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*Comment Received From: Western States Petroleum Association
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**WSPA Comments on November 3 SB X1-2 Pre-Rulemaking
Workshop**

Please see attached letter.

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

November 21, 2023

California Energy Commission
Docket Unit, MS-4
Docket No. 23-OIR-03
715 P Street
Sacramento, California 95814

Uploaded/E-mailed to docket@energy.ca.gov

RE: WSPA Comments on General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322 [Docket #23-OIR-03]

Thank you for the opportunity to comment on the California Energy Commission's (CEC) November 3, 2023, pre-rulemaking workshop on the planned rulemaking to implement provisions of Senate Bill (SB) X1-2 (2023) and SB 1322 (2022) through rules on data collection and analysis and to manage refinery maintenance and turnarounds. We appreciate the CEC's recognition of this necessary step to conduct a rulemaking given our multiple rulemaking requests dating back to December 2022, almost a year ago, that the CEC take action to ensure data clarity, consistency, and uniform compliance in implementing SB X1-2.

As an initial matter, we have serious concerns that the CEC's stated intention to use truncated emergency rulemaking procedures is not justified by California law and is a violation of stakeholders' right to due process. Following standard Administrative Procedures Act (APA) process is necessary when developing first-in-the-nation regulations that affect a critically important commodity, where the public is afforded the time necessary to review and understand the proposed regulation, the right to regular notice and comment, and a fair opportunity to engage in a dialogue with the regulatory agency on whether the regulation is necessary and how it should be drafted. We are troubled that the CEC has suddenly decided to treat this as an emergency rulemaking process outside of the due process protections afforded under APA and request that the CEC advise as to what has changed since December 2022 to now require the rulemaking on this impactful statute to be conducted under an emergency rulemaking process. California law allows use of emergency regulation rulemaking process **only** when "necessary to address an emergency," defined as "a situation that calls for **immediate** action to avoid serious harm to the public peace, health, safety, or general welfare."¹ The CEC has failed to substantiate any threat of "serious harm to the public peace, health, safety, or general welfare" if the regular APA procedures are followed. A full rulemaking – providing sufficient time for meaningful dialogue with industry – will best ensure the CEC achieves the transparent process and thoughtful outcome the State Legislature expects without compromising the provision of an adequate, affordable, reliable, safe, and equitable supply of transportation fuels for Californians. While WSPA intends to participate in the rulemaking process regardless of how the CEC designates this rulemaking, WSPA does not endorse the CEC's choice to impose emergency rulemaking procedures on this process, believes it may threaten the legality of these regulations, and reserves the right to seek judicial review regarding whether the CEC violated California law in considering these as emergency regulations.

¹ Cal. Gov. Code §§ 11342.545 (emphasis added), 11346.1(b)(1)

The Western States Petroleum Association (WSPA) is a non-profit trade association representing companies that import and export, explore, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California. 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 as necessary to reflect additional materials or changes in the CEC's decisions.

SAFETY IS INDUSTRY'S HIGHEST PRIORITY FOR MAINTENANCE AND TURNAROUNDS

The legally questionable authority granted to the CEC under SB X1-2 to "impose requirements governing the timing of turnaround and maintenance" is dangerously undefined, threatens to upend over three decades of California and Federal regulations (under both the Occupational Safety and Health Act (OSH Act) and the Clean Air Act) around refinery process safety management, and is of grave concern to the industry. We believe that the CEC's purported new authority under SB X1-2 intrudes into the area of refinery process safety management, and very well could be preempted by Federal law and conflict with the Cal/OSHA refinery workplace safety standards authorized by the OSH Act. Restrictions on refinery maintenance *based not on safety but on market dynamics* could create serious health and safety concerns for our essential refinery workers, the surrounding communities and California's citizens generally. It may also constrict fuel supply and actually *increase* consumer fuel prices, rather than lowering them.

Turnarounds and planned maintenance are long-standing and critically important practices for any refinery in the world. Turnarounds can involve maintenance to one or more processing units, or may require the entire shutdown of a refinery. As California workplace safety regulations have long recognized, inspecting, replacing, and repairing units or pipelines is of the utmost importance to ensure the safe and efficient production of transportation fuels. As such, there are numerous Federal and State regulations that impose specific schedules and deadlines on refineries to perform maintenance activities, ***dictated by what is required to guarantee safe operations***. Process safety and mechanical integrity are key reasons that turnarounds are done at predetermined intervals. These planned activities typically take years of preparation and coordination of logistics, labor, equipment, and inventory planning and are already performed during timeframes that are designed to be in compliance with the intent of Federal and State safety standards and that minimize market impacts as much as possible within the confines of said health and safety standards.

Refinery maintenance and safety are so important that there are multiple Federal, State, and local laws and regulations mandating specifically when and how maintenance must occur, and further specifying those agencies with expertise in workplace safety that are responsible for regulating. Indeed, California's Labor Code provides that *only* the State's Occupational Safety and Health Standards Board (OSHSB) is authorized to adopt occupational safety and health standards for refineries and other California workplaces, and further provides that the OSHSB shall set process safety management standards for refineries. In 2017, OSHSB strengthened the refinery process safety management regulation via rulemaking, and SB 54 (2013) mandated the use of a highly skilled and trained workforce at California refineries. In addition to the State's Labor Code and OSHSB/California Department of Industrial Relations (DIR) regulations, there are applicable local rules, including Contra Costa County's Industrial Safety Ordinance, that regulate process safety and refinery maintenance and make California one of the most stringent jurisdictions, for both of these regulatory areas, in the entire world.

These regulations include the Federal process safety management (PSM) regulations under the Occupational Health and Safety Act,² the Federal risk management plan (RMP) regulations under the Clean Air Act,³ the OSHSB process safety management regulations (CalPSM) for refineries⁴ and the California Accidental Release Prevention Program (CalARP) regulations for refineries.⁵ These regulations require refineries to conduct equipment inspections and tests at intervals consistent with established Recognized and Generally Accepted Good Engineering Practices (RAGAGEP).⁶ Under applicable RAGAGEP (such as American Petroleum Institute Standard 510), refiners must establish specific deadlines for conducting inspections and tests. Because many of these inspections and tests require a unit shutdown, they are often scheduled to coincide with turnarounds.

The same regulations require that equipment deficiencies be corrected to ensure safe operations.⁷ Similarly, the CalPSM and CalARP regulations require that action items developed during a variety of safety reviews be implemented within specific timeframes⁸ unless doing so is infeasible. The Federal PSM and RMP regulations also require the timely addressing of action items from specific types of safety reviews.⁹

Forcing refiners to defer turnarounds – even for a short period – may result in unsafe conditions and violations of these safety regulations.

Restrictions on Turnaround Schedule May Lead to Increased Turnaround Frequency

Refiners have historically planned turnarounds to coincide with periods when demand is expected to be seasonally low. In general, refiners work to optimize the maintenance cycle of their operating units to lengthen intervals within safety and legal requirements such that they can maximize their total calendar operating day rate across the interval.

Turnarounds are major activities requiring coordination of large amounts of contractor activity and other specialized resources. Narrowing the timeframe in which turnarounds may occur could limit the availability of those resources. Because refiners cannot extend a turnaround beyond existing safety/regulatory limits, this could lead to an accelerated schedule for turnarounds to ensure that legal requirements are met. Accelerated turnaround schedules would in turn increase the frequency of shutdowns, thereby further constricting supply available for consumers. Additionally, accelerated turnarounds will lead to additional overhead costs that may impact the consumer.

In addition, staffing turnarounds can often stretch the capacity of local skilled labor as these events can involve mobilizing over 1,000 highly trained personnel from across the country for larger events. In all cases, contractors rely upon predictable staffing mobilization dates to ensure resource availability. Moving turnarounds based on market timing will reduce the predictability of resource availability and could result in longer-duration turnaround events. The CEC is also not in a position to make complex predictions about the reaction of the regional and national markets to such restrictions on maintenance timing, nor does it possess the requisite

² 29 CFR § 1910.119 et seq.

³ 40 CFR at part 68

⁴ 8 CCR § 5189.1 et seq.

⁵ 19 CCR § 2735.1 et seq.

⁶ 19 CCR § 2762.5(b); 8 CCR § 5189.1(j)(2)(B); 40 CFR § 68.73(d); 1910.119(j)(4)(iii)

⁷ 19 CCR § 2762.5(c); 8 CCR § 5189.1(j)(3)(A); 40 CFR § 68.73(e); 1910.119(j)(5)

⁸ 8 CCR § 2762.16(e); 19 CCR § 5189.1(x)

⁹ 40 CFR §§ 68.67(e), 68.81(e), 68.79(d), 29 CFR §§ 1910.119(e)(5), 1910.119(m)(5), 1910.119(o)(4)

expertise or legal jurisdiction to take over refinery process safety management standard-setting from OSHSB or DIR.

In addition to safety regulations, State and Federal environmental regulations and refinery-specific consent decrees enforced by the United States Environmental Protection Agency include a variety of compliance obligations with deadlines for installation and operation of pollution control equipment. Some of these compliance projects require a shutdown to complete installation, such as constructing tie-ins for air emission controls. Delaying turnarounds could cause refineries to violate these legal requirements and result in environmental impacts.

We note as well that to the extent State regulation of refinery turnarounds would conflict with Federal regulations and laws, they are preempted.

The traditional development of refinery maintenance and safety standards in California has been driven not by the market, but by deliberate consideration and input from multiple stakeholders concerning how best to avoid refinery breakdowns and protect worker safety. As such, California created an Interagency Refinery Task Force¹⁰ in August 2013 to:

- 1) Implement the recommendations in then Governor Jerry Brown's Interagency Working Group on Refinery Safety's report, *Improving Public and Worker Safety at Oil Refineries*;
- 2) Enhance coordination of oversight, enforcement, outreach and response activities by regulatory agencies; and
- 3) Establish refinery safety forums in northern, central and southern California for ongoing dialogue amongst industry, labor, community, environmental groups and regulators to enhance public and worker knowledge and safety.

The Task Force includes a total of 22 agencies:¹¹ ten State agencies and one Federal agency, seven local certified unified program agencies, and four local air pollution control districts. The CEC is not a participant. WSPA recommends that the CEC join this Task Force to fully appreciate and better understand the complexities of turnarounds and maintenance with an existing and explicit focus towards achieving "the highest possible level of safety for refinery workers and local communities." The permanent Task Force offers an on-going forum for interagency collaboration across State, Federal, and local agencies and to facilitate implementation of regulatory efforts with a specific focus on safety and enhanced protections for workers, communities, and the environment.

Any new CEC regulations that would instead use pricing and supply/demand market concerns to drive the timing of refinery maintenance and process safety management would create an irreconcilable conflict with the State's established safety-based regulatory system. These include, for example, the CEC staff's consideration to require certain inventory levels before any planned maintenance events take place, setting certain periods where maintenance activities may be "off limits," or requiring explicit approval from the CEC for any maintenance activities. Indeed, refinery operators may be put in a position where compliance with both is simply not possible. Dictating when a refinery can or cannot perform maintenance based on any consideration other than process safety management standards is legally questionable and will threaten the safety and well-being of our workers and communities. For example, the

¹⁰ Interagency Refinery Task Force <https://calepa.ca.gov/refinery/>

¹¹ Interagency Refinery Task Force Members <https://calepa.ca.gov/wp-content/uploads/sites/6/2022/04/IRTF-Members-List-04-2022.pdf>

Governor's veto last month of SB 842, which would have required the CEC to directly consult with DIR and give greater consideration to existing process safety management standards further indicates a disregard of the State's long-established system for regulating process safety management at refineries.

Moreover, CEC regulations restricting refiners' ability to determine their refinery maintenance schedules in an attempt to manage fuel supply in California may likely have unintentional market impacts and potentially exacerbate the very problems the CEC is now tasked with trying to solve. If the CEC orders a refinery operator to defer otherwise necessary maintenance or pushes a refinery to operate equipment longer than the State's mechanical integrity regulations, it could increase the risk of unplanned upsets and breakdowns, creating a situation where fuel supplies are further constrained and price volatility becomes even greater. Moving a scheduled turnaround not only has inventory implications for that refinery, but also potential cascading supply impacts to the larger market.

In addition to the safety concerns outlined above, WSPA is therefore concerned with who would be held liable if the CEC prevents an operator from performing timely refinery maintenance and something goes wrong. Would the CEC insure and defend and indemnify operators in such instances? What if an operator decides the refinery simply cannot be operated safely if necessary maintenance is delayed? What if CEC's action contradicts the maintenance timing otherwise mandated by the CalPSM and CalARP regulations? These are extremely important issues that warrant serious consideration and understanding by State leaders.

We would instead recommend:

- Further investigating chronic infrastructure constraints on the supply and delivery of California's transportation fuel, and minimizing market volatility by identifying policy changes to support (rather than hinder) critical investments in the maintenance and build-out of necessary infrastructure to support California's ongoing and strong transportation fuels demand;
- Evaluating existing barriers that prevent or delay needed maintenance activities and the repurposing or replacement of inadequate infrastructure; and
- Working meaningfully with California's refinery operators, labor, OSHSB and DIR to ensure the pragmatic development and implementation of any new SB X1-2 related refinery maintenance and turnaround rules that prioritize safety above all else.

Chronic structural fuel supply obstacles that account for price volatility remain unaddressed in California. It continues to be a pressing issue for California gasoline supply that most refineries outside of California cannot produce fuels that meet California's strict gasoline specifications. This is only compounded by the fact that California continues to enact and implement policies that do not promote greater availability of transportation fuels for California's citizens and discourage capital investments in new infrastructure, but actively seek to *constrict* that available supply of transportation fuels. WSPA strongly advises against complicating and further hindering an already-tight California fuels market by now telling an industry when they can or cannot perform critical inspections, repairs, and maintenance.

California policymakers should join with refiners in vehemently opposing any new emergency regulation or guidelines that would bypass the State's long-standing process safety management regulatory system and potentially compromise health and safety.

Imposing Minimum Inventory Requirements Would Add Costs that May Ultimately Harm Consumers

Refiners already assure or procure required feedstocks, blendstocks, and finished fuels to maintain commitments to customers – subject to existing infrastructure constraints. Requiring additional investments to maintain additional inventory beyond contractual commitments would add significant cost, raising the cost of production and which may ultimately harm consumers.

As mentioned in WSPA’s September 11, 2023, letter:¹² “whereby the State would require each seller to hold a certain amount of inventory, WSPA would be concerned that this could reduce the amount of gasoline available to market participants to address periodic supply imbalances. Minimum inventory levels may also have major drawbacks. As the CEC previously identified,³⁷ limiting the draw-down level for current in-service storage tanks will decrease working storage capacity, impeding the operational capability of refiners and marketers. It may also reduce strategic inventories by traders and non-refiners – the consequence of which should be evaluated by the CEC. Minimum inventory holdings may warrant the construction of new storage tanks, though doing so is already a difficult regulatory endeavor. Further, since reformulated gasoline tends to be more difficult to inventory, firms will tend to avoid inventories of it and could obfuscate the market from running storage efficiently. This may actually serve to increase market volatility. In addition, ‘Boutique fuels increase the problem of storage by eliminating pooling. By proliferating fuel types, the amount of storage needed to prevent significant price spikes rises. Storage works like insurance: it reduces costs to be large. By dividing the nation into many smaller, separate fuel types, we increase the costs of storage and reduce its effectiveness.’³⁸ It would likely also not prevent market volatility.”

Moreover, once a new minimum required inventory is set by regulation, the market will respond as we approach the newly established minimum, just as it responds today when it perceives low inventories. Thus, the new limit would artificially constrain the market, potentially leading to the very price spikes the State is seeking to avoid. The new limit could only moderate prices if it is allowed to be breached, allowing inventories to dip below the regulatory minimum. However, if the market knows the limit could be breached, that will lead to speculation about how the State will respond when inventory is low, leading to greater price volatility. In neither case does State action serve to reduce price spikes or volatility.

CEC Regulation of Turnarounds May Have Negative Environmental Impacts

In a scenario where shutdown is required to repair a piece of equipment at risk of malfunction, the longer the equipment continues to be used, the greater the risk of catastrophic breakdown which could lead to a major environmental release, or excessive flaring. If CEC approval based on economic considerations is required prior to shutdown, it would increase the risk of environmental harm due to an unplanned, uncontrolled shutdown.

WSPA encourages the CEC to work closely with local, State and Federal agencies tasked with prioritizing safety and strengthening rules designed to prevent hazardous events. Safety is industry’s highest priority governing refinery maintenance and turnaround events.

WSPA RECOMMENDATIONS FOR DATA DEFINITIONS, STANDARDIZATION & ANALYSIS

WSPA appreciates that the implementation of voluminous new SB X1-2 and SB 1322 reporting requirements – while protecting market sensitive and confidential business information –

¹² WSPA Comments Regarding SB X1-2 Transportation Fuels Assessment Workshop [Docket #23-SB-02] submitted September 11, 2023; pages 17-18.

requires significant efforts from both stakeholders and the CEC's leadership, management, staff, and the new independent Division of Petroleum Market Oversight.

We must ensure the production of responsive, high quality and consistent data across the industry. WSPA appreciates that the CEC shares this desire as well. Establishing clear and reasonably implementable rules, guidance, forms, and instructions for new reporting requirements will be beneficial to both the CEC and the regulated entities by offering much needed clarity given the many gaps identified to date¹³ and the resulting inconsistencies the CEC has acknowledged.

The CEC sought feedback on the general issues at the November 3 workshop. WSPA offers general feedback on data definitions, collection, and standardization issues before providing more detailed feedback on the CEC's efforts to standardize specific reporting forms.

Flaws Remain with Statutory Margin Definitions

1. WSPA continues to be deeply concerned that existing statutory definitions are flawed and will not allow for an equitable or consistent consideration and treatment of refiners in setting a gross margin cap and when or if refiners exceed any maximum gross gasoline refining margin value. Without legislation to address these existing statutory flaws, the CEC will be challenged by metrics that do not represent real world refinery operations and result in inconsistencies across stakeholder data submissions.
2. WSPA supports rulemaking and the need to help improve the usability of reported data to increase awareness and transparency of gasoline market complexity.

Therefore, in addition to the comments proposed in WSPA's letter dated June 8, 2023, and in WSPA's Petition for Rulemaking, WSPA offers recommendations below for data standardization and analysis to directionally improve the use of data until more substantive legislative fixes can be achieved.

Need to Collect Information Using Definitions That Place Refining Facilities on Comparable and Consistent Metrics

- a) Further, the current statutory definitions do not allow equitable comparison of refiners and therefore will be inaccurate for the CEC's market analysis.
- b) Even with efforts to move towards more comparable metrics, placing gross margin caps on refiners could reduce gasoline output and increase prices.

Further Identify Regulated Entities Involved

We again strongly encourage the CEC to conduct a comprehensive public stakeholder survey to identify *all* regulated entities involved as there could be some that are still unaware of their obligation to comply with these new rules, in addition to the parts of the statutes that regulated entities do not yet fully understand; this will help ensure the CEC receives additional input necessary to effectively implement the statutes as the Legislature had intended. An adequate and defensible analysis must include holistic market input versus a "cherry picking" of only available information from just a portion of the market.

Data Standardization

¹³ See "Attachment A" in WSPA's May 11, 2023, [petition for formal rulemaking](#) filed with CEC

.CSV Formats

While transitioning to use of .CSV formats and other report validation could help the CEC improve analysis automation of reported values, WSPA stresses that doing so will not be similarly easy for regulated entities to implement. Use of standardized .CSV formats will necessarily require adequate time to discuss versions and revisions with industry before any standardized format is deployed. We ask the CEC to allow industry adequate time (2-3 months) to adjust their system to produce .CSV formatted data once the CEC releases a final or amended form template. As part of that transition, the CEC should conduct thorough testing with regulated entities to ensure that systems operate as expected.

Data Entry Validation

WSPA supports using consistent units and list of values for data entry, see examples listed under each form section. For Volume, use Barrels (BBL).

Monthly Refining Margin Report (CEC-M1322)

- 1) First, we believe that data requirements should be created that would allow direct comparison of all facilities.
- 2) We agree with the CEC's comments during the November 3 workshop that industry should use generally accepted accounting principles (GAAP), where applicable, for calculating values reported to the CEC.
- 3) To allow for a directionally more indicative net gasoline refining margin, as defined per the statute, the definition should approximate the net income/profit of the reporting entities total and complete costs associated with bringing wholesale gasoline to rack, bulk, spot pipeline and dealer tank wagon markets.
- 4) The definition of operational costs for purposes of reporting net gasoline refining margin needs to be clarified. Refineries produce a variety of commodities within the overall refining process and typically do not account for operational costs to produce individual refined products such as gasoline. Many of the processes and facilities within a refinery that are used to produce gasoline are also used to produce other refined products, including, for example, the crude distillation units. Other refinery facilities and employees are not directly used to produce finished products but are necessary for the overall operation of the refinery, such as the wastewater treatment system and administrative personnel for information technology support, human resources, and finance.
- 5) The CEC expressed interest in linking this report to other State and Federal reports, to compare and validate the reported costs. This will not be a straightforward process due to different definitions/basis for different reports. The industry will need to know which specific reports and what linkage is expected. We will need time to review the expected linkages to understand possible disconnects, which should be considered by the CEC prior to finalizing such a requirement.

Spot Market Transactions

- 1) We understand the CEC would like to formalize a two-part submission requirement (when transactions are initiated and when finalized) to report a snapshot of time data and update after the transactions are finalized. However, the CEC should also recognize that a two-part submission will be extremely complex and burdensome. The CEC must allow sufficient time after the transactions are finalized to provide the most accurate information. There are no concerns with the transactions remaining on a single daily report.

- 2) WSPA understands the CEC is interested in standardizing and limiting reporting choices listed below. We have no issue with standardizing the fields and breaking up start/end dates.
 - a) Product Type
 - b) Yes/No fields
 - c) Seller/Buyer fields
 - d) Break up start/end dates
- 3) Make the “Price value of contract” field more specific by creating new fields:
 - a) WSPA understands the CEC is interested in having reports of the difference to New York Harbor, assuming this means the prices include the +/- differential to NYMEX HO (jet and diesel) and RB (gasoline). Given California’s unique product specifications, however, this is not a comparison between the same products in two markets.
 - b) We would recommend keeping the price value simple and focused on California. We would also like to hear from the CEC about the value this information provides.
- 4) Physical price per barrel
 - a) Providing a physical price per barrel will require inputting formulas. Developing a key, or consistent formula methodology will be critical to allow comparable use of this information.

Cargo Reporting (CEC Form W700_96j)

Data on this form is a snapshot in time where more “settled” data would be captured using Form M700. Accurate values on the Landed Cost are not available and reporting parties can only provide estimates.

- 1) Define “Landed Cost”
 - a) It needs to be clear that these costs may not be knowable for imported cargoes because transfers at the berth can be on a floating basis against different benchmarks.
 - b) We recommend keeping costs simple for the purpose of the 96-hour report by allowing for an estimate.
 - c) Landed costs may be distributed for intercompany transfers, therefore may not be accurately determined until quarterly, semi-annual costs have been accrued; estimates can be provided and then updated later.
- 2) Defining “importers”
 - a) This data field may not be consistent as data available may reference the owner of the cargo, importer of record prior to transfer of title at the point of discharge at the marine terminal, owner of the vessel, or company that chartered the vessel.
 - b) We recommend maintaining the flexibility to indicate how to define importer for each type of cargo.
- 3) Defining codes for Status of Product
 - a) WSPA recommends three options: Sale, Purchased and Intercompany Transfer.
 - b) The list the CEC recommends includes options that are duplicative in nature; for example, we are not sure what “non-standard” internal company shipment would be vs. “regular.”
 - i) CEC Proposed:
 - (1) Non-Internal Company Shipment
 - (2) Non-Standard Internal Company Shipment
 - (3) For Sale to Secondary Party
 - (4) Regular Internal Company Movement
- 4) Defining “Sales Price”

- a) We recommend keeping definitions simple for the purpose of the 96-hour report as the report is a snapshot in time that has the potential to change depending on the type of cargo.
- b) In many cases the final actual costs/prices are not finalized until months after the delivery date.

Imports/Exports (CEC Form M700)

WSPA recommends keeping the data collected simple. We would like to hear from CEC on the reasons why New York Harbor / traded price / landed cost price per barrel would be helpful for their analysis.

- 1) Even at the time of this report, prices/costs associated may not be considered “settled” and may require updates. We ask the CEC to allow regulated entities to update this information on a semi-annual basis to capture changes.
 - a. For example, determining the actual landed costs may be distributed for intercompany transfers so may not be determined accurately until quarterly, semi-annual costs have been accrued; estimates can be provided and then updated later.
 - b. Additionally, imports may be distributed to multiple downstream third parties, or a combination of third parties and intercompany movements. The final disposition of an import, including whether it has one or multiple destinations, may not be known at time of importation. This additional layer of complexity should be considered when establishing deadlines and report structure.

Refinery Maintenance (CEC Form ERD_m4a Initial Unplanned Maintenance and Turnaround)

- 1) WSPA supports the CEC’s proposal to clarify and standardize the report period and schedule start date and volume (BBL).

Refinery Maintenance (CEC Form ERD_m1 Planned Maintenance and Turnaround Report)

- 1) WSPA understands that the CEC is asking for comments regarding refiner’s inventory build prior to planned maintenance. The CEC should realize that finished product inventory build is constrained by the number of tanks available to hold finished product; data on whether the purchases comes from in-state or out-of-state purchases will not reflect the intrastate movements, component purchases/movements, and internal refinery optimization that goes into supplementing inventories during maintenance. In addition, out-of-state purchases can be discerned from data already reported in Cargo M700.
- 2) Regarding the supplemental data requests for inventory build during maintenance, the CEC should realize that finished product inventory build is constrained by the number of tanks available to hold finished product; data on whether the purchases come from in-state or out-of-state purchases will result in findings that are nominal for their fuel price analysis.
- 3) We request clarification on the distinction between “planned” and “unplanned” shutdowns. There are many scenarios where the need for a shutdown arises in the short term (e.g., to change out catalyst, repair a leak, etc.). In such cases, a shutdown may be “planned” in advance, but requiring a shutdown in less than 120 days, thus missing the deadline for reporting a planned shutdown. Should such scenarios be reported as planned or unplanned, or will the State waive the 120-day deadline for these scenarios?
- 4) Industry would benefit from a clarification of the definition of a “shutdown” and when said shutdowns are subject to the reporting requirements. SB X1-2 does not limit the reporting requirement to shutdowns affecting refinery output. Will the CEC consider a *de minimis* threshold for reporting?

Detailed Response to Questions Relating to Margin Calculations

WSPA believes additional time is needed to thoughtfully discuss and respond to the questions presented for this workshop. These are complex issues and WSPA intends to work through each of these questions with technical experts and offer more detailed responses on behalf of our members. We hope doing so will yield practicable recommendations for the CEC staff.

RULEMAKING PROCESS AND TIMELINE

WSPA requests assurances that the CEC will post a reasonable definitive rulemaking schedule that outlines specific events that will occur with dates of those events set forth and the amount of time that respondents will have to respond/comment. Further, WSPA requests assurances that the CEC will host additional workshops and provide ample opportunity (including accounting for holidays) to review materials well in advance of any future workshops and comment deadlines. Process transparency requires sufficient time for regulated entities to review and opine on proposals that will impact these complex market operations. Further, it should be noted that an expedited emergency rulemaking that could inadvertently compromise existing health and safety regulations is unlikely to “reach desired implementation.”¹⁴ The public deserves to understand the safety concerns/issues presented by the CEC’s proposals and also deserves to know the full scope of the burdens that will be placed on the facilities, stakeholders, and the CEC in the implementation of these new laws, which has and will add costs for both the CEC and the industry that may ultimately be passed along to consumers.

Fortunately, the CEC has the flexibility to exercise discretion where the term “may” is used in the statute and can determine the “form and extent” of new reporting requirements. WSPA is asking the CEC to exercise this discretion with input from industry to refine the SB X1-2 reporting requirements. Although much of the data and materials outlined in the new laws may be beneficial to the CEC’s analysis and reporting to “ensure adequate gasoline supplies and prevent future extreme price spikes for gasoline prices in California,”¹⁵ other data and materials that could be required likely are not.

SUMMARY

Thank you for considering our comments. We look forward to working with the CEC to provide ongoing input to ensure regulated entities have the instructions and materials needed to properly comply, to ensure that the data submitted is responsive and consistent across the industry, and that all market-sensitive, confidential, and proprietary data is well-protected. Please do not hesitate to contact me at with any questions.

Sincerely,



Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary

¹⁴ CEC SB X1-2 Implementation – Order Instituting Rulemaking November 3, 2023, Workshop Presentation, Slide 20, “Emergency Rulemaking Timeline*” November 3, 2023

¹⁵ CEC Notice of Senate Bill 2 Implementation Workshop – May 16, 2023, agenda <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02>.