and 7 cents per gallon, respectively. The per gallon gross margins increased from 47 to 81 cents for Packer's Tisbury Shell, from 37 to 69 cents for Drake's XtraMart Citgo, from 42 to 73 cents for Edgartown Mobil, and from 38 to 68 cents for Depot Corner Mobil.

This is not the outcome expected from a model of non-cooperative behavior. In a homogeneous product, highly elastic demand environment, it makes no business sense to increase price as your costs decline, especially when you have reason to believe your rival's costs have declined as well, unless you know your rivals will follow. Nonetheless, Tisbury Shell led six price increases during the May 25-September 15, 2004 period. (See Table 9.) Similarly, it makes no business sense for a rival to follow a price increase. At a minimum, when a rival increased its pump price, its competitors would have been expected not to follow but to passively enjoy the fruit of additional sales volume. Following price increases in the demand and cost environment

on Martha's Vineyard in this three-month period was not the expected non-cooperative business strategy.

March 20—May 25, 2005. The pattern observed in the summer of 2004 reappears in the spring of 2005. See Table 10. Between March 20 and April 8, all four defendant stations experienced increases in the cost per gallon of regular gasoline that translated almost penny-for-penny into corresponding price increases. Tisbury Shell's per gallon cost-of-goods sold and retail prices both increased by 13 cents. XtraMart Citgo's cost and price increased by 12 and 10 cents per gallon, respectively. Costs for the two Edgartown stations increased by 6 cents while prices at both increased by 10 cents. That prices ratcheted up when costs increased, standing alone, is not inconsistent with non-cooperative behavior.

The price-cost relationship at all four stations changes as of April 8 and a new pattern persists through May 25. First, note from Table 10 that Tisbury Shell held price constant at $2.77 throughout the whole period. XtraMart Citgo and both Edgartown Mobils changed price only once during the period. XtraMart Citgo increased its price by two cents to $2.78 on April 22 while retail prices for regular at both Edgartown Mobil and Depot Corner Mobil increased on April 28 by four cents to $2.80 and $2.75 levels, respectively. On April 8, prices at Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil were $2.77, $2.76, $2.76, and $2.71, respectively. On May 25, their prices were $2.77, $2.78, 2.80, and $2.75. Such long periods of stable prices by any defendant, much more all three, are seldom found in the dataset.

What makes this especially informative is that each of the defendants experienced cost declines during the April 8—May 25 period. Tisbury Shell, XtraMart Citgo, and both Edgartown stations saw their per gallon costs decrease by 10, 22, and 7 cents, respectively. Price stability over such a long period of time in the face of these cost decreases is not the expected result of non-cooperative behavior among sellers of a perfectly homogeneous product.

July 15—November 7, 2005. The analysis of the three and one-half month period, displayed in Table 11, is best divided into three subperiods. The first is July 15-August 24, 2005, a period exhibiting a stable relationship between retail prices and costs at all defendant stations and ending at the closest data prior to Hurricane Katrina for which day-specific price and cost data are available for all four stations. The second subperiod runs from August 24 to September 21. The third period runs to November 7 and exhibits pricing behavior that, in my opinion, is not consistent with non-cooperative behavior.

Each defendant's costs and prices increased between July 15 and August 24. Tisbury Shell's per gallon cost-of good sold and prices increased by 24 and 26 cents, respectively. The corresponding cost and price increases for XtraMart Citgo were 25 and 30 cents. Per gallon prices at Edgartown Mobil and Depot Corner Mobil increased by 36 and 35 cents, respectively, while cost at each Edgartown station increased by only 19 cents per gallon. It is important to note that the observed price-cost divergence at the Edgartown stations might well be the result of a supra-competitive price umbrella maintained by the defendants but, standing alone from any other economic or circumstantial evidence, it also could be explained by non-cooperative behavior and so, for my present purposes, I draw no behavioral conclusion from the Edgartown data.

Hurricane Katrina struck on August 29. The Table 11 data record the resulting disruption in both cost and price data at each defendant's station. Independent of the supra-competitive margins recorded during this period and other plus factors discussed in the following section, no conclusion regarding the cooperative or non-cooperative behavior of the defendants can be drawn for this period.

The September 21-November 1 period mimics the above analyses of the May 1-September 15, 2004 and March 20-May 25, 2005 periods with one important difference. September 21, 2005

initiates an era when Tisbury Shell and XtraMart Citgo, with rare exception, sell regular gasoline at identical prices on each day. This continues through at least mid-March 2008.[49]

Apart from this fact, the price-cost patterns discussed above for the May 1-September 15, 2004 and March 20-May 25, 2005 periods is revealed once again in Table 11 for September 21-November 1, 2005. Over this six-week period, Tisbury Shell's costs fell 56 cents per gallon. Its retail price of regular gasoline fell 32 cents as did the parallel price at XtraMart Citgo whose per gallon cost fell 45 cents.[50] Prices at each Edgartown station decreased 36 cents while per gallon costs decreased 44 cents. The failure of price decreases to mirror cost decreases is instructive in itself but it masks the magnitude of the divergence in the defendants' price/cost margins between the pre and post-Katrina periods.

The proper analysis involves comparing prices and costs over the full period, July 15 through November 1, 2005. In these three and one-half months, Tisbury Shell's cost per gallon of regular gasoline decreased by 12 cents. (See Table 11.) The station's retail price increased by 25 cents per gallon. Price per gallon at XtraMart Citgo increased by 30 cents while its costs declined by 20 cents per gallon. Prices at Edgartown Mobil and Depot Corner Mobil increased by 33 and 32 cents, respectively, while costs for both fell by 10 cents per gallon. In summary, gross margins for Packer's and Drake's Vineyard Haven stations and Depot Corner, Inc.'s Edgartown Mobil and Depot Corner Mobil increased by 37, 50, 43, and 42 cents per gallon, respectively. The pattern of pricing in the post-Katrina interval and the significant per gallon increases in gross margins are inconsistent with a model of non-cooperative behavior. A competitive, non-cooperative market would have been expected to moot opportunistic behavior by any individual station.

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[49] Spreadsheet, *Vineyard XtraMart Pump Prices 8/1/03 – 6/30/08*; Daily sales slips (Edgartown Mobil, Depot Corner and Tisbury Shell).

[50] There was no delivery cost data reported in Drake's records for September 21, 2005. I therefore used the $2.64 cost reported for September 19. Had I used the $2.77 cost reported for September 23, the measured decline in XtraMart's cost per gallon between September 21 and November 1 would have been 58 cents, not the 45 cents referenced in the report's main text.

4. Plus Factors

I have been informed by counsel for plaintiffs that the following constitute "plus factors" from which courts can infer a traditional conspiracy when found in conjunction with "conscious parallelism": (1) abnormal profits, (2) fixed market shares for substantial periods of time, and (3) existence of an industry conducive to oligopolistic price fixing, either interdependently or through a more express form of collusion.[51] The data in the case record, my economic analysis in the preceding sections, and my training and experience as an economist specializing in the field of Industrial Organization (the study of alternative market structures and antitrust economics) provide the bases for the opinions that follow.

Profits at Defendants' Stations. The economic analysis described above in section 2 is based on the premise that retail service stations on Cape Cod exist in a competitive environment. It follows that price-cost margins at these stations reflect profits consistent with interdependent but otherwise non-cooperative competition.

The comparative price-cost analysis in section 2 led to the conclusions that, over the August 2003-July 2008 period, there were price differences between the four defendant stations and Cape stations that can not be explained by cost differences accounting for incremental freight, insurance, and terminal/storage costs along with island wage premiums and cost-of-living adjustments. The unexplained price differences average 38, 31, 38, and 36 cents per gallon over the period for Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil, respectively. The four-station full period average is 35 cents per gallon. The average

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[51] . See Richard Posner, *Oligopoly and the Antitrust Laws: A Suggested Approach*, 21 *Stan. L. Rev*. 1562, 1582 (1969); In *re Linerboard Antitrust Litigation*, 504 F.Supp.2d 38, 51-52 (E.D. Pa. 2007).

unexplained differences over all four stations run from a low of 27 cents per gallon in the last five months of 2003 to a high of 38 cents per gallon in the first seven months of 2008.

Higher prices unexplained by higher costs translate penny-for-penny into higher gross margins. The average 35-cent per gallon incremental margin is, in my opinion, abnormally high relative to presumably interdependent, non-cooperative prices and returns observed for the same period of time at Cape stations—stations that experience the same seasonal business patterns.

Finally, it is important to note that the dollar increments to station margins are positive at every month for each station. (See Table 8.) Moreover, the margin increments are relatively stable over time and across stations.

Stable Market Shares. Table 6 reports data for gasoline gallons sold at each station during the years spanned by the 60 months for which data are available. Market shares for the calendar years 2004-2006 (the three full calendar years for which all station data are available) are remarkable stable. The station annual gallon shares stay within very narrow ranges. The shares of Tisbury Shell, XtraMart Citgo, and Depot Corner Mobil vary by less than one percentage point. Edgartown Mobil's gallon share varies by only 1.2 percentage points over the three years.

The nearly constant market shares are consistent with both cooperative and non-cooperative pricing behavior. Though not observed, unstable shares would have been inconsistent with cooperative behavior.

Parallel Pricing. Daily price data for the four stations reveal that the defendants' stations engaged in parallel pricing. Examination of daily pump prices from August 1, 2003 to October 14, 2005 for regular gasoline at Tisbury Shell and XtraMart Citgo reveals that Tisbury Shell was typically the first to initiate a price change with XtraMart Citgo following within one to three days. There were price differences on most days during this period but typically in a range of one to three cents per gallon. In calendar 2004, for example, the price spread was less than or equal to

three cents per gallon on 205 (56%) of the days. Price spreads were one cent or less on 138 days (38%). Tisbury Shell and XtraMart Citgo prices were identical on 93 days (25%). The average daily price difference per gallon at the two stations over this 26.5-month period was nine-tenths of one cent.

The inter-station pricing pattern changed markedly starting October 15, 2005 and running through at least mid-March 2008. Daily prices at the two stations, with rare exception, were identical over this 29-month period.

Though price levels were generally higher in Edgartown than Vineyard Haven, price changes at both Mobil stations in Edgartown generally increased or decreased in sync with prices observed in Vineyard Haven. The average daily price spread between Edgartown Mobil and the average price in Vineyard Haven was 6.8 cents per gallon over the August 2003 through June 2007 period. Prices at the self-serve Depot Corner Mobil, with very few exceptions, were four to five, and mostly five, cents less per gallon than at Edgartown Mobil. The average differential between the Mobil stations over the August 2003-June 2007 period was 4.9 cents per gallon.

No unambiguous conclusion regarding cooperative or non-cooperative pricing can be gleaned from this pattern of parallel pricing. The observed pattern is not inconsistent with either form of pricing behavior.

Oligopolistic Market Structure. A review of the market setting for retail service stations on Martha's Vineyard reveals an economic environment conducive to oligopolistic pricing. The principal market characteristics are barriers to entry and inelastic demand.

Barriers to Entry. Any new proposed developments, potentially considered to be Developments of Regional Impact, such as gasoline stations, must be approved by the Martha's Vineyard

Commission (MVC).[52] The last new gas station to be approved by the MVC was the service station at the island's airport. This station was approved in 1997.[53] Since 1997, three groups (Vineyard Service Center, Tisbury Fuel Service, and the "Gervais/Goldsborough" partnership) have all unsuccessfully petitioned the MVC for permission to open a new service station on the island.[54] The Tisbury Fuel Service petition was denied, although it included an offer committing to sell gasoline for five years at 36 cents/gallon over its costs, a margin that, according to Mr. Wehner, was far lower than the margin being offered by other stations on the Island.[55]

This limited discussion of barriers to entry should not be interpreted to suggest that there are no barriers other than MVC permission. Clearly there are other financial and regulatory barriers, but those apply to stations on Cape Cod as well. The Martha's Vineyard Commission creates a significant incremental barrier.

Inelastic Demand. Elasticity of demand characterizes the sensitivity ("elasticity") of consumer demand to price changes. An inelastic demand indicates that quantity demanded changes little in response to price changes. The rationale underlying the conclusion that the demand for gasoline on Martha's Vineyard is inelastic is straightforward. First, automobile gasoline is a necessity. Second, there is no substitute product for automobile gasoline. Third, gasoline on Cape Cod or elsewhere on the mainland is not an economic substitute for island gasoline. Island residents do not find it economic to ferry their automobiles to Cape Cod for gasoline or to routinely transport gasoline from the Cape to the island—at least in sufficient volume to affect retail gasoline prices on Martha's Vineyard. Island demand is inelastic.

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[52] Chapter 831 of the Commonwealth of Massachusetts 1977 Acts and Resolves as Amended, §§ 13-16.
[53] Tisbury Fuel Services, Inc., *Report to the Martha's Vineyard Commission: The Impact on Gas Providers and Consumers if a New Gas Station Opens in Tisbury at High Point Lane* (11/15/02).
[54] Wehner Deposition (December 5, 2008), pp. 74-75.
[55] Wehner Deposition (December 5, 2008), pp. 88-89.

5. Price Gouging

The economic analysis described below leads me to the conclusion that Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil engaged in price gouging in the sale of gasoline following Hurricanes Katrina and Rita. "Price gouging" is defined by the Massachusetts Price Gouging Law, 940 CMR § 3.18 as promulgated by the Attorney General pursuant to Mass. Gen. Laws, Chapter 93A, § 2 (c). Section 3.18, which is captioned "Price-Gouging", reads as follows:

> (1) It shall be an unfair or deceptive act or practice, during any market emergency, for any petroleum-related business to sell or offer to sell any petroleum product for an amount that represents an unconscionably high price.
>
> (2) A price is unconscionably high if:
>
> > (a) the amount charged represents a gross disparity between the price of the petroleum product and
> >
> > > 1. the price at which the same product was sold or offered for sale by the petroleum-related business in the usual course of business immediately prior to the onset of the market emergency, or
> > >
> > > 2. the price at which the same or similar petroleum product is readily obtainable by other buyers in the trade area; and
> >
> > (b) the disparity is not substantially attributable to increased prices charged by the petroleum-related business suppliers or increased costs due to an abnormal market disruption.

The remainder of this report defines the operative terms of Section 3.18 and applies each of the law's threshold conditions to the post-hurricane history of prices at the defendants' stations on Martha's Vineyard.

Market Emergency. Massachusetts law defines a "market emergency" as an "abnormal disruption of any market for petroleum products".[56] As defined, such a "market emergency" relating to the sale of

[56] Massachusetts Law, 940 CMR § 3.01.

gasoline on Martha's Vineyard commenced on August 29, 2005, the date Hurricane Katrina made landfall in the United States.[57] Hurricane Rita followed soon thereafter, making landfall on September 24, 2005.[58] The disruption in the market for the sale of gasoline continued on Martha's Vineyard until early December 2005.

Federal Trade Commission Report As An Authoritative Source. Section 1809 of the Energy Policy Act of 2005, Pub. L. No. 109-58 § 1809, 119 Stat. 594 (2005) required the Federal Trade Commission to "conduct an investigation to determine if the price of gasoline was being artificially manipulated by reducing refinery capacity or by any other form of market manipulation or price gouging practices." In addition, Section 632 of the Federal Trade Commission's appropriations legislation for fiscal 2006 directed the Commission to investigate nationwide gasoline prices and possible price gouging in the aftermath of Hurricane Katrina.[59] In response, the Federal Trade Commission issued its *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases (Spring 2006)* ("The FTC Report").

I consider *The FTC Report* an authoritative source for quantifying the criteria constituting unconscionable pricing as defined in the Massachusetts Price Gouging Law. This seems a reasonable approach on its face but is also consistent with my understanding that Massachusetts courts look to interpretations by the Federal Trade Commission in determining what constitutes unfair methods of competition and unfair or deceptive acts or practices which are not defined in Mass. Gen. Laws c. 93A.[60]

Gross Disparity Between Defendants' Pre and Post-Hurricane Prices. An analysis of the defendants' regular gasoline pricing data in the second half of 2005 leads me to the conclusion

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[57] Federal Trade Commission Report, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (Spring 2006), p. 59.
[58] Ibid, p. 61.
[59] 2006 Pub. L. No. 109-108 § 632.
[60] *Ciardi v. LaRoche, Ltd.*, 436 Mass. 53, 59 (2002).

that there was a gross disparity in prices offered by the defendants after Hurricanes Katrina and Rita, when compared to the prices offered immediately prior to the hurricanes.

The relevant daily price data for regular gasoline at each station are taken from defendant records for the period mid-August through early December 2005. Table 12 displays the average price at each station for the 7-day period just preceding Hurricane Katrina and each subsequent 7-day interval through early December when prices return to their pre-summer levels, the standard adopted in *The FTC Report* defining the end of its post-hurricane price analysis.[61]

Compared to the 7-day period immediately preceding Hurricane Katrina, prices at each station in the 7-day period immediately following Hurricane Katrina rose, on average, 18, 48, 43, and 42 cents per gallon at Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil, respectively. Average prices at these stations increased during the next seven days another 18, 12, 7, and 12 cents, respectively. During the week of September 28-October 3, following Hurricane Rita and a full month after Hurricane Katrina, prices of regular gasoline at the four stations were above their August 21-28 levels by 32, 42, 35, and 35 cents per gallon, respectively, at Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil. Two weeks later these prices were still higher than their pre-hurricane levels by 20, 35, 27, and 27 cents per gallon, respectively. Except for prices at XtraMart Citgo, prices at the other three stations returned to their late August levels by the last week of October. XtraMart Citgo prices reached this level one week later.[62]

Given the seasonal business pattern on the island, the relevant pre-hurricane benchmark is the per gallon price just prior to summer 2005, not late August. Average prices at Tisbury Shell, XtraMart Citgo, Edgartown Mobil, and Depot Corner Mobil during the 7-day period November 22-28 were above their late May 2005 levels by 12, 14, 14, and 16 cents, respectively. By December 1, 2005, prices at Tisbury Shell and XtraMart Citgo had returned to their late May

[61] Federal Trade Commission Report, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (Spring 2006), p. 61. The FTC concludes its analysis of prices at the date prices return to their pre-summer levels.
[62] See Table 9 for daily prices at XtraMart Citgo.

levels. December 1 prices at Depot Corner, Inc.'s two Edgartown Mobil and Depot Corner Mobil stations were still 10 and 11 cents per gallon, respectively, above their May levels and did not change through year-end.

The FTC Report referenced above offers an additional comparative benchmark relevant to the defendants' pricing during the emergency period. The FTC examined gasoline prices at 24,197 gasoline stations across the country.[63] It found that retailers priced at very high prices for only very short periods.[64] In fact, in only one city studied did the highest price stay above $3.50/gallon for more than one day.[65] In Chapel Hill, North Carolina, a high of $3.71 was posted for four consecutive days at one station.[66] Stations' peak price generally lasted only one or two days, and only lasted for 4-5 days on a couple of occasions for the over 24,000 stations studied.[67] Four thousand six hundred and fifty-four (4,654) stations were examined in the Northeast, while one thousand five hundred and eighty nine (1,589) stations were examined in the Boston area.[68]

Peak prices at the defendants' stations remained above $3.50/gallon longer than in any of the over four thousand stations in the Northeast examined by the FTC. At Tisbury Shell, the price of regular gasoline stayed above $3.50 for at least 23 straight days; the peak price of $3.57 remained for 12 straight days. At XtraMart Citgo, the price of regular gasoline stayed above $3.50 for 42 straight days; the peak price of $3.70 remained for 17 days. At Edgartown Mobil, the price of regular gasoline stayed above $3.50 for 47 straight days; the peak price of $3.89 remained for 6 days. At Depot Corner Mobil, the price of regular gasoline stayed above $3.50 for 46 straight days; the peak price of $3.85 held constant for 6 days.

Cost differences for fuel purchases during this same pre and post-hurricane time intervals are examined below. At present, the relevant conclusion is that a significant ("gross") disparity existed between the prices offered by the defendant stations during the market emergency

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[63] *The FTC Report*, pp. 109,114, fn 78.
[64] Ibid., p. 109.
[65] Ibid.
[66] Ibid.
[67] Ibid. pp, 109-110.
[68] Ibid., p. 135, Table 6-8.

relative to the prices they offered "in the usual course of business immediately prior to the onset of the market emergency."[69]

Gross Disparity Between Defendants' Prices and Prices in the Relevant Trade Area. Section 3.18(2)(a)(2) of the Massachusetts Price Gouging Law requires a comparison between prices offered by alleged price-gouging businesses and prices "readily obtainable by other buyers in the trade area." As a matter of economics, the term "trade area", relevant to an investigation of price gouging, must be defined differently than the more common economics term "market area." The latter incorporates all competing firms and, in the case of a homogeneous product, that means firms competing primarily on price. Price gouging firms may have affected "market area" prices, especially in markets with small numbers of firms, and therefore cannot be a useful benchmark for quantitatively assessing the presence of price gouging.

"Trade area", in contrast, offers a meaningful comparative threshold. It includes businesses facing comparable costs but otherwise existing in competitively distinct market areas. Retail gasoline service stations located on Cape Cod, in my opinion, exist in the same trade area as stations on Martha's Vineyard if, for no other reason, that both Cape and island stations purchase wholesale gasoline at the same rack prices at the same Providence RI terminals and, further, experience very similar seasonal business patterns. Incremental cost differences facing island stations are addressed below but, for the purpose of applying section 3.18(2)(a)(2), common rack prices, common purchase points, and common seasonal business patterns define the relevant "trade area."

The monthly data spanning the post-hurricane period (September through November 2005) are reported in Table 1 and indicate a considerable spread between the prices offered at the defendants' stations and stations on Cape Cod. Defendant station prices for regular gasoline exceeded Cape prices by 52, 58, and 61 cents per gallon over the September-November 2005 period. The three-month average 56-cent spread represents a 20.1% increment over the average

[69] Massachusetts Price Gouging Law, 940 CMR, Section 3.18(2)(a)(1).

$2.78 price of regular gasoline available at Cape stations during the same three months. These absolute and relative differentials, in my opinion, reflect gross disparities between the prices offered by the defendant stations during the market emergency and prices "readily obtainable by other buyers in the trade area."

Price Disparities and Cost Differences. The price disparities described and quantified in the two preceding sections establish a prima facie case for price gouging as described in the Massachusetts Price Gouging Law. However, section 3.18(2)(b) makes clear that a finding of price gouging requires that "the disparity is not substantially attributable to increased prices charged by the petroleum-related business suppliers or increased costs due to an abnormal market disruption." When comparing sections (2)(a) and (2)(b), it is clear that changes in gross margins is the relevant test for price gouging in the Massachusetts law.

This is precisely the standard for price gouging adopted by the FTC in its investigation of post-Katrina price increases. The FTC states in its 2006 report:

> To determine whether the price increase were cost-based, we examined financial data on company profit margins. If price increases are attributable to increased costs, then operating margins should remain relatively unchanged.[70]

The FTC reasoned that it was best to use monthly comparisons of margins, as trends can be more confidently established by using monthly averages. The FTC noted that significant changes in margins that might only occur for a week would be reflected in monthly averages.[71]

A meaningful economic analysis of gross margins before and during the relevant emergency period begins with establishing both a benchmark pre-hurricane period against which to compare gross margins during the emergency period and a reasonable range within which emergency period margins may vary without concluding that price gouging was operative. *The FTC Report* provides guidelines for both parameters.

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[70] *The FTC Report*, p. 138.
[71] Ibid.

To determine when an increase in gross margin constituted "price gouging", the FTC examined 99 retailers, all of whom had been accused of price gouging after Katrina, and many of whom had settled state charges and paid a fine.[72] Staff received documents from 39 of these retailers.[73] Twenty-four (24) of these stations were single-location retailers.[74] Of the 24 stations, the average increase in margin for September 2005 compared to August 2005 was 2 cents/gallon.[75] The FTC concluded that a retailer had "a price increase not substantially explained by increased costs if its gross margin increased by more than five cents per gallon or more between August and September 2005."[76]

At this point, it is important to note exactly how the FTC defined "gross margin" for the purposes of its five-cent standard.

> Retailer profits are measured by gross margin per gallon, which equals the average price per gallon sold minus the average cost per gallon purchased from wholesalers. As noted above, retailers incur other costs such as rent, labor, heating and power costs and so forth, but these are omitted from the analysis since they are unlikely to have changed significantly over the comparison period of interest. Gross margins on the sale of gasoline also do not reflect retail sales and profits of convenience store items, automotive repairs and other revenue sources related to a gasoline retailer's operation.[77]

The data discussed earlier in this report permit both the quantification of gross margins and tests of price gouging consistent with the FTC's five-cent threshold.

Table 13 displays station and grade-specific gross margins for each month August through November 2005. Consistent both with section 3.18 (2)(b) of the Massachusetts Price Gouging Law and with the FTC's definition of gross margin, the monthly average cost-of-goods sold used to compute the gross margins in Table 13 is defined as the sum of the wholesale rack price, taxes, freight, and profit to the distributor. The cost components relevant to each station are found in Tables 2-5.

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[72] Ibid., p. 150.
[73] Ibid.
[74] Ibid.
[75] Ibid., p. 151.
[76] Ibid.
[77] Ibid.

The data in the lower half of Table 13 provide the ultimate basis for my opinion that gross margins at each station in each month September through November 2005 exceeded each respective station's August gross margin by more than the five-cent threshold established by the FTC. Using the language of the Massachusetts Price Gouging Law, it seems reasonable to conclude that the price "disparity is not substantially attributable to increased prices charged by the petroleum-related business suppliers or increased costs due to an abnormal market disruption."[78]

This concludes my quantitative evaluation of the criteria for unconscionably high prices as defined in the Massachusetts Price Gouging Law. During the emergency period following Hurricanes Katrina and Rita, (a) there were significant disparities between prices charged at the defendants' stations and prices charged in the pre-emergency period, (b) there were significant disparities between prices charged at the defendants' stations and prices charged by other stations in the same trade area, and (c) cost differences cannot explain the observed price differences.

This report reflects the opinions I have reached to date and the bases for these opinions. I reserve the right to amend this report as additional information becomes available between now and trial.

_____ _____

Date Frank M. Gollop

[78] The Massachusetts Price Gouging Law, Section 3.18(2)(b).

APPENDIX 1

APPENDIX 1

FRANK M. GOLLOP

CURRICULUM VITAE

Office Address:

Department of Economics
Boston College
Chestnut Hill, Massachusetts 02467
Telephone: (617) 552-3693

Home Address:

96 Church Street
Weston, Massachusetts 02493

ACADEMIC APPOINTMENTS:

Professor of Economics, Boston College, 1985-Present
Director of Graduate Studies, Economics Department, Boston College, 1999-2007
Associate Professor of Economics, Boston College, 1979-1985.
Assistant Professor of Economics, University of Wisconsin-Madison, 1974-1979.

GRADUATE STUDIES:

Harvard University: A.M., November 1972; Ph.D., July 1974
Ph.D. Thesis: Modeling Technical Change and Market Imperfections: An Econometric Analysis of U.S. Manufacturing, 1947-1971.

UNDERGRADUATE STUDIES:

University of Santa Clara: A.B. in Economics, June l969
A.B. in Philosophy, June l970

SPECIAL APPOINTMENTS:

Economic Classification Policy Committee, Expert Consultant to U.S. Government, 1992-1998.

TEACHING AWARD:

1999-2000 Distinguished Teaching Award, Boston College

RESEARCH GRANTS:

U.S. Department of Agriculture Grant 1995-99
National Science Foundation Grant, 1992-94
U.S. Department of Agriculture Grant 1992-97
U.S. Bureau of the Census Grant, 1985-87
U.S. Bureau of the Census Grant, 1984-86
Federal Trade Commission Grant, 1984
Research Fellowship, Boston College, 1984
Summer Research Grant, Boston College, 1983
U.S. Bureau of the Census Grant, 1983
U.S. Bureau of the Census Grant, l982
U.S. Department of Commerce Grant, 1982
Center for Economic Development Grant, 1982
Federal Energy Regulatory Commission Grant, 1980
U.S. Department of Labor Grant, 1979-1980
U.S. Department of Commerce Grant, 1978-1979

Graduate School Research Committee Grant, Univ. of Wisconsin, 1979
National Science Foundation Grant, 1977-1978
Graduate School Research Committee Grant, Univ. of Wisconsin, 1978
Graduate School Research Committee Grant, Univ. of Wisconsin, 1977
Department Fellow, Harvard University, 1971-1972
University Fellowship, University of Santa Clara, 1965-1969

PROFESSIONAL SOCIETIES:

American Economic Association
Conference on Research in Income and Wealth
Eastern Economic Association
Western Economic Association

RECENT REFEREEING ACTIVITY:

American Economic Review, National Science Foundation, Review of Economics and Statistics, Land Economics, Southern Economic Journal, The Canadian Journal of Economics, Journal of Environmental Economics and Management, Review of Industrial Organization, American Journal of Agricultural Economics.

PUBLICATIONS:

"Structural Inflation in the United States, 1964-1966," The American Economist, 13, No. 2 (Fall 1969), pp. 31-39.

"The Impact of the Fuel Adjustment Mechanism on Economic The Review of Economics and Statistics, 60, No. 4 (November 1978), pp. 574-84 (with Stephen Karlson).

"Firm Interdependence in Oligopolistic Markets," The Journal of Econometrics, 10 (April 1979), pp. 313-331 (with Mark Roberts).

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"Environmental and Health/Safety Regultions, Productivity Growth, and Economic Performance: An Assessment," U.S. Congress, Joint Economic Committee and Senate Commerce Committee, Committee Print, Washington, D.C.: Government Printing Office, 1980 (with Greg Christiansen and Robert Haveman).

"Scale Effects and Technical Change as Sources of Productivity Growth," in John D. Hogan (ed.), Dimensions of Productivity Research. Houston: American Productivity Center, 1980.

"A Microeconomic Model of Household Choice: The Household as a Disputant," Law & Society Review, 15: 3-4 (1980-81), pp. 611-630, (with Jeffrey Marquandt).

"Automatic Adjustment Clauses: The Effect on Fuel Prices," in U.S. Department of Energy, Federal Energy Regulatory Commission, Automatic Adjustment Clauses in Public Utility Rate Schedules. Washington, D.C.: Government Printing Office, 1982 (with Stephen Karlson).

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"Sectoral Measures of Labor Cost for the United States, 1948-1978," in J.E. Triplett (ed.), The Measurement of Labor Cost, Studies in Income and Wealth, Vol. 48, Chicago: University of Chicago Press for the NBER, 1983 (with Dale Jorgenson).

"Environmental Regulations and Productivity Growth: The Case of Fossil-Fueled Electric Power Generation," Journal of Political Economy, 91 (August 1983), pp. 654-74 (with Mark Roberts).

"Cost-Minimizing Regulation of Sulfur Emissions: Regional Gains in Electric Power," The Review of Economics and Statistics, 67 (February 1985), pp. 81-90, (with Mark Roberts).

"Productivity and Growth of Sectoral Output in the United States, 1948-1979," in J.W. Kendrick (ed.), Interindustry Differences in Productivity Growth. Cambridge: Ballinger Press, 1985, (with Dale Jorgenson and Barbara Fraumeni).

"Analysis of the Productivity Slowdown: Evidence for a Sector-Biased or Sector-Neutral Industrial Strategy," in W. Baumol and K. McLennan (eds.), Productivity Growth and U.S. Competitiveness. New York: Oxford University Press, 1985.

"Cost Minimizing Regulation of Sulfur Emissions: A Summary," Regulation, 9 (Nov./Dec. 1985), pp. 51-2 (with Mark Roberts).

"The Effect of Warranty on Used Car Prices," in Pauline Ippolito and David Sheffman (eds.), Empirical Approaches to Consumer Protection Economics, Washington, D.C.: Federal Trade Commission, 1986 (with Jim Anderson).

"Evaluating SIC Boundaries and Industry Change over Time: An Index of Establishment Heterogeneity," Bureau of the Census, Second Annual Research Conference Proceedings, Washington, D.C.: Bureau of the Census, 1986.

"Modeling Aggregate Productivity Growth: The Importance of Intersectoral Transfer Prices and International Trade," Review of Income and Wealth, (1987), pp. 211-27.

Productivity and U.S. Economic Growth. Cambridge: Harvard University Press, 1987 (with Dale Jorgenson and Barbara Fraumeni).

From Homogeneity to Heterogeneity: An Index of Diversification. U.S. Bureau of the Census, Technical Paper 60. Washington, D.C.: U.S. Government Printing Office, 1989 (with Jim Monahan).

Comments on "Regulatory Failure, Regulatory Reform, and Structural Change in the Electric Power Industry" by P. Joskow in M. Bailey and C. Winston (eds.), Brookings Papers on Economic Activity, Washington, D.C.: Brookings, 1989.

"A Generalized Index of Diversification: Trends in U.S. Manufacturing," The Review of Economics and Statistics, 73 (May 1991), pp. 318-30 (with James Monahan).

"Alternative Approaches to Classifying Economic Activity," in 1991 International Conference on the Classification of Economic Activities--Proceedings, Washington, D.C.: U.S. Department of Commerce, 1992.

"Productivity Growth in U.S. Agriculture: A Postwar Perspective," American Journal of Agricultural Economics, 74 (August 1992), pp. 745-750 (with Dale Jorgenson).

"The Heterogeneity Index: A Quantitative Tool to Support Industrial Classification," Bureau of Economic Analysis Report (BE-42), Economic Classification Policy Committee. Washington, D.C.: U.S. Department of Commerce, May 1994.

"The Pin Factory Revisited: Product Diversification and Productivity Growth," Review of Industrial Organization, 12 (June 1997), pp. 317-34.

"Do Industrial Classifications Need Re-Inventing? An Analysis of the Relevance of the U.S. SIC System for Productivity Research," Proceedings of the Sixth American Society of Information Systems Classification Research Workshop, Raymond Schwartz (ed.). Chicago: American Society for Information Science, 1998 (with Jack Triplett, D. Mark Kennet, and Ron Jarmin).

"From Total Factor to Total Resource Productivity: An Application to Agriculture," American Journal of Agricultural Economics, 80 (August 1998), pp. 577-83 (with G. Swinand).

Productivity and U.S. Economic Growth, (Greek language edition). Gutenberg: Gutenberg University Press, 1999 (with Dale Jorgenson and Barbara Fraumeni).

"Patterns of State Productivity Growth in the U.S. Farm Sector: Linking State and Aggregate Models," American Journal of Agricultural Economics, 81 (February 1999), pp. 164-79 (with V. Eldon Ball, Alison Kelly-Hawke, and Gregory Swinand).

"Total Resource Productivity: Accounting for Changing Environmental Quality," in Charles Hulten, Edwin Dean, and Michael Harper (eds.), New Developments in Productivity Analysis, Studies in Income and Wealth, Vol. 63 (Chicago: The University of Chicago Press, 2001), (with G. Swinand).

"The Cost of Capital and the Measurement of Productivity," in Lawrence J. Lau (ed.), Econometrics Volume 2: Econometrics and the Cost of Capital: Essays in Honor of Dale W. Jorgenson. Cambridge: The MIT Press, 2000.

"Environmental Regulations and Productivity Growth: The Case of Fossil-Fueled Electric Power Generation," in Economic Costs & Consequences of Environmental Regulation, Wayne Gray (ed.) (Hampshire, England: Ashgate Publishing Limited). Forthcoming March 2002. (Reprinted from Journal of Political Economy, 1983, with Mark Roberts).

"The Effect of Ground Water Regulation on Productivity Growth in the Farm Sector," in George Norton and Eldon Ball (eds.), Agricultural Productivity: Measurement and Sources of Growth. Boston: Kluwer Academic Publishers, 2002, (with K. Chaston).

PAPERS PRESENTED AT PROFESSIONAL MEETINGS:

1975 Conference on New Developments in Productivity Measurement, National Bureau of Economic Research: "United States Factor Productivity by Industry, 1947-1973."

1976 Econometric Society: "The Impact of the Fuel Adjustment Mechanism on Economic Efficiency."

1979 Conference on Productivity Measurement in Regulated Industries, National Science Foundation-University of Wisconsin: "The Sources of Growth in the U.S. Electric Power Industry."

1980 Law and Society Association: "A Microeconomic Model of Household Choice: The Household as a Disputant."

1981 Conference on Current Issues in Productivity, Rutgers University: "Growth Accounting in an Open Economy."

1981 Western Economic Association: "An Open Economy Model of Productivity Growth."

1981 Econometric Society: "Environmental Regulations and Productivity Growth: The Case of Fossil-Fueled Electric Power Generation."

1981 Conference on Income and Wealth: "Sectoral Measures of Labor Cost for the United States, 1948-1978."

l982 Southern Economic Association: "Modeling Aggregate Productivity Growth: The Importance of Intersectoral Transfer Prices and International Trade."

1983 Southern Economic Association: "Cost-Minimizing Regulation of Sulfur Emissions: Regional Gains in Electric Power."

1984 Federal Trade Commission Conference: "The Effect of Warranty on Used Car Prices."

1984 U.S. Bureau of the Census Conference: "From Homogeneity to Heterogeneity: An Index of Diversification."

1984 American Enterprise Institute: "Productivity and Growth of Sectoral Output in the United States, 1948-1979."

1986 U.S. Bureau of the Census Conference: "Evaluating SIC Boundaries and Industry Change over Time: An Index of Establishment Heterogeneity."

1987 American Economic Association Conference: "Measuring Product Heterogeneity."

1988 U.S. Department of Agriculture: "Directions for Future Research in the Productivity of U.S. Agriculture."

1991 International Conference on the Classification of Economic Activity: "Alternative Approaches to Classifying Economic Activity."

1991 American Economic Association Conference: "Productivity Growth in U.S. Agriculture: A Postwar Perspective."

1993 John F. Kennedy School of Public Policy Conference: "The Cost of Capital and the Measurement of Productivity."

1994 National Bureau of Economic Research: "Does the SIC System Need Re-Inventing for Productivity Research?" (July 1994), 22 pp. (with Jack Triplett, D. Mark Kennet, and Ron Jarmin).

1995 Industrial Organization Society Meetings: "The Pin Factory Revisited: Diversification and Productivity Growth" (January 1995).

1995 USDA Symposium--Current Topics in Research Evaluation: "State Productivity Statistics: New USDA Estimates of State Multifactor Productivity Growth" (February 1995).

1995 Eastern Economics Association: "The Pin Factory Revisited: Diversification and Productivity Growth" (March 1995).

1995 Eastern Economics Association: "The Battle Against Major Air Pollutants: Some Wartime Statistics" (March 1995).

1995 American Society of Information Systems/Classification Research Workshop: "Do Industrial Classifications Need Re-Inventing? An Analysis of the Relevance of the U.S. SIC System for Productivity Research" (October 1995).

1998 American Agricultural Economics Association: “Incorporating Changing Water Quality into Measures of Farm Sector Productivity Growth” (January 1998).

1998 Conference in Income and Wealth: “Incorporating Environmental Qualtiy in Measures of TFP Growth” (March 1998).

2000 U.S. Department of Agriculture Conference: “The Effect of Ground Water Regulation on Productivity Growth in the Farm Sector” (March 2000).

2003 Conference on Research in Income and Wealth: “Accounting for Total Resource Productivity Growth: Proposed Satellite Accounts for the U.S. National Accounts” (August 2003).

INVITED PRESENTATIONS:

1976 Council of Economic Advisors: "Labor Input and the Decomposition of Labor Quality."

1976 National Association of Regulatory Utility Commissions, Staff Subcommittee on Economics: "Efficiency Implications of Fuel Adjustment Mechanisms."

1977 State of Wisconsin, Public Service Commission: "Critique of 'Preliminary Generic Environmental Impact Statement on Electric Utility Tariffs'."

1977 U.S. Bureau of Labor Statistics: "The Measurement of Labor Input."

1978 National Academy of Sciences, National Research Council: "Microeconomic Theory Applied to Productivity Analysis: The Link Between Sectoral and Aggregate Accounts."

1978 Econometric Society: Comments on "The Econometrics of Exhaustible Resources," by Lars P. Hansen

1978 University of Virginia, Department of Economics: "Modeling Factor Market Imperfections."

1979 Boston College, Department of Economics: "Firm Interdependence in Oligopolistic Markets."

1979 State University of New York at Binghamton, Department of Economics: "The Sources of Growth in the U.S. Electric Power Industry."

1979 Federal Trade Commission: "Firm Interdependence in Oligopolistic Markets."

1980 American Productivity Center Conference: "Scale Effects and Technical Change as Sources of Productivity Growth."

1981 Bureau of Labor Statistics: "The Importance of InternationalTrade in Productivity Accounting."

1981 Western Economic Association: Comments on "An Industrial Strategy for the 80s" by Kenneth McLennan.

1981 U.S. State Department: "Structural Change, Investment, and Productivity."

1982 Boston Bar Association: "Productivity Growth in the United States--The Role of Antitrust and Deregulation."

1982 U.S. Bureau of the Census: "Development and Use of the Longitudinal Establishment Data File: Some Recommendations."

1982 Committee for Economic Development: "Evidence for a Sector-Biased or Sector-Neutral Industrial Policy: Analysis of the Productivity Slowdown."

1983 U.S. Department of Justice: "Cost-Minimizing Regulation of Sulfur Emissions: Regional Gains in Electric Power."

1984 Penn State University, Department of Economics: "Evidence for a Sector-Biased or Sector-Neutral Industrial Policy: Analysis of the Productivity Slowdown."

1984 U.S. Department of Justice: "From Homogeneity to Heterogeneity: An Index of Diversification."

1984 U.S. Environmental Protection Agency: "Cost-Minimizing Regulation of Sulfur Emissions: Regional Gains in Electric Power."

1985 U.S. Federal Trade Commission: "Cost-Minimizing Regulation of Sulfur Emissions: Regional Gains in Electric Power."

1985 NBER Conference: Comments on "Productivity of Japanese and U.S. Workers in Firms of Varying Size" by N. Hashimoto and J. Raisian.

1985 Rutgers University: "The Role of Micro Theory in Models of Productivity Growth."

1986 U.S. Federal Trade Commission: "From Homogeneity to Heterogeneity: An Index of Diversification."

1986 American Productivity Management Association: "Corporate Earnings and Productivity."

1988 U.S. Central Intelligence Agency: "Measuring Productivity Flows Across Sectors in an Economy."

1988 Brookings Institution: Comments on "Regulatory Failure, Regulatory Reform and Structural Change in the Electric Power Industry" by Paul Joskow.

1989 University of Massachusetts, Amherst: "From Homogeneity to Heterogeneity: An Index of Diversification."

1989 Econometric Society: Comments on "Cost Structure in Natural Gas Pipeline Industry" by Robin Sickles.

1990 National Academy of Sciences and Academy of Sciences of the USSR: "The Link Between Aggregate and Sectoral Productivity Growth Under Imperfect Competition."

1991 Foreign Service Institute, U.S. State Department: "Productivity Measurement and Trends."

1995 Industrial Organization Society: Comments on "Evidence from English Auctions: Does Buyer Size Matter?" by Jon Nelson.

1995 Eastern Economics Association: Comments on "Why Did Japanese-Style Manufacturing Emerge in Japan and the U.S.?" by Timothy Bushnell.

1997 Boston Bar Association, Antitrust Subcommittee: "New Developments in the Economic Analysis of Tying Arrangements."

TESTIMONY BEFORE CONGRESSIONAL COMMITTEES AND FEDERAL AND STATE AGENCIES:

1981 U.S. House of Representatives, Committee on Energy and Commerce, Sub-committee on Oversight and Investigations: "The Productivity Slowdown in the United States."

1981 Public Utilities Commission, State of Rhode Island. Docket No. 1560. Rebuttal Testimony on Behalf of New England Telephone regarding Productivity Offsets in Telecommunications Rate Setting.

1982 U.S. Senate, Committee on Labor and Human Resources, Subcommittee on Employment and Productivity: "Total Factor Productivity--Measurement and Analysis."

1982 Public Utilities Commission, State of Maine. Docket No. 82-124. Rebuttal Testimony on Behalf of New England Telephone regarding Productivity Offsets in Telecommunications Rate Setting.

1989 Department of Public Utility Control, State of Connecticut. Docket No. 87-07-01. Testimony on Total Factor Productivity Growth in Northeast Utilities, 1981-87.

1994 U.S. Department of Energy, Office of Energy Efficiency and Reliable Energy: "Economic Analysis of Proposed Rulemaking for Television Receivers."

1998 Senate Judiciary Subcommittee Meeting: "Welfare Analysis of Extending Copyright-Like Protection to Databases."

1998 U.S. Federal Communications Commission: "Economic Analysis of Price-Cap Regulation of Local Exchange Carriers."

1999 U.S. Federal Communications Commission: "Assessment of FCC Proposal for Price-Cap Modifications."

2000 U.S. Federal Communications Commission: "Economic Analysis of Inter-Exchange Carrier Proposals for Price-Cap Regulation of Local Exchange Carriers."

APPENDIX 2

APPENDIX 2

Frank M. Gollop

Expert Testimony During Past Four Years

Southern Tool & Supply, Inc. v. Beerman Precision, Inc., et al, Civil District Court, Parish of Orleans, State of Louisiana, on behalf of Southern Tool & Supply, (Report: July 2001; Deposition: January 2009).

1-800 Contacts, Inc. v. Lens.com, Inc. d/b/a as Lens.com, Justlens.com and JustLenses.com, U.S. District Court, District of Utah, on behalf of 1-800 Contacts, Inc., (Reports: September and November 2008; Deposition: November 2008).

RDK Truck Sales and Service, Inc. and RDK Municipal Truck Center, Inc. v. Mack Trucks, Inc., McNeilus Truck and Manufacturing, Inc., and Heil Environmental Industries, Ltd., U.S. District Court for the Eastern District of Pennsylvania, on behalf of RDK Truck Sales and Service, Inc. (Report: October 2007; Deposition: October 2007).

CytoLogix Corporation v. Ventana Medical Systems, Inc. U.S. District Court for the District of Massachusetts, on behalf of CytoLogix (Reports: December 2001, August 2002, and April 2007; Depositions: May and July 2007; Trial Testimony: August 2007).

Sumitomo Mitsubishi Silicon Corp and SUMCO USA Corp v. MEMC Electronic Materials, Inc., U.S. District Court for Northern District of California, Oakland Division, on behalf of Sumitomo Mitsubishi Silicon Corp and SUMCO USA Corp. (Reports: March and May 2007; Deposition: June 2007).

Toledo Mack Sales & Service, Inc. v. Mack Trucks, Inc., U.S. District Court for the Eastern District of Pennsylvania, on behalf of Toledo Mack (Deposition: January 2004 and March 2004; Trial Testimony: September 2006).

Lynne Lapensee and Roland Lapensee v. Whitehall-Robins, a Division of Wyeth f/k/a American Home Products Corporation; and Wal-Mart Stores, Inc., U.S. District Court for the District of Connecticut, on behalf of Wyeth (Report: November 2005; Deposition: January 2006).

Ralph Abraham, et al v. Richland Parish Hospital Service District, et al. 5th Judicial District Court for the Parish of Richland, State of Louisiana, on behalf of Abraham et al (November 2004, July 2005, and December 2005).

APPENDIX 3

APPENDIX 3
Data and Other Information Considered in Forming Opinion

Business Documents of Defendants*

Consolidating Statement of Operations and Retained Earnings for R.M. Packer Co., Inc. (FY 2003-2007)
Daily Sales Slips, Depot Corner
Daily Sales Slips, Edgartown Mobil
Daily Sales Slips, Tisbury Shell
Financial Statements, Vineyard Haven Xtra Mart (August 2003 – June 2008)
Payroll Records (R.M. Packer Co.) (Last week, 2006, 2007, 2008)
Price Schedules (R.M. Packer Co.) (8/03 – 8/08)

Deposition Transcripts**

McCarthy, Joseph (December 9, 2008)
Paciello, Louis (December 17, 2008)
Packer, Ralph (December 11, 2008)
Packer, Ralph (January 16, 2009)
Wehner, Steven (December 5, 2008)

Government Reports

Federal Trade Commission Report, *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases* (Spring 2006)

Invoices

Fidelity National Property and Casualty Insurance Company to R.M. Packer Co. (Flood insurance for the period November 2, 2007 through November 2, 2008)
J.P. Noonan to R.M. Packer Co.
Macera & Martini to Drake
Motiva Enterprises to R.M. Packer Co.
Mutual Wholesale to R.M. Packer Co.
Steamship Authority to Drake
Tisbury Towing Co. to R.M. Packer Co.

Miscellaneous

In *re Linerboard Antitrust Litigation*, 504 F.Supp.2d 38, 51-52 (E.D. Pa. 2007).

Posner, Richard, *Oligopoly and the Antitrust Laws: A Suggested Approach*, 21 *Stan. L. Rev*. 1562, 1582 (1969)

Tisbury Fuel Services, Inc., *Report to the Martha's Vineyard Commission: The Impact on Gas Providers and Consumers if a New Gas Station Opens in Tisbury at High Point Lane.* (11/15/02).

Pleadings and Court Documents

Answers to Interrogatories of Francis J. Paciello/Depot Corner
Answers to Interrogatories of Drake Petroleum
Complaint
Plaintiffs' Opposition to Depot Corner, Inc.'s and Francis J. Paciello's Motion for Partial Summary Judgment
Supplemental Answers to Interrogatories of R.M. Packer Co.

Spreadsheets Prepared by Defendant(s)

MV Selling Prices (Drake)
Vineyard Xtra Mart Pump Prices, 8/1/03 – 6/30/08 (Drake)
Xtra Mart Citgo, Volume, Sales By Month (Drake)

Other Spreadsheets

Gas Prices Charted From Defendants' Documents (Attorney Work Product)
Oil Price Information Service (OPIS), Excel Spreadsheet, Regular Unleaded History (Falmouth, Hyannis, Provincetown (8/1/2003 – 8/1/2008)

Statutes, Acts and Regulations

Massachusetts Code of Regulations, 940 CMR § 3.01
Massachusetts Code of Regulations, 940 CMR § 3.18
Section 1809 of the Energy Policy Act of 2005, Pub. L. No. 109-58 § 1809, 119 Stat. 594 (2005)
2006 Pub. L. No. 109-108 § 632

Web Sites

bls.gov/oes/current/msa_def.htm#M
bls.gov/oes/2006/may/oes536031.htm
bls.gov/oes/2007/may/oes_70900.htm
bls.gov/oes/2006/may/oes_70900.htm
(BLS data for prior years can be accessed via the "Archives" accessible from the BLS sites.)
www.city-data.com/city/Massachusetts.html

[*]For certain voluminous business documents and invoices, I reviewed representative documents and spreadsheets noting the relevant data on the documents.

[**]I reviewed selected portions of deposition transcripts and Answers to Interrogatories.

EXHIBIT 1

Table 1 Comparison of Average Monthly Pump Prices per Gallon with Pump Prices at Defendants' Gas Stations
Regular Gasoline

Month	Hingham Shell	Weymouth Citgo	Edgartown Mobil	Depot Corner Mobil	Average Defendant Price	Hyannis	Falmouth	Provincetown	Average Cape Price	Difference Between Average Defendant Price & Average Cape Cod Price
August 01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August December 2001	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 02	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2002	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2003	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2004	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2005	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Date	Fishery Shell	KtraMart Chgo	Edgartown Mobil	Depot Corner Mobil	Average Defendant Price	Hyannis	Falmouth	Provincetown	Average Cape Price	Difference Between Average Defendant Price & Average Cape Cod Price
January 07	2.96	2.97	3.00	2.95	2.97	2.36	2.37	2.36	2.36	0.60
February 07	2.89	2.88	2.88	2.85	2.87	2.34	2.34	2.29	2.32	0.56
March 07	3.19	3.17	3.26	3.20	3.21	2.56	2.56	2.52	2.55	0.66
April 07	3.42	3.42	3.42	3.36	3.40	2.77	2.81	2.74	2.77	0.63
May 07	3.69	3.69	3.71	3.66	3.69	3.03	3.09	3.00	3.04	0.65
June 07	3.62	3.62	3.78	3.74	3.69	3.03	3.10	3.07	3.07	0.62
July 07	3.62	3.62			3.62	3.01	3.07	3.07	3.05	0.57
August 07	3.42	3.43			3.42	2.96	3.01	3.01	3.00	0.42
September 07	3.40	3.40			3.40	2.92	2.92	2.91	2.92	0.49
October 07	3.38	3.38			3.38	2.89	2.91	2.82	2.87	0.50
November 07	3.60	3.60			3.60	3.04	3.05	2.96	3.02	0.58
December 07	3.65	3.65			3.65	3.07	3.11	3.00	3.06	0.59
January June 2007	3.29	3.29	3.34	3.29	3.30	2.68	2.71	2.66	2.68	0.67
July December 2007	3.51	3.51			3.51	2.98	3.01	2.92	2.99	0.52
January-08	3.70	3.68			3.69	3.09	3.12	3.05	3.09	0.60
February 08	3.63	3.62			3.62	3.09	3.11	3.00	3.10	0.54
March 08	3.83	3.82			3.82	3.19	3.20	3.16	3.18	0.64
April 08	3.99	3.97			3.98	3.37	3.38	3.36	3.37	0.61
May 08	4.16	4.27			4.22	3.82	3.81	3.79	3.81	0.51
June 08	4.21	4.23			4.21	4.15	4.14	4.07	4.12	0.61
July 08	4.67				4.67	4.16	4.16	4.13	4.16	0.51
January June 2008	4.00	4.02			4.01	3.45	3.46	3.42	3.44	0.58

EXHIBIT 2

Exhibit 2 - Purchase/Delivery Unit Costs for Regular Gasoline

State	Cost to Purchase Regular (After 5% Discount for Electronic Payment) ($/gal)	Taxes	Freight Cost Truck	Freight Cost Barge	Local Delivery Cost	Terminal Throughput Profit for R/M Purchase Services	Total Terminal	Terminal Costs	Wages Premium	Terminal Throughput and Storage Costs	Cost of Owning Product Inventory	Environmental Cost Inclusive of Oxygenated Mandates
August 01												
September 2004	1.041	0.395	0.027	0.030	0.010	0.050	0.052	0.206	0.034	0.007	0.016	0.006
January 05												
February 05												
March 05												
April 05												
May 05												
June 05												
July 05												
August 05												
September 05												
October 05												
November 05												
December 05												
2005												
January 06												
February 06												
March 06												
April 06												
May 06												
June 06												
July 06												
August 06												
September 06												
October 06												
November 06												
December 06												
2006												
January 07												
February 07												
March 07												
April 07												
May 07												
June 07												
July 07												

Date	Cost Per Barrel for Regular Motor Oil Shipped for Distribution Payment Date June 10 06	Index	Freight Cost Truck	* Freight Cost Barge	* Total Railway Cost	* Imputed Profit for Rail Shipper Refineries	* Liquid Insurance	Railroad Taxes	* Wages Premium	* Personnel and Storage Costs	* Cost of Living Adjust ments	Incremental Cost Depreciation for Depreciation Machinery
August 02	2.1861	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1277
September 02	2.1778	0.1444	0.0136	0.0136	0.0136	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1277
October 02	2.1695	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
November 02	2.1612	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
December 02	2.1529	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
2002	2.1700	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
January 03	2.1612	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
February 03	2.1529	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
March 03	2.1612	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
April 03	2.1695	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
May 03	2.1778	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
June 03	2.1861	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
July 03	2.1944	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278
January July 2003	2.1944	0.1444	0.0138	0.0138	0.0138	0.0000	0.0364	0.2311	0.0116	0.0012	0.0000	0.1278

EXHIBIT 3

Table 3: Drake/ExxonMobil Origin Costs for Regular Gasoline

Date	Cost to Drake for Crude Acquired	Total Taxes on Crude Acquired	* Total Drake Freight Costs (Trucking + Rail Costs)	* Estimated MBTA Freight Costs for Deliveries from Providence to Wrentham	*Imputed Profit for Drake Operations, Including Terminaling	Labor Costs	* Wage Premium	* Cost of Living Adjustment	Incremental Cost Relative to Exxon Gulf Stations
August 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August - December 2003	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**
January 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2004	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**
January 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2005	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**
January 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2006	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**	**[illegible]**
January 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Date	Cost to Ship for Cargo Regular	Fuel Taxes and High Regular	* Total Dealer Freight Costs [Trucking + Fuel Costs]	* Estimated Marginal Cost for Delivery from Providence to Wright Dale	*Imputed Profit for Dealer Petroleum, Inc. Services	Labor Costs	* Wage Parameters	* Cost-of-Living Adjustment	Incremental Cost Relative to Upper Tier Stations
June 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2007	**2.197**	**0.168**	**0.167**	**-0.0%**	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 08	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January - June 2008									
2008	**2.3148**	**0.168**	**0.168**	**0.0%**	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

NOTE: The May 2008 Attachment A rates were not provided by Dale Petroleum. Consequently, Total Dealer Freight Costs (Trucking + Fuel Costs) in column 4 for May 2008 was estimated as the average of reported freight costs for April and June 2008.

EXHIBIT 4

Table 4: Edgartown Mobil Cost for Regular Gasoline

Date	Posted Cost to Dealer for Mobil Regular	Taxes as Calculated by Drake on Mobil Regular	* Drake Total Freight Cost & Pendleton Deliveries to Edgartown Mobil	* Estimated M&M Freight Costs due Delivery from Pepperdepot to Woods Hole	Ratage Cost	* Wages Premium	* Cost of Living Adjustment	Intermediate Cost Relative to Edgar Cost Matters
August 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 03	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August - December 2003	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 04	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2004	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 05	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2005	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
October 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
November 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
December 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2006	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Date	Rack Cost to Drake for Mobil Regular	Taxes as Calculated by Drake on Mobil Regular	* Drake Total Freight Cost & Profit for Deliveries to Edgartown Mobil	* Estimated M&M Freight Costs for Delivery from Providence to Woods Hole	Labor Cost	* Wage Premium	* Cost-of-Living Adjustment	Incremental Cost Relative to Cape Cod Stations
February 07	1.728	0.369	0.247	0.054	0.213	0.036	0.039	0.264
March 07	2.061	0.369	0.223	0.055	0.213	0.036	0.044	0.248
April 07	2.274	0.369	0.211	0.056	0.213	0.036	0.036	0.257
May 07	2.495	0.369	0.242	0.056	0.213	0.036	0.044	0.265
June 07	2.425	0.369	0.233	0.056	0.213	0.036	0.050	0.271
January - June 2007	2.195	0.369	0.237	0.055	0.213	0.036	0.047	0.264

EXHIBIT 5

Table 5: Depot Corner Mobil Cost for Regular Gasoline

Date	Rack Cost to Drake for Mobil Regular	Taxes as Calculated by Drake on Mobil Regular	* Drake Total Freight Cost & Profit for Deliveries to Depot Corner Mobil	* Estimated M&M Freight Cost for Delivery from Revere/Everett to Woods Hole	* Cost of Living Adjustment	Incremental Cost Relative to Cape Cod Stations
August 01	$1.116	$0.420	$0.160	$0.040	$0.059	$0.179
September 01	1.070	0.420	0.181	0.040	0.060	0.207
October 01	0.987	0.420	0.159	0.040	0.061	0.186
November 01	0.913	0.420	0.152	0.040	0.061	0.175
December 01	0.954	0.420	0.156	0.040	0.062	0.178
August - December 2001	1.011	0.420	0.158	0.040	0.059	0.178
January 02	1.071	0.420	0.157	0.041	0.048	0.164
February 02	1.112	0.420	0.158	0.041	0.048	0.175
March 02	1.124	0.420	0.162	0.041	0.046	0.170
April 02	1.191	0.420	0.169	0.041	0.049	0.172
May 02	1.430	0.420	0.181	0.041	0.050	0.194
June 02	1.577	0.420	0.207	0.041	0.050	0.219
July 02	1.498	0.420	0.164	0.041	0.050	0.187
August 02	1.443	0.420	0.170	0.041	0.049	0.202
September 02	1.397	0.420	0.168	0.041	0.048	0.209
October 02	1.420	0.420	0.171	0.041	0.047	0.192
November 02	1.501	0.420	0.181	0.041	0.047	0.214
December 02	1.498	0.420	0.186	0.041	0.048	0.241
2002	1.381	0.420	0.168	0.041	0.047	0.193
January 03	1.502	0.420	0.180	0.040	0.052	0.196
February 03	1.561	0.420	0.191	0.040	0.053	0.198
March 03	1.650	0.420	0.183	0.040	0.055	0.225
April 03	1.722	0.420	0.198	0.040	0.058	0.224
May 03	1.943	0.420	0.221	0.040	0.060	0.251
June 03	2.076	0.420	0.242	0.040	0.060	0.277
July 03	1.977	0.420	0.199	0.040	0.060	0.254
August 03	1.968	0.420	0.198	0.040	0.059	0.254
September 03	1.943	0.420	0.191	0.040	0.058	0.220
October 03	1.929	0.420	0.189	0.040	0.058	0.204
November 03	1.975	0.420	0.201	0.040	0.058	0.217
December 03	2.021	0.420	0.194	0.040	0.060	0.205
2003	1.975	0.420	0.181	0.040	0.071	0.202
January 04	1.991	0.420	0.188	0.040	0.060	0.204
February 04	2.024	0.420	0.191	0.040	0.057	0.214
March 04	2.029	0.420	0.214	0.040	0.056	0.212
April 04	2.230	0.420	0.240	0.040	0.059	0.240
May 04	2.326	0.420	0.250	0.040	0.060	0.260
June 04	2.401	0.420	0.265	0.040	0.060	0.274
July 04	2.386	0.420	0.260	0.040	0.060	0.262
August 04	2.374	0.420	0.258	0.040	0.060	0.281
September 04	2.305	0.420	0.256	0.040	0.060	0.272
October 04	2.253	0.420	0.251	0.040	0.061	0.264

Date	Rack Cost to Drake for Mobil Regular	Taxes as Calculated by Drake on Mobil Regular	* Drake Total Freight Cost & Profit for Deliveries to Depot Corner Mobil	* Estimated M&M Freight Costs for Delivery from Providence to Woods Hole	* Cost-of-Living Adjustment	Incremental Cost Relative to Cape Cod Stations
November 06	1.777	0.369	0.242	0.054	0.070	0.257
December 06	1.815	0.369	0.230	0.055	0.068	0.243
2006	**2.040**	**0.382**	**0.235**	**0.056**	**0.068**	**0.247**
January 07	1.648	0.369	0.242	0.054	0.078	0.265
February 07	1.728	0.369	0.246	0.054	0.054	0.246
March 07	2.061	0.369	0.223	0.055	0.062	0.240
April 07	2.274	0.369	0.241	0.056	0.053	0.238
May 07	2.495	0.369	0.242	0.056	0.062	0.248
June 07	2.425	0.369	0.231	0.056	0.080	0.255
January June 2007	**2.105**	**0.369**	**0.237**	**0.055**	**0.065**	**0.247**

EXHIBIT 6

Table 6. Volume of Gasoline Sold at Defendants' Gas Stations

Date	Tisbury Shell	XtraMart Citgo	Edgartown Mobil	Depot Corner Mobil
GALLONS				
August - December 2003	494,071	324,983	357,614	248,105
2004	813,954	746,562	818,415	560,791
2005	854,329	746,808	822,663	561,218
2006	869,702	753,811	881,249	556,477
2007	900,267	728,010		
January - June 2007			294,656	231,321
January - June 2008		308,179		
January - July 2008	494,641			
Average annual gallons from January 2004 - December 2006	845,995	748,993	840,442	559,494
SHARES				
2004	27.7%	25.4%	27.8%	19.1%
2005	28.6%	25.0%	27.6%	18.8%
2006	28.4%	24.6%	28.8%	18.2%

EXHIBIT 7

Table 7: Comparison of Total R.M. Packer Revenue to Revenue Realized from Sales of Gasoline at Tisbury Shell

Fiscal Year	Total R.M. Packer Co. Revenue	Tisbury Shell Gasoline Revenue	% of R.M. Packer Co. Sales Attributable to Tisbury Shell Gasoline Sales
FY 05	$19,108,654	$2,240,129	11.7%
FY 06	$20,550,752	$2,494,962	12.1%
FY 07	$21,558,542	$2,931,114	13.6%
Average Percentage Over 3-Year Period			12.5%

EXHIBIT 8

Table II

Price Differences in Excess of Cost Differences at Defendant Service Stations Relative to Cape Cod Stations

	Tisbury Shell	XtraMart Citgo	Edgartown Mobil	Depot Corner Mobil	Average
Aug-Dec 2003	$0.21	$0.25	$0.11	$0.10	$0.22
2004	0.15	0.23	0.17	0.14	0.11
2005	0.18	0.32	0.41	0.10	0.12
2006	0.41	0.11	0.09	0.16	0.17
Jan-Jun 2007	0.14	0.24	0.09	0.06	0.18
Jul-Dec 2007	0.15	0.31			0.24
Jan-July 2008	0.41	0.15			0.18
2003					
August 03	0.25	0.30	0.11	0.05	0.11
September 03	0.28	0.21	0.25	0.27	0.23
October 03	0.25	0.19	0.26	0.24	0.21
November 03	0.28	0.27	0.15	0.17	0.18
December 03	0.14	0.26	0.14	0.11	0.11
2004					
January 04	0.10	0.25	0.12	0.10	0.12
February 04	0.11	0.26	0.14	0.11	0.10
March 04	0.21	0.15	0.11	0.11	0.17
April 04	0.12	0.18	0.14	0.12	0.11
May 04	0.24	0.19	0.26	0.26	0.24
June 04	0.27	0.21	0.32	0.20	0.22
July 04	0.25	0.21	0.13	0.20	0.26
August 04	0.28	0.13	0.11	0.28	0.19
September 04	0.26	0.31	0.28	0.15	0.24
October 04	0.27	0.31	0.24	0.23	0.22
November 04	0.11	0.20	0.22	0.10	0.18
December 04	0.12	0.18	0.15	0.21	0.21
2005					
January 05	0.21	0.13	0.10	0.17	0.15
February 05	0.05	0.17	0.03	0.25	0.08
March 05	0.18	0.14	0.15	0.12	0.13
April 05	0.21	0.22	0.21	0.15	0.15
May 05	0.21	0.17	0.21	0.17	0.18
June 05	0.18	0.18	0.19	0.16	0.17
July 05	0.18	0.12	0.17	0.10	0.12
August 05	0.15	0.15	0.18	0.16	0.14
September 05	0.26	0.22	0.14	0.15	0.21
October 05	0.13	0.10	0.13	0.18	0.14
November 05	0.10	0.11	0.18	0.15	0.15
December 05	0.12	0.13	0.12	0.25	0.13
2006					
January 06	0.21	0.11	0.13	0.11	0.21
February 06	0.15	0.17	0.10	0.18	0.13
March 06	0.10	0.13	0.17	0.15	0.18
April 06	0.13	0.15	0.18	0.11	0.17
June 06	0.18	0.14	0.17	0.13	0.16
June 06	0.21	0.17	0.20	0.17	0.17
July 06	0.15	0.11	0.13	0.14	0.14
August 06	0.17	0.13	0.18	0.16	0.15
September 06	0.21	0.19	0.21	0.17	0.17
October 06	0.13	0.15	0.18	0.16	0.16
November 06	0.17	0.20	0.13	0.12	0.11

	Tisbury Shell	XtraMart Citgo	Edgartown Mobil	Depot Corner Mobil	Average
December 06	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2007					
January 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 07	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July 07	[illegible]	[illegible]			[illegible]
August 07	[illegible]	[illegible]			[illegible]
September 07	[illegible]	[illegible]			[illegible]
October 07	[illegible]	[illegible]			[illegible]
November 07	[illegible]	[illegible]			[illegible]
December 07	[illegible]	[illegible]			[illegible]
2008					
January 08	[illegible]	[illegible]			[illegible]
February 08	[illegible]	[illegible]			[illegible]
March 08	[illegible]	[illegible]			[illegible]
April 08	[illegible]	[illegible]			[illegible]
May 08	[illegible]	[illegible]			[illegible]
June 08	[illegible]	[illegible]			[illegible]
July 08	[illegible]				[illegible]

EXHIBIT 9

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 76 of 93

Table 9. Defendant Price and Purchase Cost Data for Regular Gasoline
May 1- September 15, 2004

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
1-May-04	$2.18	$1.68	$2.20	$1.85	$2.26	$2.22	$1.87
2-May-04	2.18		2.20		2.26	2.22	
3-May-04	2.18		2.20		2.26	2.22	
4-May-04	2.18		2.26	1.89	2.31	2.28	1.88
5-May-04	2.24		2.26		2.32	2.28	
6-May-04	2.24	1.78	2.30		2.32	2.28	
7-May-04	2.24		2.30		2.32	2.28	1.95
8-May-04	2.24		2.30		2.32	2.28	
9-May-04	2.30		2.34		2.35	2.35	
10-May-04	2.30	1.82	2.30		2.41	2.36	
11-May-04	2.30		2.30	1.98	2.40	2.36	1.97
12-May-04	2.30		2.36		2.40	2.36	
13-May-04	2.36		2.36		2.41	2.36	
14-May-04	2.36	1.90	2.36	2.04	2.44	2.36	2.05
15-May-04	2.36		2.36		2.43	2.43	
16-May-04	2.36		2.46		2.50	2.46	
17-May-04	2.36		2.46		2.50	2.46	
18-May-04	2.36		2.46	2.07	2.50	2.46	2.08
19-May-04	2.42		2.46		2.50	2.46	2.08
20-May-04	2.45		2.46		2.50	2.46	
21-May-04	2.45		2.50	2.15	2.55	2.46	2.11
22-May-04	2.45		2.50		2.55	2.51	
23-May-04	2.45		2.50		2.55	2.51	
24-May-04	2.45	1.94	2.50		2.55	2.51	2.11
25-May-04	2.45	1.98	2.50	2.13	2.55	2.51	
26-May-04	2.55		2.50		2.55	2.51	2.13

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
27-Mar-04	2.59		2.59		2.65	2.64	
28-Mar-04	2.59	1.93	2.59		2.69	2.66	2.10
29-Mar-04			2.59		2.69	2.66	2.10
30-Mar-04	2.65		2.59		2.69	2.66	2.10
31-Mar-04	2.65		2.59		2.69	2.69	2.11
1-Apr-04	2.65	1.95	2.59		2.64	2.69	
2-Apr-04	2.64		2.59		2.65	2.61	2.14
3-Apr-04	2.65	1.91	2.65		2.65	2.64	
4-Apr-04	2.65		2.65	1.98	2.65	2.61	2.05
5-Apr-04	2.65		2.65		2.65	2.61	
6-Apr-04	2.65		2.65		2.65	2.61	
7-Apr-04	2.65	1.85	2.65		2.65	2.61	2.03
8-Apr-04	2.65		2.65	1.93	2.65	2.61	
9-Apr-04	2.65		2.65		2.65	2.61	1.98
10-Apr-04	2.65	1.82	2.65		2.65	2.61	
11-Apr-04	2.66	1.82	2.65	1.92	2.65	2.61	1.95
12-Apr-04	2.65		2.65		2.65	2.61	
13-Apr-04	2.65		2.65		2.65	2.61	
14-Apr-04	2.46		2.65		2.65	2.61	1.96
15-Apr-04	2.45		2.65	1.85	2.61	2.57	
16-Apr-04	2.46		2.65		2.60	2.56	1.92
17-Apr-04	2.46		2.60		2.60	2.56	
18-Apr-04	2.46		2.60	1.85	2.60	2.56	1.92
19-Apr-04	2.46		2.60		2.60	2.56	
20-Apr-04	2.46		2.60		2.60	2.56	
21-Apr-04	2.46	1.76	2.60		2.60	2.56	1.91
22-Apr-04	2.46		2.60	1.83	2.60	2.56	
23-Apr-04	2.46		2.60		2.60	2.56	1.90
24-Apr-04	2.46	1.75	2.60		2.60	2.56	
25-Apr-04	2.46	1.77	2.60		2.60	2.56	1.91

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 78 of 93

Date	Tisbury She		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]	1.77	2.50		2.50	2.56	1.91
[illegible]	[illegible]	1.71	2.50		2.50	2.56	1.85
[illegible]	[illegible]	1.68	2.50		2.50	2.56	
[illegible]	[illegible]	1.71	2.50		2.50	2.55	1.85
[illegible]	[illegible]		2.50	1.91	2.50	2.55	1.85
[illegible]	[illegible]		2.50		2.50	2.55	
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]	1.74	2.50	1.91	2.50	2.56	1.89
[illegible]	[illegible]	1.74	2.50		2.50	2.56	1.89
[illegible]	[illegible]	1.76	2.50		2.50	2.56	
[illegible]	[illegible]		2.50		2.50	2.56	1.92
[illegible]	[illegible]		2.50	1.92	2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]	1.80	2.50		2.50	2.56	
[illegible]	[illegible]		2.50	1.92	2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	1.90
[illegible]	[illegible]	1.79	2.50	1.92	2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]	1.85	2.50	1.92	2.50	2.56	1.90
[illegible]	[illegible]	1.85	2.50		2.50	2.56	1.90
[illegible]	[illegible]	1.78	2.50	1.92	2.50	2.56	1.90
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]		2.50		2.50	2.56	1.94
[illegible]	[illegible]		2.50		2.50	2.56	
[illegible]	[illegible]		2.50		2.50	2.56	

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 79 of 93

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
[illegible]	2.48		2.50		2.60	2.56	1.94
[illegible]		1.77	2.50		2.60	2.56	1.93
[illegible]	2.50	1.78	2.50		2.60	2.56	
[illegible]	2.50		2.50		2.60	2.56	1.94
[illegible]	2.50		2.50		2.60	2.56	1.94
[illegible]	2.50		2.50		2.60	2.56	
[illegible]	2.50		2.50		2.60	2.56	
[illegible]	2.50		2.50	1.91	2.60	2.56	1.94
[illegible]	2.50	1.78	2.50		2.60	2.56	1.94
[illegible]	2.50		2.50		2.60	2.56	1.93
[illegible]	2.50		2.50		2.60	2.56	1.91
[illegible]	2.50		2.50		2.60	2.56	1.91
[illegible]	2.50		2.50		2.60	2.56	
[illegible]	2.50		2.50		2.60	2.56	
[illegible]	2.50		2.50		2.60	2.56	1.91
[illegible]	2.50	1.75	2.50		2.60	2.56	1.91
[illegible]	2.50		2.50	1.87	2.60	2.56	1.91
[illegible]	2.50	1.77	2.50		2.60	2.56	
[illegible]	2.50	1.79	2.50	1.93	2.60	2.60	1.94
[illegible]	2.50		2.50		2.60	2.60	
[illegible]	2.50		2.50		2.60	2.60	
[illegible]	2.50	1.80	2.50	1.94	2.60	2.60	1.97
[illegible]	2.50	1.80	2.50		2.60	2.60	1.95
[illegible]	2.50	1.80	2.50	1.93	2.60	2.60	1.95
[illegible]	2.50		2.50		2.60	2.60	1.95
[illegible]	2.50		2.50	1.93	2.60	2.60	1.95
[illegible]	2.50		2.50		2.60	2.60	
[illegible]	2.50		2.50		2.60	2.60	
[illegible]	2.50		2.50	1.90	2.60	2.60	1.94
[illegible]	2.50		2.50		2.60	2.60	1.93

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
25-Aug-04	2.61		2.60	1.50	2.65	2.62	1.93
26-Aug-04	2.61	1.73	2.60		2.65	2.60	1.93
27-Aug-04	2.61	1.72	2.60	1.66	2.65	2.60	1.91
28-Aug-04	2.61		2.60		2.65	2.62	
29-Aug-04	2.61		2.60		2.65	2.62	
30-Aug-04	2.61	1.73	2.60		2.65	2.60	1.65
31-Aug-04	2.61	1.72	2.60		2.65	2.60	1.66
1-Sep-04	2.61		2.60	1.75	2.67	2.62	1.66
2-Sep-04	2.61		2.60		2.67	2.62	
3-Sep-04	2.61		2.60	1.84	2.67	2.62	1.66
4-Sep-04	2.61		2.60		2.67	2.62	
5-Sep-04	2.61		2.60		2.67	2.62	
6-Sep-04	2.61		2.60	1.85	2.67	2.62	1.66
7-Sep-04	2.61	1.71	2.60		2.67	2.62	
8-Sep-04	2.62		2.60	1.85	2.67	2.62	1.66
9-Sep-04			2.60		2.65	2.58	1.66
10-Sep-04	2.56		2.60	1.93	2.65	2.56	1.87
11-Sep-04	2.55		2.60		2.65	2.58	
12-Sep-04	2.55		2.60		2.65	2.55	
13-Sep-04	2.55		2.60		2.65	2.58	1.66
14-Sep-04	2.55		2.60	1.91	2.65	2.55	
15-Sep-04	2.55	1.74	2.60		2.65	2.56	1.65

EXHIBIT 10

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 82 of 93

Table 10. Defendant Price and Purchase Cost Data for Regular Gasoline
March 20 - May 25, 2005

Date	Tisbury Shell:		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
20-Mar-05	2.64		2.66	2.05	2.66	2.61	2.10
21-Mar-05	2.64		2.66		2.66	2.61	
22-Mar-05	2.64		2.66	2.18	2.66	2.61	2.11
23-Mar-05	2.64		2.66		2.70	2.65	2.14
24-Mar-05	2.64	1.97	2.66		2.70	2.65	2.14
25-Mar-05	2.65		2.66	2.12	2.70	2.65	2.14
26-Mar-05	2.65		2.65		2.70	2.65	2.14
27-Mar-05	2.65		2.65		2.70	2.65	2.14
28-Mar-05	2.65		2.65		2.70	2.65	
29-Mar-05	2.65		2.65	2.14	2.70	2.65	2.14
30-Mar-05	2.65		2.65		2.70	2.65	
31-Mar-05	2.65		2.72		2.72	2.66	
1-Apr-05	2.65		2.75	2.16	2.75	2.66	2.18
2-Apr-05	2.65		2.75		2.75	2.66	
3-Apr-05	2.65		2.75		2.75	2.66	
4-Apr-05	2.65		2.75		2.74	2.66	
5-Apr-05	2.65		2.75	2.17	2.75	2.66	2.25
6-Apr-05	2.65	2.05	2.75		2.74	2.66	
7-Apr-05	2.65		2.75		2.75	2.75	
8-Apr-05	2.77		2.75	2.17	2.75	2.71	2.16
9-Apr-05	2.77		2.75		2.75	2.71	
10-Apr-05	2.77		2.75		2.75	2.71	
11-Apr-05	2.77		2.75		2.75	2.71	
12-Apr-05	2.77		2.75	2.09	2.75	2.71	2.14
13-Apr-05	2.77	1.96	2.75		2.75	2.71	
14-Apr-05	2.77		2.75		2.75	2.71	

Date	Tisbury Sheli		Kira Mart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
15-Apr-05	2.77		2.75		2.75	2.71	2.15
16-Apr-05	2.77		2.75		2.75	2.71	
17-Apr-05	2.77		2.75		2.75	2.71	
18-Apr-05	2.77	2.02	2.75		2.75	2.71	
19-Apr-05	2.77		2.75	2.11	2.75	2.71	2.07
20-Apr-05	2.77		2.75		2.75	2.71	
21-Apr-05	2.77	2.05	2.75		2.75	2.71	
22-Apr-05	2.77		2.75		2.75	2.71	2.10
23-Apr-05	2.77		2.75		2.75	2.71	
24-Apr-05	2.77		2.75		2.75	2.71	
25-Apr-05	2.77		2.75		2.75	2.71	
26-Apr-05	2.77		2.75	2.15	2.75	2.71	2.14
27-Apr-05	2.77		2.75		2.75	2.74	
28-Apr-05	2.77	2.03	2.75		2.80	2.75	
29-Apr-05	2.77		2.75	2.20	2.80	2.75	2.20
30-Apr-05	2.77		2.75		2.80	2.75	
1-May-05	2.77	2.02	2.75		2.80	2.75	
2-May-05	2.77		2.75		2.80	2.75	
3-May-05	2.77		2.75	2.15	2.80	2.75	2.19
4-May-05	2.77		2.75		2.80	2.75	
5-May-05	2.77		2.75		2.80	2.75	
6-May-05	2.77		2.75	2.15	2.80	2.75	2.15
7-May-05	2.77		2.75		2.80	2.75	2.15
8-May-05	2.77		2.75		2.80	2.75	2.15
9-May-05	2.77	2.02	2.75		2.80	2.75	2.15
10-May-05	2.77	2.02	2.75	2.11	2.80	2.75	2.15
11-May-05	2.77	2.02	2.75		2.80	2.75	
12-May-05	2.77		2.75		2.80	2.75	
13-May-05	2.77		2.75	2.05	2.80	2.75	2.15
14-May-05	2.77		2.75		2.80	2.75	

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 84 of 93

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
15-Mar-08	2.77		2.78		2.80	2.75	
16-Mar-08	2.77		2.78		2.80	2.75	2.11
17-Mar-08	2.77		2.78		2.80	2.75	
18-Mar-08	2.77		2.78		2.80	2.75	
19-Mar-08	2.77	1.95	2.78		2.80	2.75	
20-Mar-08	2.77		2.78	2.10	2.80	2.75	2.11
21-Mar-08	2.77		2.78		2.80	2.75	
22-Mar-08	2.77		2.78		2.80	2.75	
23-Mar-08	2.77		2.78		2.80	2.75	2.11
24-Mar-08	2.77		2.78	1.93	2.80	2.75	2.09
25-Mar-08	2.77	1.96	2.78		2.80	2.75	

EXHIBIT 11

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 86 of 93

Table 11. Defendant Price and Purchase Cost Date for Regular Gasoline
July 15 - November 7, 2005

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
15-Jul-05	2.85	2.22	2.93	2.35	2.93	2.90	2.40
16-Jul-05	2.85		2.94		2.93	2.90	
17-Jul-05	2.85		2.90		2.93	2.90	
18-Jul-05	2.85		2.90	2.35	2.93	2.90	2.40
19-Jul-05	2.85		2.90		2.93	2.90	2.38
20-Jul-05	2.85		2.90	2.35	2.93	2.90	2.38
21-Jul-05	2.85	2.21	2.93		2.95	2.93	
22-Jul-05	2.85	2.21	2.93	2.28	2.95	2.93	2.38
23-Jul-05	2.85		2.95		2.95	2.90	
24-Jul-05	2.85	2.24	2.93		2.95	2.90	
25-Jul-05	2.85	2.24	2.93	2.37	2.93	2.90	2.41
26-Jul-05	2.85		2.93		2.97	2.93	2.40
27-Jul-05	2.85	2.22	2.93	2.34	2.97	2.93	2.40
28-Jul-05	2.85		2.93		2.97	2.93	
29-Jul-05	2.93		2.93	2.34	2.97	2.90	2.41
30-Jul-05	2.93		2.93		2.97	2.93	
31-Jul-05	2.93		2.93		2.97	2.99	
1-Aug-05	2.93	2.24	2.93	2.35	2.97	2.95	2.42
2-Aug-05	2.93		2.93		2.97	2.96	2.43
3-Aug-05	2.93		2.93	2.43	3.03	2.99	2.45
4-Aug-05	2.93		2.93		3.03	2.99	
5-Aug-05	2.93	2.51	2.93	2.37	3.03	2.99	2.43
6-Aug-05	2.93		2.93		3.03	2.99	
7-Aug-05	2.93		2.93		3.03	2.99	
8-Aug-05			2.93	2.44	3.03	2.95	2.51
9-Aug-05	2.93	2.35	2.93				

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 87 of 93

Date	Tisbury Shell		Xtra Mart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
10-Aug-05	3.03	2.33	3.03	2.46	3.09	3.05	2.50
11-Aug-05	3.08		3.03		3.09	3.05	
12-Aug-05	3.05		3.06	2.52	3.16	3.12	2.61
13-Aug-05	3.08		3.08		3.21	3.17	
14-Aug-05	3.08		3.08		3.21	3.17	
15-Aug-05	3.08	2.48	3.10	2.60	3.21	3.17	2.67
16-Aug-05	3.08		3.10		3.21	3.17	2.65
17-Aug-05	3.21	2.48	3.15	2.56	3.27	3.23	2.67
18-Aug-05	3.21		3.15		3.29	3.25	
19-Aug-05	3.21		3.15	2.14	3.29	3.25	2.61
20-Aug-05	3.21		3.15		3.29	3.25	
21-Aug-05	3.21		3.15		3.29	3.25	
22-Aug-05	3.21		3.15	2.55	3.29	3.25	2.63
23-Aug-05	3.21	2.43	3.15		3.29	3.25	2.59
24-Aug-05	3.21	2.46	3.15	2.64	3.29	3.25	2.59
25-Aug-05	3.20		3.15		3.29	3.25	
26-Aug-05	3.20		3.15	2.54	3.29	3.25	2.63
27-Aug-05	3.20		3.15		3.29	3.25	
28-Aug-05	3.20		3.15		3.29	3.25	
29-Aug-05			3.35	2.56	3.49	3.25	2.64
30-Aug-05		2.57	3.35		3.39	3.35	2.73
31-Aug-05	3.35		3.50	2.55	3.55	3.51	2.87
1-Sep-05	3.31		3.50		3.59	3.55	
2-Sep-05	3.32		3.70	2.47	3.80	3.76	3.20
3-Sep-05	3.33		3.70		3.89	3.85	
4-Sep-05	3.33		3.70		3.99	3.85	
5-Sep-05		2.93	3.70	3.13	3.89	3.85	3.17
6-Sep-05	3.53		3.70			3.85	3.17
7-Sep-05	3.57		3.70	2.53		3.85	3.09
8-Sep-05	3.57		3.70			3.85	

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 88 of 93

Date	Tisbury Shell		XtraMart Citgo		Edgartown Mobil	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
9-Sep-05	3.57		3.70	3.02	3.81	3.75	3.06
10-Sep-05	3.57		3.70		3.79	3.75	
11-Sep-05	3.57		3.70		3.79	3.75	
12-Sep-05	3.57		3.70	2.96	3.79	3.75	3.01
13-Sep-05	3.57		3.70		3.79	3.75	
14-Sep-05	3.57		3.70		3.79	3.75	2.89
15-Sep-05	3.57	2.74	3.70		3.79	3.75	
16-Sep-05	3.57		3.70	2.74	3.79		
17-Sep-05	3.57		3.70		3.69	3.65	
18-Sep-05	3.57		3.72		3.69	3.65	
19-Sep-05			3.52	2.64	3.65	3.65	2.78
20-Sep-05		2.52	3.52		3.69	3.65	
21-Sep-05	3.52	2.53	3.52	2.64	3.69	3.58	2.71
22-Sep-05	3.52		3.52		3.59		
23-Sep-05	3.52		3.52	2.77	3.59		2.65
24-Sep-05	3.52		3.52		3.59	3.55	
25-Sep-05	3.52		3.52		3.59	3.55	
26-Sep-05	3.52		3.52	2.72	3.59	3.55	2.61
27-Sep-05	3.52	2.67	3.52		3.59	3.55	
28-Sep-05	3.52	2.69	3.52		3.59	3.55	
29-Sep-05	3.52		3.52		3.59	3.55	
30-Sep-05			3.52	2.80	3.65	3.63	2.96
1-Oct-05			3.52		3.69	3.65	
2-Oct-05			3.52		3.69	3.65	
3-Oct-05			3.52	2.85	3.69	3.65	2.87
4-Oct-05			3.52			3.57	
5-Oct-05			3.52		3.60	3.55	
6-Oct-05			3.52		3.59	3.55	
7-Oct-05			3.52	2.65	3.59	3.55	2.67
8-Oct-05			3.52		3.59	3.55	

Case 1:07-cv-11601-RWZ Document 137-4 Filed 06/12/2009 Page 89 of 93

Date	Tisbury She		XtraMart Citgo		Edgartown Mob	Depot Corner Mobil	Both Mobils
	Price/Gallon	Cost/Gallon	Price/Gallon	Cost/Gallon	Price/Gallon	Price/Gallon	Cost/Gallon
9-Oct-08			3.52		3.59	3.65	
10-Oct-08		2.48	3.52	2.54	3.59	3.65	2.64
11-Oct-08		2.41	3.52		3.59	3.65	
12-Oct-08			3.52		3.59	3.65	
13-Oct-08			3.52		3.59	3.65	
14-Oct-08	3.40		3.42	2.45	3.59	3.65	2.65
15-Oct-08	3.40		3.40		3.59	3.65	
16-Oct-08	3.40		3.40		3.62	3.68	
17-Oct-08	3.40		3.40		3.49	3.45	2.50
18-Oct-08	3.30		3.39	2.43	3.49	3.45	
19-Oct-08	3.30		3.39		3.59	3.34	
20-Oct-08	3.30	2.28	3.39		3.36	3.32	
21-Oct-08	3.20		3.26	2.27	3.36	3.32	2.35
22-Oct-08	3.20		3.26		3.36	3.32	
23-Oct-08	3.20		3.20		3.36	3.32	
24-Oct-08	3.20		3.20		3.36	3.32	2.36
25-Oct-08	3.20		3.20		3.36	3.32	
26-Oct-08	3.20		3.20		3.33	3.29	
27-Oct-08	3.10	2.10	3.20			3.22	
28-Oct-08	3.10		3.20	2.16	3.29	3.22	2.28
29-Oct-08	3.20		3.20		3.26	3.22	2.28
30-Oct-08	3.20		3.20		3.26	3.22	
31-Oct-08	3.20		3.20		3.26	3.22	2.30
1-Nov-08	3.20	2.07	3.20	2.19	3.26	3.22	
2-Nov-08	3.20	2.07	3.20	2.19	3.26	3.22	2.32
3-Nov-08	3.20	2.07	3.20	2.19	3.26	3.26	2.30
4-Nov-08	3.20	2.07	3.20	2.20	3.26	3.22	2.27
5-Nov-08	3.20	2.07	3.20	2.23	3.26	3.22	2.27
6-Nov-08	3.21	2.07	3.20	2.23	3.26	3.22	2.27
7-Nov-08	3.20	2.07	3.20	2.23	3.26	3.24	2.27

EXHIBIT 12

Table 12. Analysis of Market Emergency Pricing, September-November 2005.

	Tisbury Shell	XtraMart Citgo	Edgartown Mobil	Depot Corner Mobil
2005				
7-Day Intervals				
Pre-Hurricanes				
May 15 21	2.77	2.78	2.80	2.75
Aug 21 28	$3.20	$3.10	$3.20	$3.25
Post-Hurricanes				
Aug 30 Sep 5	3.48	3.58	3.72	3.67
Sep 6 12	3.56	3.70	3.70	3.75
Sep 13-19	3.57	3.67	3.74	3.70
Sep 20-27	3.52	3.52	3.61	3.57
Sep 28 Oct 4	3.52	3.52	3.64	3.60
Oct 4 10	N/A	3.52	3.59	3.55
Oct 11 17	3.40	3.45	3.56	3.52
Oct 18 24	3.24	3.24	3.38	3.30
Oct 25 31	3.20	3.20	3.29	3.24
Nov 1 7	3.20	3.20	3.26	3.21
Nov 8 14	3.00	3.00	3.01	2.97
Nov 15 21	3.00	3.00	3.00	2.96
Nov 22-28	2.80	2.92	2.94	2.91
Nov 29-Dec 5	2.74	2.76	2.90	2.86
Sep 28 Oct 4 relative to Aug 21 28	0.32	0.42	0.35	0.35
Oct 11 17 relative to Aug 21 28	0.20	0.35	0.22	0.22
Nov 22 28 relative to May 15 21	0.17	0.14	0.14	0.16

EXHIBIT 13

Table 13. Gross Margin Analysis, August Through November 2005

Month	Tisbury Shell	XtraMart Citgo	Edgartown Mobil	Depot Corner Mobil
Margins (per gallon)				
August				
Regular	$0.66	$0.51	$0.65	$0.57
Special		$0.51	$0.60	$0.55
Premium		$0.66	$0.67	$0.64
September				
Regular	$0.74	$0.74	$0.78	$0.74
Special		$0.71	$0.78	$0.74
Premium		$0.70	$0.78	$0.74
October				
Regular	$0.89	$0.86	$0.93	$0.88
Special		$0.85	$0.91	$0.87
Premium		$0.86	$0.91	$0.86
November				
Regular	$0.91	$0.79	$0.85	$0.84
Special		$0.69	$0.85	$0.82
Premium		$0.69	$0.86	$0.84
Increase in Margins				
Between August & September				
Regular	$0.08	$0.23	$0.13	$0.17
Special		$0.21	$0.18	$0.19
Premium		$0.04	$0.11	$0.21
Between August & October				
Regular	$0.24	$0.35	$0.28	$0.31
Special		$0.34	$0.31	$0.32
Premium		$0.20	$0.24	$0.22
Between August & November				
Regular	$0.25	$0.28	$0.20	$0.27
Special		$0.19	$0.25	$0.27
Premium		$0.03	$0.19	$0.20