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APEN & CBE Comments re SBX1-2 Max Margin and Penalty April 11 Workshop Docket #23-OIIP-01

Additional submitted attachment is included below.

COMMUNITIES FOR A BETTER ENVIRONMENT
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APEN ASIAN PACIFIC ENVIRONMENTAL NETWORK

BY ELECTRONIC MAIL

April 25, 2024

California Energy Commission (CEC)
Docket Unit
Docket No. 23-OIIP-01
715 P Street, MS-4
Sacramento, CA 95814
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Re: Environmental Justice Comments on Informational Proceeding on Maximum Gross Gasoline Refining Margin and Penalty Workshop

Dear Commissioners and Commission Staff:

Thank you for your thoughtful work to address price gouging and lack of transparency in California's oil industry, and for engagement with environmental justice communities. We represent the Asian Pacific Environmental Network and Communities for a Better Environment, whose members are impacted not only by devastating fossil fuel pollution, but also by the exploitation of oil industry price gouging.

We appreciate the CEC and Department of Petroleum Market Oversight (DPMO) commitment to new regulatory infrastructure, data collection, and staffing needed to steward the energy transition away from fossil fuels. As the CEC proceeds to address oil industry price gouging, we urge you to evaluate equitable energy transition options. The guiding goal must remain a robust and reliable transition away from fossil fuel production and consumption.

Below, we provide a set of recommendations in response to the CEC's April 11, 2024 Workshop for the Informational Proceeding on Maximum Gross Gasoline Refining Margin and Penalty. While our comments refer to some of the recently published Transportation Fuels Transition Assessment, we plan to submit comments dedicated to it at a later date.

I. Overarching Policy Recommendations

CEC should focus on measures that can help protect consumers while we transition away from fossil fuels, without oversupplying gasoline or weakening health protections. While we generally support guardrails to smooth refinery gasoline supply to reduce price volatility—including use of storage, maintenance planning, and consideration of foreign exports—we urge the CEC not to pursue measures that would delay the urgently needed transition away from fossil fuel refining. We oppose measures that would increase gasoline supply by loosening critical health protections, including suggestions raised in the April 11 workshop to allow supply of non-CARBOB gasoline into the California market. Cost-shifting from the cost of fuel to the cost of healthcare would be counterproductive policymaking. Instead, we support policies that bring accountability to oil refiners and provide consumers, especially low-income consumers, with a greater ability to access clean transportation and transit.

The CEC should also evaluate an important missing option: a *Partial Refinery Shutdown Pathway* to smoothly lower supply while continuing toward eventual full refinery shutdown. This is described in more detail in Attachment A.[1] It includes three strategies: 1) the gradual elimination of duplicate distillation, cracking, and other units in large refineries when no longer needed as in-state demand lowers, avoiding premature whole-refinery shutdown; 2) partial shutdown of small refineries that don't have such duplicate units, through regional buying and selling of intermediate products by refiners which can no longer fully refine crude oil; 3) an additional iterative approach for lowering production at *all* refineries until reaching minimum utilization rates, then shutting some units permanently while ramping up remaining units, repeating this process until whole refineries must shut down. These strategies of partially shutting down capacity in refineries that become redundant over time, could result in a smoother phaseout of highly destructive fossil fuels in California. Identifying regulatory tools to *require* or *strongly incentivize* such partial shutdowns can make a major difference in gradually eliminating emissions while preventing unnecessary price shocks that result in a sudden, volatile, and "lumpy" decline due to closures of entire petroleum refineries. The attachment includes some detailed examples and a starting point for data gathering, modeling, and evaluation that should be carried out. This concept is based on CBE evaluation of Title V permits, EIRs, US EIA data, and other sources.

II. Data Collection and Transparency

CEC should prioritize solutions that promote transparency and prevent refineries' abuse of market power. Refineries have become increasingly concentrated, especially when considering the siloed nature of our sub-state markets, and this concentration will further increase as we transition away from refinery gas. There are already signs that refineries have used their market power to raise margins and manipulate prices; these risks will only grow. We need to focus on ensuring that oil industry market behavior (including in the spot and retail

[1] Julia May, ***Partial-Refinery Shutdown Pathway***, Communities for a Better Environment, April 25, 2024 (recommendations utilizing data on individual units within refineries and other measures could allow gradual progress toward complete refinery phaseout in California, progressively cutting emissions, and helping avoid price spikes and disruption of sudden whole-refinery shutdowns) (CBE Attachment).

markets) is highly transparent to reduce opportunities for abuse, and to create checks on their power. Voluntary reporting is unacceptable.

Data collection and verification should continue to be a top priority. We commend how much the CEC has been able to rapidly publish aggregated, and yet, still meaningful data to the public. As the presentations in the April 11 workshop explained, increased concentration in the gasoline market makes market manipulation a greater risk. And Californians have already experienced price spikes that were likely caused by market manipulation, including in the summer of 2022. The CEC should treat data transparency as an important tool for reigning in market abuses. It should collect data on all market activities, including data on refinery margins, operating costs, and all transactional data (including spot market and other sales). **Importantly, the CEC and DPMO should now explore options for independently verifying data submitted by refineries**. Transparency may help reduce market manipulation, but only if refiners are held accountable to report data accurately.

CEC should collect *and publish* data on foreign gasoline exports and consider the role foreign exports may play in limiting gasoline supply for Californians. We urge the CEC to collect and publish data on the volume of gasoline that refiners export to foreign markets. Foreign exports may reduce the supply of California gasoline, thereby increasing California gas prices and exacerbating price spikes. Refiners have been trending toward increasing foreign exports in the future even as local demand declines, and the CEC should evaluate the impacts this may have on the fossil fuel transition. Additionally, the CEC should consider how measures to address price gouging might affect exports, and whether export markets might provide refiners with opportunities to get around the Maximum Gross Gasoline Refining Margin ("MGGRM") and Penalty.

III. Storage Requirements for a Minimum Strategic Reserve

We strongly support the effort to collect data and information to implement a minimum strategic reserve. The CEC should consider storage requirements as an approach to dealing with supply shortages leading to price spikes. We recognize that the CEC considers storage-related policy options in its Transportation Fuels Assessment and plan to comment further on the development of strategic storage reserves as an approach to balancing out supply and combatting price spikes.

IV. 'Price Spikes are Profit Spikes'

First, we would like to better understand the CEC's perspective on the profit-sharing concept idea presented in the April 11 workshop. Tom O'Connor from ICF proposed an alternative option to the MGGRM and Penalty, which would establish tiered profit-sharing thresholds, unique to each refiner, and require certain percentages of profit-sharing above those thresholds. We would like to get more clarity about how this option would work, and whether the CEC is considering this option. If the CEC is considering this type of policy concept, we would appreciate a CEC analysis of the benefits and drawbacks of this option compared to a MGGRM and Penalty; specifically, how would this option affect likely refinery responses, gas production levels, prices, and revenue raised? We would also like the CEC to analyze the benefits and drawbacks of using refinery-specific margin thresholds.

The CEC should also investigate the role of the gasoline retail market in price gouging. Concentration and vertical integration in the retail market are likely increasing average gas prices as well as keeping prices high longer during price spikes. The CEC's measures on price gouging should therefore include a focus on the retail market as well. In addition, some retail facilities submitted comments indicating potential price gouging by refining companies in gasoline sales to these outlets, which need investigation.

The CEC should consider using funds from the MGGRM and Penalty to refund low-income Californians. As we shift away from fossil fuels and the California oil industry becomes increasingly concentrated, low-income drivers are the most impacted by high gas prices and price spikes. The discussion at the April 11 workshop discussed options to limit refinery margins and collect penalties for violations, but there has not yet been a robust discussion of how much revenue might be raised from penalties and how that revenue might be spent. The revenue from penalties could provide a powerful mechanism for offsetting the harms of oil industry price gouging on low-income drivers as we move through the fossil fuel transition.

Finally, the CEC and DPMO should continue to deepen investigations into California's consistently higher gas prices, including resolving the causes of the Mysterious Gas Surcharge. Nothing in the agency record so far has fully explained the observations that Dr. Severin Borenstein has made since 2015. There is a persistent surcharge on California gas prices compared to the rest of the country, costing Californians over $40 billion. Dr. Borenstein has hypothesized it may result from lack of competition in the gasoline supply chain.[2] We urge the CEC to prioritize supporting the DPMO's independent investigation into the causes behind the Mysterious Gas Surcharge. Californians should be protected from having to pay these exploitative costs, but Californians also deserve to know whether the consolidation of refinery market power, vertical integration of major oil companies, and exploitative greed is driving up the price of an essential, basic good like gasoline.

We very much appreciate the CEC's efforts to consider oil industry price gouging and safeguard Californians' access to affordable mobility as our state transitions away from fossil fuels. We also look forward to further discussions about these important topics to make this process more robust in implementing these goals.

Last, we must all keep in mind the emergencies faced by all of California and most harmful to black, brown, indigenous, and low-income people, all held hostage by the Oil Industry. The historic and monopolistic fossil fuel infrastructure devastates people's health through smog and toxics and threatens the entire planet through climate destruction. We appreciate the serious discussion of real options to escape this treadmill.

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[2] Severin Borenstein, *Trying to Unpack California's Mysterious Gasoline Surcharge* (Oct. 15, 2018), https://energyathaas.wordpress.com/2018/10/15/trying-to-unpack-californias-mystery-gasoline-surcharge/.

Respectfully submitted,

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Attachment