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| Document Title: | Western States Petroleum Association Petition for SBX1-2 Rulemaking on Forecasting Data |
| Description: | WSPA Petition Letter to CEC, dated September 3, 2024. |
| Filer: | Christina C. Ubaldo |
| Organization: | California Energy Commission |
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Catherine H. Reheis-Boyd
President and CEO

September 3, 2024

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 9th Street
Sacramento, CA 95814

PETITION FOR FORMAL RULEMAKING REGARDING IMPLEMENTATION OF PRC § 25354

Dear Executive Director Bohan,

On behalf of the Western States Petroleum Association (WSPA), I am hereby petitioning the California Energy Commission (CEC), pursuant to Title 20, Section 1221 of the California Code of Regulations, to initiate a formal rulemaking regarding implementation of Section 25354 of the California Public Resources Code (PRC). WSPA strongly believes that a formal rulemaking is necessary to ensure that the CEC's newest request for projection and forecast data will provide the clarity, consistency, accuracy, and qualifications needed for both the CEC and regulated entities to properly interpret and implement the recordkeeping and reporting requirements of PRC § 25354. We also believe that this rulemaking should address outstanding issues concerning the need for better definitions and guidance on the requested data elements in CEC's proposed refinery maintenance reporting forms.

REQUEST FOR FORMAL RULEMAKING

The CEC is tasked with implementing recent amendments to PRC § 25354 made by Senate Bill (SB) X1-2 (2023). As amended, PRC § 25354(a) requires refiners and major marketers to submit to the CEC monthly information in a variety of areas, including on feedstock inputs, imports and exports of finished products and blendstocks, and refinery stocks and inventories. PRC § 25354(c) requires refiners and major marketers to "submit a projection each month of the information to be submitted pursuant to [PRC § 25354](a) for the quarter following the month in which the information is submitted to the commission." Importantly, PRC § 25354 anticipates that the commission will need to prescribe various regulations to define the scope of requirements contained in this and other sections of SB X1-2.¹

Specific Reporting Examples that Require Guidance

In your letter dated July 12, 2024, you requested that refiners and major marketers "provide the projection *and forecast* data required by [PRC § 25354](c) when you submit the PRC

¹ See, e.g., PRC § 25354(b)(1), (e), (i), (n)(2).

§ 25354(a) reports.” (emphasis added). As a preliminary matter, we are concerned that this goes beyond the express language of PRC § 25354(c), which mandates only that reporting entities provide a “projection” of the § 25354(a) data, not a “forecast,” a term addressed in other parts of § 25354. Section 25354(d) allows the CEC to require two types of “forecasts:” (1) annual industry forecasts for Petroleum Administration for Defense, District V; and (2) “California-specific forecasts only if the Commission finds them necessary to carry out its responsibilities.” PRC § 25354(d). Section 25354 does not contain a provision allowing for monthly “forecasts,” and it is unclear what the CEC means by this term separate and apart from the monthly “projections” required by statute. We believe this needs to be clarified by guidance provided via regulation.

In addition, your July 12 letter would mandate that reporting entities provide projections “for June 2024 by July 31, 2024,” and that entities provide “projection and forecast data that was due on July 1, 2024 by July 26, 2024.” This appears to misconstrue the requirements of the statutes. PRC § 25354(c) requires that reporting entities “shall submit a projection each month of the information to be submitted pursuant to subdivision (a) **for the quarter following the month in which the information is submitted to the commission**” (emphasis added). This would require reporting entities’ monthly projections to be focused on the upcoming **quarter**, not the upcoming **month**. So, for example, the monthly projection due in June 2024 should be a projection of data to be submitted in the third quarter of 2024 (*i.e.*, July-September 2024), and the monthly projection due in July 2024 would be a projection of data to be submitted in the fourth quarter of 2024 (*i.e.*, October-December 2024). Again, we urge the CEC to clarify this potential misunderstanding by adopting clarifying regulations.

In any event, the CEC must recognize the significant and inherent limitations in any one company’s ability to provide either forecasts or projections involving any globally traded commodity. Making such predictions about the future direction of the market inherently involves a wide range of assumptions among private competitors, each of which operates with an incomplete set of data on the market and the decisions and priorities of other competitors. Thus, such prognostications are of questionable usefulness – even if the data is aggregated – and could potentially be harmful to individual companies’ competitive position.

It is therefore critically important that the CEC establishes by regulation clear guidance with standardized reporting formats, that it is informed by good faith consideration of input from regulated entities, and that the data gathered is appropriately qualified as projections or predictions about future events, subject to inherent uncertainty. A formal rulemaking will also help ensure uniform compliance, provide appropriate contextual parameters in data usage, and will therefore likely help limit the potentially harmful usage of data projections. Without further clarity and appropriate context, we are concerned that attempting to ascertain future market circumstances based on the estimation or speculation of reporting entities can result in inconsistent or misleading interpretations at best, and misguided policymaking at worst. Relying on inherently uncertain predictions in implementing PRC § 25354 – and potentially imposing severe financial “penalties” or taxes based on those predictions – is particularly troublesome and frustrates the purpose of the statute in obtaining accurate and reliable information from reporters.

To help address these issues and to acknowledge differing variables and interpretations of them, the CEC should commence a rulemaking that, at a minimum, establishes clarity on the following matters:

- a) The CEC should provide standardized forms with clear instructions and specific definitions for regulated entities.
- b) Reporting entities should be directed to communicate the degree of uncertainty in any future data projections, clarify that their predictions are forward-looking statements based on current expectations and assumptions, and note that projections or forecasts are subject to risks and uncertainties that could cause actual results to differ materially.
- c) The CEC should clarify acceptable assumptions for initial data sets that may be construed as projections or forecasts, such as using engineering or planner's judgment.
- d) The CEC should offer guidance to regulated entities on what DPMO and the CEC considers "conservative." Is the intent to provide a worst-case or best-case scenario for inventory? Does this apply to all data elements or only specific ones?
- e) The CEC should offer guidance concerning how reports should discuss categories of required information where data is unavailable, and situations where a projection is currently "unknown" or based on subjective information.
- f) The CEC should offer all other necessary specific instructions for completing each form, with cell-by-cell instructions that include expected sources of information and the acceptable formatting of data in each cell

This list excludes other concerns (such as regulatory compliance costs) and is just a sampling of the multitude of issues that need clarification through a formal rulemaking, where California citizens and all stakeholders will have an equal opportunity to provide input. This will allow for an iterative discussion on how the required data will be used and who it will be made available to. Other important considerations include avoiding any future misunderstandings or misuse of the data.

Finally, WSPA would note that outstanding issues still exist with respect to adequately defining the requested data elements on the CEC's proposed refinery maintenance reporting forms.

Those issues are detailed again below, and still must be addressed by the CEC:

1. The CEC should clearly define the data elements found under the Inventory & Supply Adjustment tab, "Quantity of Contractual Supply Obligations-Related to the Event."
2. The CEC should clarify the intent behind certain requested data categories so reporters can provide the right data. Questions include but are not limited to:
 - Is the CEC expecting regulated entities to provide values to report planned or possible reductions on contractual obligations per event?
 - Is the CEC expecting regulated entities to provide values to report the efforts to minimize reductions, or to display the full range of possible reductions for the event?
3. The CEC should indicate if regulated entities should consider unforeseen circumstances or use their judgment based on their experience.
4. The CEC should clarify whether it is acceptable to enter zero in this column when there are no expected impacts.

In summary, the request contained in your July 12 letter lacks the necessary specificity to be implemented without a formal rulemaking and could result in inconsistent and unfair interpretation and application of the SB X1-2 statutes. WSPA members are making every effort

to comply with the laws and regulations and provide data that will provide accurate reporting that will be useful for the CEC's analysis. For the foregoing reasons, we request that the CEC initiate a formal rulemaking pursuant to California Code of Regulations § 1221 regarding implementation of SB X1-2 by issuing an order instituting rulemaking to initiate such a proceeding.

Thank you for your consideration of this important matter. We look forward to working with the CEC to provide input through a formal rulemaking to ensure that our members and other regulated entities have the instructions and materials needed to properly comply with the requirements in SB X1-2. My address and phone number are included in the footer of this document should you have any additional questions for me or for Tanya DeRivi on my staff, who can be reached at (916) 325-3088 or by email at tderivi@wspa.org.

Sincerely,



Catherine H. Reheis-Boyd
President and CEO

Cc: The Honorable David Hochschild, California Energy Commission, Chairman
The Honorable Siva Gunda, California Energy Commission, Vice Chair