



Formerly The Foundation for Taxpayer & Consumer Rights

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To: California Energy Commission/ Gordon Schremp (by e-mail)

From: Judy Dugan, Consumer Watchdog (formerly The Foundation for Taxpayer and Consumer Rights) and Oil Watchdog.org; John Siebert, Owner Operator Independent Truckers Association

Re: "Hot Fuel" Issue and proceedings of California Energy Commission regarding AB868

The efforts of the California Energy Commission to determine the "costs and benefits" of adjusting the retail sale of gasoline and diesel fuels for heat expansion have been scientific and evenhanded. While we believe that the law (AB868) requiring your actions was a delay-and-obfuscate tactic by the fuel marketers who wrote the law, CEC's participation and preparation have been nonpolitical, serious and sound. For this reason, we ask you to reject and disregard the unsupported arguments made by Ross Andersen at the staff workshop meeting on March 4, 2008.

Mr. Andersen, a Weights and Measure official from New York, made a non-germane and unsupportable presentation in which he sought to deny the significance of hot fuel losses to consumers in California. He offered no evidence or other factual foundation for his conclusions, and we ask that his presentation be disregarded by the CEC. It is simply contrary to the accepted reality of how motor fuel is sold to consumers in California. Even the oil industry does not dispute the significant difference between "net" and "gross" gallons. It simply argues that existing laws permit (or somehow require) motor fuel to be sold on a "gross" basis to consumers. The result is that consumers have no way to determine the temperature or energy content, and thus the actual value, of what they're pumping into their tanks.

Mr. Andersen's presentation depended on an anecdote from a single "highly reputable retailer" in Albany, New York (annual average temperature 47.5 degrees Fahrenheit); generalized conclusions about the supposed situation in the State of Minnesota (Minneapolis annual average temperature 44.9 degrees); and "my Accountant advisor" to describe an obfuscating and meaningless "station inventory accounting." Obviously, for California consumers, any reliance on "data" from a single retailer in frozen upstate New York or comparison to Minnesota is preposterous. Our joint concern is the purchase of motor fuel in California. A description, without real-world evidence, of "station inventory accounting" in a distant state has nothing to do with the significant difference between the "net" gallons purchased by suppliers and the "gross" gallons sold to consumers in California.

For example, even the definitions introduced at the Staff Workshop on March 4 acknowledge that retailers purchase motor fuel on a “net” gallon basis but sell to consumers by the “gross” gallon. In other words, retailers are buying one thing (“net” gallons adjusted to match the energy content of gallons at 60 degrees Fahrenheit) and reselling to consumers in California another thing (“gross” gallons above 60 degrees Fahrenheit). The task at hand is to objectively quantify as best we can the admitted damage to consumers in cost, in trust and in fairness, as well as the true costs of an ATC retrofit, including who will or should bear those costs.

The fuel industry certainly understands the value of temperature variation. It has spent the resources to assure that motor fuel is price-adjusted to exactly 60 degrees Fahrenheit throughout the wholesale distribution system, so that distributors are not shortchanged. The staff of the California Energy Commission has determined that “[r]etailers [in Canada] determined that the retrofit work was economical.” However, even with the enormous volume of fuel delivered to consumers in California, the industry has not allowed consumers to get the same value by adjusting the pump volume or price for temperature, in a transparent manner.

The preliminary data collected by the California Division of Measurement Standards confirms that motor fuel is being sold in excess of 60 degrees throughout California. Its final study will confirm the extent of the sale of hot fuel to consumers in California and the cost to consumers. At 75 degrees Fahrenheit, with gasoline approaching \$4 per gallon (and with diesel fuel well over \$4 per gallon), this is 4 cents for each gasoline gallon sold in California. According to the staff of the CEC, California motorists buy 20 billion gallons of gasoline and diesel fuel each year. At a 75 degree average and \$4 a gallon price, this would amount to \$800 million in losses each year to California consumers. As the price of gasoline rises, the cost to consumers is ever more palpable.

On another important point that Mr. Andersen attempted to dismiss, there is no dispute in California that the motor fuel industry computes and pays tax to governments on “net” gallons, while taxes are recouped from consumers on a “gross” gallon basis. Through this practice, by definition, the California motor fuel industry is collecting and keeping substantially more tax from consumers is actually paid to governments. The industry itself admits it engages in this practice, because it says it is within the law to do so. Anyone suggesting otherwise must produce actual and verifiable data from California to support such a statement. Anything else is empty speculation at variance even with the oil industry.

We also disagree that the cost of temperature compensation retrofit would or should be fully passed on to consumers in California or that fuel retailers would or could act together to pass on these costs. The distribution system for motor fuel in California is highly profitable and these profits can easily absorb all or part of the retrofit of retail pumps, especially if the shift is made over time. It is also possible, even likely, that branded stations would be aided by the major oil companies’ dealer assistance funds that are typically used for station upgrades.

Finally, as we have said repeatedly, any temperature compensation retrofit may be accomplished in stages as pumps naturally age and need to be replaced. Small-volume rural stations may be exempted or given broad extensions.

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cc: Nick Janusch, Paul Deaver, CEC; Roger Macey, Div. of Measurement Standards