

DOCKETED

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WSPA Comments on Emergency Regulations Implementing Three-Month Projection Reporting Requirements

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

February 18, 2025

Office of Administrative Law
300 Capitol Mall, Suite 1250
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Via Email and Submitted to CEC Docket No. 23-OIR-03

RE: WSPA Comments on Emergency Regulations Implementing Three-Month Projection Reporting Requirements [OAL File Number 2025-0213-03]

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the California Energy Commission's (CEC) emergency regulations ("Regulations") implementing three-month projection reporting requirements as part of its implementation of Senate Bill (SB) X1-2.

As we explained in our previous comments on this matter, WSPA has serious concerns that the Regulations were adopted on an "emergency" basis despite the lack of any actual identified emergency under California law, and despite CEC having had decades to consider and adopt changes to the list of information collected from industry. This bypassed the legal timelines typically required for such rulemaking and short-changed the stakeholders and California's citizens from having adequate time to consider and discuss the projection reporting requirements at issue. This truncated rulemaking was characterized by a rushed and incomplete process of information gathering from industry and a correspondingly incomplete set of reporting regulations that have inherent potential for abuse by the State, allowing for the selective highlighting of data designed to tell a predetermined story. Not only is this a legally questionable strategy to adopt complex and far-reaching regulations, but it sets a dangerous precedent for future rulemaking by largely cutting the public out of the process.

The resulting Regulations mandate provision of extremely sensitive business confidential and trade secret information, and force businesses to speculate about the future market direction based on little to no information on what its competitors intend to do. While such guesses about the future supply little actual empirical evidence to inform policymaking, they are amenable to abuse from bad actors looking to manipulate markets, drive speculation, and/or to intentionally harm the industry. Despite this danger and confidentiality requirements under SB X1-2 and the Petroleum Industry Information Reporting Act (PIIRA), the Regulations do not adequately protect this projection data from harmful disclosure, require aggregation, or limit sharing of the data to internal CEC use only.

To compound the potential harm, making regulatory decisions about California's fuels industry based on pure speculation about the future movement of the market is both arbitrary and extremely bad public policy. Such decisions are not only ill-informed but threaten to fuel irrational market speculation by reinforcing potential investor fears and suspicions based on preciously little information. This rulemaking deserved full and fair consideration involving

robust public participation and consideration of the risks of requiring reporting of such speculative projections.

WSPA also is disappointed that the rulemaking process similarly short-changed the process of environmental impact review. CEC adopted the Regulations based on its claim that “there is no possibility” of the Regulations causing negative impacts. But the truth is that Regulations requiring speculation, and then presumably making further important policy decisions based on that speculation, very well could harm the environment, the market, California industry, and Californians themselves. CEC made this conclusion of “no possibility” of impacts simply to avoid the time-consuming environmental review the California Environmental Quality Act otherwise requires, and this lack of meaningful review now has the potential to cause very real and adverse future impacts to the State.

Finally, the hurried rulemaking process presented a host of regulatory terms and requirements that were vague or undefined. Our letter of December 9, 2024, incorporated by reference here, details numerous problems with the scope of terms like “refinery inputs,” “acquisitions” and “distributions,” along with refinery reporting and maintenance forms with several unclear reporting categories and little guidance for reporting entities. Again, these are the types of problems that could and should be resolved if the rulemaking had followed normal public review and comment timeframes to avoid unnecessary uncertainty among both stakeholders and CEC staff alike.

As always, WSPA and its members value the ability to work collaboratively with CEC to inform the process of complex rulemaking, and believe this collaboration has been successful in the past in leading to legally justifiable and factually grounded regulations. Unfortunately, we believe the process for the Regulations in this matter was unnecessarily and unjustifiably rushed, leading to Regulations that are insufficiently protective and poorly defined. This leaves the Regulations on questionable legal ground, and likely will result in substantial interim uncertainties and the need for further regulatory action.

If you have any questions or want to discuss these issues in more detail, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Ellinghouse', with a stylized, flowing script.

Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary