

**DOCKETED**

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<b>Filer:</b>	Liza Lopez
<b>Organization:</b>	California Energy Commission
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STATE OF CALIFORNIA  
STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

**IN THE MATTER OF:**

Western States Petroleum Association  
Petition for Rulemaking

**ORDER DENYING PETITION FOR  
RULEMAKING**

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On September 16, 2022, the Governor signed Senate Bill (SB) 1322 (Allen, ch. 374, stats. 2022), which added Section 25355 to Chapter 4.5, Division 15 of the Public Resources Code, also known as the California Oil Refinery Cost Disclosure Act.

On January 1, 2023, SB 1322 took effect and requires operators of refineries in the state, within 30 days of the end of each calendar month, to submit a report to the California Energy Commission (CEC) containing, among other things, volume, costs, prices, and sales data related to the production of gasoline in that month. SB 1322 requires the CEC to publish the gross gasoline refining margin data reported for that month in the aggregate as specified.

On January 6, 2023, Western States Petroleum Association (WSPA) filed with the Executive Director of the CEC a petition to initiate a formal rulemaking (Petition) pursuant to California Code of Regulations (CCR), title 20, section 1221, seeking to clarify terms in Public Resources Code section 25355, to ensure consistency and accuracy in its interpretation and implementation. WSPA asserts that terms contained in SB 1322, including the term “gross gasoline refining margin,” require clarification, and believes the components of SB 1322 used to calculate a “gross gasoline refining margin” do not accurately represent refining costs. WSPA also states that a formal rulemaking is necessary to avoid misunderstanding or misuse of publicly available data.

On January 13, 2023, the CEC’s Executive Director determined that the Petition is complete and contains the information requirements of CCR, title 20, section 1221.

On January 23, 2023, the CEC staff filed a recommendation on the Petition. In its filing, CEC staff recommends that the CEC deny the Petition because the terms that WSPA seeks to clarify are currently the subject of legislation being considered in a Special Session called by Governor Newsom in December 2022. Specifically, the Legislature is

considering Senate Bill (SB) 2 (2023-2024 1<sup>st</sup> Ext Sess.) introduced by Senator Skinner that would adopt Public Resources Code section 25355.5, which includes and further defines the term “gross gasoline refiner margin.” The first sentence of the Legislative Counsel’s Digest states: “SB 2, as introduced, Skinner. Energy: transportation fuels: supply and pricing: maximum gross gasoline refining margin.” SB 2 contains a proposal to adopt an additional section in the Public Resources Code that revises the term “gross gasoline refining margin.” This term is specifically identified in the Petition as requiring interpretation through a formal rulemaking.

The bill could also potentially address other terms that WSPA asserts require clarification such as a determination of how to quantify Low Carbon Fuel Standard and Cap-and-Trade costs, as these terms are used in the pending legislation. Since the terms in SB 1322 are being considered and revised through the legislative process, CEC staff recommends denying the Petition and waiting to determine whether to initiate a rulemaking until the pending legislation has been resolved. A rulemaking at this time may conflict with changes to pending legislation on gasoline supply and pricing that may address the issues raised in the Petition.

On January 25, 2023, the CEC held a hearing to consider the Petition.

## **II. CEC FINDINGS**

Based on the entirety of the record, the CEC finds that:

- 1) Public Resources Code sections 25213 and 25218(e) mandate and authorize the CEC to adopt rules and regulations, as necessary, to carry out its statutory duty. The CEC is required by Chapter 4.5, Division 15 of the Public Resources Code to obtain and analyze information and data concerning all aspects of the petroleum industry, including, but not limited to, production and supplies of gasoline, and costs, prices, and investment choices for the state to develop and administer energy policies that are in the interest of the state’s economy and the public’s well-being. Thus, the CEC has the authority to initiate a rulemaking to adopt regulations, as requested in the Petition.
- 2) On September 16, 2022, the Governor signed SB 1322, which added Section 25355 to the Public Resources Code (the California Oil Refinery Cost Disclosure Act), to require operators of refineries in the state, within 30 days of the end of each calendar month, to submit a report to the CEC containing, among other things, volume, costs, prices, and sales data related to the production of gasoline in that month. SB 1322 requires the CEC to publish the gross gasoline refining margin data reported for that month in the aggregate as specified.
- 3) The Petition meets the requirements of CCR, title 20, section 1221.
- 4) Because the issues raised in the Petition are pending before the California State Legislature, CEC staff recommends allowing the legislative process to conclude before initiating a rulemaking for the purpose of considering whether to clarify

terms in SB 1322 and ensure consistency and accuracy in its interpretation and implementation.

- 5) SB 1322 requires operators of refineries to provide information contained in Public Resources Code section 25355(b)(1)-(5) within 30 days of the conclusion of the month for which data is being reported. Operators of refineries are required to provide the listed data by March 2, 2023, which is 30 days after the conclusion of January, the first month in which this rule is effective.
- 6) CCR, title 20, section 1221(c), requires that the CEC, within 30 days of the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing staff to prepare an order instituting a rulemaking.

### **III. CONCLUSION AND ORDER**

- 1) For the reasons stated above, the CEC hereby DENIES WSPA's Petition for Rulemaking.
- 2) CEC staff is directed to file this Order and supporting documentation with the Office of Administrative Law in accordance with Government Code section 11340.7(d)

**IT IS SO ORDERED.**

### **CERTIFICATION**

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on January 25, 2023.

AYE: Hochschild, Gunda, McAllister, Monahan  
NAY: NONE  
ABSENT: NONE  
ABSTAIN: NONE

Dated: January 27, 2023

**SIGNED BY:**

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Liza Lopez  
Secretariat