| DOCKETED | |
|---|---|
| **Docket Number:** | 23-OIIP-01 |
| **Project Title:** | Order Instituting Informational Proceeding on Maximum Gross Gasoline Refining Margin and Penalty |
| **TN #:** | 253584 |
| **Document Title:** | Jamie Court, Consumer Watchdog Comments - SBx1 2 Gasoline Price Gouging Penalty Methodology and Implemetation |
| **Description:** | N/A |
| **Filer:** | System |
| **Organization:** | Jamie Court, Consumer Watchdog |
| **Submitter Role:** | Public |
| **Submission Date:** | 12/12/2023 12:50:21 PM |
| **Docketed Date:** | 12/12/2023 |

*Comment Received From: Jamie Court, Consumer Watchdog*
*Submitted On: 12/12/2023*
*Docket Number: 23-OIIP-01*

## SBx1 2 Gasoline Price Gouging Penalty Methodology and Implemetation

Comments attached...

*Additional submitted attachment is included below.*

December 12, 2023

Re: Comments on Price Gouging Penalty Methodology and Implementation

Siva Gunda
Vice Chair
California Energy Commission
1516 9th St
Sacramento, CA 95814

Tai Milder
Director
Division of Petroleum Market Oversight
1516 9th St
Sacramento, CA 95814

Commissioner Gunda and Director Milder,

These comments are meant to supplement the comments I made at the November 28th workshop on the Price Gouging Penalty Methodology and Implementation.

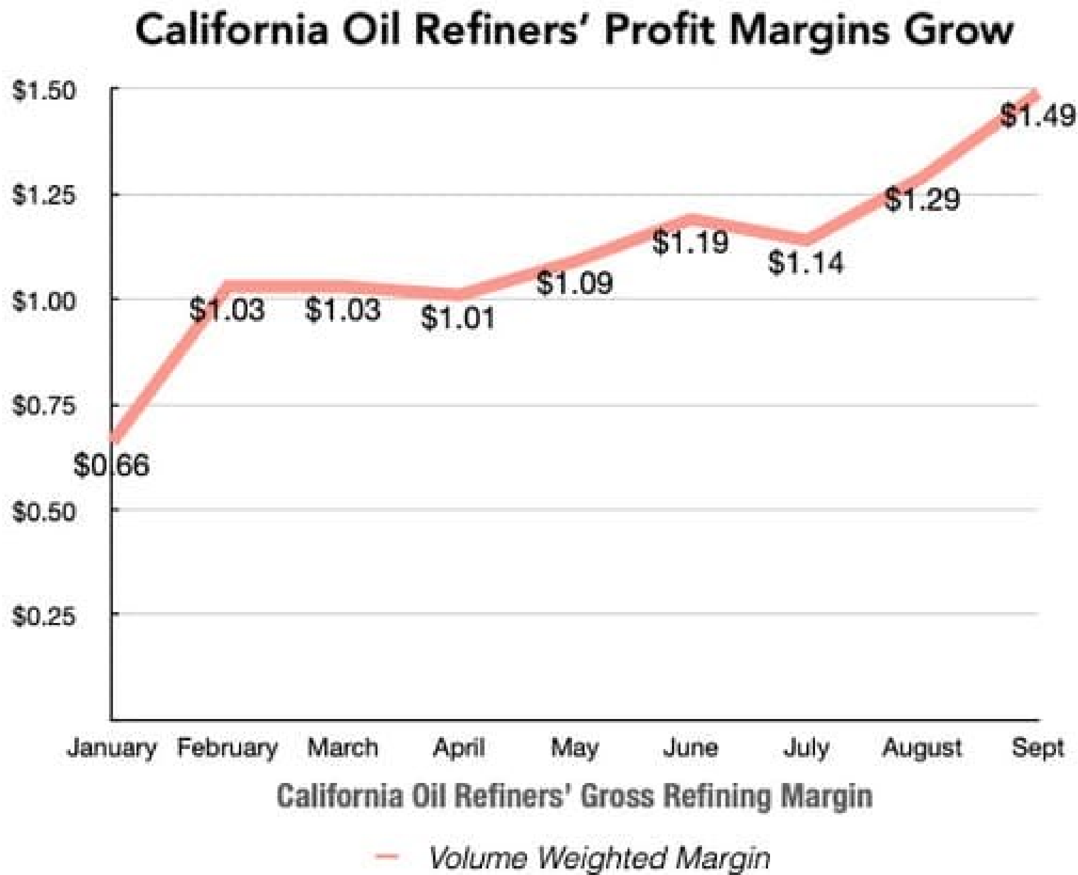
Creating a maximum gross refining margin and penalty is the most effective way to keep gasoline prices in California in line with US gasoline prices and to better balance supply and demand.

Five oil refiners control 98% of the gasoline supply in California and this oligopoly has abused its market powers to keep gasoline prices artificially high to its great financial benefit.

Consumer Watchdog's review of gross refining margins reported by the five refiners to their investors during 2022 show that California oil refiners had 30% higher margins in the state than anywhere else in the nation or world. This caused California gasoline prices to spike to an unprecedented $2.60 per gallon gap with US gasoline prices.

The companies have used their consolidated power to pump up their margins to unprecedented levels. A review of Securities Exchange Commission (SEC) filings shows major refiners' annualized gross refining margins in the West/California topped 50 cents per gallon only three times in the last 20 years, except for 2022 when all exceeded that mark. 2023's numbers are just as bad for consumers.

The latest data posted by the California Energy Commission (CEC) shows, as California gasoline prices were spiking in September 2023 at $5.70 per gallon, California's big oil refiners raked in an average $1.49 per gallon in gross refining margins, nearly three times their 66 cents margins in January. The margin appears to be unprecedented as no margin that high has been reported publicly before.




The only way to rein in these outrageous margins is with the deterrent of a maximum gross refining margin set high enough for a reasonable profit and low enough to discourage the price gouging Californians have been experiencing.

The Maximum Gross Refining Margin calculated under SBx1 2 is to be based on the rack price only. The margins reported under SB 1322 on the CEC web site combine dealer tank wagon, rack, spot, and bulk markets as well. Dealer tank wagon prices are higher than rack prices so the maximum margins need to be adjusted downward to account for the fact that the maximum margin is being calculated based only on lower rack prices.

Based on the chart provided by the CEC at the workshop (Page 14 of handout), showing the maximum margin monthly using the rack price only from 2015 – 2023, a beginning maximum margin in the 70 to 80 cents range would provide deterrence without denying refiners a reasonable profit. The CEC data shows that since 2015 on a monthly basis oil refiners made 80 cents or greater margins 19% of the time and $1.00 or more 5% of the time. Most of these occurrences have been in recent years when the gap between California and US gas prices has grown significantly. There is a direct correlation between the excessive gross refining margin and the periods when California gasoline prices exceed a $1.10 gap with US gas prices. Limiting the gross refining margin will deter gas price spikes and the periods of great disparity with US gas prices, which are the most devastating on low-income individuals.

When gas prices spike, low-income workers feel it the most. At $4 per gallon, 9% of an annual minimum wage salary is spent on gas. At $5 per gallon, 11% of an annual minimum wage salary is spent on gas. At $6 per gallon, 13% of an annual minimum wage salary is spent on gas.

Refiners are also given a relief valve under SBx1 2 should they need it for capital improvements in the refinery. A case-by-case exemption from the maximum margin penalty will allow a refiner who has a big capital expenditure to make the investment and apply for an exemption to recoup the costs, should the refiner prove it necessary. This will ensure excess profits are poured back into the infrastructure of the refinery.

Max Margin Deters Spot Market Manipulation

As to the question of whether a Max margin and penalty will cause an imbalance in supply and demand, the fact is that when gas prices spike the spike is generally caused by a sudden increase in spot prices that is sustained longer than would seem reasonable. There is no actual shortage in supply, no gas lines, only an event that leads to a run-up in the spot price, which remains higher for longer than it should and in turn drives higher retail gas prices. This is the so-called "up like a rocket, down like a feather" phenomenon.

California oil refiners set the price they charge station owners for gasoline based not on supply and demand but on the price of California gasoline on the spot market. There is much evidence about the manipulation of the spot market. The California attorney general's office is suing traders SK Energy and Vitol for allegedly manipulating the spot market after Exxon's Torrance refinery went down in 2015. The companies are accused, among other things, of making trades in which no gasoline changed hands solely to drive up the price of the fuel.

This is possible because no public ledger of trades on the gasoline spot market exists – only voluntary reports to the Oil Price Information Service, an oil industry news service. Nothing requires disclosure of a trade to OPIS, its quantity or the identity of the buyer or seller. Nor is there a record of how many trades occur on a given day. The service publishes only a spot market price.

That means a single trade can set the price of all retail gasoline in the state for days or weeks. When the spot price is high, there is no incentive to report a trade. Robert McCullough, an economist who has studied energy markets for decades, testified before a state Senate committee last year that at the height of the spikes last fall, the spot price for gasoline didn't change for two weeks. If that had happened with the Dow, he wondered, wouldn't someone have noticed?

Creating a maximum margin will deter manipulation of the spot margin as the spoils of any such unreasonable run-up will have to be returned. A max margin will make the spot market run more efficiently because the reward for gaming it will be significantly curbed.

Industry Obfuscation and Need for Transparency And Rigor In CEC Oversight

The need for greater transparency from and rigor in the CEC's oversight of oil refiners is clear by the misleading comments of the Western States Petroleum Association (WSPA) during the proceeding. Many false and misleading claims were made and I want to correct the record here. An industry this deceptive needs to be watched closely.

**Net Margins**: The oil industry claims about their net margins being in sync with other industries is phony as a three-dollar bill. The net margins reported to the CEC appear to be pure fiction. For example, the big refiners reported a net margin of 38 cents from gross refining margins of $1.49 in September. This would mean the cost of making a gallon of gasoline has increased from about 20 cents per gallon, the refinery operating expenses reported by three of the five refiners to the SEC over the last two years (PBF, Valero and Marathon), to $1.11 per gallon. Given the average margin over the last 20 years is under 60 cents per gallon, this would mean that oil refiners have been losing 51 cents on every gallon of gas made. The oil refiners are clearly obfuscating and padding their true expenses so that they can falsely claim a reasonable net margin.

The Energy Commission needs to publish the breakdown of expenses oil refiners use to calculate their "net margin" and clarify which are reasonable and unreasonable. For example, are the expenses for making jet and diesel lumped in with the expenses of making gasoline, thereby pumping up the expense costs? What capital expenditures and amortization are included? The CEC should clarify what can and cannot be counted and publish its own net margin calculations as allowed and provided for under SBx1 2. The industry should not be allowed to obfuscate its true profits. When companies are this dishonest about their expenses and profits the need for greater oversight is clear.

**Added Cost Of California Taxes and Environmental Fees**: Similarly WSPA and its surrogate groups have, in a high profile TV ad campaign, been reiterating WSPA's false testimony before the CEC that California's taxes and environmental fees add $1.12 to a gallon gas. In fact, when you take into consideration federal taxes and fees and the average state tax around the nation, California's taxes and environmental fees add 70 cents to a gallon of gas (29 cents extra state tax, 28 cents LCF, 11 cents cap and trade, and 2 cents underground storage.) This 70 cents per

gallon does not explain the average $1.10 per gallon gap between California and US gas prices or the up to $2.60 per gallon gap when prices spike.

**Refiners Shut Down Refineries To Drive Up Prices:** WSPA also falsely testified that refinery closures were the result of "not in my backyard" sentiments and excessive regulation. In fact, memos from West Coast oil refiners from the 1990s, released by United States Senator Ron Wyden (D-Ore.), suggest that reducing refining capacity to maximize profits is a deliberate business strategy.

An internal Chevron memo, for example, stated: "A senior energy analyst at the recent API [American Petroleum Institute] convention warned that if the U.S. petroleum industry doesn't reduce its refining capacity, it will never see any substantial increase in refinery margins." It then discussed how major refiners were closing down refineries. Not surprisingly, subsequent oil company profit reports show each dramatic gasoline price spike over the last decade has been mirrored by a corresponding corporate profit spike.

An internal memo from Mobil discused how the oil giant worked to "keep down" a smaller refiner Powerine from opening up its refinery as way to increase its profits, calling for increased environmental protections on the refiner. Then the memo talks about a Plan B of buying up the refiner's production should it open. Buying up other competitors' output and preventing new production is hardly the hallmarks of a competitive market.

Similarly, a Texaco memo warned that "supply significantly exceeds demand year-round. This results in very poor refinery margins and very poor refinery financial results. Significant events need to occur to assist in reducing supplies and/or increasing the demand for gasoline." In the subsequent years, California's refineries consolidated and contracted.

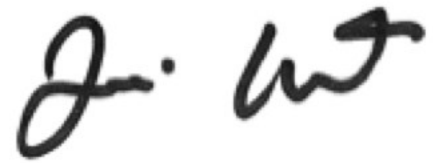
In 2005, my consumer group teamed up with Sen. Barbara Boxer (D-Calif.) and Attorney General Bill Lockyer in getting Shell Oil to reverse its decision to bulldoze its Bakersfield refinery, and to instead sell it. Internal documents showed that the refinery was making among the highest profits of all Shell refineries. That indicated the company wanted to make supplies even tighter, driving prices artificially higher.

Nonetheless, Shell continued to lean on Flying J, the new owner, who eventually shuttered the refinery. For example, leaders of the United Steel Workers local at the refinery charged Shell with "trying to shut down our plant" by shutting off pipelines and demanding payment 30 days in advance. The union memo to members said Shell had refused an offer of eight days' advance payment. The erasure of the Big West refinery took 2% of the state's gasoline and 6% of diesel offline.

The oil refiners in California have systematically shut down refiners and refineries as a way of maximizing their profits. The only recourse against big price spikes and big profit spikes is a maximum gross refining margin penalty that sets an upper limit on their greed.

Thanks for your consideration of these comments and attention to this crucial issue for California consumers.

Sincerely,



Jamie Court
President