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September 7, 2007

Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580

Dear Chairman Majoras:

It has come to my attention that you have responded to a request from Representative Issa for an opinion from the Federal Trade Commission on the implications for consumers of the thermal expansion of gasoline. Your August 28, 2007 reply raises significant questions.

As you have admitted in the fifth paragraph, the Commission has not conducted an investigation into the matters discussed in the letter. Unfortunately, in the absence of an investigation, staff's apparent misunderstanding of the issues led to a significant error in calculation. The magnitude of the error puts into question the validity of many of the assertions and opinions expressed in the letter.

Significant error in FTC's calculation of the effect of the thermal expansion of gasoline

You state that "a variation in temperature of 20 degrees Fahrenheit affects the volume of a typical 20 gallon tank of gasoline by about 6 tablespoons." In a footnote, you continue, "for a consumer refilling a 20-gallon gas tank, a 6-tablespoon fluctuation is equal to 0.1 percent of the total gasoline purchased."

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In fact, a 20 degree Fahrenheit variation would cause a variation in volume more than 10 times greater than you have calculated. According to the Weights and Measures Program Coordinator at the National Institute of Standards and Technology (NIST), a 20 degree Fahrenheit variation would cause a variation in volume of 1.38 percent, almost 12 times the result FTC calculated. Rather than 6 tablespoons, the volume variation would be about three-tenths of a gallon.^[1]

Erroneous implications

FTC makes an erroneous comparison based on its mistaken calculation. Your letter states, "FTC staff also understands that, in connection with the calibration of gasoline pumps, it is not uncommon for states to include tolerances of plus or minus 6 tablespoons for every 5 gallons of gasoline pumped." The erroneous implication is that volume variation caused by hot fuels is less than standard tolerances.

But when viewed properly with a corrected calculation, the volume variation far exceeds standard tolerances. It would indeed be noteworthy if the FTC's view of such a large variation was tolerable, or that sales in which the reported volume differed from actual volume by such a variation did not constitute the basis of a fraud investigation.

Dubious opinions

Your letter expresses opinions on a number of related topics that, in the absence of an investigation, if based solely on the calculation error described above, are dubious.

For instance, you state: "In the sale of gasoline, the individual discrepancies stemming from any failure to adjust for temperature are very small"; "it is unclear whether misrepresentations respecting the volume of gasoline arising from its sale at greater than 60 degrees Fahrenheit necessarily would be material to consumers;" "it appears that the sale of "hot fuel" might not cost consumers extra money."

The validity of all of these assertions is questionable given that that the calculation on which they are based incorrectly understated the effect of hot fuel by a factor of 10.

You opine on the cost/benefit of deploying equipment at retail gasoline pumps to adjust for temperature. You state, "the added compliance burden on gasoline retailers would raise consumer prices at the pump without providing consumers with a corresponding benefit."

^[1] Electronic mail correspondence from Richard Suiter, NIST, September 6, 2007, "For gasoline the change is **0.276 gallons**. 0.276 gallons is equal to 1.38 % of 20 gallons and 70.656 Tablespoon [US]. The tablespoon is not an "official unit of measure" in the US or SI measurement system, but conversions are readily available on the Internet."

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Once again, your significant calculation error seems to have led you to an erroneous conclusion. When calculated properly, the national hot fuel premium – the amount consumers pay for an increased volume but not energy content of gasoline caused by temperatures in excess of the industry standard – has been estimated to be about \$1.5 billion in the summer of 2007 alone.^[2] Multiplied by the average life of a new retail gasoline pump, the cost to consumers for installing temperature compensating equipment at all retail gasoline stations would have to exceed \$18 billion in order to yield no benefit.^[3] That is obviously not going to be the case, as the FTC should have realized. As the price of temperature compensating equipment now stands at about \$1000-\$2000 per unit, the FTC's opinion effectively makes the absurd assumption that there are 16 people for every gasoline pump in the country.^[4]

It appears that FTC did manage to offer good counsel to Congress in one respect, however. You write, "we suggest gathering more facts." It would have been wise for the FTC to heed its own advice.

The Domestic Policy Subcommittee will continue its investigation into the hot fuels issue. As part of its ongoing investigation, I hereby request a briefing from you at your earliest opportunity to discuss the basis for the opinions you have expressed in your letter.

You may contact Jaron Bourke, Staff Director, at (202) 225-6427 to arrange our meeting.

Sincerely,



Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc Darrell Issa
Ranking Minority Member

^[2] Majority Staff Report, Domestic Policy Subcommittee, June 7, 2007.

^[3] This cost/benefit calculation presumes that all of the cost of temperature compensating equipment would be passed on to consumers. That is highly unlikely, as experts at FTC should know. Competition among retailers would act to bring down the proportion of the cost of installing temperature compensating equipment that could be passed on to consumers. Furthermore, competition among manufacturers of temperature compensating equipment would be expected to bring down the cost to retailers who purchase it.

^[4] The ratio is the inverse of \$18 billion by \$1000 per pump, and then dividing that quotient by a population of 294 million people (Statistical Abstract of the United States, 2006, Table 2.)