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Idemitsu Apollo Corporation's Comment on SBX1-2 Merchant Terminal Position Holder Reporting Requirements

Additional submitted attachment is included below.



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Re: Comment on Emergency Rulemaking Adopting SB X1-2 Merchant Terminal Position Holder Reporting Requirements (OAL File Number 2024-0712-01E)

Idemitsu would like to thank the California Energy Commission (“CEC”) for the opportunity to comment on CEC’s Emergency Rulemaking adopting Revised Merchant Terminal Position Holder Reporting Requirements and encourages the Office of Administrative Law (“OAL”) to adopt the Proposed Resolution.¹ The changes CEC made between the draft and final regulations represent a wise limitation on who is required to file a Merchant Terminal Position Holder report. CEC’s decision to limit reporting obligations to merchant terminal operators while excluding major petroleum product storers and other nonrefiners is correct and will enable the industry to provide CEC with accurate data while avoiding unnecessary, and potentially conflicting, duplicative reporting.

As it has noted in each of its comment letters, Idemitsu shares CEC’s desire for greater transparency into the transportation fuels market. Because Idemitsu has raised several concerns regarding issues that could undermine CEC’s goals, Idemitsu here wants to note its appreciation for CEC’s efforts to make the necessary changes to clarify uncertainty in CEC’s April 10, 2024 iteration of the reporting requirements. While CEC’s changes are a necessary step with regard to the Merchant Terminal Position Holder regulations, Idemitsu continues to be concerned with other aspects of the rulemaking processes CEC is undertaking. Primarily, Idemitsu believes real and meaningful participation is necessary to ensure CEC’s rules will achieve the agency’s objectives of increasing transparency and decreasing price spikes. Indeed, CEC’s change to the Merchant Terminal Position Holder regulations is the best example of that. Nevertheless, CEC’s

¹ 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.

use of emergency rulemakings to implement SB X1-2 in piece-meal fashion shortchanges that meaningful participation. Affording interested entities only 5 days to comment on rulemakings that incrementally implement discrete portions of CEC's forthcoming SB X1-2 regulations limits their ability to provide comprehensive input on complex and important regulations. And the results show the mistakes that restrictive process has caused. In its comment letters, Idemitsu and other interested commenters, have noted clarity, burden, and other issues in CEC's regulations.² CEC did not address those issues, choosing instead to simply let the flawed regulations become effective. It is not too late to address those issues to ensure CEC's important fuels regulations are clear, appropriate, and designed to achieve the laudable goals CEC has set. Idemitsu believes the following revisions to CEC's past regulations would do so:

Revisions to the Revised SB X1-2 Spot Market Reporting Requirements:

- Modify the arbitrary deadline for daily reporting by affording entities 36 hours to file these reports, which will relieve some of the burden on industry
- Provide a clearer definition of "Spot Market Transaction" to better reflect the widely accepted industry standard
- Revise the language so that these reports are to be filed for spot market transactions in which a fuel product is delivered for final sale in California, to better avoid regulation of transactions for deliveries outside the California fuels market that have no or only a remote nexus to the California market
- Provide a clear definition of "nonrefiner" to clarify which entities must file these reports, which the regulations currently lacks
- Eliminate bifurcated reporting on both the initiation and settlement of spot market transactions
- Eliminate several reporting fields not known at time of reporting
- Conduct a comprehensive CEQA review on this regulation

Revisions to the SB X1-2 Gasoline Refining Margin and Marine Import Reporting Requirements:

- Limit the entities required to file the Marine Import Report to *final* importers of record under federal customs law or *final* owners of reportable cargo to avoid reporting each change of hand of cargo, a requirement with no support in SB X1-2
- Clarify the reporting entities by providing a clear definition of nonrefiner and limiting reporting entities to refiners, nonrefiners and importers that import reportable cargo
- Revise the language so these reports are to be filed at least 96 hours before the arrival of a marine vessel *delivery* to California, to avoid reporting on cargo that is not delivered to California and ultimately has no connection to California

² See Revised SB X1-2 Spot Market Reporting Requirements, Docket No. 23-OIR-03, TN #254725; SB X1-2 Gasoline Refining Margin and Marine Import Reporting Requirements, Docket No. 23-IR-03, TN #256479.

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- Modify several reporting fields to afford entities greatly flexibility to omit certain data that cannot be determined at time of reporting
- Reinstate that the Executive Director must provide at least thirty days of notice prior to modifying the format of reports
- Conduct a comprehensive CEQA review on this regulation

Idemitsu believes that CEC should undertake a single, comprehensive rulemaking on a non-emergency basis. Doing so will allow CEC to correct issues in its regulations and to ensure that CEC's decision-making is informed by adequate and thorough industry input. Idemitsu encourages the CEC to continue to be responsive to public comment and industry input on its regulations, which the company believes will best advance the goals of the bill while ensuring practicable rules that reflect industry practices.

Best regards,



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