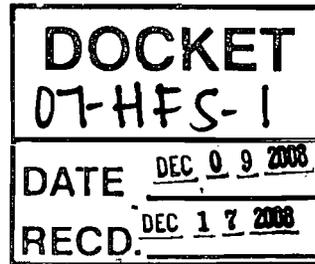


December 9, 2008



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RE: Impermissibility of Temperature Compensation for Retail Motor Fuel Sales Under California Law

Dear Mr. Schremp:

I am writing on behalf of Pilot Travel Centers LLC, Circle-K Stores, Inc., 7-Eleven, Inc., and Terrible Herbst, Inc. who are retail sellers of motor fuel in California. We reviewed with interest your recent draft report and offer the comments below for your consideration.

The CEC Maintains that ATC Devices are Permissible at Retail, but California Case Law and Applicable Statutes and Regulations Demonstrate that ATC is not Permitted in Retail Sales of Motor Fuel.

1. Introduction.

In the CEC's recently published draft report titled *Fuel Delivery Temperature Study*, the Commission detailed a cost-benefit analysis and offered recommendations regarding the implementation of ATC devices at retail service stations.¹ These devices would adjust the volume of motor fuel (*i.e.*, "a greater or lesser quantity of cubic inches"), according to the fuel temperature,² resulting in variable-size gallons.³

The CEC stated that "[p]ermissive (voluntary) use of [ATC] devices at California retail

¹ California Energy Commission, Staff Report, *Fuel Delivery Temperature Study* at vii (November 2008) (hereinafter *CEC Fuel Delivery Temperature Study*).

² *Id.* at 7. As the report explains, "[r]etail ATC devices do not function the same way as the temperature compensation units used at the wholesale level. A retail ATC unit dispenses either a greater or lesser quantity of cubic inches based on the volume correction factor (VCF) that is calculated using the temperature and density characteristics of the dispensed fuel." *Id.* In contrast, wholesale "transactions at the terminal are measured in gross gallons and then a software calculation using API gravity and temperature of the dispensed fuel is used to calculate the quantity of net gallons. The net gallons are then multiplied by the posted net gallon price to calculate the total cost for that load of fuel." *Id.*

³ *Id.* at 75.

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stations is already permitted under California law as it is not specifically prohibited.”⁴ This statement is demonstrably incorrect. We respectfully submit this memorandum to inform the Commission that existing law does not permit California retailers to use ATC devices.

As explained in greater detail below, ATC devices that would dispense more or less than 231 cubic inches per gallon, so that the quantity delivered would vary with temperature, are prohibited by California statutes in two ways. First, it is expressly prohibited as discussed in section 2 below. Second, the maxim that a practice is permitted if not expressly prohibited is inapplicable in the context of temperature-compensated sales. Although that maxim might apply if the entire statutory scheme for the sale of motor fuel were silent on temperature-compensated sales, that is not the case.

In California, as elsewhere, the Legislature expressly permits temperature-compensated sales in other sections of the statutes, namely in the sections governing wholesale and propane transactions. California statutes, therefore, are not, in fact, silent on temperature compensation, and the rule upon which the CEC relies is inapplicable. Instead, the correct rule of statutory construction, recognized by the California Supreme Court, is that the express permission of temperature-compensated sales in one section of related California statutes, namely in the sections regulating sales of wholesale fuel and propane, necessarily “excludes” or “prohibits” temperature-compensated sales in other sections where such sales are not expressly permitted, as in the sections governing retail sales of motor fuel. Therefore, silence on temperature-compensated sales at the retail level is not construed as “permission”; rather, it is correctly construed as a “prohibition.” In short, when one section of the statutory scheme permits temperature compensation while another is silent on it, the silence is interpreted as prohibition, not permission.

2. California Law Expressly Prohibits Deviation from the Prescribed Standard of Dispensing Retail Motor Fuel in Non-Variable Gallons.

(a) ATC Devices at Retail Would Violate the Standard for the Measurement of a Gallon.

To regulate commercial weighing and measuring devices, California has adopted the standards published in the National Institute of Standards and Technology (NIST) Handbook 44.⁵ As the CEC recognizes, California law “requires retailers to sell motor fuel by the gallon.”⁶ And a gallon is defined in California law as “231 cubic inches

⁴ *Id.* at 2. This idea is repeated several times in the report. *See id.* at 8, 89, 90, 106, & 123. The attached appendix contains the exact quotations.

⁵ Cal. Bus. & Prof. Code § 12107; Cal. Code Regs. tit. 4, § 4000. Although Cal. Code Regs. tit. 4, § 4001 excepts certain Handbook 44 provisions, none are relevant to this discussion.

⁶ CEC Fuel Delivery Temperature Study at 8. *See* NIST Handbook 44 § 3.30 ¶ S.1.2.1 (mandating that deliveries of retail motor fuel “be indicated and recorded . . . in . . . gallons and decimal subdivisions or fractional equivalents thereof”).

(exactly).⁷ A gallon is considered a “unit,” which is “a special quantity in terms of which other quantities are expressed. Furthermore, “a unit is fixed by definition and is independent of such physical conditions as temperature.”⁸

Contrary to the CEC’s statement, California law *does* bar the use of ATC devices at retail service stations. Compliance with weights-and-measures standards is mandatory. The same statute that adopts Handbook 44 expressly states that “[i]t shall be unlawful for any person to violate any of the rules, regulations, tolerances, specifications, or standards established under this section.”⁹ Violators may face arrest, prosecution, civil and criminal fines, and injunctive lawsuits.¹⁰

As the Commission recognized, government inspectors “ensure compliance with California law, making certain that five gallons dispensed measure 1,155 cubic inches,” within a specified tolerance level.¹¹ If the retail dispenser measures correctly, the inspector places a seal of approval on the dispenser.¹² But if the dispenser “fails to meet all of the requirements of Section 12107” (*i.e.*, the statute adopting Handbook 44), the dispenser is deemed to be “false”¹³ and “incorrect,”¹⁴ and the retailer may not use the equipment until it is properly calibrated.¹⁵ And if the retailer knew that the dispenser was not standardized, he or she is charged with a crime.¹⁶

Therefore, were a retailer to install an ATC device that dispenses a larger gallon (*e.g.*, 234 cubic inches) or a smaller gallon (*e.g.*, 229 cubic inches) than the legally mandated size gallon (*i.e.*, 231 cubic inches (exactly), without regard to temperature), then the retailer would violate California law and would be subject to the above-described sanctions by California weights-and-measures officials. Indeed, the inspectors would be duty bound to declare the ATC dispenser “false” and “incorrect.” California law therefore expressly

⁷ NIST Handbook 44 App. C, at C-16.

⁸ NIST Handbook 44 App. B, at B-1 (emphasis added).

⁹ Cal. Bus. & Prof. Code § 12107.

¹⁰ Cal. Bus. & Prof. Code §§ 12013 (arrest), 12015 (mandating that sealer prosecute violators), 12020 (criminal charge), 12015.3 (civil penalties), 12012.1 (injunction).

¹¹ CEC Fuel Delivery Temperature Study at 8 (emphasis added). *See also id.* at 65 (noting that inspectors verify accuracy of dispensers “to ensure” that “correct quantity of fuel (in cubic inches) is within specified . . . tolerances”).

¹² Cal. Bus. & Prof. Code § 12505.

¹³ Cal. Bus. & Prof. Code § 12019.

¹⁴ Cal. Bus. & Prof. Code § 12500.

¹⁵ *See* Cal. Bus. & Prof. Code § 12506. *See also* CEC Fuel Delivery Temperature Study at 65 (recognizing that if dispenser measures inaccurately, inspector will make “minor adjustment to bring the device back into compliance” or require retailer “to have the fuel dispenser properly calibrated by a certified technician”).

¹⁶ Cal. Bus. & Prof. Code § 12020.

prohibits temperature-compensated sales at retail.

(b) ATC Devices at Retail Would Violate California Law Governing Price Terms, Unit Pricing, and Value Computations.

December 9, 2008
Page 4

California weights-and-measures laws regulate the manner in which retailers represent price in sales of retail motor fuel to ensure standardization and fairness to consumers.¹⁷ Sellers of retail motor fuel must provide consumers specified price information so that consumers can make informed decisions on motor fuel purchases. The California laws regulating commercial weighing-and-measuring equipment are designed to ensure that consumers get accurate price information.¹⁸

California law requires sellers of retail motor fuel to use unit pricing. They must set prices on a *per unit* basis and provide accurate information to consumers reflecting this basis.¹⁹ Deliveries of fuel must “be indicated and recorded . . . in . . . gallons.”²⁰ The “unit price” must be “conspicuously displayed or posted on the face of a retail dispenser used in direct sale.”²¹ Specifically, retail stations must provide the price per gallon.²² And, as discussed above, a gallon at retail must measure at a determined volume, unadjusted for temperature. In other words, retailers may not set the unit price according to a variable-size gallon.

To comply with existing California weights-and-measures laws, sellers of retail motor fuel must ensure that the *total sales price* accurately reflects and mathematically agrees with the computation of *quantity* multiplied by *unit price*.²³ That is, the overall “total

¹⁷ See Cal. Bus. & Prof. § 13413 (prohibiting sellers from “misrepresenting” price of petroleum products); NIST Handbook 44 *Introduction* (stating that “purpose of these technical requirements is to eliminate from use, weights and measures and weighing and measuring devices that give readings that are false, that are of such construction that they are faulty (that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly), or that facilitate the perpetration of fraud, without prejudice to apparatus that conforms as closely as practicable to the official standards.”).

¹⁸ NIST Handbook 44, § 1.10 ¶ G-A.1 (stating that Handbook 44’s requirements apply to commercial weighing-and-measuring equipment not only as to quantity but also to “computing any basic charge” on the basis of weight or measure); NIST Handbook 44, § 3.30 ¶ A.3 (providing that liquid-measuring devices must meet the requirements of both § 3.30 (“Liquid-Measuring Devices”) and § 1.10 (“General Code”)).

¹⁹ See Cal. Bus. & Prof. Code § 12024.2 (unlawful to charge or compute “an amount greater than a true extension of [the advertised] price per unit”); § 13470 (“actual total price per gallon” of motor fuel must be displayed on dispensing apparatus).

²⁰ See NIST Handbook 44, § 3.30 (“Liquid-Measuring Devices”) ¶ S.1.2.1 (“Retail Motor-Fuel Devices”).

²¹ *Id.* ¶ UR.3.3 (“Computing Device”) (providing that if “product or grade is offered for sale at one or more unit prices,” computing device must “compute[] and display[] the sales price for the selected transaction”); see also Cal. Bus. & Prof. Code § 13470 (“actual total price per gallon” of motor fuel must be displayed on dispensing apparatus)

²² *Id.*

²³ See NIST Handbook 44, § 1.10 (“General Code”) ¶ G-S.5.5 (“Money Values, Mathematical

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sales price” cannot be divorced from the meaning of the “unit price.”²⁴ California law also requires that the values indicated on the dispenser meet the mandated formula, quantity x unit price = total sales price.²⁵ The price computation must be based on 0.01 gallon intervals.²⁶ Retailers are required to provide a printed receipt showing the total volume, unit price (*i.e.*, price per gallon), total computed price (*i.e.*, quantity x price per gallon = total sales), and product identity.²⁷ In short, if a retailer used the ATC devices that the CEC calls permissible, he or she would violate the California pricing and computing laws.

(c) ATC Devices Would Cause Retailers to Violate Misrepresentation Laws.

The Commission rightly recognized that given the lack of regulatory standards on labeling or signage for ATC devices at retail service stations, implementation of retail temperature compensation would “lead to consumer confusion.”²⁸ As such, not only would a retailer violate specific labeling laws pertaining to motor fuel,²⁹ but the retailer could also be found liable for violating provisions that forbid misleading practices and

Agreement”) (“recorded money value and any digital money-value indication on a computing-type weighing or measuring device used in retail trade shall be in mathematical agreement with its associated quantity representation or indication to the nearest 1 cent of money value”); Handbook 44, § 3.30 (“Liquid-Measuring Devices”) ¶ S.1.6.5 (“Money-Value Computations”) (“(a) A computing device shall compute the total sales price at any single-purchase unit price (*i.e.*, excluding fleet sales, other price contract sales, and truck stop dispensers used only to refuel trucks) for which the product being measured is offered for sale at any delivery possible within either the measurement range of the device or the range of the computing elements, whichever is less.)

²⁴ See *id.* ¶ S.1.6.5.5 (“Display of Quantity and Total Price”) (when “delivery is completed, the total price and quantity for that transaction shall be displayed on the face of the dispenser”); *id.* ¶ S.1.6.6 (“Agreement Between Indications”) (“When a quantity value indicated or recorded by an auxiliary element is a derived or computed value based on data received from a retail motor fuel dispenser, the value may differ from the quantity value displayed on the dispenser, provided the following conditions are met: (a) all total money values for an individual sale that are indicated or recorded by the system agree; and (b) within each element, the values indicated or recorded meet the formula (quantity x unit price = total sales price) to the closest cent.”).

²⁵ *Id.* ¶ S.1.6.5.5; *id.* ¶ S.1.6.6.

²⁶ *Id.* ¶ S.1.6.5.2 (“Money-Value Divisions, Digital”) (“computing type device with digital indications shall comply with the requirements of Paragraph G.S.5.5. Money Values, Mathematical Agreement, and the total price computation shall be based on quantities not exceeding . . . 0.01 gal intervals for devices indicating in inch-pound units”).

²⁷ *Id.* ¶ S.1.6.7 (“Recorded Representations”) (“Except for fleet sales and other price contract sales, a printed receipt providing the following information shall be available through a built-in or separate recording element for all transactions conducted with point-of-sale systems or devices activated by debit cards, credit cards, and/or cash: (a) the total volume of the delivery, (b) the unit price, (c) the total computed price, and (d) the product identity by name, symbol, abbreviation, or code number.”).

²⁸ CEC Fuel Delivery Temperature Study at 90.

²⁹ Cal. Bus. & Prof. Code § 13595 (making it “unlawful for any person to sell or deliver any petroleum product . . . from . . . unlabeled or mislabeled container or device”).

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misrepresentations regarding the sale of motor fuel.³⁰ The statutes governing the sale of petroleum products make it “unlawful for any person . . . to make any deceptive, false, or misleading statement by any means whatever regarding quality, quantity, performance, price, discount, or saving used in the sale” of motor fuel.³¹ A retailer is also prohibited from “misrepresenting” the price of motor fuel.³² If by implementing ATC devices a retailer would create “confusion” in consumers, as the CEC stated, the retailers surely would be in jeopardy of violating these provisions.³³

As discussed, California retailers must also set and advertise prices on a *per gallon* basis.³⁴ If a retailer advertises regular unleaded gasoline at \$2.50 per gallon, the pump must dispense exactly 231 cubic inches of gasoline (regardless of temperature) for each \$2.50 paid by the consumer. If, instead, the device dispenses more or less cubic inches of fuel for \$2.50 per gallon, then the consumer does not receive the quantity (231-cubic-inch gallon) she agreed to pay (*i.e.* \$2.50 per gallon). California deems such a sale to be misleading because the unit price (\$2.50 per gallon), in fact, would misrepresent the quantity for which the consumer actually paid--*i.e.* 231 cubic inches exactly, not, for example, 229 cubic inches (below 60 degrees F) or 234 cubic inches (above 60 degrees F). A retailer thus would violate California’s misrepresentation laws by using ATC devices.

3. The Express Provision for ATC Devices at Wholesale Implicitly Bars Their Use at Retail: The Rule of Statutory Construction that the Permission of One Thing is the Prohibition of Another Demonstrates that Temperature-Compensated Sales Are Prohibited.

Not only does California law expressly forbid retailers from using dispensers that deliver

³⁰ Cal. Bus. & Prof. § 13413.

³¹ *Id.*

³² *Id.*

³³ Such practices also would quite possibly engender liability under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq., and the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.

³⁴ See Cal Code Regs. tit. 4, § 4201 (limiting pricing signs on dispensers to, among other information, *actual price per gallon*); NIST Handbook 44 § 3.30 ¶ S.1.2.1 (“Retail Motor-Fuel Devices”) (“[d]eliveries shall be indicated and recorded . . . in liters or gallons”); *id.* ¶ S.1.6.4.1 (“Unit Price”) (“computing or money-operated device shall be able to display . . . unit price at which the device is set to compute or dispense”); *id.* ¶ 1.6.5.4 (“Selection of Unit Price”) (“Except for dispensers used exclusively for fleet sales, other price contract sales, and truck refueling . . . , when a product or grade is offered for sale at more than one unit price through a computing device, the selection of the unit price shall be made prior to delivery *A system shall not permit a change to the unit price during delivery*”); *id.* (emphasis added) ¶ UR.3.2 (“Unit Price and Product Identity”) (providing that “unit price” must be “conspicuously displayed . . . on . . . retail dispenser”); *id.* ¶ UR.3.3 (“Computing Device”) (providing that if “product or grade is offered for sale at one or more unit prices,” computing device must “compute[] and display[] the sales price for the selected transaction”). See also CEC Fuel Delivery Temperature Study at 8 (recognizing that California law “[r]equires retailers to advertise prices on a per gallon basis on its dispensers”).

motor fuel in units other than 231-cubic-inch gallons, but the law also *implicitly prohibits* retail ATC devices because they are expressly authorized only at wholesale. One cannot view the retail provisions in a vacuum but must consider them in light of all laws governing motor-fuel sales.³⁵ These laws distinguish between retail and wholesale transactions. In stark contrast to the retail provisions, California law expressly permits temperature compensation in wholesale fuel sales.³⁶ The CEC recognized that while temperature compensation is expressly permitted for wholesale transactions,³⁷ a “lack of regulatory structure” exists for the use of retail ATC devices.³⁸

³⁵ This follows from the familiar canon of statutory construction that “[o]ther statutes dealing with the same subject as the one being construed--commonly referred to as statutes in *pari materia*--” should be construed together. *People v. Honig III*, 48 Cal. App. 4th 289, 327, 55 Cal. Rptr. 2d 555, 576 (1996) (citation omitted).

³⁶ See Cal. Bus. & Prof. Code § 13520 (prescribing that purchasers of bulk gasoline or diesel fuel at wholesale must be offered option of invoicing “on the basis of temperature-corrected gallonage”); Cal. Code Regs. tit. 4, § 4002:8 (providing method of testing “wholesale devices equipped with [ATC] systems”); Cal. Bus. & Prof. Code § 12107 (incorporating NIST Handbook 44); Cal. Code Regs. tit. 4, § 4000 (incorporating NIST Handbook 44); NIST Handbook 44 § 3.30 ¶¶ UR.3.6 (“Temperature Compensation, Wholesale”).

Compare these retail sales and invoicing procedures with the wholesale procedures:

Retail pricing and receipt procedures: Handbook 44, § 3.30 ¶¶ S.1.6.4.1 (“Unit Price”), S.1.6.5 (“Money-Value Computations”), S.1.6.5.4 (“Selection of Unit Price”), S.1.6.5.5 (“Display of Quantity and Total Price”), S.1.6.6. (“Agreement Between Indications”), S.1.6.7 (“Recorded Representations”), S.5 (“Totalizers for Retail Motor-Fuel Dispensers”), UR.3 (“Use of Device”), UR.3.2 (“Unit Price and Product Identity”), UR.3.3 (“Computing Device”), UR.3.4 (“Printed Ticket”), & UR.3.5 (“Steps After Dispensing”); Handbook 44, § 1.10 ¶¶ G-S.5.2 (“Graduations, Indications, and Recorded Representations”) & G-S.5.5 (“Money Values, Mathematical Agreement”).

Wholesale pricing and invoice procedures: Handbook 44, Sec. 3.30 ¶¶ S.2.6 (“Temperature Determination and Wholesale Devices”), S.2.7 (“Wholesale Devices Equipped with *Automatic Temperature Compensators*”), S.4.3 (“Wholesale Devices”), S.4.3.2 (“Wholesale Devices . . . *Temperature Compensation*”), N.5 (“*Temperature Correction* on Wholesale Devices”), UR.3.6 (“*Temperature Compensation, Wholesale*”), UR.3.6.1.2 (“*Temperature Compensation, Wholesale . . . Automatic . . . Invoices*”), UR.3.6.2.2 (“*Temperature Compensation, Wholesale . . . Nonautomatic . . . Invoices*”), & UR.3.6.3 (“*Temperature Compensation, Wholesale . . . Period of Use*”).

³⁷ See CEC Fuel Delivery Temperature Study at 7.

³⁸ CEC Fuel Delivery Temperature Study at 90. On page 89 of the report, the Commission states that the “near-absence” of any ATC regulatory framework in California means that no laws would regulate when retail ATC devices would be activated. The Commission then comments that “DMS regulations do . . . specify that, if ATC is operated at retail, it must remain operational for 12 consecutive months at a time.” A similar statement is made on page 118. In neither place did the Commission cite the DMS regulation to which it referred. Finding no such regulation applicable to retail sales, we can only conclude that the CEC may be referring to Handbook 44, which specifies in a section *related to wholesale transactions* that “[w]hen fuel is bought or sold on . . . [a] temperature-compensated basis, it shall be bought or sold using this method over at least a consecutive 12-month period, unless otherwise agreed to by both the buyer and seller in writing.” NIST Handbook 44 § 3.30 ¶ UR.3.6.3. Or perhaps the CEC meant Cal. Bus. & Prof. Code § 13520, which provides that if temperature-compensated gallons are invoiced at wholesale, the seller

Because the Legislature provided for temperature compensation at wholesale but not at retail, the use of retail ATC devices is prohibited. The maxim of statutory construction known as *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other) plainly applies here.³⁹ When a form of conduct is designated in a statute (in this case, temperature compensation at wholesale), “*there is an inference that all omissions should be understood as exclusions.*”⁴⁰ If the Legislature had intended to permit ATC devices at retail, the Legislature “would have done so expressly and not by silence.”⁴¹

The California Supreme Court has ruled that “[w]hen the Legislature ‘has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded.”⁴²

Nothing in the statutory and regulatory scheme suggests that the Legislature intended the wholesale ATC provisions to apply to the laws governing retail sales. In fact, quite the opposite is true. The absence of ATC devices in the retail laws indicates that the Legislature intended ATC *only at wholesale*. Indeed, proper rules of statutory construction recognized by the California Supreme Court mandate *prohibition* of temperature compensation in retail sales of motor fuel, not its *permission*.

CONCLUSION

As the CEC has observed, no retail station operation in California has installed ATC dispensers.⁴³ This is no accident. California law expressly prohibits retailers from selling motor fuel in variable-size gallons (*i.e.*, more than or less than 231 cubic inches). State law also implicitly bars temperature compensation at retail because the law expressly permits ATC devices only at wholesale. The CEC is thus incorrect in asserting that California law already permits the use of ATC devices at retail.

We ask the Commission to remove from the *Fuel Delivery Temperature Study* the statements suggesting that existing California law permits the use of ATC devices in

must do so for all sales to the same purchaser for a 12-month period. We point out that these provisions apply *only to wholesale transactions*. On page 118, the CEC also states (without citation) that DMS has regulations for activating ATC devices, but as the report recognizes, those laws are *for LPG, not retail motor fuel*.

³⁹ See Black’s Law Dictionary 602 (7th ed. 1999).

⁴⁰ Norman J. Singer & J.D. Shambie Singer, 2A *Statutes and Statutory Construction* § 47:23 (7th ed. 2007).

⁴¹ *Id.* § 47:23, at 416.

⁴² *Pasadena Police Officers Assn. v. City of Pasadena*, 51 Cal.3d 564, 576, 797 P.2d 608, 614 (1990) (emphasis added). See also *Phillips v. San Luis Obispo County Dept. of Animal Regulation*, 183 Cal. App. 3d 372, 379, 228 Cal. Rptr. 101 (1986).

⁴³ CEC Fuel Delivery Temperature Study at 2, 89.

retail sales of motor fuel. We similarly ask the CEC to remove the conclusions that a prohibition of ATC implementation on a voluntary or permissive basis would require a law change prohibiting ATC sales at retail because the proper rules of statutory construction already prohibit temperature-compensated sales at retail.⁴⁴ To construe California law any other way flies in the face of settled California law.

December 9, 2008
Page 9

Sincerely,

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⁴⁴ The attached appendix lists all these statements from the report.

APPENDIX

The following statements appear in the California Energy Commission's report titled *Fuel Delivery Temperature Study* (November 2008).

- Permissive (voluntary) use of automatic temperature compensation (ATC) devices at California retail stations is already permitted under California law as it is not specifically prohibited. (Page 2.)
- Permissive (voluntary) use of automatic temperature compensation (ATC) devices at California retail stations is already permitted under California law as it is not specifically prohibited. (Page 89.)
- A prohibition of ATC implementation on a voluntary or permissive basis would require a law change prohibiting ATC sales at retail. (Page 90.)
- Yet, [retail ATC devices are] legal to use on a voluntary basis per DMS regulations. (Page 106.)
- A prohibition of ATC implementation on a voluntary or permissive basis would require a law change prohibiting ATC sales at retail. (Page 123.)

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