

From: Diana Schwyzer
To: Gordon Schremp; Jim Page; Mike Smith
CC: Susan Brown
Date: 1/27/2009 3:48 PM
Subject: AB 868 report
Attachments: AB 868 Executive Summary 01-27-09.doc

Gordon, Jim, Mike,
Commissioners Boyd and Douglas are pleased with the AB 868 report but would like to see the attached changes made to the Executive Summary. We have a meeting scheduled at 8:30 tomorrow to discuss these changes if necessary; please let us know if you feel that the meeting won't be needed.
Thanks,
Diana

EXECUTIVE SUMMARY

The issue of reduced volumes of gasoline or diesel when distributed at high temperature, or "hot fuel," is not new. It is, however, a controversial subject that has created strong and divergent opinions. Some stakeholders believe that if temperature compensation was practiced at retail stations, motorists that purchase fuel at retail stations would realize significant monetary benefits in the warmer areas of the United States. Other stakeholders representing business interests believe that the costs to retail station owners will be significant.

This national debate has continued for several years but without any analysis being performed to determine if automatic temperature compensation (ATC) at retail stations would be a net benefit to retail motorists. As a result of these activities and the lack of analysis, in October 2007 the California Legislature passed and the Governor signed Assembly Bill 868 (Davis), which directed the Energy Commission to conduct a cost-benefit analysis.

This report quantifies the benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuels in California. The cost-benefit analysis results are negative (net cost to society) under all options examined, but when quantified in terms of cents per gallon the results are small. Further, it is unlikely that there are any plausible circumstances whereby some consumers could realize a small net benefit of ATC at retail in California. The estimated annual recurring net costs to society, if completely passed through to consumers, could amount to between two hundredths (2/100) and 18 hundredths (18/100) of a cent per gallon.

The primary issues associated with the ATC debate can best be characterized in a series of questions that follow in a summary of this report.

- *If temperature compensation has been instituted for most wholesale transactions for purposes of removing the inequity of temperature variations from financial transaction, why has that practice not extended all the way to the California retail consumer?*

Hawaii is the only state in the nation that has adopted a form of temperature compensation at retail outlets. This occurred when the state increased the size of their gallon from the U.S. standard of 231 cubic inches to a larger Hawaiian gallon of about 233 cubic inches. Canada, too, has adopted regulations and standards for ATC at retail. Even though ATC at retail is voluntary in Canada, more than 90 percent of the retail stations have converted to using the equipment. Most of the time in Canada, the temperature of the fuel is colder than the reference standard of 60 degrees Fahrenheit. The ATC dispensers compensate for colder fuel temperatures by decreasing the average size of the liter dispensed to motorists in that country.

No retail station operator has elected to install ATC-ready dispensers in California, and it is unclear whether the voluntary use of Permissive (voluntary) use of automatic temperature

compensation. ATC devices at California retail stations is already permitted under California law as it is not specifically prohibited. Although no retail station operator has elected to install ATC-ready dispensers in California, if such a decision was made, there would be business costs similar to the ones discussed below for the mandated ATC option. Also, there could be some difficulties due to lack of operational and enforcement standards, inspection procedures, and labeling provisions.

EXECUTIVE SUMMARY

The purpose of this report is to provide information to the California Energy Commission regarding the potential impacts of ATC devices at retail stations.

Comment [DS1]: Revised this paragraph to be consistent with our position on this issue as stated later in the paper.

- Is the temperature of gasoline and diesel fuel sold to California consumers warmer, on average, than the 60 degree Fahrenheit reference standard?

California is considered a warmer state regarding fuel temperature at retail stations. Based on the results of a recent survey of retail stations, the average temperature of regular grade gasoline during the base period from April 2007 through March 2008 was about 71 degrees Fahrenheit. Diesel fuel was a little warmer with an average temperature of nearly 73 degrees Fahrenheit.

- If ATC was mandated at retail stations in California, how would businesses and consumers be affected?

California retail station owners would experience additional expenses for the ATC retrofit, equipment and slightly higher inspection fees. California retail motorists are expected to receive slightly larger gallons (as measured in cubic inches) that vary in size with changes in temperature. The perceived benefit to some stakeholders would be the value of the reduced number of gallons purchased each year, assuming retail station owners do not increase prices in response to selling fewer units. California retail motorists are also expected to receive an additional benefit due to increased price transparency, estimated at approximately \$258,000 per year.

Comment [DS2]: I recommend dropping this sentence since we are NOT assuming that station owners wouldn't increase prices.

California businesses would be required to have new electronic components installed in their fuel dispensers at a total initial cost of between \$103.8 million and \$127.4 million, or between \$10,704 and \$13,136 per retail outlet. Recurring costs for more expensive ATC-ready dispensers, maintenance, and higher inspection fees would amount to between \$7.4 million and \$20.6 million per year. The initial ATC retrofit costs in combination with the recurring annual expenses would average between eight hundredths (8/100) and 18 hundredths (18/100) of a cent per gallon, assuming retail station owners pass along all of the retrofit expenses by raising retail fuel prices alone over a period of 10 to 15 years.

Unlike the colder fuel temperature dynamic in Canada, ATC devices would adjust for warmer fuel temperatures by slightly increasing the size of the gallon dispensed to California consumers (in cubic inches). The adjustment for the motorist would be approximately 1 percent for every 15 degree Fahrenheit increase in the temperature of gasoline greater than the reference standard of 60 degrees Fahrenheit. The slightly larger and variable-sized gallons (in cubic inches) would

not have changed the total amount of fuel consumed in the state as measured in cubic inches, but would have reduced the actual number of net or adjusted gallons purchased by motorists.

If ATC had been in effect at retail gasoline stations during the study period, the quantity of net gasoline gallons sold would have been approximately 15.508 billion or about 117 million gallons less compared to status quo (no ATC at retail outlets) because the fuel was warmer (71.1 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

Under the ATC scenario, the quantity of net diesel fuel gallons sold would have been approximately 3.037 billion or about 19 million gallons less compared to the status quo (no ATC at retail) of 3.056 billion because the fuel was also warmer (72.9 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

The representative value of the reduced quantity of gallons that consumers would not have purchased if ATC had been in place at retail stations in California during the study period was calculated at about \$437.5 million (\$376.4 million for gasoline and about \$61.1 million for diesel fuel).

- *Would retail station owners charge the same price after ATC equipment began to dispense slightly larger sized gallons when fuel is warmer than the 60 degree Fahrenheit standard? If so, what would be the impact on the expected benefits of retail motorists?*

Owners of retail stations that sell fuel and non-fuel commodities (such as convenience stores) have increased flexibility to attempt incremental expense recovery by increasing prices for multiple goods (gasoline and foodstuffs) and/or services (car washes). But an owner of a retail station that only sells transportation fuels has less flexibility and can only attempt to pass along increased expenses by raising the price of fuel they sell. These types of retail stations are estimated to account for less than 20 percent of the gasoline and diesel fuel sales.

Comment [DS3]: Not clear how this paragraph is relevant to the question, especially given the paragraph that follows.

If one assumes that the industry of retail station owners and operators will continue to grow and remain profitable, the conclusion is that retail station owners will in fact raise their fuel prices to compensate for selling fewer units, all other things being equal. As such, expected benefits for retail motorists resulting from a conversion from gross to net gallon retail fuel transactions will be essentially zero.

- *If ATC was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?*

The results of the ATC retrofit cost-benefit analysis (CBA) show net costs of between \$205 million to \$530 million over 20 years. If measured in terms of retail gallons of gasoline and diesel fuels, the CBA net costs would average between five hundredths (5/100) and 14 hundredths (14/100) of a cent per gallon over the same period.

- If a new reference temperature was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?

The estimated costs of a new reference temperature and associated larger gallon size (in cubic inches) could amount to between \$9.0 million and \$27.9 million or from \$925 to \$2,879 per retail station. On a per-gallon basis these additional expenses incurred by retail station owners would equate to between five hundredths (5/100) and 15 hundredths (15/100) of a cent per gallon for only one year. After the modifications were completed, there would be no additional recurring costs for businesses or consumers.

Primary Recommendations

—Mandatory use of ATC at California retail stations should not be required if the *sole criteria* is that the net result of the cost-benefit analysis be positive (a net benefit to society).

- The Legislature should consider whether the value of the public perception since the annual net costs to society are so low, less than two tenths (2/10) of a cent per gallon at most, it is recommended that the State's Legislature consider the value of increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost-benefit analysis, justify mandating the when making a final determination regarding mandated use of ATC at California retail stations.
- If the Legislature chooses to mandate the use of ATC at retail stations, two options are available: (1) require the simultaneous installation and activation of ATC devices at all retail stations, or (2) a phase-in approach, in which new and refurbished stations are required to install, but not activate, ATC devices over a five-year period. The remainder of retail stations would be required to install ATC devices during the fifth year, and all stations would activate their devices at the end of that year. Such a phase-in approach is the least-cost option for mandatory ATC, though it would still result in a net cost to society.
- If the Legislature chooses to allow voluntary ATC, it should consider legislation requiring the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, consumer labeling, and timing provisions for voluntary ATC at retail stations. Until that process has been completed, it is recommended that the Legislature prohibit the use of ATC on a voluntary basis.
- Establishing a new statewide reference temperature, or different regional reference temperatures for the state, would not successfully address temperature compensation at the

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retail level and is not recommended. The option of a new reference temperature not be pursued as a potential remedy to address temperature compensation at the retail level.

Areas for Further Research

Research in the following areas is recommended to supplement the cost-benefit analysis presented in this report.

- The value of the perceived fairness, accuracy, and consistency benefits of ATC to consumers, which was not included in this analysis, should be estimated through focus groups and survey methods that assess consumers' willingness to pay for such benefits.
- The value of increased price transparency associated with ATC, as calculated in this report, should be refined through further research on the fuel temperature variation between adjacent retail stations.

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From: Diana Schwyzer
To: Susan Brown
Date: 1/27/2009 9:42 AM
Subject: Hot fuels
Attachments: AB 868 Executive Summary DS2.doc

OK, here it is again. Does this address your concerns? After I hear from you I will run it past Karen again.
Thanks,
Diana

EXECUTIVE SUMMARY

The issue of reduced volumes of gasoline or diesel when distributed at high temperature, or "hot fuel," is not new. It is, however, a controversial subject that has created strong and divergent opinions. Some stakeholders believe that if temperature compensation was practiced at retail stations, motorists that purchase fuel at retail stations would realize significant monetary benefits in the warmer areas of the United States. Other stakeholders representing business interests believe that the costs to retail station owners will be significant.

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From: Susan Brown
To: Diana Schwyzer; Gordon Schremp; Jim Page; Mike Smith
Date: 1/27/2009 2:15 AM
Subject: Re: AB 868 Status
Attachments: Susan Brown.vcf

Mike--we are still not in agreement on the recommendations presented in the Executive Summary on the Committee Draft. Diana and I need a meeting with Gordon and Jim ASAP if we are to meet your Friday release date. Believe it or now--- there are plenty of other pressing matters that are demanding our attention.

We'll do our best to wrap this up in the next couple of days.---Susan

Susan J. Brown
Special Advisor to Commissioner Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
E-mail: sbrown@energy.state.ca.us
Tel. (916) 654-4741
Fax (916) 653-1279

>>> Mike Smith 1/26/2009 2:00 PM >>>
Why the need to wait until Monday to post?
-----Original Message-----
From: Gordon Schremp
To: Diana Schwyzer <Dschwyz@energy.state.ca.us>
Cc: Jim Page <Jpage@energy.state.ca.us>
Cc: Susan Brown <Sbrown@energy.state.ca.us>
Cc: Mike Smith <Msmith@energy.state.ca.us>
Cc: Susanne Garfield <Sgarfiel@energy.state.ca.us>

Sent: 1/26/2009 12:55:23 PM
Subject: Re: AB 868 Status

Diana:

The revised schedule, conveyed to Assemblyman Davis, is that the report will be delivered to the Legislature on February 12, 2009 (assuming adoption at the February 11 Business Meeting with no major revisions). We should be able to meet that commitment if we keep the item on the Feb 11 agenda.

Susan is correct in stating that all of the main stakeholders have been closely following this process through all of the previous workshops. Further, the current revisions to the document do not really change any of the primary findings, just clarifications of the conclusions. So most of the stakeholders will probably focus on the wording of the primary recommendations, rather than have to plow through the entire document. Hope this is helpful.

Thanks,

Gordon

>>> Diana Schwyzer 1/26/2009 12:24 PM >>>
Gordon,
Related question: can you remind me when we promised to deliver the report to the legislature? Is the Feb 11 business meeting our last chance to meet the (extended) deadline?
Diana

>>> Susan Brown 1/26/2009 12:20 PM >>>
Yes---from my perspective, there has been adequate outside exposure in public workshops (both staff led and Committee led) and input from an advisory committee formed by Staff under the legislation.---Susan

Susan J. Brown

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>>> Susanne Garfield 1/26/2009 12:18 PM >>>

Susan,
Does the Committee feel that there will be adequate outside review if it doesn't get posted until Monday? Are they holding firm for Feb 11 biz meeting? Thanks, s
Susanne Garfield
Assistant Executive Director
Media and Communications
916-654-4989

-----Original Message-----

From: Gordon Schrepf
Cc: Diana Schwyzer <Dschwyz@energy.state.ca.us>
Cc: Jim Page <jpage@energy.state.ca.us>
Cc: Nick Janusch <Njanusch@energy.state.ca.us>
To: Susan Brown <Sbrown@energy.state.ca.us>
Cc: Claudia Chandler <Cchandle@energy.state.ca.us>
Cc: Mike Smith <Msmith@energy.state.ca.us>
Cc: Susanne Garfield <Sgarfiel@energy.state.ca.us>

Sent: 1/26/2009 12:13:05 PM
Subject: Re: AB 868 Status

Susan:

AOK. We will wait to hear back from you guys some time on Wednesday. Look forward to the comments and completing the document.

Thanks,

Gordon

>>> Susan Brown 1/26/2009 12:02 PM >>>

Yes--we will have comments--I have been coordinating with Karen Douglas' Office but will need until Wednesday to get back to you. We are very busy here, since Jim is acting Chair, and I need to talk with him first!--Susan

Susan J. Brown
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>>> Gordon Schrepf 1/26/2009 11:02 AM >>>

Susan and Diana:

Just wanted to check in and see if we could meet with the two of you some time this afternoon to discuss status of the AB 868 report, especially the language of the draft recommendations. We would like, if possible, to post a final version of the report by COB Wednesday. But we could wait until Friday to post, if necessary. We will find out more when we go to the preliminary Agenda review meeting at 4 PM today.

Regards,

Gordon

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Gordon

>>> Susan Brown 1/26/2009 12:02 PM >>>

Yes--we will have comments--I have been coordinating with Karen Douglas' Office but will need until Wednesday to get back to you. We are very busy here, since Jim is acting Chair, and I need to talk with him first.--Susan

Susan J. Brown
Special Advisor to Commissioner Boyd
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>>> Gordon Schremp 1/26/2009 11:02 AM >>>

Susan and Diana:

Just wanted to check in and see if we could meet with the two of you some time this afternoon to discuss status of the AB 868 report, especially the language of the draft recommendations. We would like, if possible, to post a final version of the report by COB Wednesday. But we could wait until Friday to post, if necessary. We will find out more when we go to the preliminary Agenda review meeting at 4-PM today.

Regards,

Gordon

From: Gordon Schremp
To: Diana Schwyzer; Susan Brown
CC: Jim Page; Mike Smith; Nick Janusch; Sherry Stoner; Susanne Garfield
Date: 1/28/2009 1:54 PM
Subject: AB 868 - Revised Executive Summary
Attachments: AB 868 Executive Summary 01-28-09 GDS.doc

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Please see the attached file for a revised copy of the AB 868 Executive Summary. It would be best to read all four pages since some of the text was reorganized, along with some additional language and deletions. Let me know if you would like to incorporate any additional modifications before we update the master document.

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EXECUTIVE SUMMARY

The issue of reduced volumes of gasoline or diesel when distributed at high temperature, or "hot fuel," is not new. It is, however, a controversial subject that has created strong and divergent opinions. Some stakeholders believe that if temperature compensation was practiced at retail stations, motorists would realize significant monetary benefits in the warmer areas of the United States. Other stakeholders representing business interests believe that the costs to retail station owners will be significant.

Hawaii is the only state in the nation that has adopted a form of temperature compensation at retail outlets by allowing existing retail fuel dispensers to be modified to distribute an additional quantity of fuel (as measured in cubic inches) to compensate for the fact that the fuel sold is warmer. Hawaii's retail sales unit of gasoline is now 233.8 cubic inches, roughly equivalent to how much a standard gallon of gasoline would expand when warmed from 60 to 80 degrees Fahrenheit. Hawaii is the only state that has adopted a form of temperature compensation at retail outlets. This happened in 1974 when the state increased the size of their gallon from the U.S. standard of 231 cubic inches to a larger Hawaiian gallon of about 233 cubic inches. Canada, too, has adopted regulations and standards for automatic temperature compensation (ATC) at retail. Even though ATC at retail is voluntary in Canada, more than 90 percent of the retail stations have converted to using the equipment. Most of the time in Canada, the temperature of the fuel is colder than the reference standard of 60 degrees Fahrenheit. The ATC dispensers compensate for colder fuel temperatures by decreasing the average size of the liter dispensed to motorists in that country.

This national debate has continued for several years but without any analysis being performed to determine if ATC at retail stations would be a net benefit to retail motorists. As a result of these activities and the lack of analysis, in October 2007 the California Legislature passed and the Governor signed Assembly Bill 868 (Davis), which directed the Energy Commission to conduct a cost-benefit analysis.

This report quantifies the benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuels in California. The cost-benefit analysis concludes that the results are negative or a net cost to society under all the options examined, however when quantified by cents per gallon these costs are small. The estimated total annual recurring net costs to society, if completely passed through to consumers, could amount to between two-eight hundredths ($\frac{82}{100}$) and 18 hundredths ($\frac{18}{100}$) of a cent per gallon. It is also unlikely that there are any plausible circumstances consumers could receive a small net benefit with installed ATC devices at California's retail stations.

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- If temperature compensation has been instituted for most wholesale transactions to remove the inequity of temperature variations from financial transaction, why has that practice not extended to the California retail consumer?

Currently, no retail station operator has chosen to install and operate ATC ready dispensers in California, and it is unclear whether the voluntary use of ATC devices is permitted under California law.

- If ATC was mandated at retail stations in California, how would businesses and consumers be impacted?

California retail motorists are expected to receive slightly larger gallons (as measured in cubic inches) that vary in size with changes in temperature. ATC devices adjust for warmer fuel temperatures by slightly increasing the size of the gallon dispensed to California consumers (in cubic inches). The adjustment for the motorist would be approximately 1 percent for every 15 degree Fahrenheit increase in the temperature of gasoline greater than the reference standard of 60 degrees Fahrenheit. The slightly larger and variable sized gallons (in cubic inches) would not have changed the total amount of fuel consumed in the state as measured in cubic inches, but would have reduced the actual number of net or adjusted gallons purchased by motorists.

If ATC had been in effect at retail gasoline stations during the one-year study period, the quantity of net gasoline gallons sold would have been approximately 15.508 billion or about 117 million gallons less compared to status quo (no ATC at retail outlets) because the fuel was warmer (71.1 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

Under the ATC scenario, the quantity of net diesel fuel gallons sold would have been approximately 3.037 billion or about 19 million gallons less compared to the status quo (no ATC at retail) of 3.056 billion because the fuel was also warmer (72.9 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

EXECUTIVE SUMMARY

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The value of the reduced quantity of gallons that consumers would not have purchased if ATC had been in place at retail stations in California during the study period was calculated at about \$437.5 million (\$376.4 million for gasoline and about \$61.1 million for diesel fuel).

California retail motorists are also expected to receive an additional benefit due to increased price transparency, estimated at approximately \$258,000 per year. Currently, motorists compare retail fuel prices when deciding where to purchase fuel for their vehicle. Prices posted by two retail stations at an intersection showing identical prices may appear to be equivalent in value by the consumer, but if the fuel temperature at one station is higher than the other, the motorist would want to select the station with the cooler fuel temperature. (Gordon... this is where you have a sentence or two to clarify price transparency). If ATC were mandated for use at retail stations, consumers would be able to more accurately and fairly compare prices because variations in temperature and its associated impact on the value of the product would be corrected by the ATC equipment.

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California retail station owners would experience additional expenses for the ATC retrofit equipment and slightly higher inspection fees. If ATC's are mandated, California businesses would incur a total first cost between \$103.8 million and \$127.4 million, or between \$10,704 and \$13,136 per retail outlet. Recurring costs for more expensive ATC-ready dispensers, maintenance, and higher inspection fees would total between \$7.4 million and \$20.6 million per year. The initial ATC retrofit costs combined with the recurring annual expenses would average between eight hundredths (8/100) and 18 hundredths (18/100) of a cent per gallon, if retail station owners pass all of the retrofit expenses by raising retail fuel prices from of 10 to 15 years.

- *Would retail station owners charge the same price if ATC equipment is installed and dispensed slightly larger sized gallons when fuel is warmer than the 60 degree Fahrenheit standard? If so, would consumers still receive anticipated financial benefits?*

Owners of retail stations that sell fuel and non-fuel commodities (such as convenience stores) have increased flexibility to attempt some recovery of additional expenses by increasing prices for items such as gasoline and foodstuffs and/or services such as car washes. However, an owner of a retail station that only sells transportation fuels has less flexibility and can only attempt to pass along increased expenses by raising the price of fuel. Retail stations that sell only fuel and no non-fuel commodities are estimated to account for less than 20 percent of the gasoline and diesel fuel sales.

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If it is assumed that retail station owners and operators will continue to grow and remain profitable, then retail station owners will most likely raise their fuel prices to compensate for selling fewer units. If this is the case then expected benefits for retail motorists will be essentially zero.

- If ATC was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?

The results of the ATC retrofit cost-benefit analysis show net costs of between \$205 million to \$530 million over 20 years. If measured by retail gallons of gasoline and diesel fuels, the net costs would average between five hundredths (5/100) and 14 hundredths (14/100) of a cent per gallon over the same period.

- *If a new reference temperature was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?*

The estimated costs of adopting a new reference temperature and a larger gallon size (in cubic inches) could total between \$9 million and \$27.9 million or from \$925 to \$2,879 per retail station. On a per-gallon basis these additional expenses incurred by retail station owners would be between five hundredths (5/100) and 15 hundredths (15/100) of a cent per gallon for only one year. After the modifications were completed, there would be no additional recurring costs for businesses or consumers.

Primary Recommendations

- If the only criteria for mandatory ATC installations is criterion for assessing the merit of mandatory ATC installations for use at California retail stations is a negative or nonet cost benefit to consumers, the the Transportation Committee of the California Energy Commission (Committee) concludes that ATCs should not be required since the results of the cost-benefit analysis show a net cost for consumers.
- However, The Committee recommends that the Legislature should also consider whether the value of the public perception of increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost-benefit analysis, justify mandating ATC's mandating ATC's at California retail stations.
- If the Legislature chooses to mandate the use of ATC at retail stations, two options are available: (1) require the simultaneous installation and activation of ATC devices at all retail stations to retrofit their fuel dispensers over a two-year period, or (2) a more gradual phase-in approach, requiring new and refurbished stations to install, *but not activate*, ATC devices over a five-year period. The remainder of retail stations would be required to install ATC devices during the fifth year, and all stations would activate their devices at the end of that year. Such a phase-in approach is the least-cost option for mandatory ATC, although it would still result in a net cost to society.
- If the Legislature chooses to allow voluntary ATC, it should consider legislation requiring the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, consumer labeling, and timing provisions for voluntary ATC at retail stations. Until that process has been completed, it is recommended that the Legislature prohibit the use of ATC on a voluntary basis.
- The Committee concludes that establishing a new statewide reference temperature, or different regional reference temperatures for the state, would not successfully address temperature compensation at the retail level and is not recommended.

Areas for Further Research

Research in the following areas is recommended to supplement the cost-benefit analysis presented in this report.

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Gordon Schremp - Re: AB 868 - Revised Executive Summary

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Owners of retail stations that sell fuel and non-fuel commodities (such as convenience stores) have increased flexibility to attempt some recovery of additional expense by increasing prices for items such as gasoline and food items and/or services, such as car washes. However, an owner of a retail station that only sells transportation fuels has less flexibility and can only attempt to pass along increased expenses by raising the price of fuel. Retail stations that sell only fuel and non-fuel commodities are estimated to account for less than 20 percent of the gasoline and diesel fuel sales.

If it is assumed that retail station owners and operators will continue to grow and remain profitable, then retail station owners will most likely raise their fuel prices to compensate for selling fewer units. If this is the case then expected benefits for retail motorists will be essentially zero.

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Comment [DS3]: Not clear how this paragraph is relevant to the question, especially given the paragraph that follows.

- *If ATC was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?*

The results of the ATC retrofit cost-benefit analysis show net costs of between \$205 million to \$530 million over 20 years. If measured by retail gallons of gasoline and diesel fuels, the net costs would average between five hundredths (5/100) and 14 hundredths (14/100) of a cent per gallon over the same period.

- *If a new reference temperature was mandated, would the overall costs to businesses and governmental agencies to implement and oversee the program outweigh any potential benefits?*

The estimated costs of adopting a new reference temperature and a larger gallon size (in cubic inches) could total between \$9 million and \$27.9 million or from \$925 to \$2,879 per retail station. On a per-gallon basis these additional expenses incurred by retail station owners would be between five hundredths (5/100) and 15 hundredths (15/100) of a cent per gallon for only one year. After the modifications were completed, there would be no additional recurring costs for businesses or consumers.

Primary Recommendations

- If the *only criteria* for mandatory ATC installations is *criteria* for assessing the merit of mandatory ATC installations for use at California retail stations is a negative or net cost benefit to consumers, the the Transportation Committee of the California Energy Commission (Committee) concludes that ATCs should not be required since the results of the cost-benefit analysis show a net cost for consumers.
- However, (The Committee recommends that the Legislature should also consider whether the value of the public perception of increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost-benefit analysis, justify mandating ATCs mandating ATCs at California retail stations.
- If the Legislature chooses to mandate the use of ATC at retail stations, two options are available: (1) require the simultaneous installation and activation of ATC devices at all retail stations to retrofit their fuel dispensers over a two-year period, or (2) a more gradual phase-in approach, requiring new and refurbished stations to install, *but not activate*, ATC devices over a five-year period. The remainder of retail stations would be required to install ATC devices during the fifth year, and all stations would activate their devices at the end of that year. Such a phase-in approach is the least-cost option for mandatory ATC, although it would still result in a net cost to society.
- If the Legislature chooses to allow voluntary ATC, it should consider legislation requiring the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, consumer labeling, and timing provisions for voluntary ATC at retail stations. Until that process has been completed, it is recommended that the Legislature prohibit the use of ATC on a voluntary basis.
- The Committee concludes that establishing a new statewide reference temperature, or different regional reference temperatures for the state, would not successfully address temperature compensation at the retail level and is not recommended therefore does not recommend this approach.

Areas for Further Research

Research in the following areas is recommended to supplement the cost-benefit analysis presented in this report.

- The value of the perceived fairness, accuracy, and consistency benefits of ATC to consumers, which was not included in this analysis, should be estimated through focus groups and survey methods that assess consumers' willingness to pay for such benefits.
- The value of increased price transparency associated with ATC, as calculated in this report, should be refined through further research on the fuel temperature variation between adjacent retail stations.

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From: Gordon Schremp
To: Diana Schwyzer; Susan Brown
CC: Jim Page; Mike Smith; Nick Janusch; Sherry Stoner; Susanne Garfield
Date: 1/28/2009 1:54 PM
Subject: AB 868 - Revised Executive Summary
Attachments: AB 868 Executive Summary 01-28-09 GDS.doc

Susan and Diana:

Please see the attached file for a revised copy of the AB 868 Executive Summary. It would be best to read all four pages since some of the text was reorganized, along with some additional language and deletions. Let me know if you would like to incorporate any additional modifications before we update the master document.

Thanks,

Gordon

EXECUTIVE SUMMARY

The issue of reduced volumes of gasoline or diesel when distributed at high temperature, or "hot fuel," is not new. It is, however, a controversial subject that has created strong and divergent opinions. Some stakeholders believe that if temperature compensation was practiced at retail stations, motorists would realize significant monetary benefits in the warmer areas of the United States. Other stakeholders representing business interests believe that the costs to retail station owners will be significant.

Hawaii is the only state in the nation that has adopted a form of temperature compensation at retail outlets by allowing existing retail fuel dispensers to be modified to distribute an additional quantity of fuel (as measured in cubic inches) to compensate for the fact that the fuel sold is warmer. Hawaii's retail sales unit of gasoline is now 233.8 cubic inches, roughly equivalent to how much a standard gallon of gasoline would expand when warmed from 60 to 80 degrees Fahrenheit. Hawaii is the only state that has adopted a form of temperature compensation at retail outlets. This happened in 1974 when the state increased the size of their gallon from the U.S. standard of 231 cubic inches to a larger Hawaiian gallon of about 233 cubic inches. Canada, too, has adopted regulations and standards for automatic temperature compensation (ATC) at retail. Even though ATC at retail is voluntary in Canada, more than 90 percent of the retail stations have converted to using the equipment. Most of the time in Canada, the temperature of the fuel is colder than the reference standard of 60 degrees Fahrenheit. The ATC dispensers compensate for colder fuel temperatures by decreasing the average size of the liter dispensed to motorists in that country.

This national debate has continued for several years but without any analysis being performed to determine if ATC at retail stations would be a net benefit to retail motorists. As a result of these activities and the lack of analysis, in October 2007 the California Legislature passed and the Governor signed Assembly Bill 868 (Davis), which directed the Energy Commission to conduct a cost-benefit analysis.

This report quantifies the benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuels in California. The cost-benefit analysis concludes that the results are negative or a net cost to society under all the options examined, however when quantified by cents per gallon these costs are small. The estimated total annual recurring net costs to society, if completely passed through to consumers, could amount to between two-eight hundredths ($2/100$) and 18 hundredths ($18/100$) of a cent per gallon. It is also unlikely that there are any plausible circumstances consumers could receive a small net benefit with installed ATC devices at California's retail stations.

The primary issues associated with the ATC debate is ~~best characterized~~ best characterized in a series of questions.

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- Is the temperature of gasoline and diesel fuel sold to California consumers warmer, on average, than the 60 degree Fahrenheit reference standard?

California is considered a warmer state regarding fuel temperature at retail stations. Based on the results of a recent survey of retail stations, the average temperature of regular grade gasoline during the base period from April 2007 through March 2008, was about 71 degrees Fahrenheit. Diesel fuel was a little warmer with an average temperature of nearly 73 degrees Fahrenheit.

- If temperature compensation has been instituted for most wholesale transactions to remove the inequity of temperature variations from financial transaction, why has that practice not extended to the California retail consumer?

Currently, no retail station operator has chosen to install and operate ATC-ready dispensers in California, and it is unclear whether the voluntary use of ATC devices is permitted under California law.

- If ATC was mandated at retail stations in California, how would businesses and consumers be impacted?

California retail motorists are expected to receive slightly larger gallons (as measured in cubic inches) that vary in size with changes in temperature. ATC devices adjust for warmer fuel temperatures by slightly increasing the size of the gallon dispensed to California consumers (in cubic inches). The adjustment for the motorist would be approximately 1 percent for every 15 degree Fahrenheit increase in the temperature of gasoline greater than the reference standard of 60 degrees Fahrenheit. The slightly larger and variable sized gallons (in cubic inches) would not have changed the total amount of fuel consumed in the state as measured in cubic inches, but would have reduced the actual number of net or adjusted gallons purchased by motorists.

If ATC had been in effect at retail gasoline stations during the one-year study period, the quantity of net gasoline gallons sold would have been approximately 15.508 billion or about 117 million gallons less compared to status quo (no ATC at retail outlets) because the fuel was warmer (71.1 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

Under the ATC scenario, the quantity of net diesel fuel gallons sold would have been approximately 3.037 billion or about 19 million gallons less compared to the status quo (no ATC at retail) of 3.056 billion because the fuel was also warmer (72.9 degrees Fahrenheit) than the 60 degree Fahrenheit reference standard.

Comment [DS1]: I revised this paragraph to be consistent with our position on this issue as stated later in the paper.

Comment [DS2]: I recommend dropping this sentence since we are NOT assuming that station owners wouldn't increase prices.

The value of the reduced quantity of gallons that consumers would not have purchased if ATC had been in place at retail stations in California during the study period was calculated at about \$437.5 million (\$376.4 million for gasoline and about \$61.1 million for diesel fuel).

California retail motorists are also expected to receive an additional benefit due to increased price transparency, estimated at approximately \$258,000 per year. Currently, motorists compare retail fuel prices when deciding where to purchase fuel for their vehicle. Prices posted by two retail stations at an intersection showing identical prices may appear to be equivalent in value by the consumer, but if the fuel temperature at one station is higher than the other, the motorist would want to select the station with the cooler fuel temperature. (Gordon... this is where you have a sentence or two to clarify price transparency). If ATC were mandated for use at retail stations, consumers would be able to more accurately and fairly compare prices because variations in temperature and its associated impact on the value of the product would be corrected by the ATC equipment.

California retail station owners would experience additional expenses for the ATC retrofit equipment and slightly higher inspection fees. If ATC's are mandated, California businesses would incur a total first cost between \$103.8 million and \$127.4 million, or between \$10,704 and \$13,136 per retail outlet. Recurring costs for more expensive ATC-ready dispensers, maintenance, and higher inspection fees would total between \$7.4 million and \$20.6 million per year. The initial ATC retrofit costs combined with the recurring annual expenses would average between eight hundredths (8/100) and 18 hundredths (18/100) of a cent per gallon, if retail station owners pass all of the retrofit expenses by raising retail fuel prices from 10 to 15 years.

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Owners of retail stations that sell fuel and non-fuel commodities (such as convenience stores) have increased flexibility to attempt some recovery of additional expenses by increasing prices for items such as gasoline and foodstuffs and/or services such as car washes. However, an owner of a retail station that only sells transportation fuels has less flexibility and can only attempt to pass along increased expenses by raising the price of fuel. Retail stations that sell only fuel and no non-fuel commodities are estimated to account for less than 20 percent of the gasoline and diesel fuel sales.

If it is assumed that retail station owners and operators will continue to grow and remain profitable, then retail station owners will most likely raise their fuel prices to compensate for selling fewer units. If this is the case then expected benefits for retail motorists will be essentially zero.

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- The Committee concludes that establishing a new statewide reference temperature, or different regional reference temperatures for the state, would not successfully address temperature compensation at the retail level and is not recommended.

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From: Gordon Schremp
To: Karen Douglas
CC: Diana Schwyzer; Galen Lemei; Jim Boyd; Jim Page; Mike Smith; Nick J...
Date: 2/3/2009 3:30 PM
Subject: Re: AB 868 - Final Report On Line

Commissioner Douglas:

So far the feedback we have received via emails and phone calls is positive, mostly compliments on the overall quality of the document. There are at least four stakeholders who plan on making formal comments to the record:

California Independent Oil Marketers Association (CIOMA)
Representative of the oil companies (TBD)
Los Angeles Agriculture Commissioner (Kurt Floren)
Advocation, Inc. (folks behind the ATC class action lawsuits)

The last group has two main issues important to them. The first is permissive use of ATC at retail. They wanted to understand why our earlier documents inferred that permissive use of ATC at retail was OK in California, but is now characterized as being in dispute in the final report. I informed them that the modifications to the document more accurately reflect the current debate based on information provided at the December 9th workshop by two law firms. The main purpose of the report is not for the Energy Commission to render a legal opinion on permissive use of ATC at retail stations for gasoline and diesel fuel. The courts, legislature and DMS are the parties that should be closely involved in addressing that issue.

Second topic of interest was the staff conclusion that the retail market is perfectly competitive and that all costs will be completely recovered. These folks are trying to show in their class action lawsuit that the retail station operators are making excessive profits (in the warmer states) and that they may not be completely successful in recovering expenses. I told them that we did not examine the issue involving current level of profitability by retail station owners. However, we believe the retail industry is operating in a competitive environment and we assume that the industry will remain profitable over the long-term. Therefore, it was assumed that in aggregate the industry is expected to be able to pass through any capital expenditures, completely.

They also raised an interesting hypothetical during this morning's conference call, namely the possibility that a large oil company would announce a "settlement" associated with the current class-action ATC lawsuits that involves the company installing ATC devices at all of their stations in the United States, including California. They asked us how the Commissioners would respond to such information. I told them that staff does not speak for the Commissioners.

Don't know if this was a trail balloon floated by these folks, but thought you should be informed that it is possible that this point might be raised during discussion of the agenda item. Ultimately, however, the Energy Commission does not regulate the sale of gasoline and diesel fuel. Rather, the Division of Measurement Standards (DMS) is the appropriate state agency who develops regulations from legislation for enforcement of ATC at retail, even if necessitated by a hypothetical class action lawsuit settlement.

Please let me know if you have any questions regarding the above information. We will continue to dialogue with various stakeholders and provide you with an updated number of possible speakers for the February 11th business meeting.

Regards,

Gordon

>>> Karen Douglas 2/2/2009 10:23 AM >>>
Thank you and good work on this. any feedback to far?

>>> Gordon Schremp 01/30/09 4:56 PM >>>
Commissioners Boyd and Douglas:

I would like to thank everyone for their rapid review and closure that allowed us to post the report on line this afternoon. We look forward to the Business Meeting on February 11th. Staff will try and identify the number of stakeholders who would like to make comment on the item and convey that tally prior to the meeting. I have attached a copy of the report. In the meantime, please let me know if you have any questions.

Regards,

Gordon

From: Gordon Smith <gsmith@ecofor.org>
To: Mike Smith <Msmith@energy.state.ca.us>
CC: "Jim Page" <Jpage@energy.state.ca.us>, "Susan Brown" <Sbrown@energy.stat...
Date: 2/10/2009 3:14 PM
Subject: Re: Request for Information

All:

I'd love to help but I think you have the wrong Gordon Smith. My expertise is forest and agricultural greenhouse gas emissions, and what policy tools are likely to achieve the greatest GHG emission mitigation from different forestry and agricultural activities. I don't know about fuel or ownership of gas stations. Now, if you want to know why a cap on forest emissions would work better than trying to create GHG emission offsets from forest management, I can help you with that--

cheers,
Gordon

Gordon Smith, Ph.D., Managing Partner
Ecofor LLC
13047 12th Ave NW
Seattle, WA 98177-4108
USA
voice: +1 206.784.0209
gsmith@ecofor.org

On Feb 10, 2009, at 2:08 PM, Mike Smith wrote:

Jim, Gordon

Do we have this info? How quickly can we provide to Jim?

Mike.

-----Original Message-----

From: Susan Brown
To: Gordon Smith <gsmith@ecofor.org>
To: Jim Page <Jpage@energy.state.ca.us>
To: Mike Smith <Msmith@energy.state.ca.us>

Sent: 2/10/2009 2:06:31 PM
Subject: Request for Information

Hi, Mike, Jim, and Gordon. Jim is requesting the following information for his use at the February 25 Business Meeting. Can we aim for COB Thursday, February 19? These are Jim's words below.

First, we need data/facts on oil industries' exact ownership of CA stations, and who other owners are as well, e.g., private owner-dealers, independent dealer co's, etc. What costs to each sector would be if ATC were required? In other words, don't major oil companies only control less than 10 percent of the retail service stations in California.

Second, Jim recalls a 2005 study by U.C. Berkeley that indicated the

oil industry, at that time, owned between 5 & 10 percent of CA retail stations, closer to 5 percent, and with the trend to dispose, I imagine now its 5 or less. Isn't the trend to shed company ownership of retail stations?

Please let me know if you have any questions.---Susan

Susan J. Brown
Special Advisor to Commissioner Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
E-mail: sbrown@energy.state.ca.us
Tel. (916) 654-4741
Fax (916) 653-1279

[Faint, mostly illegible text, likely bleed-through from the reverse side of the page]

From: Gordon Schremp
To: Susan Brown
CC: Alan Mattes; Jim Page; Keith O'Brien; Mike Smith
Date: 2/13/2009 12:56 PM
Subject: Re: Request for Information--Resent
Attachments: Retail Station Overview 02-13-09.doc

Susan:

We are still working on our analysis of the A15 California retail outlet survey information to determine what portion of the major oil companies' branded retail outlets fall under the "company-owned and operated" category. In the meantime, I wanted to provide you and Jim with some retail station ownership factoids for the United States. Jim is correct in his assumption that ownership and operation by big oil is declining, based on data obtained from a couple of different sources. In addition, some of the majors have either completely exited the ownership and operation of retail outlets (such as ConocoPhillips) or have indicated plans to do so over the next couple of years (BP and ExxonMobil). After you have had a chance to review the attached document, please let us know if you have any follow-up questions. With regard to the A15 data analysis, we hope to have something by the end of next week.

Regards,

Gordon

>>> Susan Brown 2/10/2009 3:31 PM >>>

Hi, Mike, Jim, and Gordon. Jim is requesting the following information for his use at the February 25 Business Meeting. Can we aim for COB Thursday, February 19? These are Jim's words below.

First, we need data/facts on oil industries' exact ownership of CA stations, and who other owners are as well, e.g., private owner-dealers, independent dealer co's, etc. What costs to each sector would be if ATC were required? In other words, don't major oil companies only control less than 10 percent of the retail service stations in California.

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Please let me know if you have any questions.---Susan

Susan J. Brown
Special Advisor to Commissioner Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
E-mail: sbrown@energy.state.ca.us
Tel. (916) 654-4741
Fax (916) 653-1279

According to National Association of Convenience Stores (NACS) – Open Source Information

Convenience stores sell more than 80 percent of all the gasoline purchased in the United States.

The convenience store industry continues to be dominated by small, "independent" operators – stores that are owned and operated as a one-store business or franchise.

- Roughly 62 percent of all convenience stores in the United States are owned and operated as one-store operations:

While the majority of stores selling motor fuels are "branded," **less than 3 percent** of the 115,157 convenience stores selling motor fuels are **owned and operated** by one of the five major oil companies.

Major Oil Is Exiting the Retail Marketplace

In recent years, several major integrated oil companies have announced their decision to exit the retail marketplace and sell all of their remaining corporate retail locations. As of August 2008, the five largest integrated oil companies **owned and operated** 2,140 retail locations in the United States:

- BP: 796
- ChevronTexaco: 388
- ConocoPhillips: 103
- ExxonMobil: 799
- Shell: 54

(Source: *Convenience Store News*, Aug. 18, 2008)

Of these companies, BP, ConocoPhillips and ExxonMobil have all announced their intention to leave the retail marketplace in the near future. Once these sales are complete, major oil will **own and operate** less than 1 percent of the U.S. convenience stores that sell motor fuels.

- November 2007 - BP announces that they plan to sell all of their company-owned and company-operated convenience stores. The majority of sites will be sold to franchisees and some will also be sold to dealers and large distributors (jobbers). The sale of the convenience stores will be completed over the next two years.
- June 2008 - ExxonMobil announces that they plan to sell those service stations over several years.
- August 2008 – ConocoPhillips agrees to sell all remaining retail outlets and C-stores to PetroSun Fuel.

According to John S. Herold, Inc. - Proprietary Information

Other refining and marketing companies who have not announced that they are exiting **ownership and operation** of all retail assets in the United States have generally been decreasing their ownership positions as evidenced by the statistics below derived from John S. Herold, Inc. Only exception is Tesoro, but the aggregated totals show a downward ownership trend.

Portion of Company Branded Outlets			
Company	Owned or Leased	Owned or Leased	Change
	2003	2007	
Chevron	12.3%	5.6%	-54.0%
Valero	37.1%	23.9%	-35.6%
Tesoro	40.6%	48.5%	19.6%
Totals	22.0%	14.1%	-35.8%

Additional Information from NACS – Open Source Information

Branded and Unbranded Independent Retailers

Of the 161,768 retail gasoline outlets in the United States, about 35 percent sell fuel under the brand of one of the five major integrated oil companies (Shell, BP, ExxonMobil, ChevronTexaco and ConocoPhillips), including the 1 to 2 percent that are **owned and operated** by these companies.

Another 20 percent of all retail fueling outlets sell fuel under the brand of a refining company (such as Valero, Sunoco or Alon), while 45 percent sell fuel under their own, private brand.

Despite their exit from the retail marketplace, the major integrated oil companies will retain a presence at retail through their branded outlets. These are independent businesses that sign a supply and marketing contract with their refiner-supplier to sell fuel under the brand of that supplier. These locations are designed to reflect the image of the fuel supplier and are often mistaken by consumers as being directly owned and operated by the refiner-supplier.

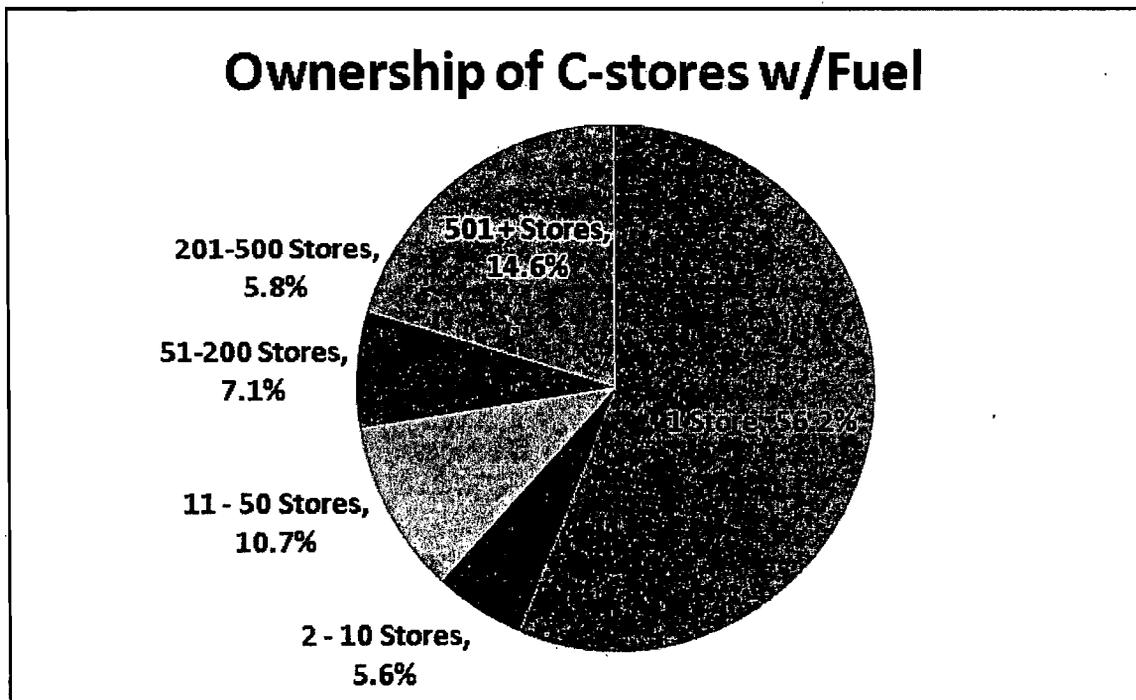
However, the reality is that there is no link beyond an agreement to sell a specific gasoline. The arrangement is similar to arrangements inside the store, where a store may choose to dispense a specific brand of soft drink and receive branded dispensers and other signage. But the business arrangement ends there. The other retail format prevalent in the market is the independent, unbranded retailer. These businesses have not signed a supply and marketing agreement with a refiner-supplier and often establish their own, private brand for their store and their fuel offer.

Other Motor Fuels Retailers

In addition to convenience stores and gas stations, there are a number of big-box retailers that sell fuel, including Walmart, Costco and a number of grocery chains. As of September 2008, there were 77 hypermarket companies in the United States operating at least one retail gasoline site. These companies represented more than 4,495 "hypermart" sites (big-box retailers) and sold 13.9 billion gallons of gasoline. These sites sell approximately 258,000 gallons per month, about twice the volume of a traditional fuel retailer. Overall, the fuel site growth for hypermarkets has slowed down to an annualized rate of 224 sites for 2008. The supermarket subset has grown the most over the past year at a 5.5 percent rate.

Who Sells Motor Fuels in the United States?

There are 161,768 retail gasoline outlets in the United States, based on the 2008 station count by industry publication *National Petroleum News*. This count includes all fueling outlets in the country, including many very low volume retailers, such as marinas. Of this total, more than 114,000 are convenience stores. These convenience stores sell the overwhelming majority of the gasoline purchased in the United States and despite canopies that promote a specific brand of gasoline, very few of these stores – less than 2 percent – are owned and operated by one of the integrated, major oil companies. It is much more likely that the business is owned by an independent entrepreneur who lives in the community. Of the roughly 115,000 convenience stores selling gasoline in the United States in 2008, about 56 percent were one-store operations, compared to only about 14 percent that were operated by a company having 500 or more stores.



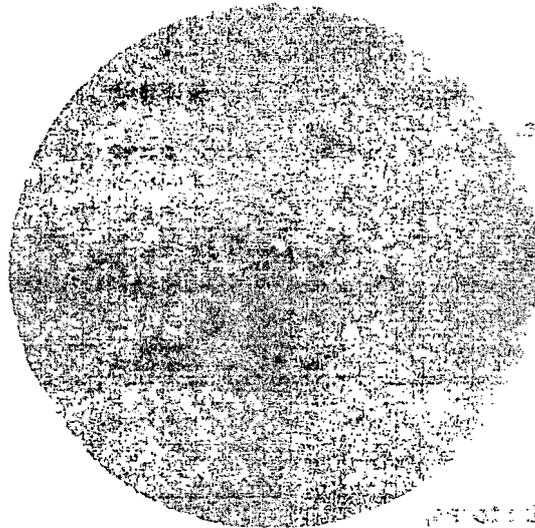
(Source: NACS/TDLinx Official Industry Store Count, Feb. 2009)

Convenience stores in 2007 sold an estimated 80 percent of all gasoline and diesel fuel purchased in the United States – a sharp increase from a decade ago (1997) when convenience stores sold an estimated 59 percent of the country's motor fuels. The other 20 percent is sold through an increasing number of hypermarkets (mass retailers, supermarkets, discount stores, warehouse stores) and a declining number of fuel-only stations.

Overall, 79 percent of convenience stores sell motor fuels, and gasoline and diesel fuel sales account for 70.8 percent of the convenience store industry's total sales. (However, low gross margins on fuel means that motor fuels sales contributed less than one-third of total store gross margins dollars – 34.5 percent.)

When the Motor Fuel Tax is added to the total fuel cost, the gross margin on fuel drops to 10.5 percent. This is why convenience stores have a very low gross margin on fuel. The low gross margin on fuel is a result of the fact that convenience stores are not the only retailers that sell fuel. Other retailers, such as hypermarkets, supermarkets, and warehouse stores, also sell fuel. This competition has driven the gross margin on fuel down. The low gross margin on fuel is also a result of the fact that convenience stores are not the only retailers that sell fuel. Other retailers, such as hypermarkets, supermarkets, and warehouse stores, also sell fuel. This competition has driven the gross margin on fuel down.

Ownership of C-stores w/ fuel



From: Gordon Schremp
To: Susan Brown
CC: Jim Page
Date: 2/19/2009 2:05 PM
Subject: Re: Request for Information--Resent

Susan:

I sent an overview to you back on February 13th. Did you have a chance to look at the document? Let me know if I should re-forward the email when you get a chance.

Thanks,

Gordon

>>> Susan Brown 2/19/2009 1:53 PM >>>

Just checking in, Gordon. Will you have information for Jim by Monday (at the latest) on California retail stations (branded versus unbranded, company-owned versus independent, percentage owned by major oil companies)? I will focus on all of this information on Monday, and let you know if you/we have any questions. Thanks again.---Susan

Susan J. Brown
Special Advisor to Commissioner Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
E-mail: sbrown@energy.state.ca.us
Tel. (916) 654-4741
Fax (916) 653-1279

>>> Gordon Schremp 2/13/2009 12:56 PM >>>

Susan:

We are still working on our analysis of the A15 California retail outlet survey information to determine what portion of the major oil companies' branded retail outlets fall under the "company-owned and operated" category. In the meantime, I wanted to provide you and Jim with some retail station ownership factoids for the United States. Jim is correct in his assumption that ownership and operation by big oil is declining, based on data obtained from a couple of different sources. In addition, some of the majors have either completely exited the ownership and operation of retail outlets (such as ConocoPhillips) or have indicated plans to do so over the next couple of years (BP and ExxonMobil). After you have had a chance to review the attached document, please let us know if you have any follow-up questions. With regard to the A15 data analysis, we hope to have something by the end of next week.

Regards,

Gordon

>>> Susan Brown 2/10/2009 3:31 PM >>>

Hi, Mike, Jim, and Gordon. Jim is requesting the following information for his use at the February 25 Business Meeting. Can we aim for COB Thursday, February 19? These are Jim's words below.

First, we need data/facts on oil industries' exact ownership of CA stations, and who other owners are as well, e.g., private owner-dealers, independent dealer co's, etc. What costs to each sector would be if ATC were required? In other words, don't major oil companies only control less than 10 percent of the retail service stations in California.

Second, Jim recalls a 2005 study by U.C. Berkeley that indicated the oil industry, at that time, owned between 5 & 10 percent of CA retail stations, closer to 5 percent, and with the trend to dispose, I imagine now its 5 or less. Isn't the trend to shed company ownership of retail stations?

Please let me know if you have any questions.---Susan

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From: Susan Brown
To: Gordon Schremp
CC: Jim Page
Date: 2/19/2009 2:15 PM
Subject: Re: Request for Information--Resent
Attachments: Susan Brown.vcf

Hi, Gordon. I have the information you provided me has national statistics, not California specific. These U. S. statistics are extremely useful. Your 2/13/09 e-mail below suggested you were compiling retail service station information for California, am I correct? Why don't you call me at your convenience so that we can discuss....Jim needs simple factoids on California, if this information is available.--Susan

From Gordon on 2/13: We are still working on our analysis of the A15 California retail outlet survey information to determine what portion of the major oil companies' branded retail outlets fall under the "company-owned and operated" category. In the meantime, I wanted to provide you and Jim with some retail station ownership factoids for the United States.

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Jim needs this information no later than Tuesday, in preparation for the Feb 25 Business Meeting. Make sense?--Susan

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Fax (916) 653-1279

>>> Gordon Schremp 2/19/2009 2:05 PM >>>
Susan:

I sent an overview to you back on February 13th. Did you have a chance to look at the

document? Let me know if I should re-forward the email when you get a chance.

Thanks,

Gordon

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Gordon Schremp - Fuel Delivery Temp. Study; Letter to Comm. Karen Douglas, CA. Energy Commission

From: "Angelino Petrocelli" <apetrocelli@ccplaw.com>
To: "Guy Calladine" <gcalladine@ccplaw.com>, <kdouglas@energy.state.ca.us>, <arosenfeld@energy.state.ca.us>, <jbyron@energy.state.ca.us>, <jlevin@energy.state.ca.us>, <jboyd@energy.state.ca.us>, <gschremp@energy.state.ca.us>, <bchamber@energy.state.ca.us>, <cgraber@energy.state.ca.us>
Date: 2/27/2009 2:05 PM
Subject: Fuel Delivery Temp. Study; Letter to Comm. Karen Douglas, CA. Energy Commission
Attachments: 181178_1.PDF

Dear Madame/Sir: Please see the attached letter from Guy D. Calladine.

Thank you for your consideration.

Angelino Petrocelli
Assistant to Guy D. Calladine



February 27, 2009

Via Electronic Mail and U.S. Mail

Commissioner Karen Douglas
California Energy Commission
1516 Ninth Street, MS-33
Sacramento, California 95814
kdouglas@energy.state.ca.us
Fax: 916.653.3478

Re: *Docket Number 07-HFS-1*
Fuel Delivery Temperature Study

Dear Commissioner Douglas:

As discussed at our meeting on February 23, 2009, with, among others, Commissioner Jeffrey Byron, Michael Smith, Deputy Director for Fuels and Transportation, Gordon Schrempf and Nick Janusch, we are writing to set forth proposed changes and alternative language respecting the January 2009 Committee report dealing with the issues of (i) the net economic benefit to consumers under the cost/benefit analysis and (ii) the permissive use of automatic temperature compensation ("ATC") in California.

1. Net Economic Benefit to Consumers

The current CEC report at page 74 "calculated that the decreased quantities of gasoline gallons were valued at about \$376.4 million and diesel fuel at about \$61.1 million . . . This amount of money [\$437.5 million] is the representative value of the reduced quantity of gallons for which consumers would not have purchased if ATC had been in place at retail stations in California during the study period." However, as to the "net [economic] benefit to consumers", the CEC also concluded at page 3 "that ATCs should not be required since the results of the cost-benefit analysis show a net cost for consumers."

As we expressed at our meeting, there is no basis in or foundation for the current report to conclude that all costs to fuel retailers of ATC will be passed on to consumers. The methodology and conclusions contained in the report of Jeffery J. Leitzinger, Ph.D. of Econ One Research, Inc. should be considered and expressly acknowledged in the report of the CEC as

well as those of the county Weights and Measures officials (Messrs. Atkins, Boitano and Floren). Based on these submissions, at a minimum, it is unlikely that retail service stations would be able to recapture all cost and lost margin from hot fuel after introduction of ATC at retail pumps in California. Under that range of scenarios, there would be a material net economic benefit to consumers through the use of ATC.

Thus, Dr. Leitzinger, submitted written comments to Fuels and Transportation Division on January 5, 2009 concluding:

ATC would unmask temperature-driven fuel prices differences, forcing retailers of warmer fuel (and by implication their suppliers) to choose between surrendering some margin or competing at an increased fuel price disadvantage.

The absence of temperature correction provides retailers of hot fuel with a hidden source of margin advantage over their cooler-fuel competitors. As a result, they make more money than those competitors even while charging the same prices. Consumers do not have information about fuel temperature differences and, one can fairly assume, do not realize the lower energy content in a hot gallon given the myriad of other factors that affect their per-gallon driving mileage. Consequently, consumers do not have the means to create competitive erosion of hot fuel margin premiums.

ATC would change that. By correcting retail fuel sales volumes to the same standard temperature, the source of the existing hidden hot fuel margin premiums would disappear.

In my opinion, the reality of the California fuel market casts serious doubt on the underlying assumptions upon which the conclusions of the no-benefit proponents rest. In particular, by failing to take into account the market significance of temperature-adjusted fuel volumes, differences between retailers as to fuel temperature, size, and business models, or the broader fuel market structure in which retailers participate, the no-benefit proponents overlook the market mechanisms through which ATC could readily benefit consumers.

Depending upon the extent of margin recapture (by refiners, wholesalers, and retailers in combination), there would be significant and long-term consumer net benefit from ATC. . . . As is shown in Exhibit 1, ATC would provide a net consumer benefit in the first year even if the degree of margin recapture is as much as just over 76 percent. Exhibit 2 assumes that margin recapture exactly meets this first-year (net) break-even point and, taking account of recurring ATC-related costs, carries the net consumer benefit analysis forward for 10 years. Exhibit 2 shows that even at this high level of margin recapture,

consumers would achieve a net benefit of \$844 million over the next ten years. As is shown in Exhibit 3, a 50 percent margin recapture would leave a net consumer benefit of \$2.1 billion over the next ten years.

(pages 28, 30-31, 39-40) (emphasis added)

Dr. Leitzinger offered express examples of circumstances where the industry had not passed on all cost increases to consumers (see Leitzinger report at pages 25-27). Further, Dr. Leitzinger concluded that, if there was a 25% margin recapture by motor fuel retailers, there would be a net consumer benefit over \$3.2 billion over the next ten years. (*Id.* at Exhibit 4).

Significantly, in the discussion regarding general methodology and analysis of costs/benefits contained in your staff's Workshop Materials dated June 5, 2008, the Fuels and Transportation Division set forth a methodology and quantified the benefits to consumers and the costs to retail service stations of implementing ATC in Alameda County and Fresno County. The monthly benefit calculation was the amount of fuel sold in each county multiplied by the fuel price and multiplied by a "volume correction factor" that was based on the temperature of the fuel (page 70). The cost estimate calculation methodology was based on the cost of new fuel dispensers, retrofit kits for existing pumps, labor costs, slightly higher inspection fees and maintenance costs, and increased inspection time of regulators. (pages 66, 68) Further, at pages 71-74, the Fuels and Transportation Division assumed zero margin recapture (*i.e.*, no pass through to consumers of lost hot fuel margins), and found that the benefits to consumers outweighed the costs in Alameda County by almost \$9.5 million per year after the first year and in Fresno County by roughly \$11.5 million each year after the first year.

While the Staff's assumption as of June 5, 2008 of NO recapture by the retailers was revised later, presumably as being unfounded and unrealistic, so to is the current unfounded and unrealistic polar opposite assumption in the current draft, namely that ALL such margins will be 100% recaptured by the retailers from day 1 following implementation of ATC. The likely truth regarding the degree of recapture over time is somewhere in between, and we respectfully submit the final report must acknowledge the probability of different ranges of recapture, and the resultant significant and material impact that range of possibilities has on the economic benefit to consumers under any basic cost/benefit analysis. The CEC does not possess a crystal ball which enables it to predict precisely how the industry and consumers will react to ATC costs and recapture. Simply put, without advising the CEC of the economic ramifications of recapture at less than all of such costs and lost revenues, we respectfully suggest the report opens itself to the same loss of credibility which presumably lead your Staff to change its conclusions of June 5, 2008. The reality is there will not be 0% or 100% recapture, and the report should and must show the ranges of other possibilities and the economic impact of those ranges on the amount of economic benefits to the consumer.

Indeed, such an approach would also be entirely consistent with the revised position of the Staff regarding the issue of permissive use, where the Staff has concluded it is important to acknowledge in the Report differences of opinion. Similarly, such differences of opinion on a matter of speculation as to the future degree of recapture must also be acknowledged given the markedly divergent conclusions these differences offer as to the economic cost-benefit analysis.

Further, in a letter to the California Energy Commission, dated January 4, 2009, Kurt E. Floren of the Los Angeles Department of Agricultural Commissioner/Weights and Measures (the county which consumes 25% of California motor fuel each year) concluded:

The findings of the report support a conclusion that automatic temperature compensation at the retail level for transportation fuel sales is both feasible and beneficial to the purchasing consumer as well as for competing dealers. Given the certain premise that liquids do expand and contract with temperature, it is imperative that consumers know, in making purchase decisions, exactly what they are receiving for their money at the time such decisions are made. This is all the more pertinent in considering that the retail fuel market is, indeed, highly competitive and consumers make purchase decisions based upon very slim per-gallon price variances among competitors. The lack of certainty regarding temperature and resulting fuel expansion that exists in the absence of automatic temperature compensation (ATC) technology at retail fuel stations results in the potential obliteration of the ability to compare value among such minimal price variances.

Regarding retail fuel dealers, as the vast majority of wholesale fuel purchases are conducted on a temperature-compensated basis, ATC at retail ensures that fuel sellers can both recover their wholesale costs and apply a profit margin that is consistent and reliable, as sales volumes and revenues would be directly proportional to their wholesale fuel purchases. The need to continually monitor fuel tank contents and fuel temperatures and to make continual adjustments to advertised fuel prices to achieve those cost recoveries and profit gains become entirely unnecessary, as delivery adjustments are automatic via the technology's compensation functions.

First is the recognition that temperature compensation has been implemented in the majority of wholesale transactions to ensure consistency and accuracy within that level of motor fuel commerce for at least half a century, as noted in the report. Finally, the observations of Canada's voluntary implementation of ATC at a rate exceeding 90% is evidence of Canadian retailers' recognition that fuel sale volumes and maintenance of desired and reliable profitability are successfully facilitated by ATC in cold weather environment. Certainly, it can be assumed that the same should be true in a typically warm weather environment as exists in California.

The bottom-line goal of the AB 868 Fuel Delivery Temperature Study has been to conduct a cost-benefit analysis to determine whether the cost of ATC implementation at retail is warranted. As a weights and measures regulatory official with twenty-four years of experience overseeing the nation's largest county in which nearly two-thousand retail fuel stations operate over 56,000

dispensers and conduct nearly 25% of the state's annual fuel sales, I submit to you that the answer is "Yes."

* * * *

Weights and measures laws and regulations are intended to facilitate value comparison [emphasis in original] Many measuring devices that were previously implemented for commercial use are no longer permitted, as technology has advanced, become available at reasonable cost, and has proven to provide greater assurance of accuracy than that of the preceding equipment. Similarly, newer and improved accuracy tolerances and device specifications have been required and implemented in their place as they became available, even though higher costs were incurred, as they provided greater protection to commerce. Such should be done in the case of automatic temperature compensation technology.

* * * *

The issue of monetary benefits from ATC to California consumers is, admittedly, a convoluted issue. As reflected in the CEC staff study report, sales of gasoline and diesel fuel in California amounted to approximately 15.625 billion gallons and 3.056 billion gallons, respectively, during the study period. Had ATC been in use, California consumers would have paid for a total of 136 million fewer gallons amounting to a value of \$438 million. Opponents of ATC will argue that this value is presented in error, as it is to be presumed that cost savings to retailers (fuel not actually delivered) is reflected in the per-gallon prices offered to consumers and they, therefore, did not incur the actual expense. Facts supporting such a presumption, though, have not been presented or documented in any way by the opponents. Opponents will also argue that, if ATC were to be implemented, costs would need to be passed on to consumers, resulting in no net benefit to them. This brings the matter to its bottom-line question: Is there a net benefit? I again submit, "Yes."

There can be no assurance, under current non-ATC retail fuel sales practices, that temperature variables have been taken into account in establishing retail per-gallon prices. There is a demonstrated recurring problem of uncertainty amounting to over \$400 million that can be remedied by a one-time \$123 million solution, using the CEC's high-end calculation of implementation costs. Even if passed through to consumers in its entirety, this solution will be offset by a one-year increase in retail fuel prices of less than a penny per gallon (7/10 of a cent) over the course of a single year, with ongoing costs (at the high-end) of seven-hundredths of a cent per gallon. By any reasonable standard, such a cost is negligible.

* * * *

Accuracy and reliability in measurement standards is critical to the maintenance of a fair marketplace and to facilitate value comparison, benefiting consumers and competitors, alike." (emphasis added).¹

Accordingly, we propose that regarding the economic benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuel in California, the following language be added to the "Executive Summary" of the report, replacing the fourth paragraph on page 1:

This report quantifies the economic benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuels in California. The conclusion of the cost-benefit analysis is predicated on whether motor fuel retailers in California may be able to pass on to consumers the costs of installing the ATC equipment and their reduced margins from selling hot fuel (that is, pass on to consumers all costs associated with ATC-cost of implementation and reduced margins on gallons sold in excess of 60 degrees F.). It is not possible to predict whether retailers (refiners, wholesalers, and retailers in combination) can or will be able to successfully pass on to consumers all costs associated with the introduction and use of ATC. Therefore, the amount of net benefit to consumers depends on the degree to which retailers of motor fuel in California pass through to consumers their reduced margins and costs to consumers.

Depending on the amount of margin recapture by retailers of motor fuel, there is a range of potential economic benefits to consumers. For example, assuming a 75% margin recapture by motor fuel retailers, consumers would achieve a net benefit of \$844 million over the next 10 years. Assuming a 25% margin recapture by retailers, there is a net economic benefit to consumers in excess of \$3.2 billion over the next 10 years.

Finally, through ATC, there is value in the public perception of increased fairness, accuracy, and consistency of fuel measurement that support mandating ATC at California retail stations.

The following language be added replacing the paragraph under the first bullet on the middle of page 3 of the "Executive Summary":

¹ See also the submission dated January 5, 2009, Mike Boitano, California Agricultural Commissioners & Sealers Association ("The facilitation of value comparison in commercial transactions and the assurance of accuracy in conducting such transactions are central to the regulatory efforts of our members. Automatic temperature compensation (ATC) technology provides enhancements to the means for achieving each of these endeavors. * * * * CACASA recognizes the benefits of ATC to fuel measurement accuracy, its ability to aid consumers in performing value comparison when shopping for fuel, and the reasonable pass-through cost of implementation.") (emphasis added); submission dated December 19, 2008, Robert G. Atkins, San Diego Department of Agriculture, Weights and Measures ("Automatic temperature compensation would result in the same 'gallon' being sold at retail as it is at wholesale so that buyer and seller are both dealing in 'net gallons'. The obvious benefit for consumers is improved retail price transparency.") (emphasis added). (After Los Angeles county, San Diego county is the largest consumer of motor fuel in California)

"There is a range of potential net financial benefits to consumers depending on the amount of margin recapture by retail station owners, wholesalers, and refiners."

The following language be added replacing the first bullet point under "Primary Recommendations" on page 3:

"If the only criterion for assessing the merit of mandatory ATC installation for use at California retail stations is the net economic benefit to consumers, results of the cost-benefit analysis depend on whether retail stations can and will pass on to consumers all costs associated with ATC. If they can and do pass on all costs of ATC to consumers, there is no net economic benefit to consumers and ATC should not be mandated. If, however, retail stations cannot or do not pass on all those costs to consumers, depending on the amount of pass through, there are material and sizable net economic benefits to consumers and ATC should be mandated."

To make these changes/deletions regarding the net benefit to consumers after the introduction of ATC in California, the following portions of the existing report should be deleted and/or modified:

- Page 3 (Executive Summary): Delete first bullet point on bottom of page three ("If the only criterion for assessing the merit of mandatory ATC ...the results of the cost-benefit analysis show a net cost for consumers.").
- Page 57 (Chapter Four): After the third full paragraph on page 57 under "Cost-Benefit Analysis Approach and Methodology", add "Accuracy and reliability in measurement standards is critical to the maintenance of a fair marketplace and to facilitate value comparison, benefiting consumers and competitors, alike."
- Page 74 (Chapter Four): In the first full paragraph, delete the first sentence ("The conclusion, therefore, is that retail station owners will in fact raise their fuel prices to compensate for selling fewer units, all other things being equal"). Add "It is unclear whether, and the degree to which, retail station owners will be able to raise motor fuel prices depending on market conditions and other factors."
- Pages 76-80 (Chapter Four): Revisions under section entitled "ATC Retrofit Cost-Benefit Analysis Results for Society" and "ATC Retrofit - Potential Net Benefit to Consumers Under Certain Circumstances". Add "It is unclear whether retail stations owners would be able to pass on increased costs of ATC and increased size of gallons (i.e., margin recapture) and there is a range of possibilities depending on the amount of pass through to consumers. For example, if there is a 50% margin recapture by retailers, consumers would have a net benefit of \$2.1 billion over the next ten years."
- Pages 111-112 (Chapter Seven): Delete last bullet point ("But the perception by various stakeholders...the Conclusion is that retail stations owners will in fact raise

their fuel prices to compensate for selling fewer units, all other things being equal.”). Add “The net benefit to consumers depends on the degree to which retailers can pass on to consumers their decreased margin. It is unclear whether retail stations owners will be able to raise their fuel prices to fully compensate for selling fewer units (*i.e.*, margin recapture). Thus, the net benefit to consumers is unclear and there is a range of possible economic benefits to consumers.”

- Page 113 (Chapter Seven): Second bullet point delete last sentence (“As such, it is unlikely that there are any plausible circumstances whereby some consumers could realize a small net benefit of ATC at retail in California.”). Add “Thus, the net economic benefit to consumers is unclear and there is a range of possible economic benefits.”
- Page 114 (Chapter Seven): Delete last bullet point (“Any attempts to increase the level of information... and the electronic cash register or Point of Sale (POS)”).
- Page 116 (Chapter Seven): Delete first bullet point under “Recommendations” (“If the only criterion for assessing... is the results of the cost-benefit analysis showing that costs for consumers.”). Add “There is a range of possible net economic benefits to consumers depending on the amount of margin recapture by retailers, wholesalers, and refiners.”

2. Permissive Use of ATC

In May 2007, the Department of Agriculture, found, in accordance with Business & Professions Code Section 12500.5, an ATC device to temperature compensate the delivery of motor fuel at retail service station pumps “meets the requirements of this [Business & Profession] code” and approved the ATC device for “use in commerce” in California (*i.e.*, on motor fuel pumps in California). Consistent with that certification, under California law, in a 2007 national survey by the National Institute of Standards and Technology of State Weights & Measures officials regarding the legality of temperature correction on retail sales of motor fuel, California responded that temperature compensated retail motor fuels were now permissive and lawful at California retail stations. See http://www.ncwm.net/events/atc2007/States_Survey_On_ATC.doc.²

Accordingly, as we urged at our meeting this week, we respectfully suggest that the current version of the report at page 2 be changed and the following language added to the end of paragraph 2 following the first bullet point question:

For purposes of this report, the CEC assumes that permissive use of ATC at retail motor fuel pumps in California is now permitted under California law.

(Footnote 1)

² The November 2008 Staff Report of the CEC concluded at page 2 “[p]ermissive voluntary use of automatic temperature compensation (ATC) devices at California retail stations is already permitted under California Law as it is not specifically prohibited.” That report further concluded that it is now “legal to use [ATC devices] on a voluntary basis per DMS regulations.” (page 106)

Footnote 1: The CEC recognizes that certain stakeholders assert divergent positions respecting whether the use of ATC is now permitted in California and that litigation is now pending in California and elsewhere regarding certain issues relating to the temperature of motor fuel sold to consumers. Thus, lawyers for the oil industry filed two letters arguing that the use of ATC is now prohibited in California while a lawyer representing consumers filed a letter concluding that the use of ATC is now permitted in California.

To be consistent with this conclusion, the portions of the existing report that need to be deleted and/or changed are as follows:

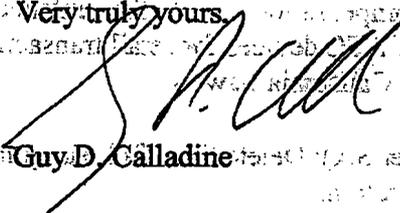
- Page 2 (Executive Summary): Delete second half of sentence under first bullet point (“and it is unclear whether the voluntary use of ATC devices is permitted under California law.”).
- Page 4 (Executive Summary): Delete second and third bullet points (“If the Legislature chooses not to mandate... consumer labeling provisions for ATC at retail stations.”).
- Page 8 (Chapter One): In fourth paragraph under “Retail Transactions and Temperature Compensation” delete the sentence (“[i]t is unclear whether the voluntary use of ATC devices for retail transactions of gasoline and diesel fuel is permitted under California Law.”).
- Page 89 (Chapter Six): Delete third full paragraph under “Permissive vs. Mandatory ATC at Retail Stations”.
- Page 90 (Chapter Six): Delete and/or modify first full paragraph, second full paragraph, and last paragraph on this page as “The Department of Agriculture has approved an ATC device ‘for use in commerce’ as meeting all the requirements of the Business & Professions Code.” Add “For purposes of this report, the CEC assumes that permissive use of ATC at retail motor fuel pumps in California is now permitted under California law.”
- Page 95 (Chapter Six): Delete first full paragraph (“If voluntary use of ATC at the retail level is clarified...”).
- Page 105 (Chapter Seven): Delete last bullet point (“Currently, there are no retail ATC devices...is permitted under California law”).
- On page 114: Delete bullet point (“The status of permissive (voluntary) use of ATC devices at California retail stations is currently in dispute with various stakeholders.”) Add “For purposes of this report, the CEC assumes that permissive use of ATC at retail motor fuel pumps in California is now permitted under California law.”

- Page 116 (Chapter Seven): Delete fourth and fifth bullet points under "Recommendations" ("If the Legislature chooses not to mandate the use of ATC... and consumer labeling provisions for ATC at retail stations.").
- Page 118 (Chapter Seven): Delete all three bullet points under "Permissive vs. Mandatory ATC at Retail Stations". Add "For purposes of this report, the CEC assumes that permissive use of ATC at retail motor fuel pumps in California is now permitted under California law."
- Page 118 (Chapter Seven): Delete last bullet point under "Labeling" ("If voluntary use of ATC...").

We are available to further meet and confer with you, the other Commissioners, or their staff to discuss these issues. We very much appreciate the time, dedication and effort that you and the CEC have expended in preparing and conducting the cost/benefit analysis and in preparing the various reports.

Thank you for your cooperation and consideration.

Very truly yours,


Guy D. Calladine

cc:

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From: Gordon Schremp
To: Diana Schwyzer; Susan Brown
CC: Galen Lemei; Jim Page; Mike Smith; Nick Janusch; Susanne Garfield
Date: 3/3/2009 6:04 PM
Subject: AB 868 - Draft Errata Language
Attachments: Business Meeting - Draft Errata 3-3-09.doc

Susan and Diana:

Please see the attached file for a copy of the Draft Errata document associated with the AB 868 Committee Report scheduled for the March 11 Business Meeting. The language has completed review within our division and we offer this draft for your consideration. Let me know if you have any questions or if you would like to schedule some time on Wednesday to discuss in greater detail.

Thanks,

Gordon

Page 3, the third complete paragraph is revised as follows:

If retail station owners and operators continue to grow and remain profitable, then retail station owners will most likely raise their fuel prices to compensate for selling fewer "gallons." If this is the case then expected benefits for retail motorists will be essentially zero. It should be noted, however, that some stakeholders argue that there is a degree of uncertainty regarding the ability of retail station owners to completely and successfully compensate their margins to maintain profitability over the long-term if ATCs are mandated at California retail stations.

Page 3, the second bullet under "Primary Recommendations" is revised as follows:

However, the Committee recommends that the Legislature also consider whether the value of ~~the public perception of~~ increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost-benefit analysis, justify mandating ATC at California retail stations.

Page 4, the first bullet under "Areas for Further Research" is revised as follows:

The value of ~~the perceived~~ increased fairness, accuracy, and consistency benefits of ATC to consumers, which was not included in this analysis, should be estimated through focus groups and survey methods that assess consumers' willingness to pay for such benefits.

Page 57, the third paragraph under "Cost-Benefit Analysis Approach and Methodology" is revised as follows:

On the benefit side of the ledger, staff performed analysis to monetize the expected benefits society might realize from the ATC retrofit option. In this context, "society" would include all California consumers who purchase gasoline and diesel fuel at retail stations within the state and owners of retail stations. The two types of potential benefits that were analyzed as part of this option included expected benefits for retail motorists that might be derived from changes in the method by which retail fuel was sold at the retail station and potential economic benefit to society of improved information regarding transparency of California retail fuel prices. Accuracy and

reliability in measurement standards is critical to the maintenance of a fair marketplace and to facilitate value comparison, benefiting consumers and competitors, alike.

Page 74, the first complete paragraph is revised as follows:

The conclusion, therefore, is that retail station owners will in fact raise their fuel prices to compensate for selling fewer units, all other things being equal.⁷⁹ It should be noted, however, that various stakeholders are in disagreement with the report's assumptions of retail fuel price adjustment and the ability of retail owners to completely pass through incremental expenses. These contrary positions are best described in the work of Dr. Jeffrey Leitzinger submitted to the docket on January 5, 2009.⁸⁰ Summarizing the arguments raised by Dr. Leitzinger and others, it is unclear whether, and to the degree to which, retail station owners will be able to raise motor fuel prices depending on market conditions and other factors. Further, these stakeholders also argue that it is unclear whether retail station owners will be able to completely recover ATC-related costs, even over the long-term. The implications of these two positions is that consumers could realize a net benefit if ATCs are installed, the size of the net benefit being contingent upon the degree to which costs can be passed through to consumers and retail prices adjusted to compensate for selling fewer gallons of fuel. The quantification of the reduced number of units and a valuation of their worth during the study period are presented in the following paragraphs only to illustrate the magnitude of the anticipated retail price adjustment:

Page 76, the paragraph under "Quantification of Fairness" is revised as follows:

The concept of increased fairness for motorists has been raised by some stakeholders as a type of benefit that has not been accounted for in the cost-benefit analysis. Some stakeholders believe that the collective benefits for motorists that would result from a conversion to ATC at retail ~~station~~ stations could amount to hundreds of millions of

⁷⁹ The outlook for convenience stores (that sell transportation fuels) in the United States appears to be one of growth. According to statistics developed by Willard Bishop, convenience store numbers are forecast to increase from 120,740 in 2007 to 142,026 by 2012. Annual sales of non-fuel goods (groceries and consumables) are also expected to rise from a per-store average of \$1.03 million in 2007 to \$1.18 million by 2012. Bishop, Willard, *The Future of Food Retailing*, June 2008, [<http://www.willardbishop.com/filebin/200806FFR.pdf>].

⁸⁰ California Energy Commission, Docket No. 07-HFS-01, AB 868 Fuel Delivery Temperature Study, Written Comments of Jeffrey J. Leitzinger, Ph.D., Econ One Research, Inc., January 5, 2009. [http://www.energy.ca.gov/transportation/fuel_delivery_temperature_study/documents/2008-12-09_workshop/comments/Jeff_Leitzinger_Econ_One_TN-49602.PDF].

dollars per year in California. Although no quantification of “fairness” has been attempted as part of these proceedings due to the ~~subjective~~ variable nature of this ~~perceived~~ consumer benefit, there are some research survey techniques and methodologies that could be used to provide some valuable insight into this variable and ~~subjective~~ consumer ~~belief~~ benefit.

Page 112, the new bullet is inserted prior to “Quantification of Increased Price Transparency Benefits for Society” that reads as follows:

Summarizing the arguments raised by Dr. Leitzinger and others, it is unclear whether, and to the degree to which, retail station owners will be able to raise motor fuel prices depending on market conditions and other factors. Further, these stakeholders also argue that it is unclear whether retail station owners will be able to completely recover ATC-related costs, even over the long-term. The implications of these two positions is that consumers could realize a net benefit if ATCs are installed, the size of the net benefit being contingent upon the extent to which costs can be passed through to consumers and retail prices adjusted to compensate for selling fewer gallons of fuel.

Page 112, the third bullet under “Quantification of Fairness” is revised as follows:

Although no quantification of “fairness” has been attempted as part of these proceedings due to the ~~subjective~~ variable nature of this ~~perceived~~ consumer benefit, there are some research survey techniques and methodologies that could be used to provide some valuable insight into this variable and ~~subjective~~ consumer ~~belief~~ benefit.

Page 116, the third bullet is revised as follows:

However, the Committee recommends that the Legislature also consider whether the value of ~~the public perception of~~ increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost-benefit analysis, justify mandating ATC at California retail stations.