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## WSPA Comments on AB X2-1 Resupply Framework Pre-Rulemaking Workshop 25-PIIRA-01

Please see attached.

*Additional submitted attachment is included below.*

Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary

March 11, 2025

California Energy Commission
Docket Unit, MS-4
715 P Street
Sacramento, California 95814

Uploaded to Docket 25-PIIRA-01

**RE: WSPA Comments on February 2025 AB X2-1 Pre-Rulemaking Workshop [25-PIIRA-01]**

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Energy Commission's (CEC) February 25, 2025, pre-rulemaking staff workshop regarding a refinery resupply planning framework to implement Assembly Bill (AB) X2-1 (2024) – specifically, towards developing rules regarding necessary refinery maintenance and turnarounds, including the CEC's authority to establish refinery resupply requirements, pursuant to Public Resources Code (PRC) Section 25354.2.

We appreciate the CEC's ongoing engagement with WSPA member companies to better understand California's gasoline market, particularly around planned refinery maintenance activities and recent refinery transitions and closure impacts on the market. We welcome an ongoing dialogue in search of practical solutions to offset lost production due to planned maintenance. We remain concerned, however, that any attempt by the State to micromanage refinery fuel inventories or refinery maintenance will further complicate California's fundamental, systemic problems, which are a result of decades of intentional State policies that actively restrain locally produced fuel supplies while increasing local refining costs. Such issues will likely only worsen California's susceptibility to price volatility – especially when the few remaining California refineries perform necessary maintenance activities required for safe, reliable, and responsible operations.

WSPA is also concerned that any refinery resupply requirement, if not carefully crafted, could conflict with existing statutory mandates for refiners ***not*** to withhold fuel from the market – which would not only adversely impact the California market but would harm Arizona and Nevada consumers if refineries are required to withhold fuel supplies for the benefit of Californians. These types of impacts to states like Arizona and Nevada could ultimately lead to costly and time-consuming litigation for California's interference with interstate commerce. We therefore urge the CEC to further analyze whether refinery resupply requirements are indeed needed – and at what cost. Any requirement that keeps fuel from the market will require the market to increasingly resort to foreign sources, forcing more long-duration marine imports into a market that may not be short and creating unintended and even more expensive consequences for consumers.

Fortunately, AB X2-1 is clear that the CEC "shall not" adopt a regulation "unless it finds that the likely benefits to consumers from avoiding price volatility outweigh the potential costs to consumers." Resupply requirements that prevent the free transaction of fuel on the open market when and where needed to satisfy demand will distort the market, further restrict available supply, and hurt consumers. We urge the CEC to continue working with WSPA and our member companies to reach a mutually beneficial framework that supports supplying fuel to the market and does not compromise refinery safety while seeking to mitigate potential consumer impacts.

**ONGOING PROCEDURAL CONCERNS WITH USE OF EMERGENCY RULEMAKINGS**

In addition to concerns regarding the delay in posting workshop presentation slides – which limits the time stakeholders have to review, analyze, and opine on them – WSPA reiterates here its ongoing concerns regarding the continued use of, and reliance upon, truncated emergency rulemaking procedures in implementation of AB X2-1. There is no actual "emergency" as defined by California law; the State has faced structural fuel supply issues for decades, and these problems are entrenched and complex. Considering these rules on an emergency basis denies both the public and stakeholders their right to due process and meaningful engagement in an iterative process with staff. The scope and impact of this proposed regulatory framework demands no less than a full and proper assessment by the CEC, the industry, and the public.

WSPA agrees that it is critical to ensure Californians have adequate and affordable supplies of fuel and are protected from price volatility resulting from structural market influences. But effectively addressing these issues will require proper consideration of refinery-specific variables, relevant market data, and of the functioning of the industry as a whole across three states. Given the importance and complexity of the issues involved, the CEC should not short-change a thorough assessment which could result in workable and effective regulations, and Californians deserve adequate time to review and comment on whatever system emerges from that assessment.

In the future, the CEC should provide workshop materials prior to the start of the workshop. This would provide stakeholders that will be directly impacted by proposed policies with sufficient opportunity to assess potential impacts, inform the CEC as to whether the proposals are consistent with existing statutory and operational requirements, and seek clarification from staff regarding any ambiguous policies or regulatory proposals as far in advance as possible.

**WSPA RESPONSE TO CEC PRESENTATION ON PROPOSED RESUPPLY FRAMEWORK**

We appreciate the CEC staff's ongoing efforts to better understand California's complex transportation fuel system. However, WSPA believes that a "one size fits all" approach to setting reporting thresholds and exemption pathways is unlikely to solve the State's concerns regarding market volatility for consumers. We urge the CEC to meet individually with each refiner, under the confidentiality protections afforded by the Petroleum Industry Information Reporting Act, to fully understand the implications of the proposed resupply framework on each refiner and to ensure that any such framework would not cause more harm than good.

A resupply threshold can present operational challenges if set too high or too low – because this is refinery-dependent. While we appreciate staff's belief that setting a resupply threshold amount too low may not mitigate price volatility, WSPA also believes that setting a resupply threshold amount too high may not mitigate price volatility either, and instead further starve the market of needed fuel supplies. We would further question whether the CEC has the expertise and capacity to intervene in planned refinery maintenance events that would trigger resupply requirements.

We are also concerned about the prospect of any inconsistent application, and therefore enforcement, under any potential exemption pathways. For example, a proposed "trigger level" of merely 450,000 total barrels in an anticipated event is quite low (using ICF's base case of an 8-week outage, that is only approximately 8,000 barrels per day). We would suggest substantially increasing this amount – and reducing the reporting threshold to at least 90 days – to avoid being overly burdensome and potentially intrusive.

Whether the CEC's goal is to drive industry accountability for managing resupply planning or simply to assess how such decisions are made, WSPA questions whether there may be other frameworks to accomplish this. We look forward to working with the CEC to discuss alternative options.

## WSPA RESPONSE TO ICF PRESENTATION ON RESUPPLY BENEFIT COST ANALYSIS

WSPA believes that a thoughtful response would involve reviewing how ICF sourced the data that led to the conclusions presented. A review would assist in our evaluation of ICF's underlying cost-benefit analysis assumptions, including assisting WSPA member companies in assessing how ICF's conclusions would impact refinery operators and to validate whether they are consistent with any statutory or operational requirements and constraints.

For example, ICF assumed a conservative scenario whereby refiners would lose money (at a 25% loss) on marine imports brought in. As this is likely the case for marine cargoes, we question what assumptions were made given increasing constraints placed upon marine imports by the California Air Resources Board through the 2020 At-Berth Regulation amendments and other regulations, and for refiners that may have limited access to marine terminals. Furthermore, the assertion that a resupply plan should account for 70-90% of lost production requires further analysis by industry experts to assess feasibility and potential real-world cost impacts, and should be assessed against California market demand rather than refiner production. Specifically, WSPA is concerned about the following analysis assumptions:

1. *Overestimation of Consumer Benefits*: The analysis may overestimate the benefits to consumers by assuming refiners were not already utilizing resupply plans during benchmark events. ICF assumes that an 8-week planned refinery outage event resulted in a total gasoline production loss of 2.5 million barrels. However, the actual impact on prices may be minimal if other factors – such as global oil prices, consumer demand, and market dynamics – continue to play a dominant role.
2. *Underestimation of Compliance Costs*: The analysis might underestimate the costs associated with compliance for refinery operators. Implementing resupply requirements, rather than allowing refineries to implement their own resupply plans – which refiners have been doing for decades, could necessitate uneconomic strategies to secure non-spot market resupplies (e.g., marine imports) and additional capital to guarantee inventories. These costs could be passed on to consumers, potentially leading to higher gasoline prices. This is similar to the concerns we have highlighted around managing mandated inventory levels and how that may reduce the available supply for consumers, thereby increasing costs.
3. *Lack of Flexibility and Potential Conflicts*: The proposed resupply requirements may lack the necessary flexibility to take advantage of unique operational opportunities identified within 60 days prior to planned maintenance or economic supply opportunities identified during the planned maintenance event. This rigidity could result in compliance difficulties and potential conflicts with existing statutory requirements that prohibit refiners from withholding fuel from the market. WSPA has emphasized the need for flexibility in resupply source, quantity, and timing to minimize consumer costs and to avoid unintended consequences.

WSPA intends to provide additional comments to the docket regarding ICF's gasoline forecast model pending a detailed review of their modeling assumptions.

## WSPA RESPONSE TO DPMO PRESENTATION ON ECONOMIC CONSIDERATIONS

WSPA reiterates here that a thoughtful response would involve understanding the assumptions used in the Division of Petroleum Market Oversight's (DPMO) cost-benefit analysis. The DPMO's claim that price increases are due to refinery outages has been disputed in the past;

there are numerous underlying reasons for California's rising gasoline prices, including the permanent loss of refinery production, providing boutique fuel blends to an isolated fuel market, minimum wage increases at retail stations, fluctuating crude oil prices on the global market, and the increasing cost of compliance with California-specific regulations (e.g., the Low Carbon Fuel Standard and the Cap-and-Trade Program).

WSPA has repeatedly raised warnings[1] regarding the State's attempt to micromanage California's gasoline inventory supplies and refinery maintenance events. Unfortunately, these warnings appear to have gone unheeded and, since then, another California refinery has opted to close. As part of prior comment letters – including regarding the DPMO's past presentations – we have repeatedly expressed concerns that California's policies present a recipe for increased fuel costs for the consumers of California and potentially reduced fuel supplies to California, as well as Arizona and Nevada.

Yet the DPMO's ongoing attribution of consumer price increases to refinery outages and "profit spikes" for industry continues to fail to appreciate both indirect and direct pricing factors, and also fails to explain why a refiner in a competitive free market would willingly schedule maintenance activities during the busiest demand periods. Basic refinery operations necessitate that tanks will always be partially used to ensure optimal and safe rates for refining operations, as some tank applications can have upstream operational effects, necessitating a reduction in unit rates when the tank levels are too high. In the simplest of terms, if a refiner has two similarly sized tanks, with demand and production balanced, an operator will only have an approximately 50% utilization rate as one tank will be filling at the same rate as the other tank is emptying. As a result, any effort to force the industry to store more product in existing storage vessels would *reduce* refinery production and *increase* supply variability – counter to what the DPMO and CEC are striving to achieve.

**CONCLUSION**

WSPA appreciates the opportunity to provide these comments on fuel supply issues of critical importance to all California consumers – and consumers of other states dependent on California's refinery production – who rely on affordable and reliable sources of transportation fuel every single day. These comments are based on WSPA's review of the materials and statements at the workshop, and 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.

Please do not hesitate to contact me with any additional questions.

Sincerely,

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Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary

[1] Western States Petroleum Association Comments - WSPA Comments on Gasoline Supply Reliability Workshop 9-10-2024 (Docket #23-SB-02); September 10, 2024 at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02