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Testimony before the
United States House of Representatives
Committee on Energy & Commerce
Subcommittee for Oversight & Investigations

Washington, DC
December 12, 2007

Honorable Chairman Stupak, Ranking Member Whitfield and distinguished members of the committee, thank you for the invitation to testify before you today. I appreciate the opportunity to provide you with insight as both a petroleum marketer and as a representative of two respected trade groups that together represent our nation's independent motor vehicle and heating fuel dealers.

I currently serve the Petroleum Marketers Association of America (PMAA)¹ as its Northeast Regional Chair. PMAA is a national federation of 46 states and regional associations representing over 8,000 independent fuel marketers that collectively account for approximately half of the gasoline and nearly all of the distillate fuel consumed by motor vehicles and heating equipment in the United States.

I am also President of the New England Fuel Institute (NEFI)², a 60-year-old trade association representing well over 1,000 heating fuel dealers and related services companies in the Northeastern United States. NEFI member companies deliver over 40

¹ Official website www.pmaa.org.

² Official website www.nefi.com.

percent of the nation's home heating oil, and many market biodiesel, bioheat, propane, kerosene, jet fuel, off-road diesel and motor vehicle fuels.

And finally, I provide you insight today as co-owner and President of Cota &Cota, Inc. of Bellows Falls, Vermont, a third generation family-owned and operated heating fuel provider in southeastern Vermont and western New Hampshire. Unlike larger energy companies, most retail fuel dealers are small, family-run businesses. Also unlike larger energy companies, heating oil and propane dealers deliver product *directly* to the doorstep of American homes and businesses. Because of this we often develop close relationships, often lasting for decades, with our customers, their families, and our local communities.

It is in light of this important relationship that I appear before you today. With winter weather once again setting in across the country, American families are facing a new and cold reality. In the Northeast, where consumers use over eighty percent of the nation's home heating oil,³ the increase in heating costs has left them not only wondering how to fit the heating bill into their family budget, but also wondering – and this is the billion dollar question – why energy prices have skyrocketed so abruptly.

I urge Congress to investigate the recent climb of crude oil prices to record shattering levels, despite what many consider to be reasonably grounded economic fundamentals. It has become apparent that excessive speculation is the fuel that is driving this runaway train. Even the Secretary General of the Organization of the Petroleum Exporting

³ Energy Information Administration, "Annual No. 2 Fuel Oil and Kerosene Sales," 2005.

Countries (OPEC) said this week, “The market is not controlled by supply and demand... It is totally controlled by speculators who consider oil as a financial asset.”⁴ And the rise in crude oil prices in recent months has dragged with it every single refined petroleum product, especially heating oil. Since March, 2007, the industry-recognized “end” of peak demand for the heating season, the wholesale price of heating oil has risen a remarkable 32 percent, from \$1.88 per gallon to a record \$2.77 per gallon.⁵ The spike comes despite reports by the Energy Information Administration (EIA) that heating oil inventories remain well above the five-year average.⁶

Many heating fuel customers falsely assume that their fuel dealer is the source of this increase, in the same way that many motorists falsely assume that their local gas station is “gouging” them when it is in fact speculative trading on the commodity markets that is driving up the cost of petroleum products. Fuel dealers do not benefit from the inflated prices now being set by activity on the energy commodity markets. For the heating fuel dealer, volatility and skyrocketing prices mean:

- Strained lines of credit with their terminal suppliers and their banks;
- Increased cash demands (a load of heating oil to me can now cost \$27,000 dollars, where just a few years ago it averaged under \$10,000);

⁴ Robin Pagnamenta, "OPEC rejects rise in output but prepares for review" *The Times Online*, December 9, 2007. Accessed December 9, 2007, 6:00PM EST.

<http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article3007105.ece>

⁵ Energy Information Administration, “U.S. No. 2 Heating Oil Wholesale/Resale Prices,” March 5-November 25, 2007

⁶ At the start of the 2007-2008 heating season, the EIA reported that U.S. heating oil inventories were 6 million barrels above the 5-year average. *See Ibid*, “Short Term Energy Outlook,” November 6, 2007.

- Struggling families find it harder to pay their bills and collections become more difficult, further straining a dealer's credit obligations with banks and suppliers;
- Customers will be more likely to use credit cards for their purchases and due to hidden credit card company interchange fees, customers ultimately pay more for their fuel; and
- Funding for the federal Low Income Home Energy Assistance Program (LIHEAP), already at severely insufficient levels, becomes diluted by rising prices and each government dollar invested in energy assistance is able to help fewer families in need.

Additionally, many heating fuel companies like mine hedge in an effort to protect their customers against roller-coaster-like price volatility on the energy commodity markets. Because of our industry's hedging activities, we strongly support open, transparent and well-managed exchanges subject to the rule of law. In fact, it is essential to businesses like mine. My company began offering fixed price programs to our customers twenty years ago. We enter into New York Mercantile Exchange (NYMEX) based futures contracts with our suppliers, who purchase contracts for future delivery and resell these contracts to me for a profit. In this way, companies like mine are able to financially hedge heating fuels for the benefit of the consumer, and help protect them against uncertainty and volatility.

However, the ability of the commodities markets to set a price based on economic fundamentals has become less and less reliable, and as a result, so do our hedging

programs. As the influence of price-setting functions on unregulated or under-regulated markets continues to grow, and as trading on over-the-counter and foreign-based exchanges continues to become the norm, American consumers are forced to ride the same speculative roller coaster as the energy trader.

It is time that Congress put some breaks on this roller coaster. The principle question being asked by this committee today is whether or not greater regulation is needed at the federal level in order to bring about greater transparency and reliability in the energy commodity markets, thereby creating renewed stability and closing the doors to manipulative and abusive trading practices. On behalf of independent petroleum marketers and retail heating fuel dealers, the answer is “yes.” For far too long, insufficient oversight and transparency has encouraged excessive speculation and created a trading environment that rewards trading misdeeds, like that of Amaranth Hedge Funds and British Petroleum. “Loopholes” in federal law have created what I call “dark markets,” or energy commodity markets engaging in futures or futures like contracts, swaps and derivatives trades without adequate federal oversight and regulation. Today, a vast majority of trading occurs on these markets.⁷

More specifically, we strongly urge Congress to take swift action to bring light to the “dark markets” by:

⁷ Nearly all experts agree that a majority of trading now occurs off of traditional exchanges like the NYMEX, and some estimate that number to be 75 percent or more.

1. **Closing the notorious “Enron Loophole”** ripped open by the Commodity Futures Modernization Act (CFMA)⁸ and through which billions of dollars have poured since it was created in 2001. Virtually overnight, the “Enron Loophole” freed all electronic markets from oversight. Congress needs to close the loophole, and close it for all energy commodities, thereby returning to the Commodity Futures Trading Commission (CFTC) the statutory authority that it lost in 2001. NEFI and PMAA are part of a broad coalition of consumer and trade groups that have begun a major grassroots effort to educate the public about the loophole. They have established closetheenronloophole.com, a website loaded with latest news, reports on abuse in the commodity markets, and even providing the general public with the opportunity to contact you, their representatives in Washington, on the subject.

2. **Investigating the CFTC’s use of “no-action letters” which I call the “no-action loophole,”** whereby in certain conditions, the CFTC may provide regulatory exemptions to an applicable foreign board of trade (FBOT) offering contracts for delivery within the United States.⁹ Last year, NEFI and PMAA called on the CFTC to conduct a comprehensive review of all existing no-action letters, urged commissioners to withdraw letters where appropriate, and questioned whether or not the no-action letter process is adequate.¹⁰ The current process may fail to provide sufficient public notice and consultation, and may not

⁸ See 7 U.S.C. §2(h)(3), (g) (2006)

⁹ See 17 CFR 140.99

¹⁰ NEFI and PMAA Comment Letter to the CFTC regarding the regulation of FBOTs, July 11, 2006, Docket ID No. CFTC-2006-0039-0001.

take into account of the full impact that these letters may have on the market. Moreover, in order to obtain such an exemption, the CFTC requires that a “comparable” regulatory authority be present in the country where the exchange operates. Congress should examine whether or not it determines such regulatory authorities to be “comparable.” And finally, we are concerned that no-action letters may be requested and approved for exchanges seeking to establish electronic platforms overseas with the intent to circumventing U.S. regulatory authority.

3. **Provide adequate funding to the CFTC**, which currently receives approximately one-tenth of the funding of its sister-regulator, the Securities and Exchange Commission (SEC). Greater funding will be needed in order to provide the futures regulator with adequate personnel, IT infrastructure and resources to adequately regulate energy commodity exchanges and to fully implement existing and future regulatory authority.

Additionally, while we applaud the CFTC for its recent announcement of intent to establish an Advisory Committee on Energy,¹¹ we hope that Acting Chairman Lukken and the Commissioners will work to insure that all interests and perspectives are represented, including those of small businesses like mine, as well as that of consumers, energy distributors, storage companies, and noteworthy academics.

¹¹ See “CFTC Seeks Legislative Change to Regulation of Exempt Commercial Markets,” CFTC Press Release 5403-07, October 24, 2007.

We make these recommendations all the while acknowledging that there are several different policy recommendations floating around Capitol Hill from an array of sources, including legislators, commission and administration officials, futures trade groups and the commodity exchanges themselves. Each proposal claims to have the solution for well regulated and balanced energy commodity markets. No doubt some of my fellow panelists will be making alternative recommendations to you today. As members of Congress weigh each these recommendations, we urge you to always be mindful that the well-being of American small businesses, struggling families and the economy at-large must come before an exchange, energy trader, hedge fund or other market player. We also ask that your deliberations take in to account all trading environments and all energy commodities, not just the regulation of one commodity at the exclusion of all others.

We – those that provide fuels to American motorists, contractors, farmers, homes and businesses – are hopeful that Congress will vigorously investigate regulatory inadequacies and their role in excessive speculation and allegations of manipulation, and that it will provide the resources necessary to police and monitor all markets and commodities vital to U.S. interests. To do so will minimize market volatility, prevent market manipulation *before it occurs*, and close the door to individuals and trading practices that artificially inflate prices for personal gain.

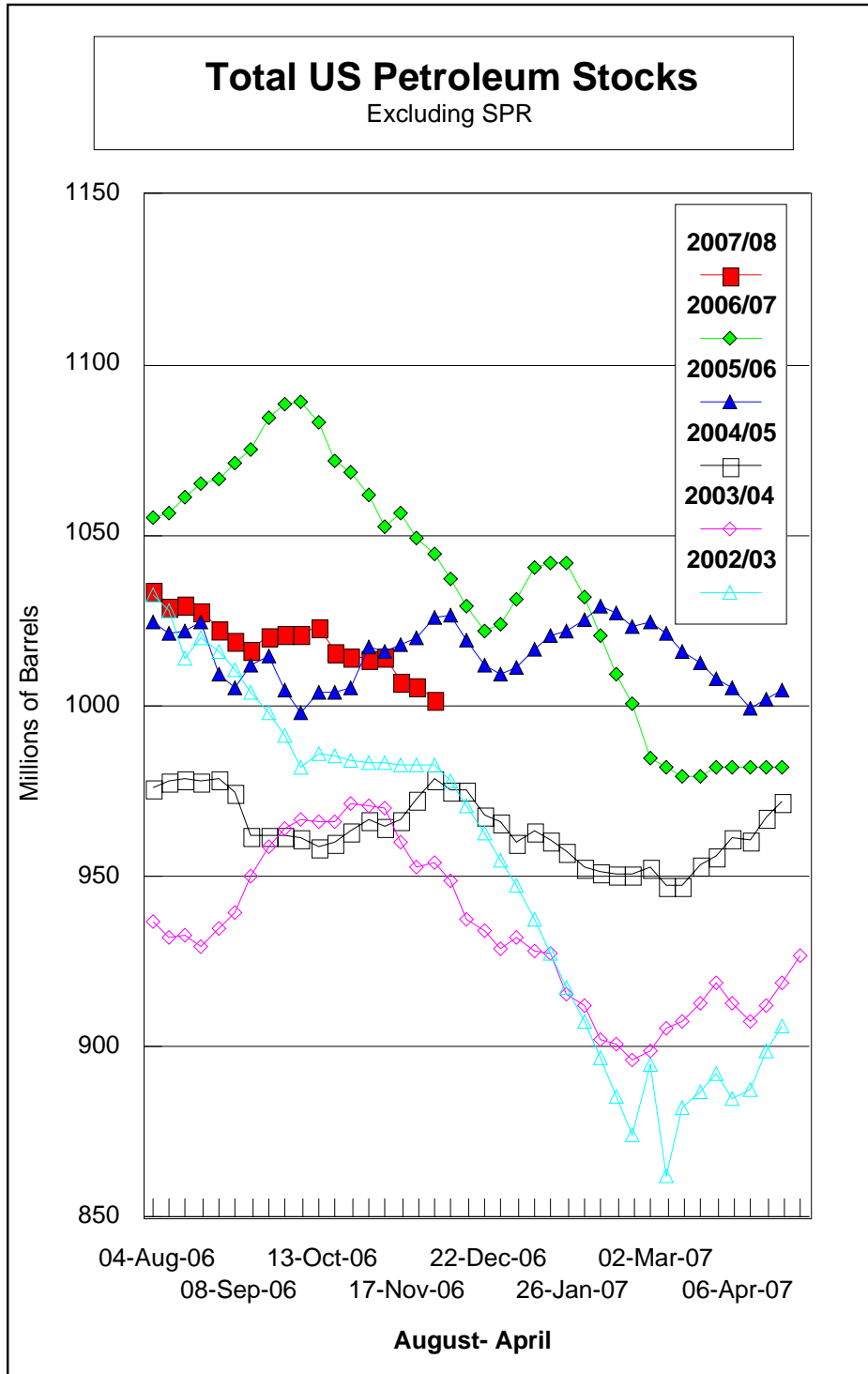
I thank you again, Mr. Chairman, and to your colleagues for this opportunity to share my insight on this issue. I am open to any questions that you might have.

APPENDIX: SUMMARY OF MAIN POINTS

The Petroleum Marketers Association of America and the New England Fuel Institute, representing America's independent motor vehicle and heating fuel marketers, believe that greater oversight is needed in the energy commodity markets because:

- The recent spike in crude oil and petroleum products, especially heating oil, do not reflect market fundamentals. Crude oil and heating oil inventories at ample supply levels. There has been a 32 percent increase in the wholesale price of heating oil since March, 2007 despite low demand for the fuel during that period. OPEC has confirmed that speculation is controlling the market.
- Abrupt and drastic increases in fuel prices due to activity on energy commodity markets hurt not only the consumer, but also the fuel dealer, who must struggle with strained credit lines with suppliers and banks, increased cash demands, higher credit card fees, payment collections; and "gouging" accusations. It also jeopardizes the reliability of fuel hedging programs. Fuel dealers and consumers are losing confidence in the ability of the markets to set prices based on economic fundamentals, putting the consumer at risk.
- Regulatory loopholes, including the "Enron Loophole" and the "No-Action Loophole" open the door to excessive speculation and abusive trading practices. Greater statutory authority should be provided to the CFTC by closing the loopholes and increasing funding so that all commodities markets are transparent, well regulated and accountable.

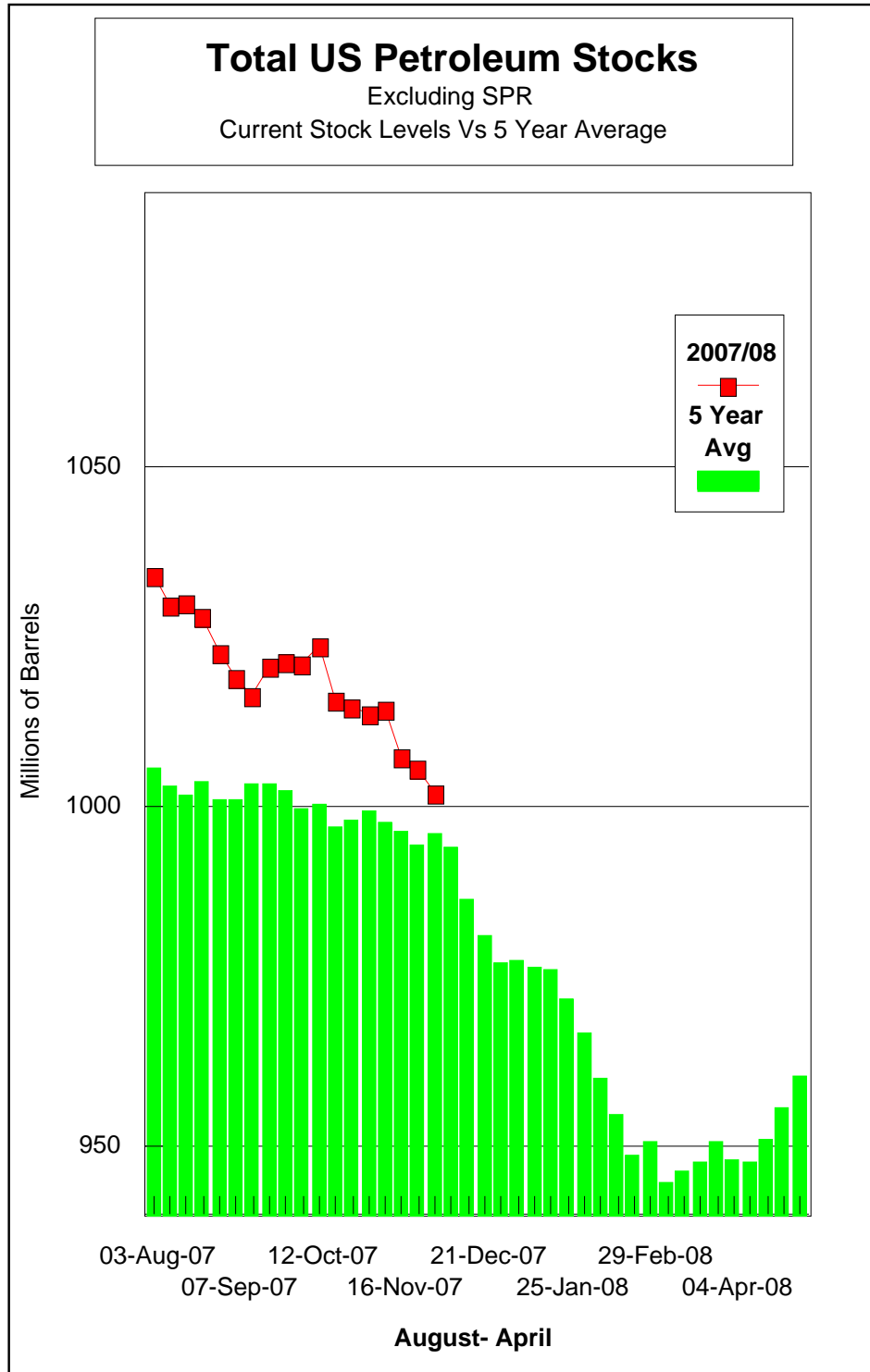
EXHIBIT 1. PETROLEUM STOCKS



Crude Oil Inventories are well over the 5-year average.

(Chart and data courtesy The Windham Group)

EXHIBIT 2. PETROLEUM STOCKS



Crude Oil Inventories are well over the 5-year average.

(Chart and data courtesy The Windham Group)

EXHIBIT 3. DISTILLATE STOCKS

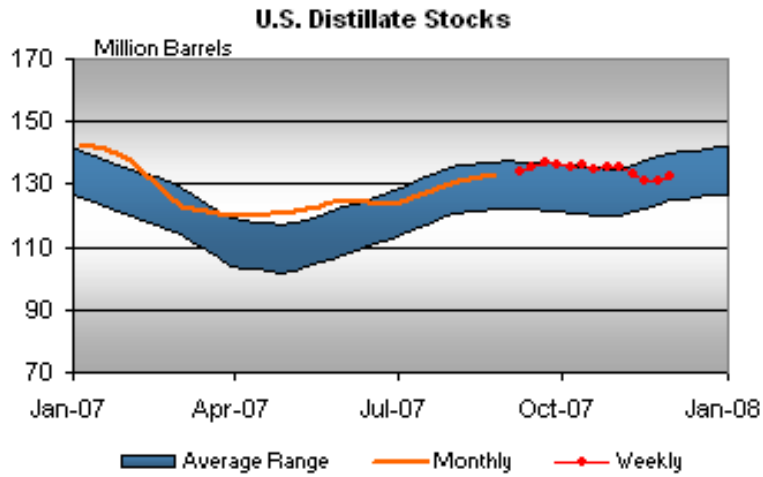
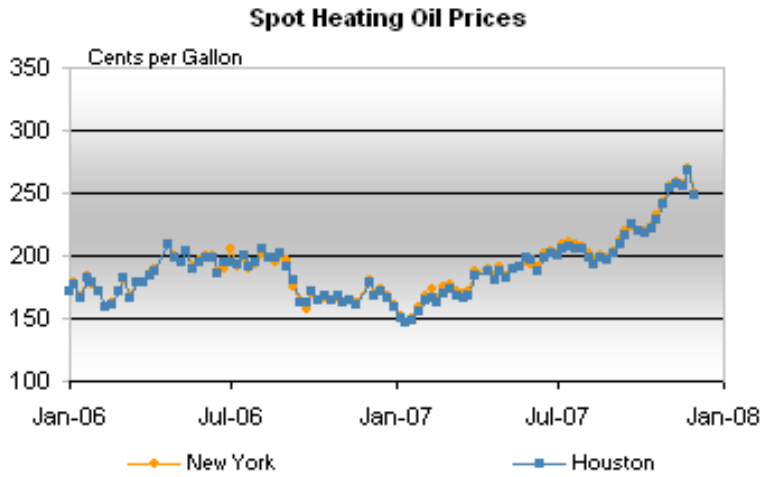


EXHIBIT 4. HEATING OIL SPOT PRICES



Heating oil prices continue to rise despite low off-season demand and above 5 year average inventory levels for distillate fuel.

(Source: EIA November 6, 2007)