

# United States Senate

WASHINGTON, DC 20510

November 27, 2012

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Dear Attorney General Holder:

We are requesting a Department of Justice investigation of possible market manipulation and false reporting by oil refineries which may have created a perception of a supply shortage, when in fact refineries were still producing. A McCullough Research report released Nov. 15th in conjunction with a California State Senate hearing on California gas prices revealed information that showed that the price spikes in May and October occurred while crude oil prices were declining, inventories were increasing, and possibly in conjunction with misleading market-making information. We hope the Justice Department and members of the Oil and Gas Price Fraud Working Group will launch a refinery-by-refinery level probe.

According to this new analysis by McCullough Research, supply shortages following refinery fires and other unexpected outages at West Coast refineries did not cause the May and October gas price spikes. During these periods inventories were either increasing or remaining level at historic five-year averages during the highest price spikes. In addition, an exhaustive review of California refinery emissions data revealed inconsistencies between when refineries were actually producing petroleum products and when maintenance shutdowns were publicly reported. Potentially market-making information, misleading reports of shutdowns could create or exacerbate a perceived supply shortage and artificially drive market prices to unjustifiably high levels. If these findings are accurate, which could only be confirmed through subpoenaed records, they would violate the FTC August 2009 Rule against "false or misleading public announcements of planned pricing or output decisions," and be subject to fines of up to \$1 million a day per violation.

West Coast families and businesses are reeling from elevated and extremely volatile prices at the pump, impacting family budgets, inflation levels, and overall economic activity. We believe this situation demands the attention from the Working Group established in April 2011 specifically to "monitor oil and gas markets for potential violations of criminal or civil laws to safeguard against unlawful consumer harm." Anomalous, uncompetitive market dynamics may have forced West Coast drivers to pay \$1.3 billion more at the pump during the May 2012 price spike than they should have, according to an analysis by McCullough Research. Even a one cent per gallon increase in gasoline prices cost California consumers an extra \$150 million per year, according to the Federal Trade Commission (FTC).

Unfortunately, our constituents are all too familiar with energy market schemes that manipulate supplies to boost profits at the expense of consumers. We are still paying for higher electricity rates from the fraud perpetrated by Enron, Reliant, and others during the Western Electricity crisis over a decade ago. Petroleum is a key part of our economy, yet these markets are opaque and highly concentrated making them inefficient and subject to market power abuse. While we applaud the Working Group for convening in April 2011, we see scant evidence that its members are policing these markets as required by law or cracking down on other practices that may be illegal and hurting consumers.

It is important to note that because the West Coast refinery market is highly concentrated and isolated, inaccurate information about just one refinery being down can impact gasoline prices for tens of millions of consumers.

Taken together we believe these facts paint a picture of a highly unusual set of concurrent events in West Coast petroleum markets. Given the hit to American families and businesses from gasoline price spikes, we urge the Working Group to use every existing authority and regulation to identify, stop, and prosecute any and all instances of false reporting, manipulation, or anticompetitive behavior in the West Coast wholesale petroleum markets.

The Working Group should aggressively utilize all of its members' relevant statutory authority to remedy this situation. That includes the Justice Department's authority to prevent and prosecute fraud and collusion, the FTC's authority to prohibit fraud or deceit in wholesale petroleum markets and the reporting of false or misleading information related to wholesale prices (42 U.S.C. 17301 - 17305); as well as the parallel authorities to prevent the use of any "manipulative or deceptive device or contrivance" granted to the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Federal Energy Regulatory Commission (FERC)(15 U.S.C. 78j(b), 7 U.S.C. 13(a)(2), 15 U.S.C. 717c-1, and 16 U.S.C. 791a).

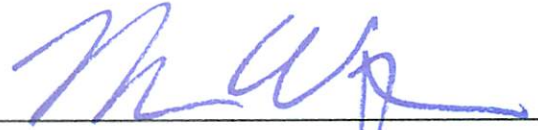
We commend FERC for effectively using the authority and responsibility granted by Congress in 2005 to actively police electricity and natural gas markets, deploying a well-qualified team of experts to oversee trading activity and analyze trading data. Since January 2011, FERC has announced more than 10 probes into alleged energy market manipulation, including reaching a record \$245 million settlement with Constellation Energy Group Inc., issuing a show cause order that Deutsche Bank's energy trading unit manipulated the California power market in 2010, and recently proposing a record \$469 million penalty against Barclays Plc for energy market manipulation. As of October 2012, FERC has used its 2005 anti-manipulation authority to conduct 107 investigations resulting in 52 settlements and civil penalties of \$294 million and disgorgement of profits totaling \$155 million.

Thank you for your attention to this critical matter and we look forward to your timely response.

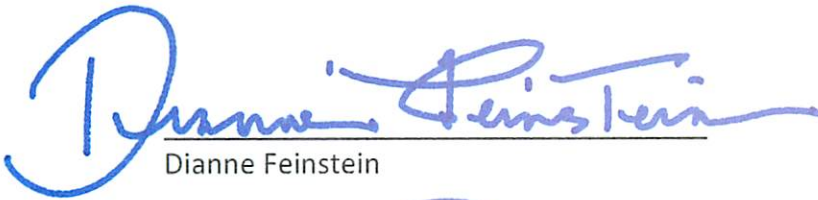
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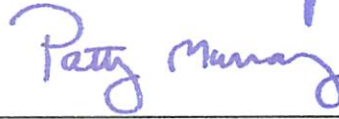
Maria Cantwell



Ron Wyden



Dianne Feinstein



Patty Murray



Barbara Boxer



Jeff Merkley