

February 28, 2024

Mr. Kirk Tanner
President and CEO
The Wendy's Company
One Dave Thomas Blvd.
Dublin, OH 43017

Dear Mr. Tanner,

I write to you to express my concern regarding recent statements indicating that The Wendy's Company will soon move to dynamic pricing, also known as surge pricing.¹ At a time when American families are seeing higher prices on everyday items, including food, I am concerned about the substantial impact this decision will have on families' budgets. Further, this decision comes as Wendy's is reporting increased sales and profits.² In line with my work investigating greedflation—the practice of large corporations using inflation and economic pressures as an excuse for raising prices and inflating profits—I seek to understand why Wendy's executives opted to shift to surge pricing.

On February 15, 2024, in an earnings call, you touted Wendy's coming investments in new, artificial intelligence-powered digital menus that will allow the company to “increase further supporting sales and profit growth across the system”³ through the integration of dynamic or surge pricing. Dynamic pricing is responsive to surges in demand, meaning that when demand is high, prices will increase—a model that can resemble price gouging. For instance, a Wendy's Baconator might fluctuate in price throughout the day, leaving consumers unable to predict costs.⁴ Students may be charged more after their classes let out, churchgoers after services on midday Sunday, and workers will have to pay more when their shift is over. Surge pricing may lead to prices changing during the time a customer waits in line, including in a crowded drive-thru lane.

While you asserted that it is your goal “to ensure this new technology is delighting [your] customers,”⁵ it is reasonable to assume that dynamic pricing will negatively impact the millions of Wendy's customers who frequent your locations, including the 259 locations in Pennsylvania,⁶ at peak times. For families that frequent Wendy's for a quick breakfast, lunch, or dinner, changing their schedules to get to Wendy's when prices are low is not an option—working parents have to abide by work, school, and other limiting factors. Executives' choice to penalize hungry customers based on the time they can frequent their local Wendy's is predatory and

¹ <https://www.fool.com/earnings/call-transcripts/2024/02/15/wendys-wen-q4-2023-earnings-call-transcript/>

² <https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/30697/000003069724000004/wen-20231231.htm>

³ <https://www.fool.com/earnings/call-transcripts/2024/02/15/wendys-wen-q4-2023-earnings-call-transcript/>

⁴ <https://www.goodmorningamerica.com/food/story/wendys-announces-uber-surge-pricing-model-107584986>

⁵ <https://www.fool.com/earnings/call-transcripts/2024/02/15/wendys-wen-q4-2023-earnings-call-transcript/>

⁶ <https://locations.wendys.com/united-states/pa>

greedy—a Frosty costs Wendy’s the same regardless of the time it is ordered, and it should cost customers the same as well.

In your remarks to shareholders, you indicated that the company plans to roll out this new pricing scheme in test markets throughout 2025.⁷ Should Wendy’s proceed with this concerning proposal, I urge you to consider both the customers and business owners in the chosen markets. For instance, the algorithms used in artificial intelligence (AI) that fuel dynamic pricing are complicated and often inexplicable to those interacting with them the most. As such, customers should be made aware of pricing changes at the point of purchase—failing to do so is deceptive; customers should not have to analyze menu boards for price changes every time they go to purchase a meal. Wendy’s should also involve franchisees and workers in the decision-making process before, during, and after implementing dynamic pricing. The impact on individual businesses may be significant; some experts predict that dynamic pricing may permanently drive customers away from businesses.⁸

Given the financial impact that dynamic pricing could have on Wendy’s customers and workers alike, I ask that you provide answers to the following questions no later than March 27, 2024:

1. Dynamic pricing has the potential to significantly change purchasing behavior. How has Wendy’s engaged consumers, workers, and franchise owners in the decision to transition to dynamic pricing? Relatedly, how will Wendy’s determine the test markets for rollout of dynamic pricing in 2025? How does Wendy’s plan to respond to concerns should the dynamic pricing model negatively impact a particular location?
2. The company’s investments in menu boards and other technology to enable dynamic pricing is going to be significant—with plans to invest approximately \$20 million by the end of 2025.⁹ It is reasonable to assume that Wendy’s executives have determined that dynamic pricing will provide a significant return on investment. How has Wendy’s evaluated projected costs and profits for implementing dynamic pricing? In what markets and on what data did Wendy’s base these evaluations?
3. Wendy’s use of AI in dynamic pricing models poses several consumer protection concerns. How will Wendy’s executives develop the algorithms used in dynamic pricing models, and will the company employ third-party contractors to develop and implement the technology? If so, how will Wendy’s ensure that the dynamic pricing models utilized do not interact with third party data from competitors?
4. Unrestricted AI can sometimes result in changes that are discriminatory in practice, even if not the intent. How will Wendy’s audit outcomes to make sure that surge pricing is not discriminatory against people with low incomes, children, and seniors, among others?

⁷ <https://www.fool.com/earnings/call-transcripts/2024/02/15/wendys-wen-q4-2023-earnings-call-transcript/>

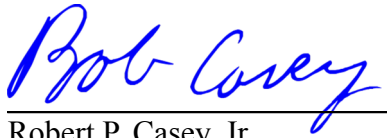
⁸ <https://www.axios.com/2024/02/27/wendys-surge-pricing>

⁹ <https://www.fool.com/earnings/call-transcripts/2024/02/15/wendys-wen-q4-2023-earnings-call-transcript/>

5. After intense public backlash, Wendy's is now claiming it will only use dynamic pricing to lower pricing during slower traffic times.¹⁰ The company's announcement to backtrack on this demonstrates widespread public concern and raises questions about the company's original intent. What assurances can Wendy's give the public that it will not simply raise base prices to a new high level, and then offer varying misleading "discounts" throughout the day?

I appreciate your responsiveness to these concerns. I look forward to receiving your response.

Sincerely,



Robert P. Casey, Jr.
United States Senator
Chairman, Subcommittee on
Children and Families

¹⁰ <https://www.today.com/food/restaurants/wendys-surge-pricing-rcna140601>