

Consumer's View of Mr. Ross Anderson's "Comments on Fuel Deliver and Temperature Study"

Submitted by John Siebert, OOIDA

Thank you for the opportunity to enter this rebuttal into the record. My intent is to clarify the debate and keep the project on-track so it can be completed within the accepted time schedule.

In the letter Mr. Anderson sent to the CEC Docket of January 23, 2008, he contends that the "Market" makes corrections for temperature through the "Equalizing Effects of Competition." However, the market is not just made up of wholesalers and retailers. Consumers are also part of the US fuel market, and the "Market" cannot be relied upon to make corrections to a problem about which most consumers remain totally ignorant.

ATC reduces the measurement error due to fuel temperatures from 5% to .5%. Considering the volume of fuel sold in this country, this is obviously a significant problem. No one can say ATC is not a more transparent retail method to sell fuel, for all parties involved.

Mr. Anderson asserts that fuel temperature is only one variable in a very complex system and not deserving of the attention it is getting. It was one variable that the petroleum industry saw as important back in 1900, and by 1920, temperature compensation was the default method for fuel sales among themselves. Within the industry they describe it as "Getting what your pay for and paying for what you get." This is also what US fuel consumers seek, equity in the marketplace.

Mr. Anderson believes that the assumption that retailers buy "Net" and sell "Gross" is false. The method of sale at the rack determines the rack owner's method of computing fuel taxes. If fuel is warmer than 60 degrees F. the rack owner will select to pay fuel taxes on the "Net" gallons sold. If the fuel is cooler than 60 degrees F. he will select to compute the fuel taxes on "Gross" gallons sold. Wholesalers will sell from the rack in the method that minimizes their tax exposure.

Mr. Anderson also asserts that filling stations use gross temperature gallons to fulfill the EPA fuel spill detection requirements. The EPA requires that tanks over 10,000 gallons have a leak detection program in place that can detect a leak as small as 8 oz. per hour. Testing programs require temperature compensation of fuel volumes to detect a leak that small.

Mr. Anderson's asserts that changing the volume of fuel from net gallons to gross gallons is similar to changing from measuring fuel by gallons to liters, or just a different way to describe the same end volume. However, the issue facing consumers is between buying only gross gallons in a market where fuel temperatures can vary 15 to 20 degrees within a five block area. Henry Opperman shared a fuel temperature map of Topeka, Kansas, at the NCWM interim meeting which illustrates this well.

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Mr. Anderson presents a hypothetical mathematical exercise on how retailers set their prices to accommodate for the fuel temperature. However, that is not how retailers in a competitive market set their prices. The price leader in the market sets the daily price, and competitive stations, regardless of the temperature of their fuel, follow that lead. If every retailer temperature compensated their daily price you'd see a wider range of prices, but in any given market fuel prices are relative uniform. He also offers no evidence this actually happens in the real world beyond his hypothesis.

His example from Sprague Oil illustrates why the heating oil retailers in the Northeast are pushing for temperature compensation on their delivery trucks so they can sell "Net" gallons to consumers. Apparently the "Market" is not sufficient to solve their shrinkage problem.

Although the committee is mandated to look at climate zones as a solution to fuel temperature variations, it is not a good solution for any state which experiences seasonal changes in temperature. Hawaii, which as a constant year around climate did the best they could with technology available to them in 1975, but even there, by moving to an 80 degree volumetric gallon they missed the average fuel temperature by 6 degrees F.

Mr. Anderson asserts that retail stations may change their price more than once a day due to competition, or inventory reconciliations. Last year we saw a 50 cent a gallon hike in gasoline prices in two weeks due to one tropical storm that threatened to, but did not make landfall, and a rusty pipe in a BP terminal in Alaska, which did not have a real effect on fuel supplies of the nation. In two weeks a 20 gallon fill-up increased \$10 in price, on rumor alone. That leads one to doubt retailers are immediately changing their prices because the fuel in their storage tanks cooled off a degree or two.

Mr. Anderson explains the inventory shrinkage predicament of the retailers in his home state of New York. They should be lined up wanting to buy ATC pumps, but they aren't, even though right across the river in Canada, they adopted them voluntarily. One plausible reason for this is the oil producers who sell fuel in NY are also selling fuel in CA, AZ, NM, TX, LA, MS, AL, GA, NC, SC, and FL. Since the impact of warm fuel temperatures in the southern states is 10 times greater than the impact of cool fuel temperatures in the northern states it is in the best interest of the oil producers to not recognize fuel temperature anywhere in the US.

In his discussion of how the market finds the "right" price for gasoline at the retail level, Mr. Anderson has stepped out of his role as a state weights and measures official. In fact during this discussion he sounds as if he were a lobbyist for the petroleum marketing industry, or quoting verbatim from one.

By stating that the temperature data collected by this committee will fall far short of providing information needed to calculate the impact of ATC on the retail market, Mr. Anderson is asking for a level of minutia that will only delay the current exercise and provide no real increase in knowledge. He's said himself, net and gross are just two ways at looking at the same quantity of

fuel. So what is added to our understanding if we know the temperature of the fuel at steps between where it is purchased by the retailer at the rack, and the temperature at which it is sold to the retail customer at the pump?

Mr. Anderson is fond of the FCC and the High Definition TV rollout example. What he ignores in his scenario is that the nation's broadcasters did not have a say on whether they were moving to High Definition or not. Unlike the FCC, the NCWM is not a branch of the US government and it is operated as a private consensus-based group. Petroleum marketers, who are members of NCWM and have stated, there will never be a consensus on the topic of introducing ATC at the retail level.

Mr. Anderson's says the smallest independent retailer in a market place is the price setter. In Kansas City, Missouri, Quick Trip, the largest fuel retailer in the area is the price setter. Proponents of ATC have agreed, we don't want to see small rural mom and pop filling stations close due to ATC's increased costs, because these type stations may represent 15% of the total stations, but they also probably only sell 5% of the fuel in the country.

American consumers are not prone to confusion any more than Canadian consumers. Canada was able to have a decade long voluntary transition to ATC in which the government and petroleum retailers cooperated in educating the consumer about the new system.

One of Mr. Anderson's concluding comments is certainly true, an independent fuel retailer in Minnesota is not in competition with independent fuel retailer in southern California. Although we've seen the independent petroleum marketers take the forefront of the debate over ATC, it is the multi-national integrated petroleum producers who have the most to lose in the leveling of this playing field. And, they are competing in Minnesota and southern California.

Thank you for this opportunity to add a consumer point of view to the continued debate.

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