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Feb. 8, 2008

To: California Energy Commission

From: Judy Dugan, The Foundation for Taxpayer and Consumer Rights (FTCR) and OilWatchdog.org

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

For the record, FTCR asserts:

- **Gasoline should be sold by the same method from refinery to wholesaler to retailer to consumer.** To have the top of the sales chain receiving goods compensated for temperature and the bottom, particularly consumers, receiving no temperature compensation is unfair on its face. At the least, NCWM should require the same method of sale throughout the chain. If refiners and wholesalers are willing to go back to gross (uncompensated) sales, that would also provide a fair method of sale. The unacceptable method of sale, for consumers, is the present broken chain.
- **No ordinary consumer has the ability to determine the temperature of gasoline at the pump,** or to make temperature comparisons among retailers. The consumer is therefore unable to make actual price to energy-value comparisons. The presentation by Henry Opperman at the open meeting Jan. 28 showed that, even in a small sample, stations within blocks of one another had gasoline temperature variations of up to 10 degrees F.
- **Consumers are smart enough to understand temperature compensation** if it is offered to them. The marketing lobby's contention that ATC would simply confuse their customers is true only if both regulators and sellers mis-educate buyers. The same "confusion" argument was made by food packagers attempting

to prevent nutritional content labeling, ultimately one of the great successes of the Food and Drug Administration.

- **The cost of ATC to retailers is a function of time.** FTCR and the Owner Operator Independent Drivers Association have been fully willing to agree to a timeline for ATC that comports with usual pump replacement time frames, minimizing the cost of retrofit or replacement. We have also agreed that small-volume rural stations, particularly those using mechanical pumps, may be exempted, for a longer period of time. These stations, much wept-over by marketing lobbyists at the meeting, are not and never have been at issue. In addition, the major oil companies and refiners often provide financial assistance for equipment upgrades.
- **Consumers have no way to validate marketers' claim** that retailers somehow "compensate" with pricing for fuel temperature variation, and thus the consumer loses nothing to hot fuel. If that were true, certain retailers would not embrace flat-black aboveground fuel tanks, which are only the most blatant, visible heating of fuel. Without method of validation, no claim is believable. The NCWM, above all others, should believe in "trust but verify."

As gasoline prices rise, hot fuel becomes a larger apparent cost to consumers and a larger temptation for gaming by retailers. Losing 1% of energy on a \$1.49 gallon of gasoline mattered little to consumers, just as a similar loss on "cold fuel" at \$1.49 mattered less to retailers. We're done with \$1.49 gasoline, however. At \$3.00, and even more at \$4.00 a gallon, fuel temperature matters. Since miles driven and gallons used rise in spring and summer, the overall unfairness is exaggerated to the detriment of consumers.

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