

DOCKETED

Docket Number:	23-OIR-03
Project Title:	General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322
TN #:	260563
Document Title:	Western States Petroleum Association Comments on SB X1-2 Forecasting Data and Maintenance Reporting
Description:	N/A
Filer:	System
Organization:	Western States Petroleum Association
Submitter Role:	Public
Submission Date:	12/9/2024 2:27:44 PM
Docketed Date:	12/9/2024

*Comment Received From: Western States Petroleum Association
Submitted On: 12/9/2024
Docket Number: 23-OIR-03*

WSPA Comments on SB X1-2 Forecasting Data and Maintenance Reporting 23-OIR-03

Additional submitted attachment is included below.



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December 9, 2024

California Energy Commission
Docket Unit, MS-4
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Uploaded to Docket 23-OIR-03

RE: WSPA Comments on SB X1-2 Pre-rulemaking Staff Workshop [Docket #23-OIR-03]

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the California Energy Commission's (CEC) November 12, 2024, pre-rulemaking staff workshop to implement Senate Bill (SB) X1-2 (2023) – specifically, regarding the collection of gasoline projection data and to clarify refinery maintenance reporting requirements pursuant to Public Resources Code (PRC) Sections 25354(c) and 25354(m). We also acknowledge the goodwill in staff extending the written comment period given the recent Thanksgiving holiday.

WSPA appreciates the CEC staff's efforts to ensure that projection data provides the clarity, consistency, accuracy, and qualifications needed for both the CEC and regulated entities to properly interpret and implement recordkeeping and reporting requirements. This includes efforts to address outstanding issues concerning the need for better definitions and guidance on the requested data elements in refinery maintenance reporting forms.

USE OF PROJECTION DATA

A bedrock principle embedded in SB X1-2 is that information collected from an entity by the CEC could include business confidential and/or competitively sensitive information where public disclosure would be profoundly damaging either to the entity itself or to the competitiveness of the public market. For this reason, SB X1-2 prohibits public disclosure of such information. PRC § 25364(b) mandates that “[i]nformation presented to [CEC] pursuant to Section 25354, 25355, or 25355.5 shall be held in confidence by [CEC] or aggregated to the extent necessary to ensure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information or would adversely affect market competition.” Section 25364 contains several other provisions imposing strict restrictions on the permissible use of certain information submitted to the CEC under SB X1-2.

To the extent the CEC is considering projections of product prices, projections of product prices are among the most competitively sensitive categories of information the government can mandate from businesses. Those projections can easily be misused by bad actors seeking to manipulate the fuels markets, force increased market speculation, artificially increase costs throughout the supply chain, and ultimately harm California consumers.

We understand that gasoline price projection data *is for internal use by the CEC only*. We appreciate this representation and agree that price projections must remain confidential to avoid the harms described above. But we urge the CEC to memorialize that commitment in the rulemaking record and formalize it in the regulations themselves. Disclosure by the CEC and subsequent misuse of price projection data can create unforeseen opportunities for harm not

only to California's fuels industry, but the Californians who rely on that industry every day. This potential for harm means that any fuel price projection data mandated from industry should be heavily restricted – and even in its aggregated state – access to the data should be very limited. The CEC must take steps to proceduralize safeguards to protect this data, and proactively validate the effectiveness of internal safeguards.

As we previously explained in our September 2024 petition for rulemaking,¹ there are also significant constraints in any one company's ability to provide either forecasts or projections involving any globally traded commodity, and even further limitations on how useful such speculative guesses about future price movement would be in making sound policy. Making predictions about the future direction of the market inherently involves a wide range of assumptions among private competitors, each of which operates with an incomplete set of data on the market and the decisions and priorities of other competitors. Thus, such prognostications are of questionable usefulness – even if the data is aggregated – and could potentially be harmful to individual companies' competitive position. Attempting to set policy based on such uncertainties also threatens to harm the overall market. WSPA therefore seeks to ensure that the CEC formalizes in its written regulations the requirement to maintain projection data as strictly confidential, so that any change in direction on that requirement will necessarily require a formal rulemaking process before the CEC.

Projections are also inherently complex. They necessarily rely heavily upon assumptions that can vary widely based on numerous variables. The outcomes of projections will therefore differ depending on modeling design(s), assumptions, and validation processes used. This broad range of methodologies and assumptions can result in a wide array of estimated values, potentially obscuring the usefulness of the data for decision-making purposes. This situation also undermines the State Legislature's transparency goals and compromises the CEC's ability to analyze the data effectively. Any poor interpretation(s) of available data can then lead to flawed or inaccurate perceptions about the state of California's fuels industry, and therefore, potentially ineffective policy.

It is therefore critically important that the CEC establishes a regulation that it is informed by good faith consideration and iterative input from regulated entities, and that the data gathered is appropriately qualified as projections or predictions about future events, subject to inherent uncertainties. Relying on inherently uncertain predictions in implementing PRC § 25354 – and potentially imposing severe financial "penalties" or taxes based on those predictions – is particularly troublesome and frustrates the purpose of the statute in obtaining accurate and reliable information from reporters.

ONGOING PROCEDURAL CONCERNS WITH USE OF EMERGENCY RULEMAKINGS

WSPA reiterates its serious concerns regarding continued use of, and reliance upon, truncated emergency rulemaking procedures in this matter. It is neither justified by any actual "emergency" as defined by California law nor allows the public or stakeholders their right to due process and meaningful engagement in an iterative process with staff. While the industry has provided detailed reporting to the CEC for decades, the State itself has also recognized the volatility of the gasoline spot market for nearly as long. None of that is a surprise, and none of it developed overnight. Thus, why claim that these long-standing issues are suddenly an "emergency" and deprive the public and the agency of the ability to fully assess and comment on those issues in order to get a true resolution? The scope and impact of these proposed changes demands no less than a full and proper assessment by the CEC, the industry, and the public.

¹ See WSPA "Petition for Formal Rulemaking Regarding Implementation of PRC § 25354" filed with CEC on September 3, 2024.

Additionally, we warn against government practices where an agency asks a regulated community to report values with vague guidance and quick turnaround times to then develop the basis for reporting rules and guidelines. We believe this sets a dangerous precedent that should cause critical concern for any industry regulated by a governmental entity. Not only does it impose a significant burden on resources, but it also creates the potential for an agency to manipulate reporting – which should be an objective process – to tell a predetermined story. Objective reporting programs demand a clear purpose, cross-industry consistency, and a constructive set of reporting requirements that meet the purposes of a proper rulemaking.

SPECIFIC REPORTING ISSUES WITH PROJECTION REGULATION FORMS

Below are several technical clarifications needed regarding forecast data.

- The term “refinery inputs” is not defined in PRC § 1363.2 of the regulations.
- The terms “acquisitions” and “distributions,” as used in Appendix B, Section X, are not defined in PRC § 1363.2 of the regulations. WSPA suggests using the terms “receipts” and “shipments” to ensure consistency with refinery reporting terms.
- Appendix B, Section X should be revised to clarify that only bulk movements (i.e., pipeline, marine, or rail) are sought in the Major Petroleum Products Marketer projections, as indicated by the CEC’s proposed form, and not distributions and acquisitions utilizing other modes of transportation.
- The phrase “by destination” should be removed in Appendix B, Section X(C) and the “Destination” column should be removed from the reporting form. Forecasting bulk movements by physical location is not standard industry practice. Forecasts, when known, should be limited to Northern California and Southern California.
- How does the CEC expect refiners who are also major petroleum product marketers to report? Is the “Projected Production” reported on the M05 Refiner form meant to be reported as receipts (acquisitions) from California Refineries on the M07 form, or is equity production not meant to be included on the M07 form? The CEC should ensure the regulatory language is clear.

M05 Refiner Form

- The form should include an instructions page, including clear definitions for each of the input columns and terms used.
- Projected Receipts should be a “+” value to represent the increase to inventory.
- The instructions should indicate whether “+” and “-” values should be entered as positive or negative.
- Appendix B, Section IX indicates that opening inventories must be reported, but there is no column for this in the form.
- Appendix B, Section IX requires reporting for crude oil, motor gasoline, aviation fuel, distillate, and residual fuel oil. All Product Names that are not one of these Product Types should be removed from the “Product Name” list. For example, Lubricants.

M07 Marketer Acquisitions and Distributions Form

- The form should include an instructions page, with clear definitions for each of the input columns and terms used.
- The CEC has not proposed a format for submitting projected stocks on hand for Appendix B, Section X(A).
- To avoid errors, the “Product Name” drop-down list should be dynamic, based on the “Product Type” selected.
- The list of products appears to be inaccurate:
 - Appendix B, Section X requires reporting for motor gasoline, aviation fuels, distillate, ethanol, residual fuel oil, and gasoline blending components. The “Product Type” list

should list these categories. All Product Names that are not one of the Product Types listed should be removed from the “Product Name” list. For example:

- Why is “Coal” listed amongst the “Product Name” list?
- Why are “Asphalt and Road Oil” and “Lubes” on the list as well?
- Why is “Crude” on the list? If intended to be included, there are Product Names for “Crude: Alaska” and “Crude Domestic (including Alaska).” Which is correct?
- Given that the intent is to capture bulk deliveries and receipts, the ethanol-blended gasoline product codes (164, 174, 181, 183) should be removed. These are never shipped by pipeline, marine, or rail.
- Several diesel products should also be removed:
 - There is no highway diesel, federal Environmental Protection Agency (EPA) or California Air Resources Board, with >15 ppm sulfur content.
 - There is no special EPA designation for “offroad diesel.” All ground transportation diesel fuel has been <=15 ppm sulfur since 2014.
 - Biodiesel blends (B2, B5, B20) are not referred to as “biodiesel” and are not shipped via pipeline, marine, or rail. These should also be removed.
- The word “biodiesel” is not hyphenated.
- “B100” should be changed to “B99-100.”
- Renewable diesel is missing from the list and needs a definition in PRC § 1363.2.
- There is a “Product Type” listed for “Renewable Fuels,” but biodiesel is listed as a Diesel fuel and ethanol is listed under gasoline blending components.
- There is a “Kerosene/Jet” Product Type, but kerosene is listed with the “Diesel” fuels.
- There are several “Aviation Gasoline” products listed, but no associated “Product Type.”

SPECIFIC REPORTING ISSUES WITH REFINERY MAINTENANCE FORMS

WSPA again strongly recommends that an “Event ID” be added for reporting purposes so that a list of units affected by a single event can be grouped together.

In summary, WSPA members are making every effort to comply with the laws and regulations and provide data that will provide accurate reporting that will be useful for the CEC’s analysis.

Please do not hesitate to contact me with any additional questions.

Sincerely,



Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary