



March 3, 2009

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Re: Fuel Temperature Study Final Draft Report  
Docket No. 07-HFS-01

Dear Nick and Gordon,

Thank you both for your time in helping clarify our urgent requests for changes in the final draft of the fuel temperature staff report. Please distribute these to the appropriate commissioners and staff for consideration on or before the March 11 meeting.

Fair and transparent method of sale is a bedrock of regulation and consumer protection. It is not, as parts of the report currently and bewilderingly assert, a mere “public perception,” or a “subjective... consumer benefit.”

The requested changes below align language in the Executive Summary, Quantification of Fairness, and Primary Recommendations with Attachment S to the report, the chief body text of the report and established regulatory values involving fairness and transparency.

First, however, Consumer Watchdog and Public Citizen want to be clear that they also strongly oppose the draft’s conclusion that there is no net monetary benefit to consumers in automatic fuel temperature compensation (ATC).

The draft appears to accept wholesale the oil marketers’ assertion that retailers would recoup from consumers every penny of possible lost revenue from fair sales, even after paying for installation costs. This is an opinion, and certainly no more valid than a competing economic analysis showing a monetary benefit of variable size. To accept the marketers’ opinion as fact makes no sense except as an indication of bias.

Consumer Watchdog and Public Citizen also object to the study's acceptance of legal opinions written on behalf of the fuel marketers and stating that the voluntary installation of temperature compensating pumps may be illegal under current law in California. Such sales were legal and accepted as such by both the California Division of Measurement Standards and the National Conference on Weights and Measures before oil marketers claimed illegality. It is not appropriate for the CEC to invite the Legislature to reverse, rather than advance, legally allowed consumer protections.

We understand that these other issues are being addressed in greater detail before the commission by other consumer-oriented parties.

### **Fairness and Transparency Issues**

The changes specifically requested in this letter concern the dismissive language applied to fair and transparent sale of fuel in the draft report, calling both values no more than a "public perception" that is "variable and subjective" Such language allows no quantifiable benefit for either fairness or transparency.

The meeting record and part of the draft report itself are contrary to this assertion of subjectivity. The report itself also asserts on page 75 an absolute, though unquantified, price benefit to the consumer resulting from transparency.

Fairness in method of sale is also an absolute benefit. In both oral statements and letters to the Energy Commission, state and county weights and measures regulators have stated that a fair method of sale for consumer goods is a fundamental requirement of a fairly competitive marketplace.

In a Jan. 4, 2009, letter to the Commission, Los Angeles County Director of Measurement Standards Kurt Floren said:

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. The costs projected in the CEC study are entirely reasonable to accomplish this goal and fulfill the longstanding practice of embracing new and improved technologies to ensure appropriate consumer protection and fair competition. I urge your Commission to recommend to the Legislature that a law requiring mandatory ATC implementation be pursued.

In a Jan. 5 letter to Commissioners Boyd and Douglas, Mike Boitano, president of the California Agricultural Commissioners and Sealers Association, stated:

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.

Boitano, speaking for the association, concludes (like Floren) that such value comparison and accuracy outweigh a small consumer cost, if one existed.

CACASA recognizes the benefits of ATC to fuel measurement accuracy, its ability to aid cons[um]ers in performing value comparison when shopping for fuel, and the reasonable pass-through cost of implementation. CACASA urges your Commission to recommend to the Legislature that it pursue the establishment of a State law to mandate the implementation of ATC at retail fuel stations throughout California within the time frames suggested in the report.

Thus there is an established value to fairness in method of sale and transparent ability perform value comparisons. They are not mere “public perception[s].”

### **Specific Requests**

We request the following changes to the draft report. If any instances of similar need for correction are omitted from these specific changes, we ask that they be corrected in similar fashion.

1. Page 4, under “Areas for Further Research”

The first bullet point, beginning “The value of perceived fairness, accuracy and consistency benefits of ATC to consumers ... should be estimated through focus groups and survey methods, etc.” Entire paragraph should be deleted.

(Fairness, accuracy and consistency are established regulatory values protective of both consumers and a competitive market. Their value is not determined by focus groups.)

2. Pages 3 and 116, under “Primary Recommendations”

The second bullet point, beginning “However, the Committee recommends that the Legislature also consider whether the value of the public perception of increased fairness, accuracy and consistency etc.” should be changed to read:

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

3. Page 76, “Quantification of Fairness”

This paragraph, beginning “The concept of increased fairness has been raised by some stakeholders and has not been accounted for in the cost-benefit analysis, etc.” should be changed to read:

*Increased fairness for motorists has not been accounted for in the monetary cost-benefit analysis. Although no quantification of fairness has been attempted as a part of these proceedings, fairness in method of sale is a primary goal of consumer protection agencies and regulators.*

(Fairness, in the context of method of sale, is not a broad “concept,” nor is it a “subjective ... consumer benefit” or a “consumer belief, as stated later in the paragraph. Again in the context of compensated vs. uncompensated fuel sales, the first is objectively fair to both seller and buyer, and the second is not. This is not an opinion determined by poll or survey.)

4. page 75, “Quantification of Price Transparency”

The discussion of price transparency on page 75, and the accompanying Appendix S on pp. 144-148 both accept transparency as a benefit to economic efficiency. On page 75 the first paragraph of the draft states:

[H]aving no knowledge of fuel temperature at the time of a transaction creates a problem because consumers cannot adequately compare the benefits or value of fuel prices advertised by two competing retail stations.”

Paragraph 3, page 75, states that if ATC were installed,

Any uncertainty regarding whether or not temperature influences had been factored into the advertised per-gallon price would be removed and the consumer’s selection of the lowest-priced fuel would consistently result in an actual savings to the consumer. [emphasis added]

This conclusion *must be reflected in the ultimate cost-benefit calculations and recommendations of the report.* Even if not fully quantifiable, this absolute monetary benefit may not be omitted from the report’s conclusions and recommendations.

Full information results in smarter shopping, whether the consumer understands the fuel temperature issue or not.

Sincerely,



Judy Dugan  
Consumer Watchdog

(Signature on file)  
Tyson Slocum  
Public Citizen