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WSPA Comments on SB 2 Implementation [Docket #23-SB-02]

Additional submitted attachment is included below.

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President and CEO

May 30, 2023

California Energy Commission
Docket Unit, MS-4
Docket No. 23-SB-02
715 P Street
Sacramento, California 95814

Submitted via email to docket@energy.ca.gov

RE: WSPA Comments Regarding SB 2 Implementation Workshop [Docket #23-SB-02]

Thank you for providing an opportunity for the regulated community to comment on the California Energy Commission's (CEC) May 16, 2023 hybrid workshop that was dedicated to informing the public of the proposed plan to implement Senate Bill (SB) X1-2 (2023). The Western States Petroleum Association (WSPA) is a non-profit trade association representing companies that import and export, explore, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California.

SB X1-2 directs state agencies to evaluate how to ensure that petroleum and alternative transportation fuels are adequate, affordable, reliable, and equitable. Implementation will necessarily require that transportation energy companies make **significant** investments to maintain and upgrade the fuels infrastructure – upstream, midstream, and downstream. These investments must be economically viable if we are to meet the strong fuels demand today and for decades to come. We fully recognize that transforming the world's third largest fuels market will not be easy. Nor will it be easy or inexpensive to significantly upgrade and dramatically expand California's electric grid to accommodate the anticipated electrification of the transportation and building sectors, especially in underserved areas. It is therefore equally important that the state closely evaluate what investments must be made in both systems to meet the diverse energy demands of all Californians, as well as steps that can be taken to facilitate a more expedient permit review process to enable these necessary investments in the ongoing energy transition.

The implementation of the voluminous new requirements in SB X1-2 and SB 1322 (2022), while continuing to protect confidential business information, will require significant efforts from both stakeholders and CEC alike. Coordination will be required by all involved to explain, clarify, interpret and carry out these many new obligations, which is why we believe CEC will need to exercise its existing statutory flexibility by prioritizing implementation efforts and phasing in reporting and compliance obligations. Accordingly, in addition to a formal rulemaking process, WSPA requests assurances that CEC will host additional workshops and provide ample time to review and answer questions about any new or modified reporting forms well in advance of any reporting deadline, which has been identified by CEC staff as June 26, 2023. Regulated entities must have sufficient time to ensure internal protocols are in place at the CEC and within their organization to collect and report the requisite information in a responsive, accurate, and timely manner. The public also deserves to know the full scope of the burdens that will be placed on

the facilities, stakeholders, and CEC in the implementation of these new laws, which will add costs to both CEC and the regulated community.

INTRODUCTION

WSPA continues to strongly believe that a formal rulemaking process is necessary to ensure clarity, consistency, and accuracy for both CEC staff and all regulated entities in interpreting, implementing, and properly complying with SB X1-2 (including SB 1322). Formal rulemaking is also necessary to help ensure that CEC can continue to protect highly confidential and proprietary data in accordance with, among other things, federal antitrust and state reporting laws, which remains a major concern because this valuable competitive information could be a target for hackers or subject to leaks.

We understand that the CEC intends to work in an administrative capacity to implement the new laws as the new Division of Petroleum Market Oversight and the new Independent Consumer Fuels Advisory Committee are established and staffed. We strongly recommend and urge that the CEC prioritize and narrow the scope of SB X1-2's initial reporting requirements during this start-up period. Doing so would help to ensure regulatory certainty and compliance for known obligated entities now, while providing time to phase in compliance for unknown or newly obligated entities in the future as the state hires and trains additional staff and new entities are apprised of new reporting requirements and related rules. We strongly encourage CEC to conduct a public stakeholder survey to identify all regulated entities involved as there could be some that are unaware of their obligation to comply with the law in addition to the parts of the statutes that regulated firms do not yet fully understand; this will help ensure CEC receives the additional input necessary to effectively implement the statutes as the Legislature intended. An adequate defendable analysis that responds to the objectives of this legislation must include wholistic market input versus a "cherry picking" of only available information from a portion of the market.

We welcome the opportunity to work with CEC through workshops and staff-level industry working groups (including, especially, with respect to information technology issues) to implement these new laws in a manner that allows for understanding and compliance while also protecting all market-sensitive, confidential, and proprietary data and ensuring that all applicable cybersecurity and data privacy regulations are followed.

EXPANSIVE SB X1-2 DATA COLLECTION EFFORT

WSPA does not seek to delay new data reporting requirements; as you know, our members already gather and report a wide array of data to CEC on a regular basis. Rather, we seek to work with CEC to ensure effective implementation and standardized reporting practices when the new requirements go into effect. For example, CEC previously used interim data reporting forms to initiate expanded data collection while a formal rulemaking process was underway following the Legislature's 2003 expansion of the Petroleum Industry Information Reporting Act of 1980. This would be a helpful model for SB X1-2 implementation given both the incredibly expansive nature of the new data collection, the ambiguities and open questions within the legislation, and the numerous additional regulated entities involved who have not yet had to comply with these first-of-their-kind reporting requirements.

The amount of data reported to CEC will dramatically increase under SB X1-2. For example, if CEC chooses to require reporting of contracts and agreements under Section 25354, subdivision (i)(2)(F), that could require refiners alone to report some 30,000 total contracts and

agreements with up to approximately three million pages of documents, in addition to the 500,000 daily transactions (or 182.5 million transactions per year) required by subdivision (l). Thus, the CEC will need to work with all reporting facilities under the new laws to develop a system to manage terabytes of new data. Both the state and obligated parties will need to develop systems and processes for how this information is collected and shared with the CEC, along with defining limitations and protections around how it is shared with third parties and other agencies.

We trust CEC would agree that indiscriminate collection of copious but irrelevant information helps no one. Imposing a vast new laundry list of mandatory reporting topics starting June 26, without first assessing the necessity, costs and benefits of gathering certain types of information, would cause undue burdens on reporting entities and on CEC's own staff and technology resources. Indeed, the stated goals of the legislation would be frustrated if CEC ends up having to collect, store, and is required to protect vast amounts of data with little or nothing to do with gasoline prices (e.g., propane, petrochemicals, asphalt, etc.). Accordingly, we recommend that CEC exercise its discretionary authority to collect data based upon identified priorities and staffing and technological constraints, while assessing what types of information truly address the central issue of extreme gasoline price spikes. Providing further clarity around these new reporting requirements, would prevent varied and inconsistent responses from industry, and prevent incorrect conclusions and monumental burdens on the CEC.

We share CEC's goal of ensuring the production and sharing of responsive, high quality and consistent data and appreciate that the CEC shares the desire for clarity, consistency, and accuracy in data reporting. WSPA continues to believe that a joint staff-level working group would be helpful in determining priorities, based upon what can be more readily implemented first. We also suggest CEC staff establish a more formalized process to ensure regular check-ins with the regulated community – including, specifically, information technology experts – to provide a forum for questions to be raised and clarification sought. Establishing clear and reasonably implementable rules, guidance, forms, and instructions for the new reporting requirements will be beneficial to both CEC and the regulated entities by offering much needed clarity given the gaps identified to date.[1] "Attachment A" of WSPA's May 11, 2023 rulemaking petition letter provided an initial, but incomplete, list of issues and questions that we continue to supplement based upon ongoing internal reviews.

WSPA has identified many more open issues in "Attachment A" of this comment letter. Among these issues are impediments to compliance with various provisions of SB X1-2's reporting requirements. For example, regarding the 96-hour pre-import reporting requirement (Cal. Pub. Res. Code (PRC) Section 25354(j)(2)), it will be challenging for regulated entities to provide the information requested because purchases arrive "as delivered" and the source is not necessarily known. Additionally, providing the status of any transportation fuel "as sold before discharge," in addition to the buyer's identify for any presold product and sale price of any presold product (PRC Section 25354(j)(5)), will be problematic because companies cannot track fuel product by molecule and have no way to track the fuel volumes made in specific sales or market contracts to specific tanks in specific vessels. In addition, in daily spot market transactions, there is often a lag between the contract execution and settlement, meaning that data reported at time of contract execution may not accurately reflect updated information about

[1] See "Attachment A" in WSPA's May 11, 2023 petition for formal rulemaking filed with CEC

the fuel ultimately purchased. Occasional deal entry errors may occur as well. While PRC Section 25354(l)(15) requires the reporting of the invoiced volume of each transaction, exact volumes and pricing terms may not be known until invoiced. Daily reporting is therefore extremely cumbersome, with multiple lags, and would therefore benefit from longer lead periods to reconcile.

In addition, under SB X1-2's definitional terms it is unclear if operational costs (PRC Section 25355(b)(8)) are intended to include only the costs associated with refining or also include the distribution, marketing costs associated with bringing product to spot pipeline sales, unbranded, branded wholesale rack and DTW sales. Like concerns with "gross gasoline refining margin," the term "net gasoline refining margin" may also artificially inflate the appearance of margin as it is unclear whether all costs associated with reported sales are included in the calculations. For example, it is unclear whether the "net gasoline refining margin" calculation includes CARB mogas purchases, marketing expenditures, and full allocation of crude expenses (to account for the impacts of other products), and/or if it includes or excludes market and distribution costs outside the refinery.

Fortunately, as with other PRC statutes, the recent statutory changes provide the CEC with helpful flexibility to exercise discretion where the term "may" is used and also explicitly provide that CEC can determine the "form and extent" of new reporting requirements. Although much of the data and materials outlined in the new laws may be beneficial to CEC's analysis and reporting to "ensure adequate gasoline supplies and prevent future extreme price spikes for gasoline prices in California,"[2] other data and materials that could be required likely are not.

IMPORTANCE OF ENSURING SB X1-2 DATA SECURITY

The oil and gas industry is one of 16 federally identified critical infrastructure sectors that provide essential services to the public. Federal agencies, including the Transportation Security Administration (TSA), the Federal Energy Regulatory Commission, and the Cybersecurity and Infrastructure Security Agency (CISA), are tasked with leading efforts to constantly improve sector security, particularly as cyber threats become more prevalent. The TSA has released the Security Directive Pipeline 2021-02, which requires companies that operate pipelines to create cybersecurity implementation plans, incident response plans, and assessment programs. Previous Directives also require compliance with certain cybersecurity standards developed by the National Institute of Standards and Technology, which are designed to help protect these sectors designated as critical. For reference, CISA has also developed best practices to assist governmental entities to protect against cybersecurity risks including by strengthening cyber posture through secure planning and design, proactive supply chain risk management, and operational resilience.[3] Additionally, to help carry out the National Cybersecurity Strategy released in March 2023, CISA is working to develop best practices specific to each critical infrastructure sector. The energy sector has stepped up to accomplish this first.

Unquestionably, the illegal access, ransom and release of confidential business oil and gas industry business data can move entire markets, negatively impact individual companies seeking to comply with California's new law, and dramatically affect the everyday lives of consumers. This cannot be overstated. Federal regulatory agencies are following Federal Information Security Management Act high requirements and are required to be assessed and

[2] CEC Notice of Senate Bill 2 Implementation Workshop – May 16, 2023 agenda https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02.
[3] https://www.cisa.gov/resources-tools/resources/cybersecurity-best-practices-smart-cities

comply with these requirements. There are equivalent protections and assessments for the CEC.

Data gathering must both preserve confidential trade secret information and comply with a panoply of applicable federal antitrust and state reporting laws and international data privacy laws, which could impose steep fines if violated. Release of market-sensitive data not only can harm the regulated businesses but also can give malicious actors an opportunity to engage in market manipulation. Proper protection of information should be achieved through the aggregation or withholding of confidential data before any public release, as well as through the robustness and integrity of CEC's own information technology (IT) system to guarantee the protection of this market sensitive information.

These new reporting obligations are far from the only legal obligations that refiners must comply with. There is a growing suite of cybersecurity directives and regulations at all levels of federal and state government, as well as reporting laws in other states and strict limitations on the dissemination and accessibility of sensitive data under federal antitrust law. To ensure that California's new reporting regime does not force companies to run afoul of their overlapping obligations to other states and the federal government, CEC needs to ensure that its own IT systems are properly configured and managed in order to protect confidential and proprietary information. Tools like encryption, limitations on access, and the segmentation of data (*i.e.*, storing related information in different places so as to minimize the impact of any breaches) are essential in safeguarding sensitive information that CEC intends to collect.

As WSPA works together with CEC to inform the standards CEC will use and guarantee the robustness of CEC's IT system, we plan to share with CEC several specific issues and concerns where failure to adequately protect this information from disclosure will harm regulated industry entities, and may result in the extreme price spikes CEC seeks to avoid. Attachment B of this comment letter, the ITSP Questionnaire, includes an industry standard list of 23 questions we request the CEC provide detailed answers to via the confidential transmittal to WSPA that we can share with our members. This will best help WSPA member companies assess the IT specifications and safeguards CEC will use to protect the information to be collected under SB X1-2 commencing June 26. WSPA further requests detailed follow-on discussions with CEC IT staff, management, and leadership to discuss these details and afford WSPA member companies the comfort necessary in the robustness of CEC's information sharing infrastructure, that CEC will protect the information when shared with any other state agency or division, and that the CEC's possession of a vast quantity of highly confidential and sensitive market information pertaining the world's third largest fuels market will easily pass any independent audit. We would also appreciate that CEC name a dedicated senior staff contact who will be responsible and accountable for answering industry questions and addressing concerns.

SHOULD PROFITS BE PENALIZED?

SB X1-2 included in its findings and declarations section an incorrect and unfortunate claim – *i.e.*, that gasoline price spikes in the fall of 2022 were "caused by refiners." While this claim has been raised and analyzed by California many times before, the real-world market evidence has always refuted it and properly identified the underlying market factors of supply and demand as driving costs. Indeed, costs often have more to do with basic retail factors than refining. Even third-party experts have concluded that a cap on refinery margins has the potential to *harm consumers and drive prices up* by aggravating California's increasingly structural supply

constraint issues – leading to the extreme gasoline price spikes the CEC is tasked with preventing and mitigating.

Fortunately, the language of SB X1-2 was corrected to first require CEC to gather real-world evidence on whether a cap on refinery margins could have unintended consequences that would harm California consumers.

> The law provides that CEC "*shall not* set a maximum gross gasoline refining margin or accompanying penalty . . . *unless* it finds that the likely benefits to consumers outweigh the potential costs," considering factors such as whether action would lead to a greater supply and demand imbalance in California's fuels market or lead to higher pump prices." See PRC Section 25355.5(I).

It is therefore incumbent upon CEC that, before deciding whether to cap or penalize refining profits, it must first evaluate the potential impacts and unintended consequences of adopting such a cap and assess whether the actual market evidence indicates that such a cap will do anything to help California consumers by addressing the underlying fundamental market reasons for rising prices – *i.e.*, ongoing market volatility due to a lack of supply in the market accompanied by very strong demand. No analysis will be adequate and accurate unless the CEC looks at *all* variables impacting the market, including land use decisions, the lack of permitting, regulatory actions, etc. that impact fuel supplies. The CEC will not be in a position to make a well-informed decision, supported by a meaningful and fair analysis, without confronting and analyzing these variables.

To this point, in recent history, numerous Attorneys General have independently investigated California's refiners and confirmed that the refining industry has ***not*** engaged in price gouging. The CEC's own Integrated Energy Policy Reports (IEPR) even predicted elevated gasoline costs to consumers dating back to 2003/2004 based on the same considerations – *i.e.*, that fuel prices are driven by larger market forces of supply and demand. Furthermore, both the Federal Trade Commission and CEC investigated or conducted multiple studies of the "residual price increase" in California's fuels market following the 2015 Torrance refinery incident and concluded that refinery margins were found not to be the cause.

In addition to the SB X1-2-directed considerations CEC must consider when investigating if a maximum gross refining margin is justified, WSPA also encourages the Commission to consider fundamental fuels market issues that directly impact gasoline prices. These issues and other questions include how a gross refining margin would impact petroleum cost or statewide supply; what precedent/legal authority the CEC would set for California business as a government entity attempting to determine what income a California business should be "allowed" to earn; what an appropriate profit (or loss) amount/percentage would be for a private company within only one specified industry while other industries have no such limit; what specific factors CEC would consider in even attempting to set such a level; how to determine what percentage of a refiner's income it would be required to pay to the state; and what financial support CEC would offer to facilities operating at a loss (as California has already done for the electric utility industry for power plants).

TRANSPORTATION FUELS TRANSITION STUDY

It is undisputable that the electrification transition is unlikely to be smooth or equitable for many Californians, particularly low- and moderate-income residents and small businesses. We

therefore encourage CEC and the California Air Resources Board (CARB) to include in the SB X1-2-mandated Transportation Fuels Transition Plan an evaluation of fuel demand and price scenarios that incorporate low, medium, and high fuel demand scenarios – especially given the uncertainties raised by CARB as part of the 2022 Scoping Plan Update. This includes significant uncertainties for permitting wait times and local ordinances that may limit or slow the rapid build-out of utility-scale renewables, the ability to deploy renewable energy at the pace modeled, addressing known constraints with widespread transportation electrification (including grid readiness, affordability, and commercial availability), and the aggressive reduction of Vehicle Miles Traveled called for in the 2022 Scoping Plan Update.

We also note that, for the purposes of CEC's IEPR, by charter, the analyses supporting it must explicitly address interfuel and intermarket effects to provide a more informed evaluation of potential tradeoffs when developing energy policy across different markets and systems. The IEPR must include an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation. This assessment must consider all aspects of energy industries and markets that are essential for the state economy, general welfare, public health and safety, energy diversity, and protection of the environment.

The required fuel scenarios analysis should forecast how current and anticipated transportation fuels infrastructure limitations have and will impact energy supply and market dynamics. The CEC and CARB should determine what level of incremental investments will be required by the State of California and/or expected by industry to maintain and build-out needed infrastructure to ensure the provision of adequate, affordable, and reliable energy options for all Californians. Minimizing such market volatility would necessarily include identifying policy changes to support (rather than hinder) critical investments in the maintenance and build-out of infrastructure to support both existing fuels demand and new energy needs. The CEC should also quantify the gap between the forecasted state of current transportation energy infrastructure and the build-out of new infrastructure across the demand forecast scenarios and its impact in terms of potential supply shortfalls.

WSPA agrees with CARB's recognition in the 2022 Scoping Plan Update that a complete phaseout of oil and gas extraction and refining by 2045 is not feasible and would lead to significant "leakage" of California businesses and accompanying GHG emissions to other states, defeating the stated purposes of statewide climate regulation. WSPA expressed repeated concerns with CARB's reliance on a Zero Emission Vehicle (ZEV)-only approach in achieving the state's greenhouse gas (GHG) and air quality goals within the transportation sector. As we commented during the Scoping Plan's development and through the Advanced Clean Trucks, Advanced Clean Cars II, and Advanced Clean Fleets rulemakings, CARB's analyses failed to evaluate cost-effective air quality and GHG reduction benefits that other technology options, such as near-zero emissions vehicles and low-carbon and renewable fuels, could deliver. WSPA requests that the Fuels Transition Study called for in SB X1-2 analyze and consider the benefits of utilizing alternative pathways, including using renewable and other low carbon fuels, that can dramatically reduce transportation sector carbon emissions without simply forcing emitting activities and associated businesses out of state, and without ZEV mandates for achieving carbon neutrality and improving air quality in highly impacted communities.

Assembly Bill 32 (2006) requires CARB to minimize "leakage" of GHG emissions from California's economy. As WSPA raised in comment letters to CARB, the significant potential for leakage of emissions due to technology forcing mandates in the 2022 Scoping Plan Update

ignores the life cycle emissions of “zero emission” vehicles. Importantly, life cycle GHG emissions associated with ZEVs are not zero, but include all the GHG emissions created from mining materials for batteries to disposing of ZEVs at the end of their useful lives. The 2022 Scoping Plan Update did not assess the leakage of these life cycle emissions that would be caused by increased mining activities, battery production, recycling, and disposal under the proposed light-duty vehicle and medium-duty vehicle/heavy-duty vehicle ZEV mandates. It also did not consider the life cycle emissions and other environmental impacts that would be caused by a dramatic development of electric infrastructure, including solar panels, wind turbines, and grid-scale battery production impacts. All of these have considerable embedded GHG emissions and would largely be produced outside California. Further, actions to phase down California’s oil and gas extraction and refining would cause increased production and refining of liquid fuels outside of California from operations with higher GHG intensities. All of these unconsidered impacts would represent emissions leakage.

Technology-neutral, performance-based standards could be an affordable alternative to ZEV mandates and would more completely characterize the potential life cycle GHG emissions impacts of a ZEV option versus other options. Performance-based standards also have the significant advantage of not requiring the replacement of California’s entire transportation infrastructure system and requiring the wholesale transformation of the electric energy production and distribution infrastructure on an unprecedented time scale without full evaluation of the totality of other environmental impacts. This would maintain equitable emission reductions across the transportation sector while significantly abating the technological and economic concerns surrounding the proposed ZEV mandates. We continue to ask CARB to fairly evaluate a plan that allows for this alternative pathway to achieve carbon neutrality with fewer feasibility challenges and lower costs.

SB X1-2 states in part that the Transition Plan “shall be prepared in consultation with the state’s fuel producers and refiners” and “shall include, at a minimum, a discussion of how to ensure that the supply of petroleum and alternative transportation fuels is affordable, reliable, equitable, and adequate.” WSPA looks forward to working closely with the CEC, CARB, and the new Division of Petroleum Market Oversight to inform the Transition Plan’s development – including the analysis of multiple demand case and price scenarios. Equity must be a central part of this study to help inform policies under the base assumption that internal combustion engine vehicles (including hybrid vehicles) will be used and needed by Californians for decades to come, and that fuel affordability be a guiding tenet.

TRANSPORTATION FUELS ASSESSMENT REPORT

WSPA looks forward to working with the CEC to inform its development of the first triennial Fuels Assessment Report. The statute is clear in requiring CEC to identify methods to ensure a reliable supply of affordable and safe transportation fuels while evaluating prices, supply and employment conditions and potential refinery closure impacts, and the cost and cost-effectiveness of any proposal.

In addition to the points raised above for the Transportation Fuels Transition Study, the CEC must analyze the existing state of California’s legacy oil and gas infrastructure that is substantially supporting our energy economy. This must be inclusive of the entire supply chain – upstream, midstream, downstream, and retail/marketing – and should include an analysis of the root causes of the infrastructure challenges and related supply issues. WSPA recommends that CEC utilize CalGEM production data to assess the differential in what CARB has assumed

(approximately 3% annual production decline in the 2022 Scoping Plan) versus what CalGEM data has shown (approximately 10-15% decline depending on the data set used).[4] We also recommend CEC evaluate regulatory barriers preventing needed maintenance activities, policies and processes that challenge infrastructure from being repurposed, and policies and processes preventing significant new infrastructure investments by creating long-term uncertainties. It continues to be a pressing issue for California gasoline supply that most refineries outside of California cannot produce fuels that meet California's strict specifications for gasoline.

WSPA encourages CEC to closely evaluate how existing state policies have impacted the in-state production and refining of petroleum fuels as part of this assessment. Given that CARB's 2022 Scoping Plan Update seeks to marry demand with supply, we believe such an evaluation will show that the state has taken numerous steps to artificially reduce production (and therefore constrained supply) of petroleum fuels needed by refineries to meet California's ongoing and high demand. California produces and refines the cleanest hydrocarbons available – under the strictest environmental policies in the world – and any artificial constraint that reduces in-state supply and production must be compensated for by refineries elsewhere around the world that are outside the jurisdiction of California's strict environmental policies.

SUMMARY

In addition to commencing the recommended formal rulemaking process, WSPA also encourages CEC to ensure that compliance be phased in as additional information is gathered about regulated entities, priorities are determined, staff are hired and IT resources deployed. It is only as additional information is identified and understood that CEC will get a clear picture of how to efficiently and effectively structure reporting and data gathering requirements. With the multitude of outstanding issues and questions and such a short window of time before reporting commences, a phased-in approach is truly required.

Thank you for considering our comments. We look forward to working with the CEC to provide ongoing input to ensure regulated entities have the instructions and materials needed to properly comply, to ensure that the data submitted is responsive and consistent across the industry, and that the information is well-protected. Please do not hesitate to contact me at (916) 498-7752 or cathy@wspa.org with any questions, or Tanya DeRivi on my staff, who can be reached at (916) 325-3088 or at tderivi@wspa.org.

Sincerely,

cc: The Honorable David Hochschild, California Energy Commission, Chair
The Honorable Siva Gunda, California Energy Commission, Vice Chair
Shant Apekian, WSPA

[4] California Department of Conservation, WellSTAR monthly production data reports, 2018-2023, https://www.conservation.ca.gov/calgem/Online_Data/Pages/WellSTAR-Data-Dashboard.aspx

ATTACHMENT A – REVISED 5/30/2023

SB X1-2 Items Requiring Clarification Through Rulemaking
The bulleted categories and sections below describe areas of the statutes at issue that still require additional clarity and would benefit from the rulemaking process. WSPA and its members are still evaluating the statute for additional items that require clarification so that the legislature's intent for transparency and clarity can be achieved. We expect to complete that process and convey such information to CEC prior to or during the rulemaking process.

- **Definitional Terms**
  - In **Section 25354(a)**, the use of the word "existing" is confusing; it is unclear if it is intended to mean changes to reporting that is occurring today.
  - In **Section 25354(a)(1)** the term "price" may not be available or able to be calculated. The term lacks specificity in application to receipts, inventories, and exports.
  - In **Section 25354(a)(1)** the "entity receiving those exports" may not be knowable if they are the final recipient. This is possibly infeasible for foreign exports, especially marine cargos with multiple deliveries and marine cargos that are sold to another entity prior to delivery to its final destination.
  - **Section 25354(a)(1)** requires refiners to report "all current inventories of refined and unrefined petroleum products." The term "unrefined petroleum products" is undefined and could have multiple meanings.
  - In **Section 25354(b)**, the use of the word "existing" is confusing; it is unclear if it is intended to mean changes to reporting that is occurring today.
  - **Section 25354(b)(6)** introduces "Pipeline Operator" as a new party without defining this term.
  - **Section 25354(h)(2)** requires refiners to report monthly on "weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company operated retail outlets, sales to other end users, and wholesales of No. 2 diesel fuel, No. 2 fuel oil, and any renewable fuel." The new term added "renewable fuel," which is not listed on the EIA form and provides no specificity as to the different types of renewable fuels that would be reported. Clarity is needed to determine the feasibility of reporting these types of fuels as they are typically blended into gasoline, and ultra-low sulfur diesel fuels.
  - **Section 25354(i)(2)(F)** may require reporting of "copies of all contracts or agreements entered into, or amendments to contracts or agreements, with other oil refiners, oil producers, petroleum product transporters, petroleum product marketers, petroleum product pipeline operators, terminal operators, or any other entity that trades in petroleum products whether or not those entities take possession of petroleum products, as designated by the commission, during the monthly reporting period, along with records of every transaction made under those contracts or agreements and the prices charged for those transactions." This section could be widely interpreted and may result in multiple submissions of the same documents, in addition to the questionable necessity of these contracts having to be submitted each week.

- **Section 25354(j)** uses the term "importers." It is unclear if this means the owner of the cargo, the importer of record prior to transfer of title at the point of discharge at the marine terminal, the owner of the vessel, or the company that chartered the vessel.
- **Section 25354(j)** states reporting must happen "at least 96 hours before the arrival." This 96-hour rule may impact supply of "refined products and renewable fuels" if ships must sit out at sea waiting for the 96 hours to pass before "delivery to California." If 96 hours is the requirement, sometimes what is planned can be provided – which may be different from what actually happens.
- **Section 25354(j)** uses the term "imports," but it is unclear if this means imports from foreign countries or imports from domestic resources as well (e.g., the United States Gulf Coast and Pacific Northwest).
- **Section 25354(j)(2)** may be challenging to provide the information sought; sometimes purchases are "as delivered" and the source is not necessarily known.
- **Section 25354(j)(4)** uses the term "landed cost," which may not be knowable for many imported cargoes since an importer transfers ownership at the berth and can be on a floating basis against different benchmarks. This information may be challenging to provide as it does not link costs to every purchase.
- **Section 25354(j)(5)** may be challenging to provide the information sought; as transportation fuel is not tracked by molecules, so there is no way to apply the volumes to specific sales or marketing contracts.
- **Section 25354(l)** may need to be limited to the data "if applicable," as all of the information required for each transaction may not apply to each such transaction. Daily reporting of this information is expected to be extremely cumbersome, even if it can be achieved at all. Given the complexity and size of data requested, there should be more time allowed to collect the requested data. There is no indication that this information is needed or will be actioned on an urgent basis, so there would be little benefit to regulators for a slightly longer period to collect and validate the vast amount of information requested. WSPA suggests that this requirement be changed to a daily report that reports out three business days after each transaction given the need for reconciliation of information, where a longer lag period would be beneficial. Further, it is unclear how reporting would be conducted on a Saturday, Sunday, holidays or during emergency events when resources are limited.
- **Section 25354(l)(1)** refers to the term "spot market." This does not specify which spot markets are to be included under this provision. It is unclear if this could include the San Francisco Bay Area or Los Angeles, or Pacific Northwest, Gulf Coast, Atlantic Coast or Midwest. There should be clarity on which spot market transactions would need to be reported under this subsection.
- **Section 25354(l)(8), (9), (11)** <u>requires the name, or nonanonymized identification, of the broker, as well as the executing and counterparty trader for transactions. Collection of international personal data under the General Data Protections Regulation (GDPR) has specific guidelines for processing data that CEC must consider and develop transparent privacy safeguards per GDPR requirements.</u>
- **Section 25354(l)(14)** requires reporting of the volume of each transaction in thousands of barrels, or other unit of measurement, if unable to be indicated in thousands of barrels; however, this information may only be known as an estimate.

- **Section 25354(l)(15)** requires reporting of the invoiced volume of each transaction in thousands of barrels, or other unit of measurement, if unable to be indicated in thousands of barrels; however, there may be a lag in providing this information if not known until invoiced given a wide range of payment terms.
- **Section 25354(l)(19)** requires the actual title transfer date; however, this may not be known until after the fact.
- **Section 25354(l)(16)** requires the "time and date" of a transaction. Spot mark transaction published each business day by OPIS for the West Coast identify pipeline cycles, rather than specific dates and times.
- **Section 25354(l)(18)** requires reporting of methods of transportation such as pipeline, marine vessel, or truck. Spot market transactions published each business day by OPIS for the West Coast are only for pipeline delivery.
- **Section 25354(l)(19)** requires reporting of "the actual title transfer date." The actual title transfer usually takes place upon transfer from one party to another. Since spot pipeline transactions reported by OPIS are for future delivery, it could be infeasible to know what date transfer will occur when reporting spot transaction each day.
- **Section 25354(m)** and **(n)** requires further clarification regarding whether this section applies only to maintenance at producing units at a refinery and excludes storage or pipelines inside the refinery gate.
- **Section 25354(m)(1)(C)** refers to "return-to-service date." This should be properly defined to clarify how to treat circumstances of gradual ramp-ups for processing units to return to full service.
- **Section 25354(m)(1)(E)** refers to "operational capacity." This should be further defined to clarify either barrels per stream day or barrels per calendar day.
- **Section 2535 (m)(1)(G)** refers to "finished gasoline." Decreased output of gasoline component from process units associated with either planned or unplanned work are not "finished gasoline" that contains ethanol at a concentration of 10% by volume. This needs to be clarified to properly compare reported declines in process unit output to the contractual supply obligations.
- **Section 25354(m)(1)(K)** refers to "noncontracted sales of gasoline." This requires clarification.
- **Section 25354(m)(4)(A)(iv)** requires "a description of the season for the unplanned maintenance or outage." This may not be known with 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment.
- **Section 25354(m)(4)(A)(v)** requires "a projected duration of production reduction." This may not be known with 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment.
- **Section 25354(o)** requires refiners to "report annually to the commission their planned production levels and schedule for turnarounds and planned maintenance for the following 12 months, by month and by finished product." No clarity or direction exists to identify the optimal submittal date each year that would be properly sequenced to be aligned with the refinery information provided to the Division of Industrial Relations.
- **Section 23555(8)** is unclear if operational costs are intended to include on the costs associated with refining or also include the distribution, marketing costs associated with bringing product to spot pipelines sales, unbranded, branded wholesale rack

and DTW sales. Net margin will also artificially inflate the appearance of profits if distribution costs outside the refinery are excluded. Furthermore, costs do not include the purchased gas costs that may be needed to be consistent with Section 25355.5(a)(1) definition of Gross gasoline refining margin excluding state program costs. In addition, purchase gasoline gas costs need to be included to match corresponding revenue generated in associated spot pipeline sales, unbranded, branded wholesale rack and DTW sales.

- **Section 25355.5(l)** and **Section 25355(a)(2)** have a definitional mismatch. The definition of "gross gasoline refining margin" as currently defined in Section equals the difference, expressed in dollars per barrel, between the average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received by the refinery. SB X1-2 does not propose changing this definition. Rather, SB X1-2 adds a second definition, the "gross gasoline refining margin excluding state program costs" which equals the difference, expressed in dollars per barrel, between the average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received and refined gasoline imported by the refinery, less state program costs (low carbon fuel standard and cap-at-the-rack costs). The first measure of "gross gasoline refining margin" is reported to the CEC by refineries; while the second is calculated by the CEC monthly based on data received. It is unclear why imported gasoline costs are part of the equation for the CEC calculation of "gross gasoline refining margin," but not the value as reported by the refiners. Such a difference feels easily resolvable, but without clean-up or clarification could lead to confusion – especially since both gross gasoline refining margins, as reported by the refineries and the one calculated by the CEC are required pursuant to SB X1-2 to be published on the CEC's website within 45 days of the end of each calendar month. Without adjusting these definitions, the two values may be inaccurately represented as divergent.

- **Information Technology (IT)/Security and Confidential Business Information**
  - Regulated entities must know if the CEC will have specific data output formatting requirements to inform software design parameters.
  - Regulated entities will need to know how soon any dedicated data reporting portal will come live or what alternative methods will be available for reporting purposes.
  - Regulated entities must know if there will be dedicated staff and/or a dedicated email address to address questions regarding the reports to be filed.
  - Will CEC have a notification process for regulated entities who do not submit complete data and, if so, what form will that process take? A grace period should be factored into such a process to allow for compliance.
  - Is the CEC confident, and how so, in the capabilities of its IT system to handle the market sensitive data and other reporting data to be collected under SBX1-2?
  - How will the CEC ensure confidentiality of the sensitive data provided to the Commission under SBX1-2?
  - What steps will CEC take to identify and mitigate any breach of security?
  - Would the CEC be willing to engage a third party to monitor and ensure stringent IT security measures to protect data reported?

  - Regulated entities must be apprised of the technical specifications and parameters of the IT security system, process and protocols that will be employed to protect confidential business information prior to uploading such data into the system that is ultimately deployed.
  - Regulated entities must ensure that the IT Security System/Technology that is implemented is implemented across all agencies that will have access to the information.
  - Regulated entities need clarity around which agencies and third parties will have access to Confidential Business Information.

- **Stakeholders**
  - **Section 25354(b)(6)** introduces new obligated reporting entities of "port operators" and "pipeline operators," to report their capacities for all pipelines and ports used to transport refined gasoline. It is unclear whether port operators and pipeline operators possess this information.
  - **Section 25354(i)(2)(F)** may create a new obligation for "oil refiner, oil producer, petroleum product transporter, petroleum product marketer, petroleum product pipeline operator, and terminal operator" to report each week "copies of all contracts or agreements entered into, or amendments to contracts or agreements, with other oil refiners, oil producers, petroleum product transporters, petroleum product marketers, petroleum product pipeline operators, terminal operators, or any other entity that trades in petroleum products whether or not those entities take possession of petroleum products, as designated by the commission, during the monthly reporting period, along with records of every transaction made under those contracts or agreements and the prices charged for those transactions." It is unclear whether all entities required to report would be able to adequately comply with reporting likely thousands of contracts that will likely vary in length.
  - **Section 25354(k)** introduces new reporting entities of "nonrefiners, such as proprietary storage companies, that commercially trade in gasoline, gasoline blending components, diesel fuel, or renewable diesel fuel not subject to contractual supply obligations". It is unclear who these "nonrefiners" are. The term "refiner" is also vague as it is unclear if this means only someone who owns storage and then would report what it holds in its storage facilities.

SB 1322 Items Requiring Clarification Through Rulemaking

The bulleted sections below describe areas of statute that still require additional clarity and would benefit from a rulemaking process:

- First, the term "gross gasoline refining margin" is itself unclear. If the term is meant to be the summation of Section 25355 (b)(1)-(4), then certain compliance issues must be considered.
- Alternatively, if "gross gasoline refining margin" is intended to mean something different than the summation of Section 25355 (b)(1)-(4), refiners will need additional clarity before attempting to quantify associated costs for Low Carbon Fuel Standard and Cap-and-Trade programs compliance in dollars per barrel as initially requested. An agreed-upon benchmark derived during the rulemaking could be a better approach.
- Section 25355 (b)(3) references the "quantity of wholesale gasoline sales." If this term is not adequately defined or is inconsistently applied, such as by some refiners including spot

pipeline sales, the result could be the improper "double counting" of these volumes because such volumes could be resold.

- Section 25355 (b)(1) and (2) reference both "received" crude oil volumes and "received and intended to be refined during that month" crude oil volumes which can have different interpretations. First, these two characterizations of crude oil volumes are not the same due to timing differences between purchasing and processing. Second, it is unclear whether "received" volumes include or exclude purchased crude oil that has not yet arrived at a refinery.
- Section 25355 (b)(4) is unclear as to whether stationary refinery Cap-and-Trade obligation costs should be included.
- It is unclear if the margin cap will apply to a regulated company's margins in California or a company's margins overall and how a company's wholistic profit and loss statement and financial position fits into the formula used for determining appropriate profit margins in California.
- The formula that will be utilized to analyze the data being provided and to make the determination that a margin cap should be imposed is unclear and lacks specificity.

Additionally, it is important to note that the components included in SB 1322 that appear to be used to calculate a "gross gasoline refining margin" fail to accurately represent refining profits, because they exclude significant costs incurred by refiners including, but not limited to: federal renewable identification numbers (RIN) obligation costs, other refinery costs (e.g., electricity, natural gas, chemicals, maintenance, hydrogen, other intermediate oil products), capital investments, logistics costs, additive costs, and gasoline purchases. In other words, the use of gross margin, particularly on one product line in a complex operation, artificially inflates profits, rather than reflecting actual profit margins. This runs counter to providing the public with facts.

The list above excludes other concerns (such as regulatory compliance costs) – but is a sampling of the multitude of SB 1322 issues that still needs clarification, which should be addressed through a formal rulemaking. That would be the best mechanism through which all stakeholders will have an opportunity to provide input on SB 1322 implementation. It will allow for discussion on what new data is needed to comply with the law and which can be provided by the parties under antitrust laws with the proper protections, and how the required data will be used and to who it will be made available. Other considerations include avoiding any future misunderstandings or misuse of publicly available data. We want to ensure a consistent interpretation of SB 1322 by privately held, competing companies subject to SB 1322 that each have different assets and market positions and by CEC staff.

ATTACHMENT B

ITSP Risk Questionnaire for CEC

1. Has an information security governance framework been established, maintained and monitored? Which industry standard information security framework is this based on (e.g., ISO/IEC, NIST, CIS)?

2. Is a review or audit of framework controls performed regularly? Please provide an example audit report (a redacted report is acceptable).

3. Is a rigorous information risk analysis undertaken for each critical information system? Which industry standard risk analysis framework is this based on (e.g., ISO/IEC, NIST, CIS)?

4. Is an information security review or audit of all third-party service providers performed? Please describe the process.

5. Have third party penetration tests been performed? Please provide an executive summary or report of the results (a redacted report is acceptable).

6. Are key information security performance indicators (such as patch status, results of risk assessments, internal audits, and incident documentation) or metrics reported on a regular (e.g. monthly) basis? Please provide sample information security management status report (a redacted report is acceptable).

7. How long does the CEC intend to keep the data provided? Will all provided data be purged when it is no longer needed and will companies be notified when it has been removed or shared beyond the scope of the law requirements?

8. Are systems and networks which host the repository monitored continuously and IDS/IPS systems employed to detect/prevent security events?

9. Do you have a Security Operations Center or alert on-call staff 24/7?

10. Is an approved method for identifying, maintaining and protecting Personally Identifiable Information (PII) applied to ensure that information about individuals is used in compliance with legal and regulatory requirements for information privacy?

11. What methods(s) are used to transfer data into the repository? (e.g., API, FTP, other?)

12. Is all data encrypted both at rest and in transit? What encryption algorithms will be used? Who will generate and hold the encryption keys?

13. What restrictions will be in place to prevent downloading or copying of data to unauthorized devices and users? Will users be able to access the information using mobile devices?

14. Are backups of the repository taken (or is it replicated to another repository)? Where are they stored and how are they protected?

15. Describe the breach notification process? Would notifications to customers in the event of a breach be within 24 hours or less?

16. Is there a patch management process in place? Please provide patching timelines for 0-day, critical, high, and medium vulnerabilities.

17. Do the administrators of the repository have malware prevention process in place (e.g. antivirus)? What is the timeline for definition updates? “

18. Are wireless networks secured according to an industry best practice including segmentation of guest and corporate wireless networks and encryption?

19. Is multi-factor authentication required for all users who will have access to the data (including cloud administrators)? Is just-in-time privilege elevation enforced for cloud administrators? What authentication protocols are used?

20. Are all user activities continuously logged, monitored, and reviewed on a regular basis? Are logs aggregated into a centralized Security information and event management, (SIEM)?

21. Are secure coding best practices employed by the developers of the portal/repository? What best practice standards are used? Are static and dynamic code tests performed on the portal/repository?

22. Describe in detail how each company’s data is separated from other companies’ data. Will separate encryption keys be used for each company’s repository?

23. Describe your access control policies and procedures in detail (both for reading and writing to the repository) Is access restricted to authorized locations and users? If so, how often is the access reviewed?

24. Describe in detail what controls are in place to prevent exfiltration of Company’s data from your systems.