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**WSPA Comments on January 17 SB X1-2 Spot Contract Forms
Webinar**

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

January 31, 2024

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

Uploaded to Docket

RE: WSPA Comments on the January 17, 2024, Staff Webinar on SB X1-2 Implementation – Revised CEC Spot Contract Forms [Docket #23-SB-02]

Thank you for the opportunity to comment on the California Energy Commission’s (CEC) January 17, 2024, staff webinar to demonstrate revisions to “CEC Form D354_I - Daily Spot Contract Report (Form D354_I)” for implementation of Senate Bill (SB) X1-2 (2023). 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. We reserve the right to amend these comments or add to the docket as necessary to reflect additional materials or changes in the CEC’s decisions.

WSPA remains concerned that the challenges already associated with spot market reporting will not be resolved with this revised form. In fact, they may worsen. While we understand that the CEC would like to formalize a two-part submission requirement, the CEC should also recognize that a two-part submission will be extremely complex and burdensome for all parties involved. In light of the complexity of these new requirements, including revisions based upon any new guidance provided by the CEC, we would ask that the CEC extend the February 9, 2024, remittance date for beginning to implement these new requirements until the concerns raised below are addressed.

As we previously explained,^{1,2,3,4,5,6,7} there is often a lag between the contract execution and settlement dates for daily spot market transactions, meaning that data reported at the time of contract execution may not – and often, does not – accurately reflect updated information about the fuel ultimately purchased. Occasional deal entry errors may also occur. While Public Resources Code 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 on the execution “trading from prior day” of the contract is therefore extremely cumbersome, with multiple lags, and would benefit from longer lead periods to reconcile. It is therefore advisable that the CEC allow 30 business days to collect more complete and accurate data from industry.

¹ Petition for Formal Rulemaking Regarding SB 1322 Implementation, January 6, 2023

² Request for Reconsideration of WSPA Petition for SB 1322 Rulemaking and Stay of Penalties, February 15, 2023

³ Western States Petroleum Association Comments – WSPA Petition for Formal Rulemaking, May 11, 2023,

⁴ Western States Petroleum Association Comments – WSPA Comments on SB 2 Implementation, May 30, 2023,

⁵ Western States Petroleum Association Comments – Request for SB X1-2 Data Reporting Clarifications, June 9, 2023

⁶ Western States Petroleum Association Comments – on Transportation Fuels Assessment Report workshop, September 11, 2023

⁷ WSPA Comments on General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322 [Docket #23-OIR-03]

Unfortunately, the CEC made no attempt to work with industry through a formal rulemaking process before opting to change the reporting format. As a result, the CEC's format changes created unnecessary ambiguity and virtually ensured that reporting on the form – reflecting only a limited snapshot of individual transactions – would not provide an accurate or representative picture of the overall local gasoline spot market or pressures on market prices.

The CEC's own management has stated that the CEC's aim was to obtain the information called for in SB X1-2 while minimizing burden upon industry. Unilateral adoption of a novel reporting form, without incorporating industry input, does not accomplish that. The CEC ultimately failed to meaningfully address the challenges we have already shared with the CEC or to explain how the CEC proposes to generalize about the state of the overall spot market based only on information contained in the individual reporting forms. Instead, the CEC unilaterally adopted a substantially ambiguous and burdensome reporting form that creates regulatory uncertainty for reporting entities and compromises data quality for the CEC. As WSPA stated during the staff webinar, for any new spot market reporting regime to be successful, industry needs regulatory certainty to allow the time necessary to build out compliance tools to ensure consistent and efficient reporting regimes.

WSPA shares the CEC's desire to compile an accurate and representative picture of the gasoline spot market, but novel data reporting systems must be understandable, implementable and not unreasonably burdensome in order to be effective. While WSPA continues to support efforts to help improve the usability of reported data to increase awareness and transparency into the gasoline market's complexity, industry performs this reporting at a great administrative burden. We are aware of companies using spreadsheets and ad-hoc reporting systems until more expensive software investments can be made to conduct SB X1-2 reporting most efficiently. Even separating the data elements (as seen in this revised template) requires significant tool development. During the webinar, WSPA requested a commitment from the CEC not to adjust this form for six months without a majority approval from the regulated community. Otherwise, industry faces the prospect of investing in reporting systems that could later be deemed useless for the CEC's reporting and analysis purposes. A better approach would be to have a meaningful discussion with industry stakeholders, who can then better understand how the data is being used, and cooperatively work on implementable solutions.

WSPA has identified initial concerns and questions with the CEC's revised reporting forms:

- 1) Frequently changing the format, definition, and cadence of reporting requirements creates confusion and inconsistency amongst the report producers and consumers. This not only increases the workload while reducing the efficiency of the reporting process, it also undermines the credibility and reliability of the reports as sources of information and decision-making tools. This may likely lead to errors, omissions, or inaccuracies in the reports due to the lack of clarity or alignment.
- 2) Specific questions and concerns regarding the spot trades report:
 - a. The CEC should clarify the definition of "Spot Market Trading Location." We are unsure how this is different than the delivery location.
 - b. Is the CEC aware of trading locations other than Los Angeles and San Francisco?
 - c. What are the geographic boundaries for these regions?
- 3) Specific questions and concerns regarding the settlement report:
 - a. The definition for "settlement type" must be clarified.
 - b. Does the CEC want industry to report received invoices or approved invoices? The CEC must be aware that sellers and buyers will usually report different dates for the settlement.

- c. The CEC should be aware of standardized industry practice associated with reversals and rebooks. A “reversal” (or “credit memo”) refers to a cancelled invoice, while a “rebook” refers to a reissuance of a previously cancelled invoice. Reversals and rebooks are a standard, unavoidable business practice. Typically, a reverse/rebook occurs within a few days of the initial invoice – but can sometimes happen months afterward. Therefore, when an invoice is issued it cannot be known with certainty that it is a final invoice. If the CEC seeks more frequent reporting cycles, more reversals/rebooks will appear. With a multi-part daily report, the CEC should expect to have to reconcile these commonplace occurrences which would likely lead to some confusion with the data being reported. Again, a better approach would be to have a monthly report (e.g., report the January invoice data at the end of February).

As such, the CEC’s February 9th effective date to begin using the refined form is infeasible without first considering these concerns. Addressing these concerns and recommendations would allow adequate time for industry to report more accurate information.

SUMMARY

Thank you for considering our comments. Please do not hesitate to contact me at with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Ellinghouse', written in a cursive style.

Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary