

DOCKETED

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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 REQUEST FOR
RECONSIDERATION OF DENIAL OF
PETITION FOR RULEMAKING AND
STAY OF PENALTIES**

I. INTRODUCTION

On February 15, 2023, WSPA filed with the CEC's Executive Director a letter titled "Request for Reconsideration of WSPA Petition for SB 1322 Rulemaking and Stay of Penalties." In the letter, WSPA requests that the CEC reconsider its denial of WSPA's petition for rulemaking pursuant to Government Code Section 11340.7(c) and also requests the CEC stay enforcement of SB 1322's reporting requirements until the Legislature or CEC clarify or contextualize SB 1322. WSPA asserts the CEC should reconsider its denial of the Petition for two reasons: refinery operators should not have to comply with SB 1322 if the Legislature is currently considering clarifications to terms used in that legislation; and it would be unfair and arbitrary to not postpone enforcement of SB 1322 while the CEC is awaiting further clarification from the Legislature. WSPA continues to repeat earlier assertions that terms in SB 1322 are "vague." Finally, WSPA requests a stay of the obligation to report and a stay of any enforcement or penalty for failure to report.

II. PROCEDURAL HISTORY

On January 1, 2023, Senate Bill (SB) 1322 (Allen, ch. 374, stats. 2022), took effect, adding the California Oil Refinery Cost Disclosure Act to the Public Resources Code. The statute, Public Resources Code section 25355, requires refinery operators to report data to the California Energy Commission (CEC) regarding their gross gasoline refining margin. SB 1322 defines "gross gasoline refining margin" and requires refinery operators to submit five categories of information related to the volume of specified gasoline-related products, information on various costs paid, prices, and sales received for products bought and sold by refinery operators, and information related to other costs such as taxes and fees. The first of the required monthly reports was due March 2, 2023.

On January 6, 2023, Western States Petroleum Association (WSPA) filed a petition to initiate a rulemaking (Petition) with the CEC's Executive Director, 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 asserted 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.

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

On January 23, 2023, the CEC staff (Staff) filed a recommendation on the Petition which recognized WSPA is requesting the CEC initiate a rulemaking to interpret terms that are the subject of pending legislation. Specifically, Staff noted that the Legislature is considering SB 2 (2023-2024 1st 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" among other terms in SB 1322. Staff recommended waiting to determine whether to initiate a rulemaking until the pending legislation has been resolved because a rulemaking at this time may conflict with changes to pending legislation, and those legislative changes may render moot the issues raised in the Petition.

On January 25, 2023, the CEC held a hearing to consider the Petition. WSPA, Staff, and Steve Uhler provided comments at the hearing. The CEC agreed with Staff's recommendation and adopted an Order Denying WSPA's Petition for Rulemaking, recognizing the prudence of awaiting the outcome of the legislative process under the circumstances. The Order also finds that refinery operators are required to provide the listed data by March 2, 2023.

WSPA filed its request for reconsideration on February 15, 2023, and by March 5, 2023, all major California refinery operators had submitted reports to the CEC regarding the information required in SB 1322, including their gross gasoline refining margin, with only one refinery operator providing only partial information, and objecting to providing the rest of the data.

On March 10, 2023, Staff filed a response to WSPA's request recommending the CEC issue an order denying the request for reconsideration, and denying the request for a stay of SB 1322's reporting requirements. In its recommendation, Staff notes that WSPA does not identify any new information or argument that would support reconsidering the original decision on the petition for rulemaking and that WSPA has not substantiated its claim by showing that it is impossible to comply with the statute as written without further agency interpretation. Staff further supports this point by noting that the majority of refinery operators complied with SB 1322's data reporting requirements. Staff also reasserts its position from its recommendation on the original petition that initiating a rulemaking to interpret terms that may conflict with pending

legislation is not a prudent use of state resources nor is a rulemaking necessary for refinery operators to comply with SB 1322.

Staff also concludes that because it is possible to comply with SB 1322 without a rulemaking, the request for a stay should also be denied. Moreover, Staff asserts WSPA fails to show the CEC has authority to order a stay of SB 1322, WSPA lacks standing to request a stay, and the presence of administrative due process for challenging any penalties provides sufficient protection for refinery operators and obviates the need for a stay from the enforcement of penalties. To this last point, Staff notes that refinery operators who timely object to the information reporting requirements would be subject to a civil penalty only if, after being notified of the failure to provide specified information, they refuse to submit the specified information after a hearing was held on the matter. Since adequate procedures exist to protect the due process rights of refiners subject to reporting requirements, Staff concludes that a stay regarding penalties is unnecessary.

On March 14, 2023, the CEC held a hearing to consider the Request for Reconsideration of the WSPA Petition for SB 1322 Rulemaking and Stay of Penalties.

III. ENERGY COMMISSION FINDINGS

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

- 1) Public Resources Code sections 25213 and 25218(e) 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 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 Request for Reconsideration.
- 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) On January 6, 2023, WSPA filed a Petition for Rulemaking requesting CEC open a rulemaking proceeding to interpret various terms used in SB 1322.
- 4) On January 25, 2023, the CEC adopted an Order Denying WSPA's Petition for Rulemaking because the terms used in SB 1322 are also contained in pending legislation. Specifically, Senate Bill (SB) 2 (2023-2024 1st Ext Sess.), introduced by Senator Skinner, would adopt Public Resources Code section 25355.5, which

includes several of the same terms used in SB 1322, such as “gross gasoline refiner margin.”

- 5) On February 15, 2023, WSPA submitted a letter to the CEC’s Executive Director that contains a Request for Reconsideration of the Order Denying Petition for Rulemaking dated January 25, 2023, and a request for CEC to stay refinery operators’ reporting obligations under SB 1322.
- 6) The Request for Reconsideration meets the requirements of Government Code section 11340.7(c) because it was filed within 60 days of the Order Denying the WSPA’s Petition for Rulemaking, and provides a reason for requesting reconsideration.
- 7) Government Code section 11340.7(c) requires that the CEC, within 30 days of the filing of the request for reconsideration, grant or deny the petition, indicating why the agency has reached its decision on the merits or schedule the matter for public hearing in accordance with the rulemaking provisions of the Administrative Procedure Act (Govt. Code section 11346 et seq). California Code of Regulations, title 20, section 1221(c) interprets this provision and requires either a written denial of a petition for rulemaking, or the issuance of an order instituting a rulemaking proceeding.
- 8) As of the date of this Order, the Legislature is still considering Senate Bill (SB) 2 (2023-2024 1st Ext Sess.). Because the California State Legislature is still considering whether to further define terms used in SB 1322, it is premature to consider initiating a rulemaking process to define these or related terms.
- 9) SB 1322 requires refinery operators 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. Refinery operators are required to provide the listed data by March 2, 2023, and monthly thereafter.
- 10) By March 5, 2023, all major refinery operators submitted to the CEC information in each of the categories specified in SB 1322. Only one major refinery operator provided only partial information and objected to providing data for the remaining statutory categories. SB 1322 directs refinery operators to provide data in specified categories, and compliance with these provisions is feasible.
- 11) Public Resources Code section 25362 directs the CEC to notify refinery operators who fail to timely provide the information specified in Section 25355. If, within five days after being notified of the failure to supply the specified information, the refinery operator fails to supply the specified information, refinery operator shall be subject to a civil penalty as specified in Section 25362. The process further permits a refinery operator to timely object to providing specified information, and for the CEC to hold a hearing on the matter. Adequate due process is provided to refinery operators prior to the imposition of a penalty. A

general stay of the potential for penalties is unnecessary to provide refinery operators with due process.

IV. CONCLUSION AND ORDER

- 1) The CEC hereby DENIES WSPA’s Request for Reconsideration of the Order Denying Petition for Rulemaking.
- 2) The CEC hereby DENIES WSPA’s request to stay implementation of SB 1322.
- 3) 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 March 14, 2023.

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

Dated: March 14, 2023

SIGNED BY:

Liza Lopez
Secretariat

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Steve Uhler Petition for Rulemaking

**ORDER DENYING PETITION FOR
RULEMAKING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 1, 2023, Steve Uhler filed a letter requesting that the California Energy Commission (CEC) initiate a rulemaking pursuant to California Code of Regulations (CCR), title 20, section 1221. Specifically, Steve Uhler's petition requests the CEC initiate a rulemaking to repeal CCR, title 20, section 1201, subsection (f), and amend CCR, title 20, section 1208, subsection (a).

On March 3, 2023, the Executive Director determined that Steve Uhler's petition met the requirements of CCR, title 20, section 1221 and certified that the petition was complete. The Executive Director also noted that his determination and certification does not constitute an approval of his petition for the CEC to initiate a rulemaking hearing. The Executive Director's determination and certification was sent to Steve Uhler via email.

On March 3, 2023, the CEC published the Business Meeting Agenda for its business meeting scheduled on March 14, 2023. The agenda includes consideration of Steve Uhler's petition for a rulemaking hearing and describes the agenda item as follows: "Consideration of an action on a petition that requests the CEC to initiate a rulemaking hearing pursuant to CCR, title 20, section 1221." The CEC posted the agenda on its website and Business Meeting Docket 10 days prior to the March 14 business meeting. The agenda included information on how to participate in the meeting.

On March 14, 2023, the CEC held a hearing to consider Steve Uhler's petition for a rulemaking.

II. CEC FINDINGS

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

1. CCR, title 20, section 1201, subsection (f) provides that: "Docket Unit" means "the office of the commission that receives, distributes, serves and stores all filed documents."
2. CCR, title 20, section 1208, subsection (a) provides that: "All documents submitted in any proceeding, whether by a party, committee, the commission, or any other individual or entity, shall be filed with the Docket Unit. Filing is complete when a document has been accepted by docket staff or by the commission's automated electronic filing or commenting system. Documents that are not filed will not be deemed part of a proceeding's record."
3. 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. Thus, the Commission has the authority to initiate a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a), as requested in Steve Uhler's petition.
4. The Steve Uhler petition for a rulemaking meets the requirements of CCR, title 20, section 1221.
5. The Chief Counsel's Office evaluated Steve Uhler's petition and found that the CEC follows existing law.
6. The CEC staff uses the Docket Unit as a central location to keep records for its proceedings. Nothing requires the CEC to submit documents that are not part of a proceeding's formal record to the Docket Unit. Thus, the requested rulemaking is not necessary and does not warrant the expenditure of resources that such a rulemaking would require.
7. 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 Steve Uhler's petition for a rulemaking to repeal CCR, title 20, section 1201, subsection (f) and amend CCR, title 20, section 1208, subsection (a).
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 March 14, 2023.

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

Dated: March 15, 2023

SIGNED BY:

Liza Lopez
Secretariat