OAL FILE NUMBER: Z-04-1123-01

FINAL STATEMENT OF REASONS

AMENDMENTS TO PETROLEUM INDUSTRY INFORMATION REPORTING REGULATIONS

CALIFORNIA CODE OF REGULATIONS, TITLE 20, DIVISION 2, CHAPTER 3, SECTIONS 1361 ET SEQ.

CALIFORNIA ENERGY COMMISSION

Docket Number 02-PII-01

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TITLE 20, SECTION 1361 et seq.
PETROLEUM INDUSTRY REPORTING

FINAL STATEMENT OF REASONS

Summary of Legislation

The legislation being implemented (SB 1962 (Costa), Chapter 288, Statutes of 2000 and AB 1340 (Kehoe), Chapter 692, Statutes of 2003, is set forth and described in the Informative Digest/Plain English Policy Statement Overview in the Final Notice of Regulations.

The California Legislature enacted the Petroleum Industry Information Reporting Act (PIIRA) of 1980 (Pub. Resources Code, sec. 25350 et seq.) to address the need for state government to understand how the petroleum industry operates.

SB 1962 (Costa), Chapter 288, Statutes of 2000 amended PIIRA to add monthly reporting requirements for crude oil and petroleum product production, importing, exporting, inventory, storage, transporting, distribution and marketing activity.

AB 1340 (Kehoe), Chapter 692, Statutes of 2003 further amended PIIRA to add weekly reporting requirements on wholesale fuel prices, production, inventory, distribution and marketing data. AB 1340 was chaptered into law in October 2003.

On November 17, 2003, Governor Schwarzenegger issued Executive Order S-2-03, which directed state agencies to suspend work on regulations for six months (with exceptions for health and safety related regulations). Consequently, the California Energy Commission (Energy Commission) halted this rulemaking activity.

On March 18, 2004 and April 27, 2004, the Energy Commission held a hearing and workshop to take public comment on proposed instructions and forms for implementing the new reporting requirements.

In September 2004, the Energy Commission issued revised forms and instructions in response to comments heard at the hearing and workshop. These forms and instructions will not be made final until the completion of this rulemaking.

During the 45-day comment period (between December 3, 2004 and January 18, 2005), the Energy Commission received detailed comments containing requests for clarification, objections, and support for the proposed regulations. Copies of the comments received are available on the Energy Commission’s website. No interested party requested a hearing before the close of the written comment period.

After the 45-day comment period, the Energy Commission responded to the comments and distributed copies of those responses and comments received to all parties who filed comments. All of this information was also published on the Energy Commission website.

The modified proposed regulations were published on the Energy Commission website as "15-day Proposed Regulations" on March 15, 2005.

The regulations were adopted by the Energy Commission on April 13, 2005, at a hearing held during a regularly scheduled Business Meeting.

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Section by Section Analysis

The Energy Commission received additional comments during the 15-day comment period and at its hearing to adopt the proposed regulations on April 13, 2005. Those comments and the Energy Commission's responses to these items are as follows:

1. Consolidating Weekly and Monthly Reporting Requirements (Sections 1366 (a-j))

Comment:
One refining company requested that weekly reports be accepted in lieu of monthly reports. It stated that some of the monthly and weekly regulations require reporting of identical information.

Response:
The existing, as well the proposed, regulations allow the Energy Commission to consider and approve alternative reporting methods (Section 1366(v) and (w)).

The requirements to provide weekly and monthly data are specified in statute. Public Resources Code Section 25354 (a) and (h) specifies monthly reporting requirements. Public Resources Code Section 25354 (i) specifies the weekly reporting requirement. The closing period for monthly reports is the last day of the month, while the closing period for weekly reports is Friday. These two, different closing periods rarely coincide. The Energy Commission compares monthly production data with monthly pricing and inventory data. If the Energy Commission calculates a 4-week average of production weekly data the result will not be the same as the month-end data value because the time periods are not identical. Having the same periodicity (i.e., the same closing date of the reporting periods for data from all sources used), ensures that Energy Commission analyses are based on consistent information from various sources.

Finally, having comparable data is important to producing reliable and credible analyses.

The Energy Commission recognizes that weekly reports can be less accurate than monthly reports since some companies may be providing estimates and/or the best data, on hand, when the weekly reports are submitted. The proposed regulations require weekly reporting for the near-term, time-sensitive data needs. Weekly reports are due no later than Tuesday after the close of each Friday reporting period. Monthly reports are due 30 days after the last day of the month. Accordingly, adjustments and reconciliation of data are more likely to occur with monthly data than weekly data.

The Energy Commission uses the weekly data to provide timely, relatively accurate snapshots of California crude oil and petroleum products. These reports contain critical data during periods of unexpected fuel shortages. The monthly reports are used to give greater detail. The monthly reports are used in long-term price series trends to build forecasts of future energy supply and demand.

2. Applicability of Monthly Reporting Requirement to Major Marketers (Section 1366(j))

<u>Comment:</u>
At the hearing on April 13, 2005, to consider adoption of the proposed regulations, the California Independent Oil Marketers Association (CIOMA) objected to the applicability of a monthly reporting requirement because the legislation authorizing the collection of monthly data did not apply to marketers. Specifically, this commenter said, "And I can tell you personally, and as a result of our interaction with now-Congressman Costa, there was no intent, nor was there a requirement for CIOMA members to have to report under SB 1962" [Page 48 of April 13, 2005, hearing transcript].

The same commenter also stated the definition of "Major Marketer" was too broad and that it would apply to many small companies who should not be subjected to this reporting requirement.

<u>Response:</u>
In order to respond to this comment, the Energy Commission reviewed the legislative analyses for SB 1962, which are publicly available over the Internet from the State Legislative Counsel's website. According to the analyses prepared for the Legislative Hearings, if SB 1962 was enacted, Major Marketers would be required to file monthly reports with the California Energy Commission.

Statute authorizes the Energy Commission's authority to define a Major Marketer (Public Resources Code, sec. 25354(i)(1)). The current regulations (section 1363(ww)) defines "Major Marketers" as companies marketing at least 20,000 barrels of product in a single month during the current or prior year. The Energy Commission did not modify the definition of Major Marketers in its proposed amendments.

The proposed regulations add section 1366(j) which requires Major Marketers to report total sales volumes and average prices for products specified in Appendix B, Section VI.

The Energy Commission's intent was to apply this reporting requirement to Major Marketers who also file a similar monthly report with the federal Energy Information Administration (EIA). The Energy Commission agrees that these regulations will apply to those companies that are required to file the EIA monthly report. This was clarified at the hearing on April 13, 2005, where the Energy Commission adopted the proposed regulations.

3. Applicability of Monthly Reporting Requirements to Buford Oil Co. and Van de Pol Enterprises (Section 1366(j))

<u>Comment:</u>
Buford Oil Co., Inc stated that, to file the monthly sales report (CEC 782B report), they would have to purchase new software that would cost around $30,000, or add a "module" costing approximately $7500 or enter the data by hand into a spreadsheet. They went on to state that the initial cost would be around $800-$1000 and ongoing monthly costs would be around $180.

Van de Pol Enterprises expressed a similar concern regarding the cost of completing a monthly sales report. Mr. Van de Pol stated, at the April 13, 2005 hearing, "We look at the cost of that as being, aside from having to reprogram, if we can do that, and still manually have to do some of these things. It's going to cost us at least $30,000 a year."

<u>Response:</u>
Small and Medium-sized Marketers are not subject to this reporting requirement.

The Energy Commission believes that neither Buford Oil Co., Inc. nor Van de Pol Enterprises would be required to file monthly sales reports based on the requirements of section 1366(j). Cost issues are also discussed below, in item 4.

4. Cost of Monthly Reporting Requirements for Major Marketers (Section 1366(j))

<u>Comment:</u>
CIOMA stated "the Energy Commission staff did not comply with Government Code section 11346.3 which requires the analysis of regulations for the impact on businesses." They further stated that "they are not aware of any empirical

data collection or analysis regarding potential costs of this regulation to business, nor are the reporting elements of Section 11346.3 addressed in the Initial Statement of Reasons (ISOR)." CIOMA also states that there "is quite a variety of costs involved – from hundreds of dollars per month to tens of thousands of dollars for reconfiguring reporting and accounting software."

Response:
The proposed regulations do not require new software or programming of existing software to comply with the reporting requirement.

The data required to report is contact information, total sales of specified product (those products are listed in Appendix B, Section VI) and their average sales price for the month.

Standard spreadsheet software can be used to complete this report using data that a Major Marketer has already compiled for a similar EIA report (known as the EIA 782B). The Energy Commission will also accept reports completed manually.

The Energy Commission filed an "Economic Impact and Fiscal Impact Statement" with the Office of Administrative Law on December 3, 2004.

Energy Commission staff testified during the PIIRA regulations hearing on April 3, 2005 that it had estimated about two to three hours to complete a form at a cost estimated to be less than $150. This estimate appears to be consistent with the $180 on-going cost estimate provided by Buford Oil Co. It is also possible that this estimate is consistent with the information provided by CIOMA that the reporting requirement could cost in the "hundreds of dollars," although CIOMA comment did not specify the reporting form to which they were referring.

5. Retail Fuel Outlet, Annual Reporting Requirement (Section 1366(p))

Comment:
One commenter expressed concerns that the Energy Commission's response to their 45-day comments on reporting requirements for Retail Fuel Outlets was not adequate. They did not specify the inadequacy. During the 45-day comment period a commenter said that there were alternative sources that could provide the information requested from Retail Fuel Outlets.

Response:
The Energy Commission previously responded that it investigated alternatives to the proposed regulations to require an annual report from Retail Fuel Outlets. At that time, the Energy Commission concluded that the Retail Fuel Outlets were the only source of information that enabled the Energy Commission to perform the analyses directed by the Public Resources Code section 25356. The Energy

Commission contacted the Division of Weights and Measures and the Board of Equalization to obtain these data. These data are not available from the Division of Weights and Measures. Portions, but not all, of the data are available from County Agricultural Commissions. It is likely some of the data would be available from the Board of Equalization; however, the Board of Equalization is required to hold these data confidential. Consequently, they cannot share these data with the Energy Commission.

6. Energy Commission use of Dealer Tank Wagon and Monthly Marketer Sales Data (Appendix A, Section IV and Appendix B, Sections V and VI)

Comment:
Two commenters requested information on how the Energy Commission would use the data it collects as a result of this rulemaking.

Response:
The data required by this rulemaking is essential for performing analyses required by Public Resources Code section 25356. Specifically, Public Resources Code section 25356 requires the Energy Commission to gather, analyze, and interpret information relating to the supply and price of petroleum products, with particular emphasis on motor vehicle fuels, including, but not limited to, all of the following:

- The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;
- The prices, with particular emphasis on retail motor fuel prices, including sales to unbranded retail markets, and any significant changes in prices charged by the petroleum industry, for petroleum or petroleum products sold in California and the reasons for those changes;
- The profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio;
- Emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;
- Nature and extent of petroleum industry efforts to expand refinery capacity and to acquire additional supplies of petroleum and petroleum products, as well as activities relating to the exploration, development, and extraction of resources within the state; and
- Development of a petroleum and petroleum products information system that enables the state to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

Profit margin calculations and analyses required pursuant to Public Resources Code section 25356 are based on wholesale price, supply, distribution volumes and inventories made by both independent and major petroleum product suppliers. The weekly and monthly sales information from refiners and marketers will provide the Energy Commission with better information on branded, unbranded, and dealer tank wagon product sold in the state. This information will enable the Energy Commission to more accurately calculate apparent refinery and dealer margins for California. In addition, the weekly and monthly dealer tank wagon information will enable the Energy Commission to analyze regional price and sales volume data.

The information necessary to perform these analyses is not available from any other source because it is highly confidential, market sensitive and proprietary. For example, one company (the Lundberg Survey) collects some of this data but does not allow full use by the Energy Commission.

7. Refinery Flow Diagrams and Site Maps (Appendix C, Sections VII and VIII)

Comment:
Two commenters expressed concern whether the Energy Commission has the authority to collect refinery flow diagrams and site maps. In addition, they expressed concern over the Energy Commission's ability to maintain the confidentiality of this information. They also questioned how the Energy Commission would use this data.

Response:
The Energy Commission's authority for this requirement is found at Public Resources Code section 25354(f). It states, in pertinent part, that "The [Energy] commission may request additional information as necessary to perform its responsibilities under this chapter." This information is necessary to perform analyses directed by Public Resources Code section 25356(a)(7) on the "nature and extent of efforts of the petroleum industry to expand refinery production capacity."

Energy Commission staff clarified during the PIIRA regulations hearing on April 3, 2005 that the throughput and capacity information from the flow diagrams will be used to perform utilization assessments of the process units of the refineries. The information provided from the site maps will be used as part of our ongoing analysis of the petroleum infrastructure.

Demand for transportation fuels now exceeds the production capacity of in-state refineries, resulting in California's ever increasing reliance on imports to meet demand. The current production of in-state refineries is not projected to grow sufficiently to provide sufficient volumes of gasoline, diesel and jet fuel supplies. Historically, refineries have added some capacity. However, there is no information available that would allow the Energy Commission to accurately project future refinery production capacity. The flow diagrams and site maps will provide information that can be used to determine the possible increase of in-state refinery production capacity.

Flow diagrams and site maps also enable to the Energy Commission to identify potential crude oil or petroleum product distribution constraints and to provide more accurate and reliable analyses regarding potential impacts of expansion or elimination of specific petroleum infrastructure assets. New infrastructure to receive, store and distribute imported fuels will need to be planned, permitted and constructed to meet California's transportation fuel needs.

In addition, the Energy Commission has an unbroken record of maintaining the confidentiality of PIIRA data. In fact, there has not been a single breach of confidentiality at the Energy Commission from 1980 to present. The serious nature of handling and securing confidential data by staff, managers and supervisors is of the utmost concern to the Energy Commission.

8. Reporting Forms and Instructions

Comment:
One commenter asked that the forms and instructions be included in the rulemaking.

Response:
Government Code section 11340.9 excludes forms and instructions from rulemakings. However, the Energy Commission has made draft instructions and reporting forms available to the industry and addressed their comments and questions. The Energy Commission held workshops in March 2003 and April 2004 where it took comments and questions on the instructions and reporting forms. In September 2004, the Energy Commission distributed a revised set of instructions and reporting forms for review. Following the completion of this rulemaking, the Energy Commission will provide draft instructions and reporting forms for final comment.