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Additional submitted attachment is included below.



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Re: Comment on DRAFT Proposed SB X1-2 and SB 1322 Regulation Changes

Dear All,

Idemitsu Apollo Corporation (“Idemitsu”) appreciates the opportunity to continue to work with the California Energy Commission (“CEC”) to further CEC’s goals of (1) increased transparency, (2) decreased price spikes, and (3) increased liquidity in the fuel marketplace. Idemitsu would like to thank CEC for hosting the March 18th pre-rulemaking workshop discussing its second set of emergency regulations implementing SB X1-2. Idemitsu is a fuel reselling company located in Sacramento, California that buys and sells products, primarily to jobbers and independent gas stations. Resellers like Idemitsu keep refiners competitive by providing an alternative to refinery-direct sales. Given its perspective, Idemitsu hopes that its participation in the March 18th workshop (like its comments submitted on February 20, 2024) was helpful to the CEC.

Despite efforts like these to engage with CEC, Idemitsu would like to reiterate that it has been exceptionally challenging to keep pace with CEC with respect to CEC’s ongoing changes to the regulatory regime.¹ It is simply not possible to provide the sort of meaningful feedback that CEC needs to effectively understand and regulate these transportation fuels transactions within

¹ In a March 28 letter submitted to the CEC docket, Idemitsu requested a two-week extension of the April 1, 2024 5:00 pm deadline for written comment on the proposed regulations. Idemitsu expressed concern that the CEC deadlines for written comment continue to fall on the first business day after a holiday weekend. CEC did not acknowledge this concern nor agree to extend the deadline by even one day, despite the fact that its offices are closed in observance of Cesar Chavez Day when comments are due. As a result, this letter is admittedly incomplete, and does not come close to addressing all of Idemitsu’s concerns. Idemitsu hopes to have the opportunity to provide more thorough input in the future.

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the timelines provided. Idemitsu is therefore concerned that the regulations CEC has proposed (and promulgated) will thwart rather than advance the agency's goals and cause unintended harmful disruptions to the California transportation fuels market. As drafted, the draft regulations publicized in advance of the workshop (the "proposed regulations") would impose requirements that are not feasible, are in some respects impossible, and are otherwise unclear and conflicting. More, the regulations have been rushed through so quickly that there has hardly been time for affected stakeholders to read them, much less evaluate and analyze them so as to provide helpful input.

The specialized nature of the transportation fuels transactions at issue plainly require CEC to collaborate more closely with affected stakeholders. That coordination will allow CEC to ensure reporting aligns with industry standards and to avoid redundancy, unnecessary confusion, and flawed reporting. To achieve these goals, Idemitsu strongly encourages CEC not to promulgate such important regulations on an emergency basis and in piecemeal fashion. Rather, Idemitsu believes the correct approach is a collaborative rulemaking process that the traditional, non-emergency timelines provide. To help facilitate that rulemaking process, Idemitsu requests the opportunity to meet with CEC to discuss specific proposed changes that Idemitsu believes will assist CEC in achieving its goals.

Ad-Hoc Changes to Reporting Requirements Place Market Participants in Regulatory Limbo

The proposed regulations present a serious risk to market participants because CEC can change its requirements on extremely short notice. To allow for compliance and to provide regulated entities with fair notice of their obligations, regulations should be clear and consistent. For example, courts have expressed serious concern when agencies issue piecemeal rulemakings with staggered notice provisions and overlapping and interrelated requirements. This is because such efforts deprive the public of an opportunity to not only provide comment but also to understand how they themselves may be impacted by the rule. *See, e.g., Centro Legal de la Raza v. Exec. Office for Immigration Review*, 542 F.Supp.3d 919, 958 (N.D. Cal. 2021). Moreover, regulations should provide adequate lead time to design compliance frameworks *prior to* implementation. Regulated entities need time to build compliance programs, train compliance staff, and develop and implement technology tools to assist in compliance. CEC's proposed regulations do not provide adequate time to achieve these necessary goals; they have instead left market participants scrambling to ensure they will comply.

In its most recent set of draft rules – "DRAFT Proposed SB X1-2 and SB 1322 Regulation Changes," Docket No. 23-OIR-03, TN #255019 – CEC proposed to revise Cal. Cod. Regs. § 1367 such that the Executive Director of the CEC may make modifications to the reporting forms with only seven days' notice. Before this set of draft regulations, the Executive Director was required to provide thirty days' notice before making a modification. CEC's decision to allow itself the opportunity to change its forms in one week (instead of one month) demonstrates that the agency recognizes that its forms and reporting may not be perfect and

flexibility is required. But to stakeholders, this “work-in-progress” rulemaking only creates substantial risk of inadvertent noncompliance. Market participants cannot be expected to tweak their compliance programs, retrain staff, and reprogram their data collection systems to capture new reporting fields or other changes in reporting requirements on such a short timetable. From a technology standpoint, reprogramming these systems requires significant time and resources and can take many weeks to do. CEC should reconsider its approach here and provide a grace period for regulated entities to respond to changes CEC makes.

This sort of uncertainty is not without consequence – it complicates market participants’ already daunting role of securing gasoline supply for the State during a critical period. Springtime of March and April has historically been the time that inventories are built up for the anticipated peak demand for gasoline among consumers in the summer. Instead of focusing on that goal, which requires entities to make calculated decisions and significant investments, industries are trying to ensure compliance with a set of ever-changing regulations and evaluating whether continued business in the California market is possible. As a result, Idemitsu understands there has been an up to 25% reduction in imports for the month of March, and California faces its lowest inventory levels in history.

The 96-Hour Planned Import Report is Unworkable As Drafted

CEC’s proposed import reporting rule is unworkable as drafted. These most recent draft regulations from CEC introduce a 96-Hour Planned Import Report (“96-Hour Report”), the requirements of which are outlined in Appendix D, section II. As proposed, importers will be required to file an extensive report for any vessel containing liquid transportation fuel originating from a non-California port 96-hours before arrival in the State. However, the proposed 96-Hour Report contains numerous reporting fields that are unclear, unknown at the time of reporting, or not typically captured as a part of the transaction. Additionally, this report requires much of the same information already reported by entities in their daily spot market transactions reports, and is thus unduly redundant. Because CEC may, in the future, use this information to set margin caps on the price of gasoline, it is imperative that any accounting performed by CEC properly reflects all elements of the transaction and associated costs in order to avoid unfounded claims of price gouging.

In practice, importers purchase cargo with petroleum products at various points in the supply chain. That is, importers may purchase this cargo at its origin or on a “delivered” basis after the fact. How cargo is purchased affects what information is available to entities and individuals and when. Moreover, importers are not always certain where cargo will discharge. For example, importers often route cargos to different states or countries at the last minute, even after offloading has begun. A shipment that is four days out of Los Angeles may be redirected to Mexico the next day or even while it is being unloaded. The proposed regulations do not account for these nuances and do not reasonably accommodate importers when their vessel’s

destination unexpectedly changes. Instead, the proposed regulations incorrectly treat every item of cargo the same.

Experience shows such cargos are not the same, and those differences elude the requirements of the 96-Hour Report. For example, when cargo is purchased on a “delivered” basis, the “Date When CA Designated as Destination” field may not be known at the time of reporting. The “Date(s) of Loading” field will also not be available to entities if cargo is purchased on a “delivered” basis. Moreover, suppliers often do not know where cargo will be discharged at the time of purchase. “Marine Berth Discharge Location” is, thus, a field that may not be known at time of reporting. The same is true for the “Marine Berth of Loading” field. While this field appears to require a specific dock, entities subject to reporting often do not have this information.

There are other fields on the 96-hour reporting form that lack clarity in the context of real-world transactions. For example, the “Status of Product” is a field that requires the reporter select one of three choices: “purchased,” “unsold,” or “internal use.” But the reality is that fuel suppliers may purchase cargo with no determined use in mind at the time of reporting, making this field difficult to answer. The “Cargo Landed Cost” field is another important example of a field that does not reflect how these transactions actually work. There are dozens of costs that go into these transactions, many of which are not known to market participants until well after the 96-hour period, and yet CEC provides very little insight into what costs should be included here. CEC’s proposed definition for “Landed Cost” indicates it is the “sum of all expenses associated with importing the product,” and provides a *non-exclusive* list of expenses to include, but this is not sufficient. In fact, this puts reporting entities in a situation where if they underestimate their landed cost on the 96-hour report, they are vulnerable to claims from the CEC that they are price gouging when the costs turn out higher than they estimated.

The Monthly Refining Margin Report Highlights the Need for Additional Changes for Spot Market Reporting Requirement Definitions

Idemitsu appreciates CEC’s effort to promote clarity in the regulatory scheme by proposing new definitions in Cal. Cod. Regs. Tit. 20, § 1363.2.² These changes, however, highlight problems with other definitions in Section 1363.2. For example, CEC previously defined “Spot Market Transaction” as “a trade in which petroleum products, including blendstocks for finished petroleum products, are purchased on the spot for delivery by pipeline, inter-tank transfer, pump-over transfer, in-tank transfer, marine vessel, rail car discharge, or imports.” Market participants are required to submit daily spot market transaction and settlement

² Idemitsu notes that it raised concerns about the clarity of certain regulatory provisions in its February 20 comment letter. As we note, some of the proposed regulations only deepen that lack of clarity. CEC can still fix the regulations it promulgated in February and, because the regulatory structure CEC is promulgating in multiple iterations appears meant to hang together as a whole, CEC should do so.

reports for a transaction “that either occurs in California or involves a transportation fuel product that will be delivered on the spot within the California fuels market.” *See* Cal. Cod. Regs. Tit. 20, 3 app. D.I.

The new proposed rules introduce a new definition—for “Spot Pipeline Sale”—which is a “sales transaction that physically changes hands at a refinery gate or other major pricing hub for delivery on a pipeline in either the LA or SF spot pipeline markets. Deals are usually done in bulk, typically between 5,000 to 50,000 barrels. This term also includes pump-over and in-tank transfer delivery methods.” CEC’s clearer definition of “Spot Pipeline Sale” demonstrates precisely why the definition of “Spot Market Transaction” lacks clarity and is inadequate. As such, Idemitsu encourages CEC to amend its definition of “Spot Market Transaction” to clarify what transactions CEC intends to capture.

CEC Should Re-Consider the 9:00 am Deadline for Spot Market Reporting

All of this only further demonstrates that CEC should reconsider the deadlines it is imposing on affected market participants. For example, Idemitsu encourages the CEC to reconsider the extremely burdensome nature of the daily spot market transaction reporting. Idemitsu proposes changing Section 1364(a) from requiring that daily spot market transaction reports be filed by 9:00 am for the prior day’s trading activity to instead allow market participants to file these reports within 36 hours for the prior day’s trading activities. In other words, reporting entities would have 36 hours from the close of the business day (5:00 pm) to report their spot market transactions to the CEC.³ As Idemitsu has previously stated, the daily reporting requirements are extremely burdensome. Appendix D.I (daily report for initiated transactions) requires 32 separate fields. Appendix D.II (daily report for settled transactions) requires 24 separate fields. There is no way to comply with a 9:00 am deadline without hiring staff dedicated just to CEC reporting or requiring existing personnel to work overtime or special graveyard shifts. And the same is true for the CEC—this is a substantial amount of data which the CEC will have to analyze in very short time frames, every day.

CEC Should Re-Consider the Data Fields Required for Daily Spot Market Reports

Idemitsu would like to reiterate its concern that the recently-promulgated daily spot market emergency rule goes beyond the mandate of the statute and bifurcates reporting on both the initiation of the transaction and its settlement, with different fields for each. *See* Cal. Cod. Regs. §1366(a); App. D, §§ I, II. While CEC contends that this bifurcated reporting is intended to “streamline” the reports and save “both industry and the CEC time and effort,” the reality is that CEC is merely doubling the work that entities must do to complete the reports.

³ Weekend and holiday days should be excluded from this 36-hour deadline.

And more specifically, Idemitsu encourages CEC to reconsider what attributes of spot market transactions must be reported. Not only do the fields required by Appendix D go beyond the list of required report attributes enumerated in SB X1-2, they demand information that is not available to entities and individuals at the time of reporting. While CEC stated in its responses to public comment that much of this information is already reported to the Oil Price Information Service (“OPIS”) and that all of the information collected under these regulations is available to reporters each day, this is simply not true. For example, the report for initiated transactions requires entities and individuals to report the name of the barge or product tanker, the pipeline delivery subcycle, and the first and last name of the contact person for the broker used to facilitate the transaction, all of which are not known to entities at the time of reporting. The same is true for the report for settled transactions, which requires the delivery chain sequence, the date request for shipment issued for pipeline tender by seller or buyer, and the shipment contact information for all shipment companies involved with the transaction. Idemitsu respectfully encourages the CEC to reconsider which fields allow it to efficiently analyze spot market transactions.

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Thank you for your consideration of these comments. We would welcome the opportunity to discuss these suggestions in further detail with CEC by whatever method is most convenient. As it stands, under the deadlines CEC has set and the speed with which CEC is moving to promulgate regulations in piecemeal fashion, it is impossible for stakeholders to provide CEC with the sort of meaningful feedback that will allow CEC to achieve its goals and minimize disruptions to the California transportation fuels market.

Regards,



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