Comment Received From: Julia May / CBE
Submitted On: 8/31/2023
Docket Number: 23-SB-02

EJ panelists comments SBX1-2 â€“ CA Gas Price Gouging & Fossil Transition Law

Please see attached EJ panelist members' comments on the 08/17/2023 CEC panel discussion on SBX1-2 implementation.

Additional submitted attachment is included below.

August 31, 2023

California Energy Commission (CEC)
Submitted by Portal to SBX1-2 Docket 23-SB-02

Re: EJ panelists comments on SBX1-2 – California's Gasoline Price Gouging and Fossil Fuel Transition Law

Honorable Commissioners and Executive Director Bohan,

Thank you for the August 17th panel discussion and your complex work to broaden understanding of SBX1-2 and receive input from the environmental justice, labor, and academic communities, alongside the oil industry. The undersigned environmental justice organizations write to expand on some of our initial thoughts shared at the panel discussion and supplement the discussion with some critical background details. We also want to uplift key requirements of SBX1-2, which can and must work in harmony with other health, climate, and equity requirements.

We are concerned that the very heart of this law – to rein in the destructive abuse of power of the oil industry through price gouging and polluting – could be undermined by industry pressure for new concessions.

- **First, it is perverse that the industry has implied that in order to avoid repeated gasoline price gouging, the state should 1) rescind some environmental regulation, 2) expand investment in fossil fuel infrastructure such as oil refineries and 3) increase oil drilling permitting.** In the age of extreme fossil-fueled climate destruction and deaths, record oil industry profits, and the worst smog in the nation, this redirection of SBX1-2 to further benefit the oil industry seems like an Orwellian nightmare. These demands are contrary to climate and environmental justice and should be rejected.
- **Second, other data clearly indicate there is no real shortage of total gasoline production, but there is a foreign export drain on in-state supply, since California refineries export large volumes of gasoline and diesel outside of the U.S.** (detailed below). Price gouging Californians in-state when there is overproduction for export is a condition that must be scrutinized by the Commission. Supply, demand, and cost tracking at California refineries won't make any sense without accounting for this continuing export drain on in-state supply.
- **Third, Governor Newsom's intent in passing SBX1-2 was to rein in the oil industry's exploitation of consumers, not to provide the oil industry with legal loopholes** that will increase not only the local pollution that poisons low-income communities of color, but also the greenhouse gas pollution that is destroying the planet. We would not have supported a bill that did so.

Most importantly, we do have a clean energy pathway entirely compatible with SBX1-2 that is not just technologically and economically feasible, but crucial for climate and community safety with important requirements that must be incorporated in CEC planning.

Furthermore, regarding costs, important newer modeling on decarbonization pathways found that the health *benefits* of decarbonization are of the same order of magnitude as the cost of decarbonization across the U.S. Such cost-benefits must be elevated in the discussion, in addition to preventing gasoline price gouging which is embedded in the current captivity of the transportation system by the oil industry.

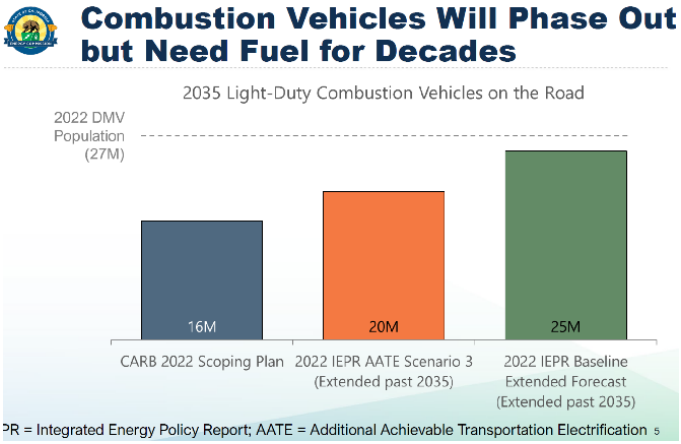
Much of SBX1-2 requires important tracking of gasoline and ensuring that untimely refinery maintenance shutdowns are not manipulated to constrain supply and increase gas prices. But it is critical for the CEC to reject industry suggestions that these straightforward requirements would override basic health and safety protections or clean alternatives. SBX1-2 did not expressly or impliedly repeal such important environmental laws and requirements.

I. Existing climate and smog requirements must not be re-litigated or erased, but incorporated in CEC SBX1-2 planning

After additional review of materials and discussion provided during the workshop, we have a few more thoughts regarding our vision of 2035 and beyond. We have submitted many more comments through the CARB Scoping Plan and other proceedings and could provide additional comment as needed.

We really appreciate the Commission staff's expressions of enthusiasm during the workshop presentation about transportation electrification (which *must* include dramatic expansion of public transit), and we join in celebrating the acceleration of electric vehicle sales to now being 1 in 4 cars sold.

We are surprised however about a seeming erasure of existing mandates in planning milestones, and we urge the Commission to reconsider use of certain outlier numbers. Specifically, the August 17th slides and presentation included a very high upper range of 25 Million gas-fired vehicles post-2035 (green bar, at right).[1]



But this is labeled and was described in the presentation as a *baseline* - basically the same as a Business As Usual (BAU) forecast, which does not include implementation of existing state regulations. A baseline isn't a proper upper range for future scenarios.

[1] Slides 5. Hearing zoom video, slides, and transcript available here.

This upper range was stated as included just in case California requirements (such as clean fleet regulations) are legally challenged. Planning for having California's crucial requirements killed is not the normal process agencies usually follow.

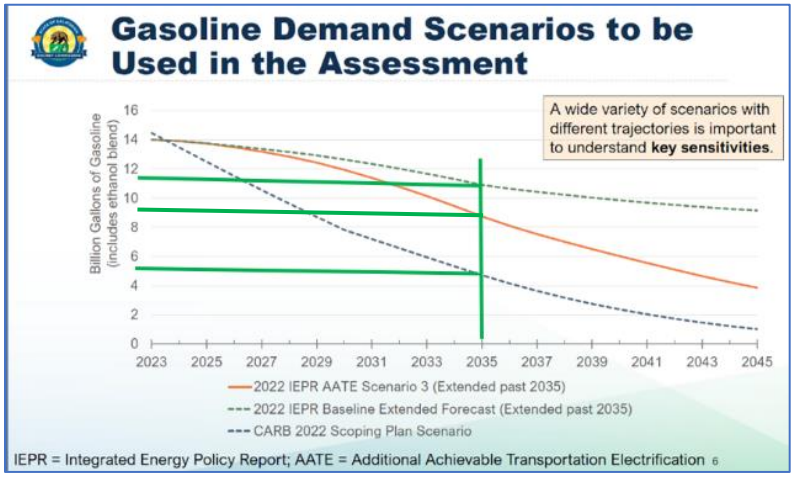
This 25 million gasoline vehicle upper range remaining in 2035 as a planning scenario must therefore be excluded. BAU scenarios are meant for comparison purposes, but California has enacted laws and plans leaving BAU behind. While the CEC has a responsibility to protect California from gasoline price spikes, it also has the responsibility to comply with existing requirements to protect California from climate and smog disaster. The good news is that these two responsibilities are compatible.

Nor does the middle range of these estimates (20 Million gas-fired cars remaining – orange bar above) comport with the adopted CARB Scoping Plan numbers of 16 Million vehicles remaining in 2035 (shown in blue bar at left).

While uncertainty must be addressed, it is important for the Commission to incorporate existing state climate and smog requirements which constrain fossil fuel use much more tightly (for a faster decline in gasoline use). **The Commission should plan for no more than 16 Million gas-fired vehicles in 2035, consistent with the Scoping Plan.** And an easy case could be made that given the dire state of the climate, 16 Million remaining gas vehicles in 2035 is far too high.

A similar massive difference in gasoline consumption in three scenarios is shown in CEC Slide 6, ranging from 5 to 11 billion gallons of gasoline demand remaining in 2035. (We added the green lines.)

Again – the high range should be discarded as a future scenario –it instead represents a *baseline* or Business As Usual forecast.



Just like the slide on the previous page (number of gasoline vehicles remaining in 2035), this is not appropriate to include as part of the future range. **Thus, the 11 billion gallon figure as an upper range for 2035 should also be discarded as a projection of future gasoline use.**

Likewise, the mid-range of 9 billion gallons does not include many adopted Scoping Plan provisions. **Again, CEC planning should incorporate no more than the Scoping Plan's approved 5 billion gallon projection for 2035 – and plan the transition for no more than this level.**

Although 2045 milestones were not highlighted in the August 17th workshop – it is important for the Commission to include shorter term and longer-term goals including 2045, to remain

consistent with state and local climate, smog, environmental justice goals, and to support developing a truly clean economy.

To that end, the Commission should plan for further phaseout through 2045 of fossil transportation fuels, 90-100% and of Oil Refining and Oil Extraction, as shown feasible in *all three scenarios* of California's *Achieving Carbon Neutrality* report.[2] AB32 first required at least 80% reduction in Greenhouse Gases (GHGs) by 2050, which was accelerated to 2045 by Governor Brown's Executive Order. Environmental Justice organizations have submitted extensive comments to CARB and other agencies on these goals and could provide much additional commentary to the Commission.

II. There are mandates for planning phaseout of *oil refining and extraction*, alongside the transportation transition

As fossil fueled vehicles phase out and cut gasoline *demand*, fossil fuel *supply* from oil extraction and refining will not automatically go away because of refinery exports that must be accounted for. SBX1-2 requires attending to reducing both supply *and* demand of fossil fuels.

California climate and clean air policies include many mandates to plan the *phaseout* of oil refineries and oil extraction, in order to align with existing environmental laws and requirements. These mandates are to be implemented in line with decreasing California fossil fuel demand, and not by unnecessarily prolonging and padding fossil fuel supply:

- 2020 Governor Newsom Executive Order N-79-20:[3]

  "WHEREAS to protect the health and safety of our communities and workers the State must focus on the impacts of oil extraction as it ***transitions away from fossil fuel****…"*

  "8. To support the ***transition away from fossil fuels****…repurpose and transition* ***upstream and downstream oil production facilities****, while supporting community participation, labor standards, and protection of public health, safety and the environment."*

- 2022 Greenhouse Gas Scoping Plan:

  *"****To manage the phasedown of oil and gas extraction and petroleum refining in California,*** *exports of finished fuels must be considered and factored into that process, in addition to the declining in-state demand. . . . If supply of fossil fuels is to* ***decline*** *along with demand,* ***a multi-agency discussion is needed to systematically evaluate and plan for the transition*** *to ensure that it is equitable."*[4]

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[2] Achieving Carbon Neutrality in California, E3, modeling produced for CARB, October 2020, Table 1 page 24 details all 3 scenarios, with graph shown above at p. 25: The report also found: *"****Specifically, the scenarios evaluated here achieve at least an 80% reduction in greenhouse gases from 1990 levels by 2045.*** *As stated in the Executive Order,* ***this level of greenhouse gas reduction should be considered the minimum level of reductions needed in the state."***

[3] Executive Order of Governor Newsom, available at https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf

[4] *Final 2022 Scoping Plan, p. 101*

- 2022 "South Coast" Air Quality Management District (AQMD) Smog Plan:

  *"The **only way** to achieve the **required NOx reductions is through extensive use of zero emission technologies across all stationary and mobile sources**."*[5] (emphasis added)

Notably, the South Coast Air Basin includes over 60% of California's oil refinery capacity. The South Coast AQMD plan adopted in December 2022, concluded it will need a 67% cut in NOx emissions **by 2037**, *even after currently existing regulations are implemented*, or it will not meet Clean Air Act (CAA) health standards. This requirement effectively means a broad fossil fuel phaseout which applies to all emission sources—stationary, mobile, and area sources. **Oil refineries are the largest stationary sources of pollution in the region**. Extreme non-attainment of health standards has plagued the region for decades. AQMD's new zero-emission approach can finally solve both the smog disaster and California's fossil fuel phasedown mandates. This approach is also necessary to cut air pollution statewide.

SBX1-2 itself is explicit about the directionality of oil production in the transition in its description of the Transportation Fuels Transition Plan required under Section 25371.3:

> "The report shall be prepared . . . to **identify mechanisms to plan for** and monitor progress toward the state's reliable, safe, equitable, and affordable **transition away from petroleum fuels** in line with **declining** in-state petroleum demand" (emphasis added).

A gap that we urge the Commission and its partner agencies implementing SBX1-2 to acknowledge and fill is the need to *begin writing this required plan* to phase out most oil refining and drilling by 2045 – by identifying the policy mechanisms and timelines. Phasing out fossil transportation fuels will not by itself result in the phaseout of fossil fuel production at refineries and drilling operations – see below.

This planning for a managed decline is in no way at odds with preventing gasoline price gouging. Indeed, protecting consumers is a necessary focus when gradually breaking dependence on gasoline. We would be happy in the future to provide further comments regarding plan elements, including engineering analysis needed, logistics, regional issues, environmental justice needs, permitting alignment, a just transition for workers and communities, and more.

III. CEC and other data shows substantial California refinery exports out of the country occurred in the lead-up to the worst price-spikes

Part of the many planning and tracking requirements of SBX1-2 necessitate evaluation of California refinery exports.

A new analysis of CEC Fuel Watch and U.S. Energy Information Administration (EIA) data – "*Refiners exported inventory in run up to record gas price spike"* – found that if even part of California refineries' foreign exports had been delayed, this would have brought in-state supply

[5] Executive Summary, Draft Final 2022 AQMP, adopted 12/2/2022, 67% cut and quote from pdf 1, graphic p. ES-7

back to normal historic inventory levels.[6] It also found *"California gasoline prices spiked to record highs in autumn 2022 even as crude oil prices fell."* These data indicate that there was no real shortage in gasoline production in California, and such implications must be examined.

The phaseout of finished fuel supply by oil refineries will not happen automatically even as California uses less gasoline because of California Refineries' *increasing* exports of finished fuels. Because of such data we submitted during the Scoping Plan process, the California Air Resources Board agreed that *supply* of fossil fuels also had to be planned for phaseout, along with reductions in fossil fuel demand.

Some of the undersigned submitted comments through the California Environmental Justice Alliance (CEJA) for the Scoping Plan[7] including additional export data analysis. It found from 2010–2019, that **in-state demand for *gasoline and diesel fuel* together fell by approximately 320 million barrels ("Mb") or seven percent** compared to 2000-2009, while **California refinery exports of gasoline and diesel rose by approximately 423 Mb, or 71%,**[8] and that this exporting of finished fuels is only increasing.

Meanwhile, California's environmental justice communities are left holding the bag of toxic emissions from oil extraction and refining. And in a different kind of leakage, Greenhouse Gas (GHG) emissions from combustion of fuels we no longer need will still be emitted outside the country, leaving no help for climate, no help for local health, nor relief from price gouging inside California.

IV. Evidence shows major charges added to California gasoline beyond price spikes; increasing oil supply in California won't solve price gouging

Gasoline use is already known as the largest contributor to climate and air quality destruction, and it must be reined in and phased out. There is also strong evidence that the harms of gasoline price gouging to consumers, will *not* be solved by increasing oil supplies.

For example, Professor Borenstein, Haas Business School, UC Berkeley, a member of the early panel discussion during the August 17th workshop provided a slide (below) showing significant costs beyond the individual gasoline price spikes occurring in California – which he called the "mystery gasoline surcharge" (starting in 2015). He defined this as the difference between California's average price, and the average of the rest of the country after adjusting for differences in taxes, environmental fees, Cap & Trade, and a ten cent/gallon higher price (in current dollars) for producing CARB gasoline.[9]

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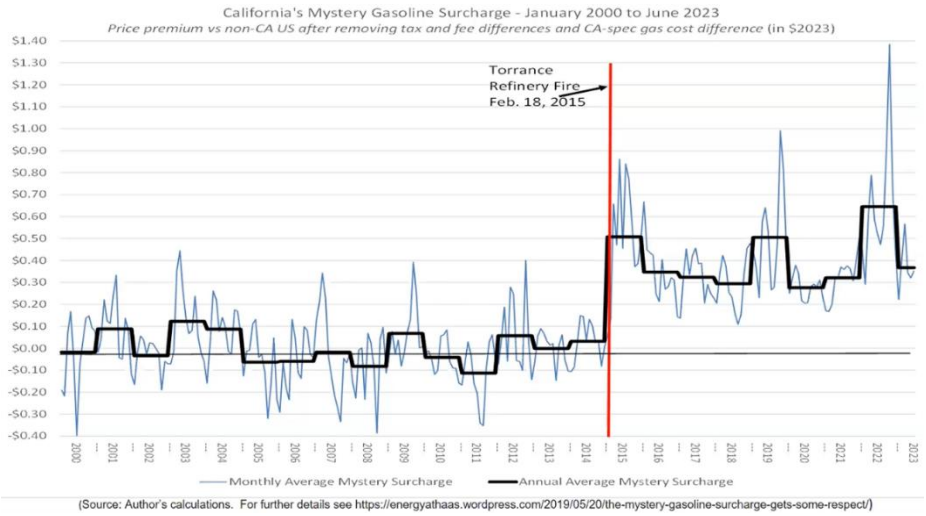
[6] Community Energy Re-source, Greg Karras, Aug 2023, available at https://www.energy-re-source.com/latest

[7] *CEJA comments on the May 10, 2022 Draft Scoping Plan*, available through CARB's 2022 draft Scoping Plan web portal under three separate documents (662, 668, and 670), submitted by Chelsea Tu, June 24, 2022. 2) *CEJA comments on the Sept. 9, 2022 Recirculated Environmental Assessment,* Oct. 24, 2022, available here.

[8] See Attachment A, with the detailed report by Greg Karras.

[9] August 17th, 2023 workshop video and audio transcript, beginning ~Time 1:24;12

He found this mystery surcharge added far more overall to gasoline cost than the individual price spikes (which were the main impetus for SBX1-2), and that this is happening separately from the defined differences between California and other states' gasoline costs. **Something else is happening to raise costs, and California must investigate.**



> "**This is not being caused by crude oil prices.** This is something that takes out the common price of crude oil because we're comparing to the rest of the country."
>
> "The price spikes are a very small part of the additional price cost to consumers driven by this mystery gasoline surcharge. In fact, . . . if we took away every spike above 50 cents, that is, every time the mystery gasoline surcharge went above 50 cents, . . . that would eliminate less than 10% of the mystery gasoline surcharge." . . .
>
> **"Most of the additional cost of gasoline that we are facing, through what I would call mystery is not being driven by these price spikes, it's being driven by a persistent higher price of gasoline."**

He also found that increasing California's oil production would not be effective in reducing consumer costs:

> "**Well, for the same reason, more oil production . . . It will have essentially no effect on gasoline prices.** The oil market is a very well integrated market worldwide. That is why the oil industry constantly tells us it's not them who's raising.
>
> "It's not California producers are raising the cost, because we're just part of the world oil market and the world price of oil has gone up. I agree with that statement entirely, and for exactly the same reason, **increasing California oil production is not going to do anything for either price fight or for even high prices generally. ...This is a discussion that's constantly coming from the oil industry... It's just internally inconsistent.**

Our takeaways from this interesting data are twofold:

1) **The Commission must look beyond the individual price spikes** to investigate continuous price gouging in California caused by the "mystery gasoline surcharge", and

2) **The Commission should discard Oil Industry arguments that increasing oil production is the answer to cost ills.** Price gouging can occur continuously, and as previously discussed, there are also overriding environmental and health reasons to phase out this costly fuel.

V. New modeling of health benefits of decarbonization across the U.S. found cost benefits of the same order of magnitude as decarbonization costs

New and improved greenhouse gas and energy modeling (EnergyPATHWAYS) has added calculation of health benefits and associated cost reductions from associated cuts in PM2.5, NOx, and SOx by County, in the United States.

It found:[10]

> ***"This capability was added because the dollar-value savings from the health benefits of improved air quality are so significant—on the same order of magnitude as the cost of investment in decarbonizing the energy system—that to neglect them in a discussion of decarbonization's costs grossly overstates the true cost to society of reaching net-zero."***

As Commissioner Gunda stated – it is important to look at SBX1-2 holistically. We agree entirely. It is essential that this process is not sidetracked by oil industry efforts to expand and erase existing protections and progress in fossil fuel phaseout.

Environmental Justice equity protections for the Black, brown, Indigenous, and low-income communities hit worst by the health, climate, and cost impacts of fossil fuel production, a steady and expanded implementation of state decarbonization efforts, and preventing oil industry price gouging are all entirely consistent and can provide cost, health, and climate benefits for all Californians. A Just Transition for EJ communities, oil industry workers, and everyone is achievable and critical for survival.

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[10] Haley, B., Jones, R.A., Williams, J.H., Kwok, G., Farbes, J., Hargreaves, J., Pickrell, K., Bentz, D., Waddell, A., Leslie, E., *Annual Decarbonization Perspective: Carbon Neutral Pathways for the United States 2022*. Evolved Energy Research, 2022, available at: https://github.com/EvolvedEnergyResearch/ADP2022

Thank you very much for a good start to a collaborative open process that will benefit from more detail and discussion. We appreciate being invited to the panel, and the opportunity for discussion on this key issue.

Sincerely,

Julia May, Senior Scientist, CBE (Communities for a Better Environment)

Andres Ramirez, Executive Director, People for Mobility Justice

Faraz Rizvi, Campaign and Policy Manager, APEN (Asian Pacific Environmental Network)