APMA
Arizona Petroleum Marketers Association

June 17, 2008

Mr. Gordon Schremp
California Energy Commission
Dockets Office, MS-4
RE: Docket No. **07-HFS-01**
1516 Ninth Street
Sacramento CA 95814
AB 868 Fuel Delivery Temperature Study
SENT BY E-MAIL: docket@energy.state.ca.us

Dear Mr. Schremp:

On behalf of the Arizona Petroleum Marketers Association, I would like to thank you for your time and efforts in addressing California AB 868. The cost-benefit analysis that the California Energy Commission is undertaking is extremely important not only to those retailers and consumers in California but to all petroleum marketers and consumers across the country. The potential implementation of Automatic Temperature Correction (ATC) devices at retail should not be adopted hastily. It is imperative that all of the potential costs, ultimately borne by consumers, be accounted for and carefully weighed against any perceived social benefit in the accuracy of measurement delivered with ATC devices at retail.

Having attended the CEC's most recent meeting in June, I would like to offer the following observations and insight for consideration. The CEC study seems to be comprised of three main sections: ATC Benefits, ATC Costs and the Cost Benefit Analysis.

ATC Benefits

In determining retail consumer benefits from ATC, the CEC staff is using the following formula: (fuel volume) x (retail fuel price) x (volume correction factor). APMA is concerned that the CEC is using current retail fuel prices from OPIS which ignores the fact that fuel pricing will likely change with ATC installation.

Common sense dictates that if retailers selling in warmer climates are required to sell an additional amount of fuel with ATC equipment to consumers that the retailer will adjust fuel pricing to take into consideration that he is now selling "larger" gallons to consumers. By not addressing this in the ATC Benefit methodology, the CEC will end up with an inflated retail consumer benefit number.

It's unclear if consumers will perceive ATC to be a benefit if they know that while they may get a larger gallon from an ATC dispenser they are also likely to pay more for that larger gallon.

ATC Costs

The CEC is gathering data on the business costs associated with the installation of ATC at retail. These would include the costs of equipment, either new or retrofit kits, and the cost of labor associated with installation. There will also be additional costs to retailers associated with the maintenance and inspection of the ATC dispensers which also need to be considered. While all of the estimates for ATC costs come from manufacturers selling the equipment in Canada---I wonder whether any of the ATC equipment has been tested and used in a retail environment where the temperature is much warmer? Will the equipment wear differently in warmer climates?

With over 2,000 retail outlets in Arizona, of which 40% are in rural outlying areas, APMA estimates the cost of installing ATC in Arizona to be over $20 million dollars. The figure increases to over $30 million when the additional 60% of retail found in larger urban areas is added. These costs do not include the hidden costs of labor, breaking concrete and additional costs associated with the installation of new equipment which will only add to the retailer's financial burden. It is important to note that the majority of motor fuel retail outlets are now independently owned---meaning they are not owned by major oil companies, so the costs associated with installing ATC will not be paid by big oil but rather by small businesses.

Cost Benefit Analysis

When discussing the cost benefit methodology at the June meeting, again APMA is concerned that the comparison of retail station costs to consumer benefits just does not provide the full picture since the formula again assumes the same retail prices in a post-ATC installation scenario as in a pre-ATC marketplace.

The CEC claimed that retailers may just raise the costs of their non-fuel items to recover costs rather than raising the price of fuel sold. This would mean that retailers in Southern California could just raise the cost of Twinkies to cover the increased gallon size they would be dispensing through ATC equipment. But how is this fair for Twinkie consumers in the Southern part of California versus those paying lower prices for Twinkies in the Northern part of California?

It seems much more likely that fuel pricing does in fact take into consideration temperature. This would explain why in Arizona, fuel prices are actually slightly lower than the national average. It also important to note that Arizona ranked last in retail margins in 2006 according to OPIS bringing in a measly 3.8 cents per gallon.

Permissive versus Mandatory ATC

Additionally, industry was asked to comment on the various scenarios in which retail ATC would be implemented and whether there should be a permissive phase and/or ultimately a mandatory phase. While it is true that industry would prefer that the status quo remain in place and that retail ATC not be pursued for reasons outlined above, the CEC needs to recognize that a permissive retail ATC scenario will likely create major problems in the petroleum retailing market.

By allowing the installation of ATC to be permissive, the CEC would be essentially allowing large well-financed retailers to use the regulation as a potential way to gain an unfair market advantage over smaller retailers. When coupled with the recent additional tank requirements under the federal Energy Act of 2005, many small retailers may decide that they can't afford to make these costly changes to their operation and close shop. Ultimately, this harms the consumer by decreasing their fueling options.

Permissive ATC also creates major confusion for the consumer because they can no longer compare station's pricing based on the same gallon being sold station to station. While the temperature in Arizona may very well be over the 60 degree standard---the temperature is constant corner to corner—consumers can easily compare price per gallon from the street—even if it is a gallon at 90 degrees. However, under a permissive retail ATC scenario, a consumer will be hard-pressed to compare stations selling ATC fuel v. retail sites selling traditional gallons. If some states decide not to implement retail ATC while other states do implement it---interstate commerce and taxes could be significantly impacted as well.

APMA truly appreciates the opportunity to share our concerns with the CEC during this cost-benefit analysis. We intend to remain active and engaged on the issue of retail ATC and hope that the ultimate decision reached by any state legislature or regulatory agency will be one which balances science and the best interest of the consumer.

Sincerely,

Andrea M.G. Martincic
Executive Director