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**WSPA Comments on Second AB X2-1 Refinery Resupply Pre-Rulemaking Workshop (25-PIIRA-01)**

Please see attached.

*Additional submitted attachment is included below.*



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March 17, 2025

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Uploaded to Docket 25-PIIRA-01

**RE: WSPA Comments on AB X2-1 Refinery Resupply Planning Pre-Rulemaking Workshop [25-PIIRA-01]**

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Energy Commission's (CEC) March 5, 2025, pre-rulemaking workshop on refinery resupply planning to implement Assembly Bill (AB) X2-1 (2024) and Senate Bill (SB) X1-2 (2023) – specifically, the refinery resupply framework and draft “express terms,”<sup>1</sup> pursuant to Public Resources Code (PRC) Section 25354.2. WSPA acknowledges the CEC’s ongoing dialogue with WSPA member companies to better understand planned refinery maintenance activities, and efforts by staff to release the proposed express terms in advance of this workshop. However – given the unusually short comment period, even in an emergency rulemaking proceeding – WSPA recommends that materials be released at least five business days (not calendar days) in advance to afford the public and affected industry stakeholders the opportunity to review, assess impacts, and prepare well-informed comments in time for the workshop.

WSPA reiterates its concerns with any State attempt to micromanage refinery fuel inventories. The CEC has a limited knowledge of complex refinery operations, and its lack of technical expertise leaves open great potential here for unintended consequences that can end up hurting California consumers. If the CEC is going to insist on adopting a refinery resupply policy, any such policy must provide maximum flexibility for refinery operators while minimizing any potential consumer impacts associated with compliance. Indeed, AB X2-1 expressly forbids the CEC from adopting any such regulation “unless it finds that the likely benefits to consumers from avoiding price volatility outweigh the potential costs to consumers.” WSPA is concerned that the CEC does not currently have the facts in front of it to legitimately support such a finding with respect to imposing a refinery resupply requirement.

Any refinery resupply requirement, if not carefully crafted, could conflict with existing statutory requirements in SB X1-2 for refiners *not* to withhold fuel from the market – such withholding can potentially result in market distortions and undesirable price impacts due to the purposeful and artificial reduction of immediately available supply to the market, and could violate California’s Cartwright Act requirements. These potential adverse impacts very likely would extend to Arizona and Nevada as well, and make it harder for those states to secure needed supplies of fuel in the face of regulations expressly favoring Californians’ access to fuel. These types of interstate impacts could ultimately lead to costly and time-consuming litigation for California’s interference with interstate commerce. In short, the adoption of a “one size fits all” rule for a complex issue such as California refinery fuel inventories has the potential to harm California

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<sup>1</sup> CEC “Draft Language Refinery Resupply Plans” California Code of Regulations, Title 20, Chapter 15 Refinery Maintenance Timing, Article 1 Refinery Maintenance Scheduling, Section 3400; dated February 28, 2025.

consumers more than help them. Additionally, it is deeply concerning that the CEC would impose civil penalties upon a refinery operator for either failing to perform resupply under an approved plan, or where the CEC's Executive Director has denied a plan despite the need for planned or unplanned refinery maintenance when legitimate operational, safety, and/or uncontrollable reasons exist.

WSPA continues to believe that the CEC's analysis (as informed by consultants) is likely overestimating the assumed consumer benefits while underestimating compliance costs. It is wrong to assume that refiners are not already utilizing resupply plans during benchmark events, just as it is incorrect to assume that factors such as global crude oil prices and market dynamics may not have dominant roles to play in impacting prices. Further, implementing resupply requirements could necessitate uneconomic strategies to secure non-spot market resupplies and additional capital to guarantee inventories that could potentially lead to higher gasoline prices. Not providing the necessary flexibility to take advantage of unique operational opportunities could result in compliance difficulties and potential conflicts with existing statutory requirements that prohibit refiners from withholding fuel from the market. WSPA previously emphasized the need for flexibility in resupply source, quantity, and timing to minimize consumer costs and avoid unintended consequences.

## **WSPA RESPONSE TO DRAFT REFINERY RESUPPLY PLANS (EXPRESS TERMS)**

WSPA has identified numerous issues and concerns with the CEC's draft refinery resupply plan language ("Proposed Refinery Maintenance Scheduling Rule") and offers the following suggestions where appropriate.

### **§3400 – Definitions**

The following proposed definition requires technical modifications:

- **"Seasonal specification" [§3400(e)].** The CEC's proposed definition is incomplete. Reid Vapor Pressure is only one specification that changes between summertime and wintertime blends. The California Air Resources Board (CARB) also sets a different standard for the T50 distillation specification, and California Business and Professions Code §13440 calls for gasoline to meet ASTM D4814, which has several specifications that differ between seasons.

### **§3401 – Refinery Maintenance Scheduling**

- **Reporting threshold [§3401(b)(2)].** The CEC's reporting threshold to require submittal of a "Refinery Maintenance and Turnaround Supply Plan" in §3401(b)(2) is inappropriate.
  - §3401(b)(2) proposes to set a "trigger level" at "more than 450,000 barrels total" or 20,000 barrels per day for at least 21 days. Understanding that there will likely be operational complexities should the CEC set a threshold that is either too low or too high, as either may not mitigate price volatility, we question the appropriateness of 450,000 total barrels. We look forward to hearing from the CEC and the Division of Petroleum Market Oversight (DPMO) regarding the basis of how a suitable volume threshold for resupply plans was determined. WSPA cautions the CEC that there appears to be no perfect threshold amount that would both protect consumers and not place undue burden on refiners and the CEC.
  - §3401(b) requires refiners to submit their resupply plan "at least **120 days** prior" to a qualifying planned maintenance or turnaround event. WSPA recommends that this be changed to "not prior to **90 days**" given the impracticality of assessing significant global market changes that can happen between 30 to 120 days. An extended time horizon would therefore offer little benefit to the CEC in its attempts to assist refiners in finding affordable consumer resupply inventory. Further, the rule does not address the scenario of a qualifying planned maintenance or turnaround event that occurs inside the 120-day

(or 90-day) window. WSPA recommends these scenarios be expressly eligible for exemption under §3402, particularly if resupply is not feasible.

- **Spot market purchases [§3401(c)].** First, WSPA is perplexed by the CEC's presumption that refiners can predict how resupply sourcing plans would impact the California market. The ability to do so would necessarily require participation in the spot market, which would be precluded in §3401(c)(3). Second, restricting spot market participation in order to resupply California's market is likely demanding the impossible. Refiners cannot demonstrate, or even provide evidence of impacts, prior to participation in the spot market. WSPA strongly recommends that this subsection be modified to allow for spot market participation to help address any perceived resupply problem. Third, WSPA questions the practical constraints associated with removing spot market transactions as a viable resupply option as doing so would force California's refiners to take costly imports with timing risks. Such an approach would likely hurt California consumers, not help them. WSPA strongly suggests that the CEC better understand the potential impacts of dictating spot sales.
- **85% resupply [§3401(c)(1)].** The proposed rule fails to distinguish between resupply of contract volumes versus spot volumes, which is a critical distinction. WSPA believes it is inappropriate to require refiners to resupply spot sale volumes at 85%; spot sale resupply should only be required if market conditions demand it, and even then, the spot sale resupply requirement should be the minimum amount demanded by the market. Otherwise, the rule unnecessarily burdens refiners with the business risk of bringing supplemental spot volumes into a market that does not need additional volume.
- **1.3-barrel multiplier [§3401(c)(1)(i)].** The proposed language counting each barrel of resupply obtained via imports to count as 1.3 barrels requires further clarification.
- **Market availability [§3401(c)(2)].** WSPA presumes that "same rate" means *product* and not *price*; if so, this should be appropriately clarified in the proposed regulatory text. WSPA otherwise questions whether this proposal is authorized under SB X1-2 or AB X2-1, as the meaning is unclear. Any price "cap" must adhere to strict procedural and analysis requirements under both statutes, neither of which are not legally satisfied here.
- **Penalties [§3401(e)].** WSPA has significant concerns with the CEC Executive Director's proposed authority to grant or deny a Refinery Maintenance and Turnaround Supply Plan, in whole or in part, and then assess civil penalties for a denial. The decision-making authority is not associated with any standard; that lack of specificity, especially when associated with a potential civil penalty, raises serious due process concerns.
- **Reporting intervals.** The industry supports transparency but believes additional reporting will be overly burdensome for all involved. We question the CEC's ability to manage the number of planned versus actual resupply reports – particularly given that the proposed language is also void of guidance in how the CEC or industry should manage the process for what is considered substantial updates or changes needed to resupply plans.
- **Planned exports.** Refineries may need to cancel exports of non-CARBOB optimal (higher sulfur, higher benzene) fuel blendstock to meet resupply needs during significant events. Therefore, it is recommended that the proposed language acknowledges this necessity for managing resupply.

### §3402 – Request for Exemption

- WSPA strongly recommends that the CEC detail a well-defined and clearly understood exemption pathway process – this would include how it would be administered and governed in the event of any disagreement. The exemption process, as currently drafted, gives the CEC excessive discretion in determining exemption eligibility and provides insufficient certainty for refiners to comply with the rule.
- The CEC's proposal does not provide necessary flexibility for refiners to source the most readily available and affordable resupply options at the start of, or during, a planned event. Because the proposed regulation is seemingly intended to lock resupply plans in, it would

eliminate other opportunistic solutions that would likely benefit California consumers after resupply plans are approved. Eliminating such flexibility is a critical concern for industry as in-State refiners must stay economic. As the primary goal is to economically replenish lost production, the CEC should not be dictating the method by which industry does so; rather, the CEC should be providing an exemption pathway after work has commenced if an extraordinary issue arises.

- The CEC's proposal does not provide any flexibility to address material factors – which are likely to be outside of industry's control – but are reasonably close to meeting planned resupply.
- WSPA questions how the CEC would propose to address any extraordinary market conditions that may occur before a planned maintenance event. This includes any unplanned refinery maintenance activities (including those elsewhere in the California market), any significant and materials impacts affecting consumer demand, any geopolitical changes that impact imports given California's significant and growing susceptibility to the global market, and any delays associated with over-water imports.

### **WSPA RESPONSE TO DPMO COMMENTS**

The DPMO contends that this regulation is justified and necessary to ensure that refiners adopt responsible resupply mechanisms. According to the DPMO, the current market lacks adequate incentives to address supply constraints associated with essential refinery maintenance.

Refiners already implement measures to mitigate the impact of planned outages on gasoline supply. For example, they may increase production prior to an outage, import additional supplies, or utilize inventory reserves to maintain a stable supply during maintenance periods. These proactive steps demonstrate that refiners are motivated to ensure product availability to fulfill their contractual obligations or supply the market during any planned or unplanned events involving competitors' inability to meet California market needs. Introducing further accountability measures may impose unnecessary regulatory burdens and increase costs to consumers without significantly enhancing supply reliability.

The DPMO further asserts that this regulation, as written, provides sufficient flexibility to allow refiners to remain economically viable under California market constraints. However, we remain concerned that the DPMO and CEC should be researching methods of protecting existing market incentives to replenish lost production without prescribing or locking in the specific methods that are in or out of scope for replenishment.

### **WSPA SUPPLEMENTAL RESPONSE TO ICF RESUPPLY COST-BENEFIT ANALYSIS**

WSPA still questions ICF's cost-benefit analysis supporting the proposed regulation. It is critical to have additional transparency and time to conduct an accurate cost-benefit analysis to ensure the CEC has the data necessary, per AB X2-1, to decide whether regulations will impose more harm than good for consumers. It is believed that this analysis lacks critical sensitivities, which may underestimate costs and overestimate benefits for these proposed resupply plans or the potential of regulating inventory. In addition to consumer costs, there are interactions between CARB's policies on marine emissions and regulations aimed at supply reliability that require thorough examination.

WSPA requests detailed information regarding the assumptions in ICF's worst-case resupply costs, including: the percentage of imports or use of other mechanisms assumed to manage resupply; how resupply assumes the use of imported finished fuels versus imported blending components; whether benchmarking scenarios regarding prices accounted for the resupply costs already incorporated and performed in past planned maintenance activities; whether

operational slowdowns or other risks due to resupply plans were included; and whether any analysis was conducted on how the resupply plans may conflict with current California environmental policies for stationary and marine mobile sources.

## **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 fuel supply chain – 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 this and the prior February 25, 2025, 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,



Sophie Ellinghouse,  
Vice President, General Counsel & Corporate Secretary