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WSPA Comments on Draft 2022 IEPR Update

Please see attached comment letter.
Thank you for the extended comment period.

Additional submitted attachment is included below.

Catherine H. Reheis-Boyd
President and CEO

December 7, 2022

Submitted via email at: https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=22-IEPR-01

The Honorable David Hochschild, Chair
California Energy Commission
1516 9th Street
Sacramento, California 95814

RE: Draft 2022 Integrated Energy Policy Report Update Comments [Docket No. 22-IEPR-01]

Dear Chair Hochschild,

Thank you for the opportunity to comment on the 2022 Integrated Energy Policy Report (IEPR) Update, specifically regarding the sections pertaining to “High Gasoline Prices” (in the Executive Summary and in Chapter 4: Emerging Topics).[1] These comments are also pertinent to the November 29, 2022, informational Commissioner Hearing on “California Gasoline Price Spikes, Refinery Operations, and Transitioning to a Clean Transportation Fuels Future,”[2] convened as part of the 2022 IEPR Update proceeding, and will be docketed later as such.

The Western States Petroleum Association (WSPA) agrees that California’s petroleum fuels market is a critical part of our economy, especially issues related to refinery operations and gasoline supply. WSPA is a non-profit trade association representing members that account for the bulk of petroleum and natural gas exploration, production, refining, transportation, and marketing across the Western United States. In this capacity, WSPA has been a consistent and active participant in the Commission’s prior IEPR proceedings – especially given the role that strict anti-trust laws and the competition-promoting principles those laws underlie that individual WSPA member companies must abide by.

WSPA objects to the 2022 Draft IEPR’s characterization of California’s “historical price premium for gasoline” being largely attributed to, first, “Bigger price spikes related to unplanned refinery outages in California’s isolated gasoline market and higher refinery cost and profit margins.”[3] Indeed, the multitude of policy decisions that local governments, California’s governors, the state legislature and regulators have made – and continue to make – directly impact the cost of fuel for Californians. While we appreciate the 2022 Draft IEPR’s recognition that California’s higher production costs, California’s increasing dependence on more expensive foreign oil, California’s environmental program fees, California’s greater tax burden for gasoline, and California’s high distribution costs and retail margins are contributing variables, the draft Report does not accurately attribute this so-called “price premium.”

Multiple State policies impact California’s fuels market. This includes policies driven by the California Air Resources Board’s (CARB) and local air quality districts, and issues previously recognized by the Commission’s own Petroleum Market Advisory Committee, both of which are discussed below.

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[1] Draft 2022 IEPR Update at https://efiling.energy.ca.gov/GetDocument.aspx?tn=247338. Accessed December 5, 2022.
[2] https://www.energy.ca.gov/event/workshop/2022-11/commissioner-hearing-california-gasoline-price-spikes-refinery-operations
[3] Draft 2022 IEPR Update at page 8.

California's Unique Fuels Market
As recognized by Commission staff, the cost of fuel is the result of several complex market factors and public policy. The factors determining gasoline and diesel market costs are therefore complicated and influenced by several intertwining components, including consumer choice, global events and public policies, the supply chain, and market forces dictating supply and demand.

And, as further recognized by Commission staff, the California market is uniquely expensive:

- Californians have a greater tax burden and high environmental program costs;
- California's market is isolated, which makes it more vulnerable to higher costs due to lower supply;
- California has become heavily reliant on foreign oil with higher waterborne import cost inputs (including marine vessels, dock fees, weather delays traversing oceans, labor shortages, etc.);
- California's refiners face high crude oil costs due to the need to import, as in-state production is artificially limited by government policy;
- Local and state policies are causing production of fuels to fall faster than consumption; and
- California's extremely challenging permitting processes creates significant uncertainty and barriers for needed energy infrastructure investments.

Despite these challenges, our WSPA members produce 42 million gallons of gasoline and 10 million gallons of diesel every day to meet the ongoing transportation fuels demand for California's 35 million registered vehicles. Our refiners meet this demand by producing California's unique, cleaner burning gasoline blend specifications while continuing to lower the carbon intensity of these fuels in line with the State's climate programs. We do this in the most expensive operating environment and the most challenging regulatory environment in the entire nation.

California has also isolated itself when it comes to liquid energy. There are no pipelines into California to import crude oil and there are limited pipelines for refined fuels. Storage options are limited and capacity limits at ports also create further challenges. This isolation is a direct result of restrictive land uses, policy decisions, and permit denials at all levels of government. California's energy isolation, coupled with reduced in-state refining capacity, has created an environment where the State simply cannot meet its own demand for fuel – directly leading to cost volatility for Californians.

President Biden has recognized the lack of supply on the national level and continues to seek more production from other parts of the world to address demand and keep costs down. This is an unfortunate and ineffective approach – particularly as it makes America's energy security increasingly more dependent on less supportive foreign governments – with Californians paying the costs.

Role of California's Transportation Fuel Policies
California's public policy impacts will be felt by the public regardless of market conditions. It is also through public policy that the governor, legislators, and regulators have the most opportunity to make changes that can positively impact fuel supply for Californians. California's polices have not only restricted the supply of refined fuels, they also continue to restrict the supply of crude oil by effectively banning new in-state production. California has routinely adopted policies and regulations that have both prevented needed, new energy infrastructure from being built in the State and sent signals to the market that have significantly curtailed investment in refining and production capacity. As a result, refineries operating in California have been unable to manufacture enough gasoline and diesel demanded by California's 35 million internal combustion engine vehicles.

In fact, CARB recently released a far reaching and extremely ambitious 2022 Scoping Plan Update[4] that assumes the near complete phase-out of in-state oil and gas production and refining capacity. The successful implementation of which is presumed to "drop gas consumption by 94%" towards achieving

[4] https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents

“an oil-free future” – as touted by the Governor in his November 16, 2022, press release about the final 2022 Scoping Plan Update.[5] The State’s ability to reach the recently-accelerated (by statute) emissions reduction target, of 48% below 1990 levels by 2030, is fundamentally premised on “hope” and the successful transformation *this decade* of California’s economy on a scale never before seen.

The final 2022 Scoping Plan Update, which we anticipate will be adopted on December 15, 2022, is based on reducing liquid fuels demand to less than one-tenth of what we use today by 2045 – while also acknowledging that petroleum demand will persist nonetheless due to legacy fleets.[6]

WSPA has maintained, as documented during the development of the 2022 Scoping Plan Update, that it is not even feasible to phase down refining in line with an anticipated reduction in State demand due to the significant volumes of transportation fuels that are exported to other jurisdictions as well as other countries, thereby limiting the provision of lower-carbon intensity (CI) fuels resulting in a net reduction of global greenhouse gas emission benefits.[7] This would result in emissions leakage which CARB is required to avoid per Assembly Bill 32 (2006).[8] California must import the majority of crude that is processed in the State; in 2020, only 31% of the 478 million barrels of crude supplied to California refineries was produced in the State.[9] There is thus capacity for the State to encourage production of lower-CI crude that can substitute foreign crude supply and further reduce the CI of fuel required within and supplied by the State. Indeed, with supportive policy approaches, California could play a pivotal role in production of negative CI crude that would support the State’s climate goals. Given this, the smarter premise would be a phase-in of low-CI crude from California.[10]

The California Energy Commission should, independent of CARB’s Scoping Plan modeling, evaluate ongoing petroleum fuel demand through 2045 as part of the IEPR. Our own analysis shows that even with implementation of California’s aggressive climate change policies that fuel demand will continue.

More broadly, California’s policies and regulations continue to put pressure not only on gasoline, but on all forms of energy, driving up costs while driving down reliability for consumers. Given that these policies disparately impact the cost-of-living for low- and moderate-income residents and small businesses, the Commission or another state regulator should study how the state’s policies impact supply and reliability. The governor, the legislature and regulators should focus their efforts on removing the policy hurdles being imposed on the energy industry so we can focus on providing affordable, reliable, and lower carbon energy to all Californians. When the women and men of our industry are allowed to do their jobs, they do, and the result has been lower costs and reduced emissions.

Insights from CEC’s Petroleum Market Advisory Committee
WSPA was also asked to participate in deliberations before the Commission’s Petroleum Market Advisory Committee (PMAC), which was comprised of leading energy economists and experts convened in December 2014, to provide independent advice and insights on issues affecting the market. Their final report was published in September 2017. During their deliberations several years ago, several major issues were raised then that foreshadowed issues we face now:

- “I think where I’ve come away from this is there are -- it’s a very complex business and there are interactions that I didn’t previously appreciate, but that we need to be aware of in thinking about how different regulations and requirements end up changing the nature of competition. But at the

[5] https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/
[6] Final Scoping Plan Update at page 105 and https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/
[7] WSPA comments to CARB on draft 2022 Scoping Plan Update at pages 8, 11-12.
[8] AB 32 Section 38562 (b)(8) https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB32
[9] CARB. 2021. LCFS Crude Oil Life Cycle Assessment. Available here: https://ww2.arb.ca.gov/resources/documents/lcfs-crude-oil-life-cycle-assessment. Accessed October 2022.
[10] WSPA comments to CARB on draft 2022 Scoping Plan Update at pages 8-9.

same time, as much as I have tried to push and say, and find out, well, tell me why a firm with this much market share wouldn't be exercise market power, I really haven't felt like I got a satisfactory answer. In fact, I think I am more convinced now, than I was when we started, that firms, some of the firms are in a position to exercise market power. Whether they're actually doing it or not is, I think, harder and maybe it's regulatory threat that keeps them from doing it. In some ways I think that some of the solutions, including ones I agree with and ones I don't agree with that are up there would likely have an ameliorative effect regardless of whether this is market power or scarcity. My personal favorite still remains waiving CARB gasoline requirements or allowing a fee to be paid if the price differential gets large enough. And that would address both the scarcity issue and a market power issue."[11] – Chairman Severin Borenstein, February 8, 2016, PMAC meeting transcript

- "So, what it really demonstrates is that there were already -- you know, California's right on the edge in terms of the number of players to make it a competitive market. And just one less, suddenly it's less competitive in a way that if we knew everything, we could probably measure."[12] – Kathleen Foote, February 8, 2016, PMAC meeting transcript
- "Today's regulatory environment layers additional costs on refineries to meet cap and trade, Low Carbon Fuel Standard. South Coast Air Quality District is rolling out a NOx reduction program that's going to be fairly expensive. And so refiners, the refining companies in California are all national companies. In many cases international companies. And so while they're making money, good money now, they are, everybody knows that when the market flips to the other direction then their margins are going to be average. My point here is that these companies will make decisions about how they're going to invest in their facilities based on their outlook for profitability. And, you know, I think they see better profitability outside of California in the long run because of the direction that the State's going."[13] – Dave Hackett, February 8, 2016, PMAC meeting transcript
- "I'm going to offer an opinion, and my opinion is that there are plenty of barriers to supply in this market. Creating additional regulations will create additional barriers and keep market participants out." [14] – Dave Hackett, April 22, 2016, PMAC meeting transcript
- "Actually, there's one other that has come up numerous times in discussions about the industry, which is that if California is serious about moving off of gasoline, which let's say we are, that means declining demand over time, and exit of refineries making CARB [gasoline], and increasingly think market that is going to be harder and harder to avoid market power. And as one person in the industry said to me, you know, you can't on the one hand tell us we're getting rid of your product, and on the other hand berate us for not investing more in capacity to produce it. And I think there's something to that that we need to think hard about, not just sort of the static market power issue, but the dynamic issue as things change over time."[15] – Chairman Severin Borenstein, April 22, 2016, PMAC meeting transcript
- "First, with regard to the price spikes, probably the most consistent point that we've heard is that uncertainty can be a significant contributor to the price spikes, either because uncertainty in terms of lack of knowledge, uncertainty because of such a small number of large players having so much, a lot of different things."[16] – Kathleen Foote, August 12, 2016, PMAC meeting transcript
- "And I'm not sure if it was during this Committee's meeting, but certainly I have heard this from industry participants, that it's a lot to ask, on the one hand, that, you know, we should be investing in this industry, and on the other hand another part of the state is telling us we're about to kill your industry by replacing your product. And so I think I'm not optimistic we're going to see any more investment in the gasoline industry in California, certainly in the refining business. And we need to

[11] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 138
[12] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 151
[13] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 168
[14] https://www.energy.ca.gov/sites/default/files/2019-05/2016-04-22_PMAC_transcript.pdf at page 68
[15] https://www.energy.ca.gov/sites/default/files/2019-05/2016-04-22_PMAC_transcript.pdf at page 135
[16] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 190

think about how to make the market work during this transition period, which is likely to be decades."[17] - Chairman Severin Borenstein, August 12, 2016, PMAC meeting transcript

The final PMAC report[18] concluded, after exploring several different policy options for addressing gasoline price volatility, that there was no agreement that any of them would appropriately address price volatility in California. Indeed, it was noted that Committee Member Kathleen Foote, "(I) have looked at many other industries where risk is a factor. And risk always enormously increases prices."

Again Chairman Severin Borenstein had noted in the final report that, there were mixed messages in the current gasoline market. On one side is the need to invest in infrastructure, while on the other side there is an active movement to "kill your industry." This situation did not make him optimistic for continued investment, but there is a need to study the market during that transition.[19]

Indeed, the Commission's more recent report, "Additional Analysis on Gasoline Prices in California,"[20] from October 21, 2019, concluded then that refiner margins were not the cause of California's retail price premium. Rather, the Commission noted "that the primary cause of the residual price increase is simply that California's retail gasoline outlets are charging higher prices than those in other states" – and that the Commission "did not have any evidence that gasoline retailers fixed prices or engaged in false advertising." The report discussed other factors, including that California consumer preferences had changed in favor of products and services offered by higher-end brands, and that consumers in western states were less concerned with price when considering location and brand.

Conclusion

We agree that a serious and independent study on how the State's goals and policies impact supplies and reliability of petroleum fuels, as well as other forms of energy, should inform all policymakers before adoption of additional policies. Efforts to ban supply and restrict capacity have consequences that threaten the State's economy and hurt consumers, especially those most vulnerable. And, that is why the State should commit to an "all of the above" transportation fuels portfolio to address climate goals and lower costs for all Californians.

Bringing down costs across the economy, ensuring an affordable and reliable energy future, and meeting our climate goals can be done cooperatively. There is a better way, and our industry and its people want to, and must be, a part of this important work. We are here to help with that type of effort.

Sincerely,

cc: The Honorable Siva Gunda, Vice-Chair, California Energy Commission
The Honorable J. Andrew McAllister, Ph.D., Commissioner, California Energy Commission
The Honorable Patty Monahan, Commissioner, California Energy Commission
The Honorable Kourtney Vaccaro, Commissioner, California Energy Commission

[17] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 199
[18] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee
[19] https://www.energy.ca.gov/data-reports/planning-and-forecasting/petroleum-market-advisory-committee at page 26
[20] https://www.energy.ca.gov/sites/default/files/2019-11/Gas_Price_Report.pdf