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March 9, 2009

DOCKET

07-HFS-1

DATE MAR 09 2009

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Via Electronic Mail and First Class Mail

Mr. Gordon Schremp
AB 868 Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, California 95814
gschremp@energy.state.ca.us

Re: *Docket Number 07-HFS-1*
Fuel Delivery Temperature Study

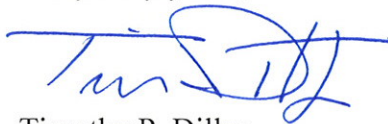
Dear Mr. Schremp:

Thank you for the proposed errata for the Fuel Delivery Temperature Study that was circulated on Thursday, March 5.

We enclose further suggested changes. We have redlined our changes from the document that was sent out on March 5. Any language that was deleted is shown in the right hand margin and any language that was added is shown in redline. We have also included additional material from the Report that should be amended and/or deleted. For your convenience, we preceded this language with the words "should be revised" in bold.

Thank you for your cooperation.

Very truly yours,



Timothy P. Dillon

TPD:jmk

cc:

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**PROPOSED ERRATA
FUEL DELIVERY TEMPERATURE STUDY
COMMITTEE REPORT
CEC-600-2009-002-CTF
JANUARY 2009**

Page 1, the last paragraph should be revised as follows:

This report quantifies the benefits and costs associated with temperature compensation for retail sales of gasoline and diesel fuels in California. ~~The conclusion of the cost-benefit analysis is predicated on whether motor fuel retailers in California may be able to pass on to consumers the costs of installing the ATC equipment and their reduced margins from selling hot fuel (that is, pass on to consumers all costs associated with ATC-cost of implementation and reduced margins on gallons sold in excess of 60 degrees F.). It is not possible to predict whether retailers (refiners, wholesalers, and retailers in combination) can or will be able to successfully pass on to consumers all costs associated with the introduction and use of ATC. Therefore, the amount of net benefit to consumers depends on the degree to which retailers of motor fuel in California pass through to consumers their reduced margins and costs to consumers.~~

~~Depending on the amount of margin recapture by retailers of motor fuel, there is a range of potential economic benefits to consumers. For example, assuming a 75% margin recapture by motor fuel retailers, consumers would achieve a net benefit of \$844 million over the next 10 years. Assuming a 25% margin recapture by retailers, there is a net economic benefit to consumers in excess of \$3.2 billion over the next 10 years.~~

Deleted: The cost-benefit analysis concludes that the results are negative or a net cost to society under all the options examined, however when quantified by cents per gallon these costs are small. The estimated total annual recurring net costs to society, if completely passed through to consumers, could amount to between eight hundredths (8/100) and 18 hundredths (18/100) of a cent per gallon. It is also unlikely that there are any plausible circumstances consumers could receive a small net benefit with installed ATC devices at California's retail stations

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Page 2, the second complete paragraph is revised as follows:

Currently, no retail station ~~operator owner~~ has chosen to install and operate ATC-ready dispensers in California, ~~and it is unclear whether the voluntary use of ATC devices is permitted under California law.~~ Whether California law currently permits the voluntary installation and activation of ATC devices by retail station owners for retail sales transactions of gasoline and diesel fuel has been disputed by stakeholders.¹

¹ In May 2007, the Department of Agriculture, found, in accordance with Business & Professions Code Section 12500.5, an ATC device to temperature compensate the delivery of motor fuel at retail service station pumps "meets the requirements of this [Business & Profession] code" and approved the ATC device for "use in commerce" in California (i.e., on motor fuel pumps in California). Consistent with that certification, under California law, in a 2007 national survey by the National Institute of Standards and Technology of State Weights & Measures officials regarding the legality of temperature correction on retail sales of motor fuel, California responded that temperature

Page 3, the third complete paragraph is revised as follows:

If retail station owners and operators continue to grow and remain profitable, then retail station owners may raise their fuel prices to compensate for selling fewer "gallons." If this is the case then expected benefits for retail motorists may be essentially zero. It should be noted, however, that some stakeholders assert that there is a degree of uncertainty regarding the ability of retail station owners to completely and successfully raise prices to compensate for selling fewer gallons if ATCs are mandated at California retail stations. If this is correct, there are immediate and substantial economic benefits to consumers. The following chart illustrates the possible benefits to consumers:

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Net Consumer Benefit from Mandatory ATC Devices over 10 years

Margin Recapture	Net Consumer Benefit
76.23%	\$844.5 million
50%	\$2.1 billion
25%	\$3.2 billion

Page 3, the first bullet point under the section entitled "Primary Recommendations" should be revised as follows:

If the *only criterion* for assessing the merit of mandatory ATC installations for use at California retail stations is a net benefit to consumers, the Transportation Committee (Committee) of the California Energy Commission concludes there is a range of possible net benefits to consumers.

Page 3, the second bullet point under the section entitled "Primary Recommendations" is revised as follows:

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

compensated retail motor fuels were now permissive and lawful at California retail stations. See http://www.ncwm.net/events/atc2007/States_Survey_On_ATC.doc

Page 4, the second bullet point is revised as follows:

If the Legislature chooses not to mandate the use of ATC at retail stations, ~~they should the Legislature may wish to confirm~~ the current intent of the existing statutes is to permit voluntary ATC at retail outlets for gasoline and diesel fuel.²

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Deleted: or prohibit

Page 4, the third bullet point **should be revised** as follows:

If the Legislature chooses to mandate ATC at retail, they should direct the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, and consumer labeling provisions for ATC at retail stations.

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Page 4, the first bullet point under the section entitled “Areas for Further Research” is revised as follows:

The value of ~~the perceived~~ increased fairness, accuracy, and consistency benefits of ATC to consumers, which was not included in this analysis, should be estimated through focus groups and survey methods that assess consumers’ willingness to pay for such benefits.

Page 8, the final paragraph is revised as follows:

California law stipulates that retail gasoline must abide by the latest standards as recommended by the National Institute of Standards and Technology (NIST) Handbook 44 that states that a gallon is 231 cubic inches and does not mention the temperature of the fuel.⁴ ~~It is unclear whether the voluntary use of ATC devices for retail sales transactions of gasoline and diesel fuel is permitted under California law.~~ California law specifies the following:

² In May 2007, the Department of Agriculture, found, in accordance with Business & Professions Code Section 12500.5, an ATC device to temperature compensate the delivery of motor fuel at retail service station pumps “meets the requirements of this [Business & Profession] code” and approved the ATC device for “use in commerce” in California (*i.e.*, on motor fuel pumps in California). Consistent with that certification, under California law, in a 2007 national survey by the National Institute of Standards and Technology of State Weights & Measures officials regarding the legality of temperature correction on retail sales of motor fuel, California responded that temperature compensated retail motor fuels were now permissive and lawful at California retail stations. See http://www.ncwm.net/events/atc2007/States_Survey_On_ATC.doc

⁴ Handbook 44, Appendix C – General Tables and Units of Measure.

- Requires retailers to sell motor fuel by the gallon.⁵
- Requires retailers to advertise prices on a per gallon basis on its dispensers.⁶
- Defines a gallon as “231 cubic inches (exactly).”⁷

Although the Department of Agriculture approved an ATC device for use in commerce as meeting the requirements of the Business & Professions Code, certain stakeholders have disputed whether California law currently permits the voluntary installation of ATC devices by retail station owners for retail sales transactions of gasoline and diesel fuel.

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Deleted: has been disputed by stakeholders.

Page 57, the third paragraph under the section entitled “Cost-Benefit Analysis Approach and Methodology” is revised as follows:

On the benefit side of the ledger, staff performed analysis to monetize the expected benefits society might realize from the ATC retrofit option. In this context, “society” would include all California consumers who purchase gasoline and diesel fuel at retail stations within the state and owners of retail stations. The two types of potential benefits that were analyzed as part of this option included expected benefits for retail motorists that might be derived from changes in the method by which retail fuel was sold at the retail station and potential economic benefit to society of improved information regarding transparency of California retail fuel prices. 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.

Page 74, the first complete paragraph is revised as follows:

The conclusion, therefore, is that retail station owners will attempt to raise their fuel prices to compensate for selling fewer units, all other things being equal.³ It should be noted, however, that various stakeholders are in disagreement with the report’s

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⁵ See California Business and Professions Code §12107 (incorporating Handbook 44 § 3.30 ¶ S.1.2.1 (2007 Ed.) (“[d]eliveries shall be indicated and recorded ... in ...gallons and decimal subdivisions or fractional equivalents thereof []”).

⁶ See Title 4 C.C.R. § 4201.

⁷ See Business and Professions Code §12107; Title 4 C.C.R. §§ 4000; 4001 (incorporating Handbook 44, App. C at pp. C-3, C-9 and C-16).

³ The outlook for convenience stores (that sell transportation fuels) in the United States appears to be one of growth. According to statistics developed by Willard Bishop, convenience store numbers are forecast to increase from 120,740 in 2007 to 142,026 by 2012. Annual sales of non-fuel goods (groceries and consumables) are also expected to rise from a per-store average of \$1.03 million in 2007 to \$1.18 million by 2012. Bishop, Willard, *The Future of Food Retailing*, June 2008, [<http://www.willardbishop.com/filebin/200806FFR.pdf>].

conclusions regarding retail fuel price adjustment and the ability of retail owners to completely pass through incremental expenses. These contrary positions are described in the work of Dr. Jeffrey Leitzinger submitted to the docket on January 5, 2009.⁴ Dr. Leitzinger and others assert that it is unclear whether, and the degree to which, retail station owners will be able to raise motor fuel prices depending on market conditions, ownership structure, and other factors. Further, these stakeholders also maintain that it is unclear whether retail station owners will be able to completely recover ATC-related costs, even over the long-term. The Energy Commission acknowledges uncertainty in this regard. The quantification of the reduced number of units and a valuation of their worth during the study period are presented in the following paragraphs only to illustrate the different scenarios of possible retail price adjustment.

Deleted: but finds that the balance of evidence points to complete or near-complete pass-through of ATC-related costs from retail station owners to consumers.

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Page 76, the paragraph under the section entitled “Quantification of Fairness” is revised as follows:

The concept of increased fairness for motorists has been raised by some stakeholders as a type of benefit that has not been accounted for in the cost-benefit-analysis. Some stakeholders believe that the collective benefits for motorists that would result from a conversion to ATC at retail station stations could amount to hundreds of millions of dollars per year in California. Although no quantification of “fairness” has been attempted as part of these proceedings due to the subjective variable nature of this perceived consumer benefit, there are some research survey techniques and methodologies that could be used to provide some valuable insight into this variable and subjective consumer belief benefit.

Page 89, the second paragraph under the section entitled “Permissive vs. Mandatory ATC at Retail Stations,” is revised as follows:

Although there are no ATC retrofit kits approved for use in California that could be used by retailers interested in implementing ATC on a voluntary basis, there is one model series ATC-ready fuel dispenser that has been approved as “meet[ing] the requirements of this [Business & Professions] code” for “use in commerce” in California by the California Department of Food and Agriculture, Division of Measurement and

⁴ California Energy Commission, Docket No. 07-HFS-01, AB 868 Fuel Delivery Temperature Study, Written Comments of Jeffrey J. Leitzinger, Ph.D., Econ One Research, Inc., January 5, 2009. [http://www.energy.ca.gov/transportation/fuel_delivery_temperature_study/documents/2008-12-09_workshop/comments/Jeff_Leitzinger_Econ_One_TN-49602.PDF]. Dr. Leitzinger concludes that there is a range of scenarios of possible net economic benefits to consumers. See Exhibits 1-4 attached to Leitzinger’s report.

Standards.⁸⁶ Before commencement of this study, it was reported at the NCWM interim meeting in New Mexico that a retailer in California was considering installing new fuel dispensers with ATC capability but would defer that decision until after the Energy Commission had completed its analysis.

Page 90, first full two paragraphs **should be revised** as follows:

Pages 90-91, the fourth full paragraph is revised as follows:

Page 105, the seventh bullet point is revised as follows:

Currently, there are no retail ATC devices installed and operating no retail station owner has chosen to install and operate ATC-ready dispensers in California. It is unclear whether the voluntary use of ATC devices for retail sales transactions of gasoline and diesel fuel is permitted under California law. Whether California law currently permits the voluntary installation and activation of ATC devices by retail station owners for retail sales transactions of gasoline and diesel fuel has been disputed by stakeholders, although the Department of Agriculture has approved an ATC device for use in commerce in California and, in 2007, reported to the National Institute of Standards and Technology that permissive use of ATC was lawful.

Page 111-112, last bullet point under “Quantification of Potential Consumer Benefits” **should be revised** as follows:

But the perception by various stakeholders that the price of the retail fuel would not be raised to compensate for the selling of slightly larger-sized “gallons” may be unrealistic if retail station owners are able to maintain a similar level of profitability before and after a conversion to mandated ATC. Staff assumes that since the industry of retail station owners and operators will continue to grow and remain profitable. The conclusion is that certain retail station owners will in fact raise their fuel prices to compensate for selling fewer units, all other things being equal and this will result in a range of possible net economic benefits to consumers.

⁸⁶ The Gilbarco Model Nxx series was approved with electronic Automatic Temperature Compensation capability that became effective on May 17, 2007. Department of Food and Agriculture, Division of Management Standards, California Type Evaluation Program, “Certificate of Approval for Weighing and Measuring Devices,” Certificate Number 5510(a)-07, (<http://www.cdffa.ca.gov/dms/programs/ctep/CTEPApprovals/PDF2007/5510a-07.pdf>).

Deleted: Even the ability to activate an approved ATC-ready fuel dispenser would be difficult without any established procedures for properly assessing the calibration of the device. It would be these same sets of protocols that would need to be followed by a county sealer during an inspection and fuel dispenser recertification visit. ¶

¶ The fact that there are no regulatory guidance standards for labeling of fuel dispensers or large signs could lead to consumer confusion at the initial stages of permissive ATC use at retail stations. Over time, consumers would become more knowledgeable of circumstances that could be beneficial to them in a permissive ATC environment, namely electing to fill-up at stations advertising ATC during the warmer months, while avoiding ATC stations during the coldest months (assuming assuming non-ATC stations are readily available options). Adequate labeling requirements would be necessary to empower consumers with sufficient information so as to make a better informed decision. Permissive ATC without adequate regulatory structure does not ensure that sufficient labeling standards would be adhered to by an ATC fuel retailer. ¶

Deleted: In order to diminish or eliminate any potential disagreements or misinterpretations involving permissive use of ATC at retail stations in California, it is recommended that the California Legislature consider clarifying the use of ATC at retail stations. If the Legislature chooses not to mandate the use of ATC at retail stations, they should the Legislature may wish to clarify if whether the current intent of the existing statutes is to permit or prohibit voluntary ATC at retail outlets for gasoline and diesel fuel. If the Legislature chooses to permit or mandate ATC at retail, they should direct the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, and consumer labeling provisions for ATC at retail stations. ¶

Page 112, a new bullet point is inserted prior to section entitled "Quantification of Increased Price Transparency Benefits for Society" that reads as follows:

Dr. Leitzinger and others assert that it is unclear whether, and the degree to which, retail station owners will be able to raise motor fuel prices depending on market conditions, structure of station ownership, and other factors. Further, these stakeholders also maintain that it is unclear whether retail station owners will be able to completely recover ATC-related costs, even over the long-term. The Energy Commission acknowledges uncertainty in this regard and finds that there is a range of possible scenarios depending on the ability of station owners, refiners, and wholesalers to pass on to consumers lost margin from selling fewer gallons and costs of ATC implementation.

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Deleted: the balance of evidence points to complete or near-complete pass-through of ATC-related costs from retail station owners to consumers

Page 112, the third bullet point under the section entitled "Quantification of Fairness" is revised as follows:

Although no quantification of "fairness" has been attempted as part of these proceedings due to the subjective variable nature of this ~~perceived~~ consumer benefit, there are some research survey techniques and methodologies that could be used to provide some valuable insight into this variable and subjective consumer belief benefit. Page 113, bullet point under "ATC Retrofit-Potential Net Benefit to Consumers under Certain Circumstances"

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Although likely that a portion of the capital costs will be recovered by retail station owners raising non-fuel commodity prices, it is improbable that the apportionment will be significantly skewed to non-fuel items.

Deleted: As such, it is unlikely that there are any plausible circumstances whereby some consumers could realize a small net benefit of ATC at retail in California.¶

Page 114, last bullet point under "Labeling" **should be revised** as follows:

Page 116, first bullet point under "Recommendations" **should be revised** as follows:

If the *only criterion* for assessing the merit of mandatory ATC installations for use at California retail stations is a net benefit to consumers, the Transportation Committee (Committee) of the California Energy Commission concludes there is a range of possible net benefits to consumers.

Deleted: Any attempts to increase the level of information on printed receipts at retail stations to include net and gross gallons would pose some difficult and problematic issues due to software limitations between the dispenser ATC equipment and the electronic cash register or Point of Sale (POS).

Deleted: concludes that ATCs should not be required since the results of the cost-benefit analysis show a net cost for consumers

Page 116, the third bullet point is revised as follows:

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

Page 116, the fourth bullet point under "Primary" **should be revised** as follows:

If the Legislature chooses not to mandate the use of ATC at retail stations, they should ~~confirm the current intent of the existing statutes is to permit~~ voluntary ATC at retail outlets for gasoline and diesel fuel.

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Deleted: or prohibit

Page 116, the fifth bullet point under "Primary" **should be revised** as follows:

If the Legislature chooses to mandate ATC at retail, they should direct the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, and consumer labeling provisions for ATC at retail stations.

Deleted: permit or

Page 118, the second bullet point under the section entitled "Permissive v. Mandatory ATC at Retail Stations" is revised as follows:

~~In May 2007, the Department of Agriculture approved an ATC device for use in commerce in California as meeting all the requirements contained in the Business & Professions Code.~~

Deleted: If the Legislature chooses not to mandate the use of ATC at retail stations, they should ~~the Legislature may wish to clarify if whether~~ the current intent of the existing statutes is to permit or prohibit voluntary ATC at retail outlets for gasoline and diesel fuel

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Page 118, the third bullet point under "Permissive vs. Mandatory" ATC at Retail Stations **should be revised** as follows:

If the Legislature chooses to mandate ATC at retail, they should direct the California Division of Measurement Standards to develop standards addressing equipment approval, certification testing, compliance enforcement, and consumer labeling provisions for ATC at retail stations.

Deleted: permit or

Page 118, the second bullet point under “Labeling” **should be revised** as follows:

If voluntary use of ATC at the retail level is confirmed by the State’s Legislature to be permissible, DMS ~~may~~ develop amended regulatory language for the large price display signs that includes guidance for:

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