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Additional WSPA Comments on 11-3-2023 SB X1-2 Workshop

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

February 8, 2024

California Energy Commission
Docket Unit, MS-4
Docket No. 23-OIR-03
715 P Street
Sacramento, California 95814

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

The Western States Petroleum Association (WSPA) provides these additional comments on the California Energy Commission's (CEC) November 3, 2023, pre-rulemaking workshop on the planned rulemaking to implement provisions of Senate Bill (SB) X1-2 (2023) and SB 1322 (2022) – specifically, regarding efforts to standardize data reporting and analysis for margin calculations. 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. These comments are in addition to those submitted previously; 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.

Detailed Response to Questions Relating to Margin Calculations

In our November 21, 2023, comment letter,¹ WSPA stated that additional time was needed to analyze and respond in more detail on behalf of our members to the margin calculation questions presented at the workshop. This was due to the complexity of the issues and the need to consult with technical subject matter experts and legal counsel.

We previously explained the numerous challenges with fundamental misunderstandings of, and the lack of an accurate definition around, the term “refining margins” as used in SB X1-2, and continue to be concerned that sole reliance on associated SB X1-2 and SB 1322 data would be misleading and cannot be reasonably relied upon to establish a “maximum gross refining margin” and penalty without first addressing the inconsistencies and ambiguities in the statute itself.^{2,3,4,5} We reiterate here the fundamental flaws with the existing statutory definitions of the margins themselves:

1. The existing statutory definitions do not allow for equitable or consistent consideration and treatment of refiners in setting a gross margin cap, nor do they provide a clear standard for when or if refiners exceed any maximum gross gasoline refining margin value. Without further legislation to fix these statutory flaws, the CEC will be challenged by metrics that do not represent real-world refinery operations and therefore result in inconsistencies across

¹ Western States Petroleum Association Comments on November 3 SB X1-2 Pre-Rulemaking Workshop, November 21, 2023, at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?doctetnumber=23-OIR-03>

² WSPA Petition for Formal Rulemaking Regarding SB 1322 Implementation filed January 6, 2023

³ WSPA Request for Reconsideration of WSPA Petition for SB 1322 Rulemaking and Stay of Penalties filed February 15, 2023

⁴ WSPA Petition for Formal Rulemaking filed May 11, 2023

⁵ Western States Petroleum Association Comments – Request for SB X1-2 Data Reporting Clarifications, filed June 8, 2023

data submissions. For example, attributing costs to just gasoline production, distribution and marketing can lead to inconsistent results and inaccurate comparisons; one methodology may not account for the differences between operations, distribution, and marketing between and among refiners.

2. Under such a flawed statute, even if the CEC were to allow refiners to make a positive “gross margin,” it could still be effectively mandating a negative “net margin” – *i.e.*, preventing refiners from operating at a profit, at least for parts of the year. This could, in turn, force refiners to choose between producing gasoline at a loss or exiting the market altogether.
3. A gross gasoline refining margin improperly focuses on only one refined product, but that is not how refineries operate or report data: refineries purchase and produce *slates of products.*, each of which can contribute to revenue and/or cost impacts unique to that company.
4. There are complex reasons why each refiner may take a slightly different approach in how the margins are evaluated and reported under different regulatory regimes. The measures “gross margin,” “net margin,” and “realized margin,” for example, may be defined differently at each company, differently from the CEC’s definitions, and differently in filings with the Securities Exchange Commission.
5. It would be unfair to assess any penalty on gross margins that fails to account for operational costs. Indeed, it would be reckless to run a business based on *gross* income without any consideration for taxes, expenses, and operating costs. In this case, the gross gasoline refining margin dramatically undercounts fuel costs and excludes operational costs altogether.

Until and unless these fundamental statutory flaws and the resulting regulatory hurdles in calculating margins are addressed by the Legislature, WSPA will face significant challenges in ensuring that future regulations mandate the type of data that accurately incorporate all relevant industry cost burdens and result in a fair representation of the overall gasoline market. Furthermore, participating in an open forum discussion would be challenging for WSPA member companies as describing margin calculations in detail could inadvertently identify individual refiners through the anonymized data that are publicly posted. Accordingly, WSPA would advise that the CEC contact individual refinery operators with questions on their respective methodologies under protections afforded by the Petroleum Industry Information Reporting Act of 1980 (PIIRA).

SUMMARY

Thank you for considering our additional comments. We look forward to working with the CEC to provide ongoing input to properly comply, to ensure that the data submitted is responsive and consistent across the industry, and that all market-sensitive, confidential, and proprietary data is well-protected. Please do not hesitate to contact me at with any questions.

Sincerely,



Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary