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Item 3: Request for Reconsideration of the CEC's Denial of Petition for Rulemaking

March 14, 2023 Business Meeting

Aleecia Gutierrez, Director
Energy Assessments Division



Overview

- Western States Petroleum Association (WSPA) requests that the CEC:
 - Reconsider its denial of WSPA's petition for rulemaking to define terms in SB 1322.
 - Delay enforcing SB 1322's reporting requirements.
- SB 1322 is clear as written and can be implemented without further interpretive regulations.
- WSPA's petition for reconsideration does not provide additional information to cause the CEC to reconsider its order denying the petition for a rulemaking.
- CEC cannot delay the applicability of the statute, and a stay regarding penalties is unnecessary.



Request for Reconsideration

- Repeated request to “clarify and contextualize” SB 1322.
- Raises no new basis to show the need for a rulemaking.
- On February 6, the CEC sent the regulated community more information on locating existing definitions of terms in SB 1322 and an optional form to use for reporting.
- As of March 5, all refiners submitted SB 1322 reports.
- One refiner provided partial information and CEC will follow procedures to obtain completed information.



SB 1322 Terms

- SB 1322 consists of terms generally used in the industry.
- Refiners can use definitions contained in Title 20 California Code of Regulations and federal law.
- Special Session called by Governor has not yet concluded, and legislation containing same terms as in SB 1322 is still pending
- Terms in SB 1322 are clear
- Rulemaking both unnecessary and inadvisable due to related legislative action



Enforcement of SB 1322

- The CEC has the authority to impose penalties in the event of non-compliance with reporting requirements.
- A stay is inappropriate because WSPA has no standing to seek a stay since it is not a refinery operation;
- A stay is premature because any penalties would be imposed after a due process hearing is provided.
- Refinery operators would be subject to a civil penalty only if, after being notified of the failure to provide specified information, they choose to delay or refuse to submit the specified information.



Staff Recommendation

- WSPA has not provided support for a request to reconsider the order to deny the petition for rulemaking.
- Staying SB 1322 reporting requirements is premature, unsupported, and not properly before the CEC.
- *It is CEC Staff's recommendation to deny WSPA's request for reconsideration and for a stay of SB 1322's reporting requirements.*