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Comment on Draft Language for Terminal Inventory and Position Holders

Additional submitted attachment is included below.



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By Email

California Energy Commission
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Docket No. 23-OIR-03
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Re: Comment on Draft Language for Terminal Inventory and Position Holders

Idemitsu would like to thank the California Energy Commission (“CEC”) for hosting the April 11th pre-rulemaking workshop regarding the agency’s proposed third set of emergency regulations implementing SB X1-2, which will establish requirements for the filing of weekly and monthly terminal position holder reports. Idemitsu is a fuel reselling company located in Sacramento, California that buys and sells products, primarily to jobbers and independent gas stations as an alternative to refinery-direct sales. Given its perspective, Idemitsu hopes that its participation in the April 11th workshop was helpful and that its comments here will be helpful to the CEC. As always, Idemitsu would appreciate the opportunity to discuss these matters with CEC in more detail.

Idemitsu shares the goal of increased transparency in the market, which the company believes is at the heart of this third round of proposed regulations. However, Idemitsu believes the position-holder requirements included in the third round of regulations will not achieve that goal because they are unworkable. This is primarily because the draft regulations CEC has shared with the public are unclear with respect to who is required to report what. This lack of clarity will create confusion in the industry and is likely to lead to the production of duplicate information, which will frustrate CEC’s goals. Idemitsu encourages CEC to refine these definitions to identify only storage-facility operators.

For example, the draft regulations create confusion through the use of the term “nonrefiners.” The draft regulations do not define the term “nonrefiner” in the context of these position-holder reports, and no such definition exists in SB X1-2 itself or CEC’s prior rounds of emergency rulemakings. Elsewhere in its regulations, CEC has categorized “importers, brokers, and traders . . . that consummate[] . . . spot market transaction[s]” as “nonrefiners.” 20 C.C.R. § 1366(a). In its draft language for sections § 1366(i) and § 1366(j), however, CEC provided different exemplar “nonrefiner” entities that would have reporting obligations under the new regulations, “terminal operators, merchant terminal operators, and major petroleum products storers . . . that commercially trade[] in transportation fuel products.” The exemplar terms

provided in 20 C.C.R. § 1366(a) do not match the exemplars proposed in the draft position-holder language. These various exemplar terms for “nonrefiner” would notably be used in the same “Requirement to File” section of the regulations, 20 C.C.R. §1366. As a result, industry participants will be left to guess at who must satisfy the reporting requirements.

CEC’s draft instructions for completing the Terminal Position Holder Reports, “CEC-M08 PH Instructions” (TN # 255616) and “CEC-PHW08 Instructions” (TN #255614) further compound the problem. Those draft instructions make no reference to “nonrefiners” at all. Instead, the instructions state that covered entities required to report are “owners and operators of California bulk storage facility . . . that provides leased capacity storage contracts to position holders for gasoline . . . ” which “includes terminal operators, merchant terminal operators, and major petroleum products storers.” This suggests that CEC did not mean to encompass all “nonrefiners,” but only those nonrefiners that provide storage services for other industry participants.

Ambiguity around who is required to report, along with the mismatch between the proposed requirements and the accompanying reporting instructions, should be corrected. Under a broad reading of the term “nonrefiners,” all position holders could conceivably be required to file weekly and monthly reports, which will result in CEC receiving redundant and potentially conflicting data. Due to differences in timing, disputes, and product regrades, position holders and terminal operators can record similar data differently. For example, these entities may differ as to when they report a blend in progress that crosses over a day, which would result in inconsistent and lagged reports. Further, terminal operators currently report daily and monthly statements and provide position holders with these monthly statements in the middle of the next month. Position holders and terminal operators would thus not be able to resolve these discrepancies in reporting at the time of monthly reporting.

To resolve this ambiguity, Idemitsu proposes that CEC revise its draft requirements to strike reference to “each nonrefiner” from § 1366(i) and § 1366(j) and limit the entities required to report to only terminal and merchant terminal operators such that multiple reports are not filed for the same products at a given facility. Ultimately, terminal operators are in the best position to report the required information as they maintain systematic records for terminals and can provide complete and accurate information about position holders.

Additionally, beyond the fundamental ambiguity around who must file the daily and monthly reports, certain data fields required to be reported are unclear. Notably, Idemitsu requests CEC clarify what the term “through blending or otherwise” refers to in its draft terminal reporting spreadsheets (column G) and what data should be reported here.

Finally, CEC should respectfully consider the environmental impacts these new reporting requirements will have. As it stands, it is unclear whether the Notice of Exemption filed by CEC

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for its “Emergency Regulatory Action for Revised SB X1-2 Spot Market Reporting Requirements” applies to *all* regulations promulgated to implement SB X1-2.

Best Regards,

A handwritten signature in cursive script, appearing to read "Maureen Gorsen".

Maureen Gorsen
Partner