High Gasoline Prices and the Unfair Sales Act in Wisconsin

By J. Isaac Brannon

Politicians—mindful of the November elections—have been searching for villains to blame as gasoline prices hit record levels across the county. But shrill criticism of OPEC, EPA, and greedy oil companies will do little to reduce gasoline prices.

THE VILLAIN OF THE PIECE

If the people of Wisconsin, where prices are among the highest in the nation, really want a villain, they need look no farther than the politicians of their own state. The state of Wisconsin, through its Unfair Sales Act, has gone out of its way to reduce competition among gas stations, with the predictable result of higher prices. If the politicians really wanted to help consumers, they would repeal the Unfair Sales Act immediately.

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The act, a vestige of the Great Depression, requires gas stations to charge at least 9.18 percent more than the current wholesale price at the nearest gasoline terminal. The ostensible reason for that mandate was to prevent predatory pricing by large gas stations: setting their retail prices below wholesale in order to drive smaller stations out of business and subsequently raise their retail prices.

Economists believe that predatory pricing is relatively rare today, owing to the ability of new competitors to enter the market if they see a firm earning high profits. In Wisconsin, however, Governor Thompson signed a bill in 1998 to *strengthen* the penalties for violating the Unfair Sales Act, at the same time that other states, such as Minnesota and Montana, were eliminating such antiquated "fair-competition" laws.

A LAW WITH MANY PROBLEMS

The Unfair Sales Act has many problems. First, there is no justification for the 9.18 percent markup. The reason legislators gave at the time the act was passed was that the markup represented a gas station's average operating costs. But because most of a gas station's operating costs are fixed, its markup varies mainly with the volume of sales, not with the wholesale price of gasoline. Nevertheless, because of the law, the minimum markup has risen with the wholesale price of gasoline, from about 4.5¢ when the wholesale price was 50¢ a gallon to more than 10¢ with wholesale prices now above a dollar a gallon. Protestations to the contrary, owners of gas stations in Wisconsin are making a lot more money with higher gas prices—and they have to if they are to obey the law. Those higher profits, if sustained, will entice new entry, which will dissipate profits and reduce the average station's efficiency by reducing the number of gallons of gas it sells daily.

A second problem with the Unfair Sales Act is that the penalties for violating the act make little sense. Since 1998, a violator has been liable to a fine of $2,000 for each day the act was violated (plus attorneys' fees), payable to whoever filed the complaint. The act is unclear as to whether the plaintiff must show actual damages or even be a competing gas station. Thus, there is the bizarre possibility that an astute citizen could drive around looking for criminally cheap gasoline so as to file a lawsuit and win some money. The law's vagueness serves its purpose: gas station owners are so afraid to violate the law that they amply mark up the wholesale price of gasoline.

The formulation of wholesale price also makes little sense. With posted terminal prices changing several times a day, even those in charge of administering the law admit that it is difficult to calculate the legal minimum price. Most stations, out of prudence, charge the same high price.

Although the law does allow stations to lower prices to meet competition, it is unclear how far a gas station can look to find a competitor. The current ruling that firms across state lines aren't competitors came as a shock to gas stations in Kenosha, Beloit, and LaCrosse, where people routinely cross state borders to work and shop.

With Frank Kelly of Indiana University-Purdue Uni-

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versity Indianapolis, I did a study that found that the average markup on gasoline went up significantly in the six months after the penalties for violating the Unfair Sales Act were increased in 1998. What's more, we found that gasoline prices in Wisconsin varied markedly less than in other states, a manifestation of the act's inhibiting influence on competition in the retail gasoline market.

FACTS VS. RHETORIC

WISCONSIN'S GOVERNOR THOMPSON HAS PLAYED THE rhetorical game before, signing a bill in 1994 to restrict competition in the retail drug market only to come back and bash drug stores for charging higher prices in the state. Wisconsin also has laws that restrict competition in the markets for milk, soft drinks, tobacco, and alcohol. The restrictions on competition in alcohol were passed only last year, with no reasonable explanation as to why liquor producers should be subject to less competition in the state.

But the restrictions on gasoline prices are especially egregious. As the typical gas station morphs into a gas station-restaurant-convenience store, most gas stations make the bulk of their profits from in-store sales and—outside Wisconsin—sell their gasoline nearly at cost. It seems that in Wisconsin the government must guarantee gas stations' profits.

Tommy Thompson's dirty little secret is that he may be for business but he is definitely against competition. In a state with a long socialist tradition, Thompson fits the left's caricature of a Republican as one who screws citizens while helping fat-cat capitalists. Repealing the Unfair Sales Act, in all its manifestations, would be one way for Thompson to help consumers—for a change. ■

What If Everyone Were a Policy Analyst?

By Keith B. Belton

BEGINNING WITH RONALD REAGAN, U.S. PRESidents have required federal agencies to conduct cost-benefit analyses before making major regulatory decisions. That discipline serves the public interest because it forces regulators to consider whether new regulations will benefit society as a whole.

But what about people who would be affected directly by new regulations? Small business owners want to know the cost of complying with a new paperwork requirement. Parents want to know how air bag regulations will affect their children's risk of injury. Taxpayers want to know how changes in the tax code will affect next year's tax bill. None of them would find enlightenment in federal agencies' regulatory analyses because those analyses present aggregate—not individual—costs and benefits.

Whenever a proposed regulation would affect a variety of individuals or entities differently, regulatory analysis should reflect those differences. That would not have been possible a few years ago. Now it is possible, thanks to the Internet.

MAKING ANALYSIS RELEVANT

ECONOMIC ANALYSIS OF A PROPOSED RULE (ALSO KNOWN AS regulatory impact analysis) measures the net social benefit of a regulation. In theory, the net benefit stems from the preferences of individuals. But an agency does not survey individuals and sum their preferences to determine the benefits and costs of a rule; instead, it uses aggregate data.

For example, to estimate social costs, an agency's analysts may develop a partial equilibrium model, based on market supply and demand curves. Alternatively, they may use a direct compliance model, based on cost-engineering techniques, to estimate the average compliance cost, then multiply that estimate by the number of entities affected by the rule. Such analysis may provide information useful to regulators, but it seldom informs those who would be affected directly by a regulation. On-line calculators could help to fill this information gap.

Consider the ergonomics rule proposed by the Occupational Safety and Health Administration (OSHA). The rule would require businesses to implement and maintain ergonomic programs to prevent and alleviate musculoskeletal disorders, which are common in the workplace. OSHA's preliminary analysis of the proposed rule was based on aggregate estimates of the costs and benefits for all businesses in each three-digit standard industrial classification (SIC) code.

If OSHA provided an on-line calculator for the proposed rule, anyone could go to OSHA's web site and get an estimate of the rule's costs and benefits to a firm having characteristics specified by the user. The user might be asked to input firm-specific information, such as the number of employees, the number of establishments, the SIC code that best describes the firm, and the percentage of employees currently covered by an existing ergonomics program. The calculator would then determine the average cost of the rule to such a firm. The cost information could be categorized (e.g., worker restriction cost,

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