

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

DOCKET 07-HFS-1
DATE _____
RECD. <u>MAR 11 2009</u>

**Deleted Text is Strikethrough
New Text is Underlined**

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.

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 will most likely raise their fuel prices to compensate for selling fewer “gallons.” If this is the case then expected benefits for retail motorists will 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 maintain their profit margins over the long-term if ATCs are mandated at California retail stations.

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 possible 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 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 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.

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

The **possible** 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:

- 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

Whether California law currently permits the voluntary installation of ATC devices by retail station owners for retail sales transactions of gasoline and diesel fuel has been disputed by stakeholders.

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

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).

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 in fact raise their fuel prices to compensate for selling fewer units, all other things being equal.⁷⁹ It should be noted, however, that various stakeholders are in disagreement with the report’s 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, 2009.⁸⁰ 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 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 but finds that the balance of evidence points to complete or near-complete pass-through of ATC-related costs

⁷⁹ 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>].

⁸⁰ 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].

from retail station owners to consumers. 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 magnitude of the anticipated retail price adjustment.

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~~ possible consumer benefit, there are some research survey techniques and methodologies that could be used to provide some valuable insight into this possible and ~~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 for use in commerce in California by the California Department of Food and Agriculture, Division of Measurement and 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.

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>].

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

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 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.

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 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 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.

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~~ possible 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 116, the third bullet point is revised as follows:

However, the Committee recommends that the Legislature also consider whether the possible 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 118, the second bullet point under the section entitled “Permissive v. Mandatory ATC at Retail Stations” 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 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.