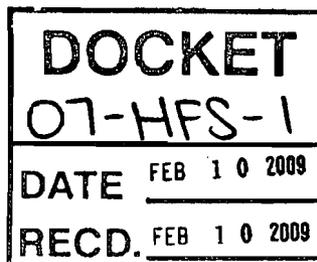


National Association of Convenience Stores (NACS)
NATSO, Inc., Representing America's Truckstops and Travel Plazas
Petroleum Marketers Association of America (PMAA)
Society of Independent Gasoline Marketers of America (SIGMA)
California Independent Oil Marketers Association (CIOMA)



February 10, 2009

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: Final AB 868 Fuel Delivery Temperature Study, January 2009; Docket No. 07-HFS-01

Dear Commissioners:

The above-noted organizations would like to express our appreciation to the staff of the California Energy Commission for the detailed and complete cost-benefit analysis of automatic temperature compensation (ATC). We believe that the report is, in most respects, a fair representation of the costs and benefits associated with the installation and implementation of ATC on retail fuel dispensers.

There is no question that this report is groundbreaking in its efforts to gather and analyze data on ATC implementation. We know of no other study of ATC to date as exhaustive as that undertaken by the CEC and we applaud their efforts.

We would like to highlight for the Commission the key findings included in this report:

- The costs of ATC far outweigh the benefits, even when using the low-cost estimates. *"The cost-benefit analysis concludes that the results are negative or a net cost to society under all the options examined."* (pg 1)
"Net costs to society amount to approximately \$245 million...over a 20-year period." (pgs 76-77)
- Consumers will not receive larger gallons with no corresponding increase in retail price. *"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' is unrealistic..."* (pgs 111-112)
- There will be no economic benefit to consumers. *"...it is unlikely that there are any plausible circumstances whereby some consumers could realize a small net benefit of ATC at retail in California."* (pg 113)

These conclusions, despite our belief that they remain based upon underestimated costs, are clear repudiations of the installation of ATC in California and thus satisfy the charge presented in AB 868 to conduct an objective cost-benefit analysis.

We would be remiss, however, not to note an area of disappointment. Despite the resounding conclusions that there are only costs and virtually zero consumer benefit associated with implementation of ATC, the report recommends that these facts should not be the “only criterion” considered by the Legislature when deciding whether to mandate this technology. In the report’s “Primary Recommendations” (summarized on pages 3-4), the report states that the Transportation Committee of the CEC recommends that the Legislature consider the “value of public perception of increased fairness, accuracy, and consistency of fuel measurement, in addition to the benefits quantified in the cost benefit analysis.”

This is a confusing recommendation in that in the “Areas For Further Research” section immediately following (page 4) it is noted, “The value of the perceived fairness, accuracy and consistency 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.” So the report is asking for legislative consideration of an area that has admittedly not been covered or analyzed.

We know of no effort to date to determine what the public perceptions are with respect to fairness, accuracy and fuel measurement. While the CEC made an extraordinary effort to reach out to all stakeholders, there was limited consumer participation in the CEC workshops, thus the CEC has no basis on which to make assumptions about the perceptions of consumers regarding ATC. Further, CEC’s recommendation to consider public “perception” suggests that the public and consumers are unified in their opinions.

We know that is not the case. We believe that most consumers are not aware of this debate at all; however, among those few groups that are aware of it, there is no consensus that ATC is merited. In fact, one of the country’s largest fuel consumer groups is on record opposing both mandatory and permissive ATC. In a letter to the National Conference on Weights and Measures (January 14, 2008), the American Trucking Associations expressed its opposition to ATC proposals under consideration by the Conference. ATA told the NCWM that implementation of automatic temperature compensation would result in higher consumer costs – the same conclusion that CEC reached in the cost-benefit analysis. *Therefore we recommend that the Primary Recommendation asking the Legislature to consider consumer fairness issues be removed.*

We also strongly disagree with the suggestion that ATC is more fair or accurate than the standards by which fuel is sold today. It is established fact that ATC is a *different* method of measurement than the system in place today but we disagree that ATC is more fair or accurate. As has been described by several observers regarding the draft report, changing to a volumetric temperature compensation standard at the retail pump would, in fact, create confusion and differing measurement standards along the fuel distribution chain. As it stands now, gross gallons are the common metric used at all points in the distribution chain. Only the *pricing* of product is changed *not the volume of product distributed*. Adjusting the volume of fuel at retail would inevitably create an inconsistent and differing standard of measurement, neither “more fair” nor “more accurate”.

Finally we are relieved that the report no longer concludes that permissive automatic temperature correction is statutorily allowed in California. We believe the report's conclusion that prescriptive ATC is "undetermined" is a side-step of the obvious fact that California law requires fuel distribution to be in "gallons" and that a "gallon is defined as "231 cubic inches (exactly)" - Title 4 C.C.R. Section 4201. We cannot understand how this is not a specific and prescriptive measurement standard precluding distribution of a temperature-compensated gallon at some other volume.

Again, we thank the Commission and the staff for their efforts to provide a comprehensive cost-benefit analysis on ATC. Their work has uncovered a wealth of information that will be of great assistance as the discussion on this issue moves forward.

Sincerely,

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Assembly Speaker Karen Bass
John Moffatt, Governor's Office
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