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15 Attorneys for Petitioner and Plaintiff
16 California Fuels and Convenience Alliance

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19
20 FOR THE COUNTY OF SACRAMENTO

21 CALIFORNIA FUELS AND CONVENIENCE
22 ALLIANCE,

23 Petitioner and Plaintiff,

24 vs.

25 CALIFORNIA ENERGY COMMISSION;
26 DAVID HOCHSCHILD, in his capacity as
27 Commissioner of the California Energy
28 Commission

Respondents and Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

(CEQA CLAIM)

[Code Civ. Proc, §§ 1060, 1085; California
Administrative Procedure Act (“APA”), Gov.
Code, § 11340 *et seq.*; California Environmental
Quality Act, Pub. Res. Code §21000 *et seq.*,
 (“CEQA”)]

Petitioner and Plaintiff California Fuels and Convenience Alliance (“CFCA”) hereby
petitions this Court for a writ of mandate and complains for declaratory relief against Respondents
and Defendants California Energy Commission and David Hochschild, in his capacity as
Commissioner of the California Energy Commission (collectively, “CEC”), and by this Petition
alleges as follows:

INTRODUCTION

1. Petitioner seeks to set aside CEC’s Emergency Regulatory Action for Revised SB X1-2 Spot Market Reporting Requirements, No. 2024-0215-02E, approved by the Office of Administrative Law (“OAL”) on February 26, 2024 (the “Emergency Rule”). The Emergency Rule is ostensibly intended to implement Senate Bill X1-2 (“SB X1-2”), the California Gas Price Gouging and Transparency Law—a law intended to address price spikes and what Californians pay at the pump. In fact, the Emergency Rule is only going to make things worse.

2. Rammed through on an expedited basis without any reasonable opportunity for comment or discussion with industry, the Emergency Rule imposes obligations that are so burdensome and unreasonable that they inevitably will push participants out of the California transportation fuel market entirely. That will reduce supply and make consumers even more dependent on a dwindling number of in-state refineries.

3. CEC does not need to foist this experiment on the people of California to find out what will happen when the supply dries up. Even week-one Economics students know that supply reduction will *increase* prices.¹ That will only thwart the Legislature’s purpose in passing SB X1-2. Indeed, the legislative findings to SB X1-2 themselves recognize that lower gasoline inventory levels impose upward pressure on gasoline prices. Moreover, while the legislative findings focus on principally “refiner conduct” the Emergency Rule is heavily focused on expanding regulation over *non-refiners* and thus will discourage those entities from participating in the market.

4. As a result, the Emergency Rule will harm consumers generally, and it will especially harm individuals in rural areas, farms, and other small businesses that rely on independent retailers (who are more likely to purchase gasoline from the spot market). And the only way to make up for the reduction in supply will be for in-state refineries to increase production, which will have a reasonably foreseeable impact on the local environment.

¹ See, e.g., Stanford University, Economics 1A Syllabus (2009-2010) at 2 (available online at <https://web.stanford.edu/~johntayl/Econ%201%20Syllabus%20-%20Fall%20Qtr%202009-2010.pdf>) (last accessed March 25, 2024).

1 5. CEC, however, took none of this into account when promulgating its Emergency
2 Rule. By invoking the emergency rulemaking process under the California Administrative
3 Procedure Act (“APA”), CEC significantly truncated any opportunity for the agency to receive the
4 type of constructive input that would have allowed it to see these problems and to plan around
5 them to safeguard Californians. Notwithstanding a very short comment period (five days over a
6 holiday weekend), CEC nonetheless received a large volume of comments warning about the
7 effects on the market (including from CFCA) and asking CEC to slow down and consult with the
8 industry and interested parties before proceeding. Yet CEC brushed aside those concerns and
9 barged forward. In the same way, CEC also declined to consider or conduct any form of
10 environmental review, wrongly contending that its actions are exempt from the requirements of
11 the California Environmental Quality Act, Pub. Res. Code §21000 *et seq* (“CEQA”).

12 6. Accordingly, CFCA now brings this petition for traditional writ of mandamus,
13 violation of the APA, and violation of CEQA, seeking a writ of mandate and/or order for
14 declaratory relief to set aside the Emergency Rule. In addition, the daily reporting requirements
15 required by Emergency Rule and/or SB X1-2 itself violate the Dormant Commerce Clause
16 because they unduly burden interstate commerce and will have the discriminatory effect of driving
17 importers and out-of-state companies out of the California transportation fuel market.

18 **JURISDICTION AND VENUE**

19 7. This Court has jurisdiction over this proceeding pursuant to the California
20 Constitution, Article VI, Section 10; Code of Civil Procedure Section 1085; and Public Resources
21 Code Section 21168.9.

22 8. Venue is proper in this Court pursuant to section 393 of the California Code of Civil
23 Procedure because CEC’s principal offices are located in Sacramento, California.

24 9. CFCA provided written notice of its intention to commence this action to
25 Respondents, in compliance with Public Resources Code Section 21167.5. A copy of that notice
26 and proof of service is attached hereto as Exhibit A.

27 10. CFCA will serve the Attorney General with a copy of this Petition, along with a
28 notice of its filing, upon filing in compliance with Public Resources Code Section 21167.7.

11. Concurrent with the filing of this Petition, CFCA filed a notice requesting that Respondent CEC prepare the administrative record for this action, in accordance with Public Resources Code Section 21167.6(a). A copy of that notice is attached hereto as Exhibit B.

12. CFCA satisfied all requirements to bring this timely action, including exhaustion of administrative remedies and providing timely written comments to CEC, attached hereto as Exhibit C.

PARTIES

13. Petitioner and Plaintiff CFCA is a trade association headquartered in Sacramento, California. CFCA represents about 300 members, including nearly 90% of all the independent petroleum marketers in the state and more than half of the state's 12,000 convenience retailers. CFCA's members are small, family- and minority-owned businesses that provide services to nearly every family in California. CFCA members fuel local governments, law enforcement, city and county fire departments, ambulances and emergency vehicles, school district bus fleets, construction firms, marinas, public and private transit companies, hospital emergency generators, trucking fleets, independent fuel retailers (small chains and mom-and-pop gas stations) and California agriculture, among many others. CFCA's independent petroleum marketers play an important role in the California transportation fuels market by providing an alternative to refinery-direct sales in order to maintain competitive prices, especially in markets away from major refining hubs around San Francisco and Los Angeles.

14. CFCA's independent petroleum marketers play a critical role by supplying independent gas stations, many of whom are also members of CFCA, and that are especially prevalent in undersupplied areas, particularly those in rural and disadvantaged urban areas. Branded gas stations are less likely to service these markets. By way of background, large refineries are contractually bound to supply their branded gas stations first. As a result, when supplies are low, independent gas stations cannot turn to refineries for supply. Instead, they must turn to independent petroleum marketers during such shortages.

15. CEC's onerous and extra-statutory requirements imposed through the Emergency Rule threaten to disrupt the gasoline supply balance by driving independent marketers out of

1 market. The regulatory requirement that best reveals this is the requirement that regulated entities
2 report on transactions by *9:00 AM the day after a transaction takes place*. Cal. Cod. Regs. tit. 20,
3 § 1364(a). So, if a transaction takes place at 5:00 PM on a Monday, the regulated entity is required
4 to have one or more employees prepare a report *over night* for delivery *before business hours* the
5 next day. Perhaps most shocking of all, CEC only unveiled this 9:00 AM deadline at the last
6 moment. Prior to that, CEC had at least proposed a rule that gave regulated parties until 5:00 PM
7 to complete reports. But CEC’s overnight report preparation mandate is not the only arbitrary,
8 capricious, and unreasonable part of the Emergency Regulations. The regulations also require
9 unnecessarily duplicative reporting and impose reporting fields that do not align with how
10 transactions are actually processed and structured. These unreasonable and unnecessary burdens
11 threaten CFCA members’ participation in the California fuel market. CFCA has an interest in the
12 lawful and effective regulation of the California fuel market generally, and in the continued
13 economic viability of fuel reselling in California. This interest would be frustrated, and the
14 industry placed at serious risk, without intervention from the Court.

15 16. CFCA participated in the limited rulemaking proceeding for the Emergency Rule via
16 its submission of a comment letter on February 12, 2024.

17 **GENERAL ALLEGATIONS**

18 **A. SB X1-2**

19 17. SB X1-2 was signed into law in March 2023, following a special legislative session
20 called by Governor Newsom months earlier. Prompted by retail gasoline price spikes in the fall of
21 2022, SB X1-2 increased CEC’s oversight and control of the liquid transportation fuels market
22 and establishes a framework for CEC to impose refinery maintenance and downtime requirements,
23 monthly reporting of liquid transportation fuel sales and profits. SB X1-2 also established CEC’s
24 Division of Petroleum Market Oversight (“DPMO”) to monitor and regulate market transactions.

25 18. According to the legislative findings, much of the gasoline price increases
26 experienced in fall 2022 “was caused by refiners, which increased the costs and profits they added
27 to the price California consumers paid at the pump.” (SB X1-2, sec. 1(b).) The legislative findings
28 further state that, “[d]uring this same period of time, refiners allowed gasoline inventory levels to

1 reach decade-low levels, placing an upward pressure on gasoline prices.” (SB X-12, sec. 1(d).)
2 The findings conclude by asserting that “[f]undamental change is necessary to prevent future
3 extreme price spikes and price gouging by oil companies, which are entitled to a reasonable return
4 but are not entitled to reap exorbitant profits at the expense of Californians, many of whom rely on
5 gasoline as an essential commodity or who are impacted by the increased cost of goods and
6 services that results from the gasoline price spikes” (SB X-12, sec. 1(i).)

7 19. As pertinent here, SB X1-2 also created a daily reporting requirement for spot
8 market transactions, *i.e.*, transactions in which transportation petroleum products are purchased
9 “on the spot” (e.g., at the pipeline or from a cargo ship) for near-term delivery to the “racks” that
10 then supply retailers and others who provide the gasoline to the ultimate consumer. Spot market
11 participants include refiners, fuel importers, and independent petroleum marketers, as well as
12 others. Prior to passage of SB X1-2, petroleum refiners in the state were required to provide
13 monthly reports on refining activities. Pub. Res. Code § 25354. SB X1-2 added additional
14 reporting requirements, including a requirement that “refiners and nonrefiners that consummate
15 spot market transactions to submit a daily report to the commission containing certain information
16 for each transaction occurring in the preceding day.” (Pub. Res. Code, § 25354, subd. (l).) As
17 amended, the statute identifies the categories of information to be included in the daily reports. SB
18 X1-2 further provides that, “[a]lthough the commission may adopt regulations to further define
19 terms or prescribe reporting procedures ..., the provisions of this chapter are self-executing and
20 shall not require any implementing regulation to be effective.” (Pub. Res. Code, § 25367, subd.
21 (a).

22 **B. CEC’s Emergency Rule and Objections Thereto**

23 20. On February 6, 2024, CEC released its first draft of the proposed Emergency Rule.
24 See “Notice of Proposed Emergency Action – Spot Transactions,” Docket No. 23-OIR-03, TN #
25 254351. CEC then issued a revised draft on February 7, 2024. See “Notice of Proposed
26 Emergency Action and Express Terms – Spot Market Reporting Requirements,” Docket No. 23-
27 OIR-03, TN # 254368. CEC submitted the proposed Emergency Rule to OAL on February 15,
28

2024 and provided for an abridged, five-day public comment period. Three days of that abridged comment period fell on a holiday weekend.

21. Despite the abridged comment period, numerous individuals, businesses, and entities submitted comments in opposition to the rule. CFCA submitted a comment letter on February 12, 2024, attached hereto as Exhibit C. Numerous other interest parties submitted comment letters objecting to the Emergency Rule, raising concern about the impact on the market, and asking CEC to take a more considered approach. Such comments came from, among others, numerous individual small business owners, the American Petroleum and Convenience Store Association, the California Delivery Association, and the Western States Petroleum Association. The objections stated by CFCA and all other interested parties are incorporated by reference as if fully stated herein.

22. By way of illustration, the following summarizes how CEC's Emergency Rule deviated from, and far exceeded, the statute in numerous ways that have significantly increased the burden of complying with the statute. The following are examples.

23. **Unreasonable 9:00 am deadline combined with additional field reporting.** While SB X1-2 requires a daily report for transactions occurring the preceding day, the statute does not establish a specific time or deadline for submitting the reports. In the initial version, the regulation issued on February 6, 2024, CEC set the deadline to report at 5:00 p.m. the following day, essentially giving entities a full business day to prepare their reports. But on February 7, 2024, CEC abruptly changed the deadline to 9:00 a.m., obviously without consulting the industry about the proposed deadline. This requirement is extremely burdensome. Under the Emergency Rule, an entity must provide a "daily transactions report" that includes 32 separate fields for initiated transactions, and it must later submit a second "daily settlement report" with 24 separate fields for each transaction once the transaction is settled. *See* Emergency Rule, Appendix D.I & II.

24. Those fields, and the required detail, go beyond what the statute requires. Moreover, this reporting is not the kind of task that is automated. In some instances, the fields and definitions imposed by the Emergency Rule are not equivalent to how transactions are recorded in entities' systems, which creates a substantial risk of reporting errors. In other cases, the reporting fields

1 will require collecting extrinsic information that may not be reflected in the contract or order
2 memorializing the transaction. Indeed, in many cases it will be impossible for the reporting entity
3 to obtain the required information in time for a 9:00 a.m. deadline. Even where information is
4 available or can be collected, for many entities, there will be no way to comply with that deadline
5 without hiring staff dedicated just to CEC reporting or requiring existing personnel to work
6 overtime or special graveyard shifts. While some large entities or refineries may have the staff and
7 existing resources to comply, many will not or will not be willing to bear the additional costs,
8 creating an incentive for those individual and entities to leave the market.

9 **25. Duplicative reporting from an expanded universe of reporting entities.**

10 Although SB X1-2 requires daily reporting from “refiners and nonrefiners,” it does not define
11 “nonrefiners,” nor does it require that *each* party to a transaction file a report (as opposed to
12 ensuring that at least one party reports each transaction). The Emergency Rule, in contrast, adopts
13 a broad interpretation of “nonrefiner” that includes newly defined terms (“brokers” and “traders,”
14 including those who never physically hold the commodity), and it requires that *every* party to a
15 transaction submit its own report. Thus, small trading firms must create and submit their reports
16 even if the transaction is already being reported by the refinery or an institutional broker.

17 26. Moreover, the definitions of broker and trader are not limited by geography or the
18 volume of transactions conducted in California. Thus, for example, if a New York broker or
19 Nevada reseller engages in a single transaction occurring at a California pipeline, they will have to
20 learn and comply with California’s daily reporting requirements, even if other more regular
21 California participants are already reporting the same transaction. Indeed, according to CEC’s
22 regulatory definitions and response to comments, while the reporting requirements do not apply to
23 transactions occurring *wholly* outside of California, they are intended to apply to transactions for
24 delivery of transportation fuels *to other states*, if the spot market transaction occurs at a California
25 pipeline.

26 27. The problems identified above—including the 9:00 am deadline and extra-statutory
27 reporting requirements—are compounding and undermine the statute’s purpose. These
28 requirements will cause independent marketers to quit the market, squeezing out smaller market

1 participants in favor of bigger companies and refineries. No one is going to participate in the
2 California transportation fuel market if they have the option of transacting business elsewhere.
3 That will restrict imports, which are especially critical to combat price spikes during refinery
4 shutdowns or seasonal transitions when gasoline supply is lower. Contraction of the spot market
5 also threatens the survival of independent gas stations and sellers in rural areas, harming already-
6 underserved populations who will have to travel farther to fill up their tanks.

7 28. Indeed, the market *has already begun shirking* in response to the uncertainty and
8 burdens created by CEC's rulemaking, and shrinking the market will have the *opposite* effect of
9 what SB X1-2 seeks to accomplish. Decreased inventory from independent marketers would also
10 require increased refinery production and an increase in truck traffic delivering fuel. These, and
11 other outcomes of the Emergency Rule, will increase greenhouse gas emissions, traffic, and noise
12 while reducing air quality, all while costing consumers more in the process.

13 29. Notwithstanding opposition to the Emergency Rule from CFCA and other industry
14 participants, OAL approved the Emergency Rule on February 26, 2024 and adopted the
15 underlying regulations, which are codified in CEC's implementing regulations set forth in 20 Cal.
16 Cod. Reg. § 1361 *et seq.* See OAL File No. 2024-0215-02E, Exhibit D.

17 30. On February 28, 2024, CEC published on its docket a CEC Reply to Comments,
18 attached hereto as Exhibit E. The next day, CEC published the Combined Marked Comments (i.e.,
19 the comment letters with annotated noted), attached hereto as Exhibit F.

20 31. Separately, on February 20, 2024, CEC submitted a Notice of Exemption ("NOE")
21 from CEQA requirements to the Office of Planning Research ("OPR"). OPR subsequently posted
22 this NOE on its website. See Exhibit G.

23 32. Notwithstanding its purported attempt to respond to the comments and objections,
24 CEC never adequately addressed the administrative burdens of complying with the Emergency
25 Rule, or the impact on the market, consumers, and the environment if participants ultimately cease
26 trading on the California spot market altogether.

27 33. Even if acting under the guise of an emergency rulemaking, CEC cannot shirk its
28 obligations under the APA or CEQA and ignore the economic and environmental consequences of

1 its regulatory actions. The requirements at issue also violate the Dormant Commerce Clause
2 insofar as they impose an undue burden and/or have a discriminatory effect on interstate
3 commerce.

4 **FIRST CAUSE OF ACTION**

5 **Declaratory Relief (Code Civ. Proc., § 1060; Gov. Code, § 11350)**

6 34. CFCA re-alleges and incorporates herein by reference the allegations of all
7 foregoing paragraphs.

8 35. The APA provides that “[a]ny interested [party] may obtain a judicial declaration as
9 to the validity of any regulation . . . by bringing an action for declaratory relief in the superior
10 court in accordance with the Code of Civil Procedure.” Gov. Code, § 11350(a). The APA further
11 defines “regulation” broadly to include “every rule, regulation, order, or standard of general
12 application or the amendment, supplement, or revision of any rule, regulation, order, or standard
13 adopted by any state agency to implement, interpret, or make specific the law enforced or
14 administered by it, or to govern its procedure.” Gov. Code, § 11342.600.

15 36. A regulation or order may be declared invalid if the “agency’s determination that the
16 regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other
17 provision of law that is being implemented, interpreted, or made specific by the regulation is not
18 supported by substantial evidence,” Gov. Code, § 11350(b)(1), or if the regulation is arbitrary and
19 capricious.

20 37. Here, the Emergency Rule is arbitrary, capricious, and irrational in numerous
21 separate and independent ways, including but not limited to the following:

- 22 • The imposition of the arbitrary and unreasonable 9:00 a.m. deadline;
- 23 • Expanded fields for reporting beyond those required by the statute, including
24 requiring separate transaction and settlement reports;
- 25 • Expanding the scope of reporting entities and in a manner that, among other things,
26 will produce duplicative and unnecessary reporting;

- Imposing a deadline and reporting requirements that, particularly in combination, will be impossible for many entities to comply with, which violates the rule that the “law never requires impossibilities” (Civ. Code, § 3531);
- Failing to consider the practical and economic impact of the Emergency Rule, including likely contraction of the California market;
- Failing to consult with industry or provide reasonable notice and an opportunity for comment prior to finalizing the Emergency Rule;
- Failing to consider whether other, less burdensome means would satisfy the statutory purpose;
- Failing to consider that its rules disproportionately burden small entities, individually-run firms, and rural areas, while favoring larger companies and in-state refineries.

38. In addition to the foregoing, on information and belief, CEC’s Notice of Proposed Rulemaking failed to “identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies.” Gov. Code § 11346.1(b)(2). This requirement of the APA is critical because it goes directly to a court’s ability to review the regulation and to the public’s ability to understand and address the agency’s justification. Here, and among other things, the Notice of Proposed Rulemaking stated that CEC developed the specific reporting requirements “through internal analyses and engagement with the industry,” but no such documents were identified in the Notice. CEC also vaguely alluded to “unusual transaction on the gasoline spot market” as a reason for the “enhanced reported requirements implemented through this rulemaking,” but it failed to provide or cite to any detailed analysis of that transaction. In the alternative, to the extent CEC stands by its representation that it did not rely on any analyses besides those cited in the Notice, then that confirms that the adoption of the Emergency Rule was arbitrary and capricious and lacked sufficient consideration.

39. CEC has also failed to explain in any detail how it proposes to analyze the large volume of reports provided and what it plans on doing with the information. That explanation would important to understand key aspects of the Emergency Rule, including, for example, why

1 the 9:00 a.m. deadline is necessary (e.g., whether CEC actually has the resources to analyze such
2 reports immediately as they come), and whether the Notice of Proposed Rulemaking was accurate
3 in stating that CEC “does not anticipate any costs to itself or other state agencies as a result of this
4 emergency rulemaking action.”

5 40. For the foregoing reasons and those stated in the objections and comment letter
6 submitted to CEC and OAL, the Emergency Rule should be declared invalid.

7 **SECOND CAUSE OF ACTION**

8 **Violation of CEQA (Pub. Res. Code § 21000 et seq.)**

9 41. CFCA re-alleges and incorporates herein by reference the allegations of all
10 foregoing paragraphs.

11 42. CEQA and the State CEQA Guidelines, 14 Cal. Code Regs., §§ 15000 *et seq.*
12 (“CEQA Guidelines”) require public agencies to evaluate and, if feasible, avoid or mitigate
13 potentially significant environmental impacts from public projects that they propose to carry out
14 or approve. *See* CEQA § 21002.1; CEQA Guidelines § 15002(a). CEQA defines a project as an
15 action “which has a potential for resulting in either a direct physical change in the environment, or
16 a reasonably foreseeable indirect physical change in the environment.” 14 Cal. Code Regs §
17 15378(a). CEQA “embodies a central state policy to require state and local governmental entities
18 to perform their duties,” including for projects undertaken by the agency itself. *Union of Med.*
19 *Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184-85 (internal citations
20 and quotations omitted). The adoption of regulations, including emergency regulations, is subject
21 to CEQA.

22 43. As set forth in its NOE, CEC contends that the Emergency Rule is not a “project”
23 subject to CEQA because the proposed rulemaking relates to an informational reporting
24 requirement and does not result in any direct physical change in the environment, or a reasonably
25 foreseeable indirect physical change in the environment.

26 44. CEC cites two bases for exemption. First, CEC invokes the categorical exemption
27 for certain classes of projects that have already been determined not to have a significant effect on
28 the environment. Cal. Pub. Res. Code § 21084. Exemption Class 6, covering “Information

Collection,” exempts “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.” 14 Cal. Code Regs. § 15306. Second, CEC invokes what is commonly referred to as the “common sense” exemption. A project is exempt from CEQA if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” 15 Cal. Code Regs. § 15061(b)(3).

45. The two exemptions CEC invoked are inapplicable. First, the categorical exemption does not apply because CEC’s daily reporting requirements are far more onerous and intrusive than the “basic data collection” contemplated by this exemption. Second, the common sense exemption does not apply because it is far from certain that there is no possibility that the activity in question may have a significant effect on the environment. Quite the opposite – the Emergency Rule imposes significant burdens above and beyond SB X1-2, which are likely to push participants out of the spot market and limit the supply of gasoline. This, in turn, creates a probability of a reasonably foreseeable indirect physical change in the environment due to, among other things, in-state refineries needing to increase local production; and/or the impact on independent gasoline retailers and businesses and consumers needing to drive further (particularly in rural areas).

46. For all the reasons alleged herein, the Emergency Rule is a “project” under CEQA, and CEC impermissibly failed to conduct the requisite environmental review and improperly relied on two exemptions from CEQA.

47. By failing to conduct an environmental review as required by CEQA, CEC committed a prejudicial abuse of discretion, failed to proceed in the manner required by law, and failed to support its actions with substantial evidence. CEQA § 21168.5.

1 **THIRD CAUSE OF ACTION**

2 **Writ of Mandate (Cal. Civ. Proc. § 1085)**

3 48. CFCA re-alleges and incorporates herein by reference the allegations of all forgoing
4 paragraphs.

5 49. When an agency imposes requirements on regulated entities, it must provide
6 reasoned decision-making in order to ensure that the requirements are reasonable and in
7 furtherance of the agency's underlying statutory mandate.

8 50. CEC failed to fully evaluate the impacts and burdens associated with the Emergency
9 Rule, including but not limited to the 9:00 a.m. daily spot market transaction reporting
10 requirement and other reporting requirements described above. CEC also failed to consider
11 whether those impacts and burdens are reasonable and necessary and whether they would
12 undermine, rather than help, the statutory purpose of SB X1-2. It is arbitrary and capricious to
13 ignore such matters.

14 51. CFCA is beneficially interested in this challenge to the legality of the Emergency
15 Rule, which will impose significant costs and impacts on the California spot market that are likely
16 to reduce supply, increase costs and, in turn, have detrimental environmental impacts on the State.

17 52. CFCA seeks a writ of mandate compelling CEC to set aside and vacate the
18 Emergency Rulemaking.

19 53. CFCA has no plain and speedy or adequate remedy at law other than the relief
20 sought herein, and will be irreparably harmed if the Emergency Regulation is allowed to go into
21 effect.

22 **FOURTH CAUSE OF ACTION**

23 **Violation of Dormant Commerce Clause (U.S. Const. art. I, sec. 8)**

24 54. CFCA re-alleges and incorporates herein by reference the allegations of all forgoing
25 paragraphs.

26 55. The Commerce Clause of the United States Constitution, article I, section 8, clause
27 3, grants Congress the power to regulate commerce with foreign nations and among states, and by
28 implication the Commerce Clause limits a state's power to enact laws or regulations that

1 unjustifiably discriminate against or burden interstate commerce. Under the Dormant Commerce
2 Clause, a state law will be subject to strict scrutiny and may be deemed invalid if it (1) facially
3 discriminates against out-of-state companies, (2) has a discriminatory purpose, or (3) *has a*
4 *discriminatory effect*.

5 56. Here, the Emergency Rule and/or SB X1-2 itself have a discriminatory effect. While
6 the daily reporting requirements apply to both refiners and nonrefiners, the reporting requirements
7 are so burdensome and unprecedented that their effect will be to drive out-of-state companies out
8 of the California market and reduce transportation fuel imports, leaving predominantly in-state
9 refiners. Moreover, the requirements cannot survive heightened scrutiny because there are less
10 intrusive and less burdensome means to accomplish the Legislature's stated purpose.

11 57. In addition, the requirements unduly burden interstate commerce, including fuel
12 imports and transactions for delivery of transportation fuels to other States. Those burdens are
13 clearly excessive compared to the state's legitimate interest, which can be accomplished through
14 other means.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, CFCA prays for entry of judgments as follows:

17 58. A judicial declaration, as alleged herein, that CEC failed to comply with the APA in
18 promulgating the Emergency Rule.

19 59. For the issuance of a peremptory writ of mandate directing CEC to comply with
20 CEQA, the CEQA Guidelines, and to take any other action required by law.

21 60. For the issuance of a peremptory writ of mandate pursuant to Cal. Code Civ. Proc.
22 § 1085 directing CEC to refrain from enforcing, and to set aside and vacate, the Emergency Rule.

23 61. For a declaration that the daily reporting requirements imposed by the Emergency
24 Rule and/or SB X1-2 violate the Dormant Commerce Clause and as such are null and void.

25 62. For costs of suit.

26 63. For attorneys' fees as authorized by Code of Civil Procedure § 1021.5 and any other
27 applicable law.


28 64. For such other relief as the Court deems just and proper.

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DATED: March 26, 2024

Respectfully Submitted

SIDLEY AUSTIN LLP

By:  _____
David R. Carpenter

Attorneys for CALIFORNIA FUELS AND
CONVENIENCE ALLIANCE

VERIFICATION

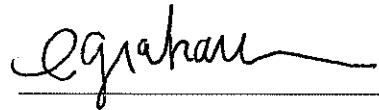
I, Elizabeth Graham, declare under penalty of perjury that:

I am the Chief Executive Officer of the California Fuels and Convenience Alliance
("CFCA"). I am authorized to make this verification on behalf of the CFCA.

I have read CFCA's Verified Petition for Writ of Mandate and Complaint for Declaratory
Relief. The matters stated within are true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing
is true and correct.

Executed on March 26th, 2024, in Sacramento, California.

A handwritten signature in cursive script, appearing to read "Elizabeth Graham", written over a horizontal line.

Elizabeth Graham

EXHIBIT A



SIDLEY AUSTIN LLP
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DRCARPENTER@SIDLEY.COM

March 26, 2024

By Overnight Mail and Email

David Hochschild
California Energy Commission
715 P Street
Sacramento, CA 95814
Chair.Hochschild@energy.ca.gov

Re: California Fuels and Convenience Alliance v. California Energy Commission, et al. – Notice of Commencement of Petition for Writ of Mandate

Dear Mr. Hochschild:

This letter is to notify you that the California Fuels and Convenience Alliance (“CFCA”) will file suit against the California Energy Commission (“CEC”) for failing to observe the requirements of the California Environmental Quality Act (“CEQA”) (Pub. Res. Code §§ 21000 *et seq.*), the State CEQA Guidelines (14 Cal. Code Regs., §§ 15000 *et seq.*), the California Administrative Procedure Act (“APA”) (Gov. Code §§ 11340 *et seq.*), and other provisions of California law in the administrative process that culminated in CEC’s adoption of emergency regulations on February 26th to amend Title 20, California Code of Regulations, Sections 1363.2, 1364, 1366 and to adopt sections Article 3, Appendix D to implement the spot market reporting requirements in Public Resources Code, section 25354(I). This notice is given pursuant to Public Resources Code section 21167.5.

Sincerely,

David R. Carpenter
Partner

Clarke, Rhonda

From: Clarke, Rhonda
Sent: Tuesday, March 26, 2024 4:08 PM
To: 'Chair.Hochschild@energy.ca.gov'
Cc: Carpenter, David R. (LA Partner)
Subject: CEC - Notice of Commencement of Petition of Writ of Mandate
Attachments: Letter to CEC re Notice of Commencement of Petition for Writ of Mandate.pdf

Dear Mr. Hochschild –

Please see the attached letter regarding a Notice of Commencement of Petition for Writ of Mandate.

Thank you,

RHONDA CLARKE
Legal Secretary

SIDLEY AUSTIN LLP
350 S. Grand Avenue
Los Angeles, CA 90071
+1 213 896 6716
rclarke@sidley.com
www.sidley.com

SIDLEY

ORIGIN ID:JBPA (213) 896-6000 DAVID R. CARPENTER SIDLEY AUSTIN LLP 350 S GRAND AVE.		SHIP DATE: 26MAR24 ACTWGT: 0.50 LB CAD: 253877961/WVSX13600	
LOS ANGELES, CA 90071 UNITED STATES US		BILL SENDER	
TO DAVID HOCHSCHILD CALIFORNIA ENERGY COMMISSION 715 P ST			
SACRAMENTO CA 95814			
(916) 654-4287 INV: PO:		REF: 072338 10030 40592 DEPT:	
			
			
REL# 3785346			
TRK# 0201		2726 6311 1657	
WED - 27 MAR 10:30A		PRIORITY OVERNIGHT	
WD BLUA		95814 CA-US SMF	
			

583.1265389/AE3

FOLD on this line and place in shipping pouch with bar code and delivery address visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

Legal Terms and Conditions

Tendering packages by using this system constitutes your agreement to the service conditions for the transportation of your shipments as found in the applicable FedEx Service Guide, available upon request. FedEx will not be responsible for any claim in excess of the applicable declared value, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the applicable FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of 100 USD or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is 500 USD, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see applicable FedEx Service Guide. FedEx will not be liable for loss or damage to prohibited items in any event or for your acts or omissions, including, without limitation, improper or insufficient packaging, securing, marking or addressing, or the acts or omissions of the recipient or anyone else with an interest in the package. See the applicable FedEx Service Guide for complete terms and conditions. To obtain information regarding how to file a claim or to obtain a Service Guide, please call 1-800-GO-FEDEX (1-800-463-3339).

EXHIBIT B

1 Maureen F. Gorsen (SBN 170158)
2 maureen.gorsen@sidley.com
3 SIDLEY AUSTIN LLP
4 1999 Avenue of the Stars
5 Los Angeles, CA 90067
6 Telephone: +1 310 595 9644
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8 David R. Carpenter (SBN 230299)
9 drcarpenter@sidley.com
10 SIDLEY AUSTIN LLP
11 350 S. Grand Avenue
12 Los Angeles, CA 90071
13 Telephone: +1 213 896 6000
14 Facsimile: +1 213 896 6600

15 Attorneys for Petitioner and Plaintiff
16 CALIFORNIA FUELS AND CONVENIENCE
17 ALLIANCE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CALIFORNIA FUELS and CONVENIENCE
ALLIANCE,

Petitioner and Plaintiff,

vs.

CALIFORNIA ENERGY COMMISSION;
DAVID HOCHSCHILD, in his capacity as Staff
Counsel of the California Energy Commission,

Respondents and Defendants.

Case No.

**NOTICE OF REQUEST TO PREPARE
THE ADMINISTRATIVE RECORD**

[Public Resources Code, § 21167.6(a)]


1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to Public Resources Code, § 21167.6(a), Petitioner
3 and Plaintiff herein request that Respondents and Defendants California Energy Commission and
4 David Hochschild prepare the record of proceedings in the above-entitled action.

5
6 DATED: March 26, 2024

Respectfully Submitted,

7 SIDLEY AUSTIN LLP

8 By: 
9 David R. Carpenter

10 *Attorney for Petitioner and Plaintiff*
11 CALIFORNIA FUELS AND
12 CONVENIENCE ALLIANCE
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EXHIBIT C



California Fuels and Convenience Alliance

2520 Venture Oaks Way, Suite 100

Sacramento, CA 95833

916.646.5999

February 12, 2024

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

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

The California Fuels and Convenience Alliance (CFCA) represents about 300 members, including nearly 90% of all the independent petroleum marketers in the state and more than one half of the state's 12,000 convenience retailers. Our members are small, family- and minority-owned businesses that provide services to nearly every family in California. Additionally, CFCA members fuel local governments, law enforcement, city and county fire departments, ambulances/emergency vehicles, school district bus fleets, construction firms, marinas, public and private transit companies, hospital emergency generators, trucking fleets, independent fuel retailers (small chains and mom-and-pop gas stations) and California agriculture, among many others.

The CFCA has significant concerns with the proposed emergency action on spot market reporting, as currently drafted. While we understand the Commission's intent to enhance transparency and market oversight, we believe that the proposed changes impose an undue burden on market participants, jeopardizing the efficiency and integrity of the fuel market.

EXCESSIVE REPORTING BURDEN

The proposed reporting requirements significantly expand the burden on market participants. Requiring transactions to be reported both at consummation and settlement, along with an increased scope of transactions, places an unnecessary strain on industry resources. Many of the transactions mandated for reporting do not align with the criteria used by OPIS in setting the index price, rendering them irrelevant for market transparency. Requiring double reporting for each transaction adds unnecessary redundancy to existing reporting processes. The current reporting mechanisms, when coupled with the proposed changes, may result in excessive and repetitive information, without commensurate benefits in terms of market oversight.

IMPACT ON COMPETITION AND MARKET DYNAMICS

The increased reporting burden may disproportionately affect smaller market participants, potentially hindering competition. The added administrative complexities could lead to market inefficiencies and hinder the fluidity of transactions, ultimately impacting fuel prices and availability for consumers.

POTENTIAL FOR MARKET MANIPULATION BY FOREIGN IMPORTERS

The proposed changes raise significant concerns about the potential for market manipulation by foreign importers. With the increased reporting requirements, there is an elevated risk that foreign entities may

exploit the system to strategically influence market dynamics. For example, these entities might engage in reporting practices that create false market signals, giving them an unfair advantage in price negotiations and ultimately driving up prices for consumers.

Such manipulative actions could distort the competitive landscape, unfairly favoring certain market participants and disadvantaging others. It is crucial to consider the global nature of the fuel market and the possibility that foreign importers may exploit reporting requirements to gain an undue upper hand, leading to adverse consequences for businesses and consumers alike.

UNKNOWN INFORMATION FIELDS

Several new information fields added to the report may not be known at the time of reporting. For instance, vessel names or numbers may not be available immediately upon completion of a transaction. Participants are compelled to report "unknown," introducing the risk of non-compliance for information beyond their control.

MANUAL PROCESSES AND STAFFING

A substantial number of the new information fields are not maintained in industry participants' transaction systems. This necessitates manual processes, leading to errors and late reporting. Extracting information like the name of the scheduler and nominated times from scattered communications is not only burdensome but also irrelevant to OPIS price information.

INSUFFICIENT TIME FOR IMPLEMENTATION

The Commission should consider delaying the implementation of the new reporting forms by at least 120 days. This would allow industry participants to hire additional staff, reprogram transaction systems, and automate the extraction of required information. Without such relief, there is a high risk of reporting erroneous and incomplete information due to the expedited implementation.

In conclusion, we urge the California Energy Commission to reconsider the proposed emergency action on spot market reporting requirements. We believe that a collaborative approach, involving stakeholders and allowing for a reasonable transition period, will better achieve the Commission's goals without unduly burdening market participants.

If you have any questions, please contact Alessandra Magnasco at alessandra@cfca.energy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alessandra Magnasco', with a stylized, cursive script.

Alessandra Magnasco
Governmental Affairs & Regulatory Director

EXHIBIT D

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 #:	254725
Document Title:	Notice of Approval of Emergency Regulatory Action for Revised SB X1-2 Spot Market Reporting Requirements
Description:	N/A
Filer:	Andrea Baley
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/28/2024 3:41:17 PM
Docketed Date:	2/28/2024

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections: Article 3, Appendix D

Amend sections: 1363.2, 1364, 1366

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2024-0215-02

OAL Matter Type: Emergency (E)

This emergency rulemaking action by the California Energy Commission adopts regulations to implement the spot market reporting requirements in Public Resources Code, section 25354(l). These regulations are deemed an emergency by Public Resources Code, section 25367(a).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/26/2024 and will expire on 2/27/2026. The Certificate of Compliance for this action is due no later than 2/26/2026.

Date: February 26, 2024



**Kevin D. Hull
Senior Attorney**

For: Kenneth J. Pogue
Director

Original: Drew Bohan, Executive
Director

Copy: Chad Oliver

NOTICE PUBLICATION/REGULATORY ACTION SUBMISSION

STD. 400 (REV. 10/2019)

EMERGENCY

For use by Secretary of State only

OAL FILE
NUMBERSNOTICE FILE NUMBER
Z-

REGULATORY ACTION NUMBER

2024-0215-02E

EMERGENCY NUMBER

ENDORSED - FILED
in the office of the Secretary of State
of the State of California**FEB 26 2024****1:47 PM**

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2024 FEB 15 PM 3:45

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Energy CommissionAGENCY FILE NUMBER (If any)
23-OIR-03**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Revised SB X1-2 Spot Market Reporting Requirements		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT Article 3, Appendix D	
		AMEND 1363.2, 1364, 1366	
TITLE(S) 20		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only			
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Chad Oliver		TELEPHONE NUMBER (916) 891-8569	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) chad.oliver@energy.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Drew Bohan

DATE

2/15/2024

TYPED NAME AND TITLE OF SIGNATORY

Drew Bohan

Executive Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED**FEB 26 2024****Office of Administrative Law**

§ 1363.2. Definitions: Specific Definitions for Purposes of Reporting Requirements.

"1/1/1" means a pricing window associated with the loading or discharge of a marine vessel that is benchmarked to a published reference price (such as OPIS prompt spot LA CARBOB Regular) the business day before, business day of, and business day after title transfer has commenced.

"3-Day Wrap" means a pricing window associated with the pumping of a pipeline tender that is benchmarked to a published reference price (such as OPIS prompt spot LA CARBOB Regular) the business day before, business day of, and business day after the pumping of the tender has commenced.

"Adjusted Dealer Tank Wagon (ADTW)" means the delivered wholesale transaction price for gasoline transported by tanker truck to a retail dealer or franchisee that has been adjusted to reflect the "net cost" to the retail dealer or franchisee such that all rebates or other discounts are subtracted from the original dealer tank wagon (DTW) price to reflect the net cost of the gasoline to the retail dealer or franchisee.

"Airport retail fuel outlet" refers to a facility that stores and dispenses petroleum products, typically jet fuel and aviation gasoline for use in private and/or commercial aircraft. Airport refueling operations that provide refueling services to military aircraft are excluded from this definition.

"API" means the American Petroleum Institute.

"Average Throughput" means the liquid volume transported by a pipeline during a specific period divided by the number of days in that period.

"Barrel" means a unit of liquid measurement that consists of 42 U.S. gallons.

"Book Transfer" means the completion of a spot market purchase or sale obligation without a physical movement or title transfer of the product as a result of two parties having purchase and sale contracts that serve to offset each other, directly or in a contractual chain with other parties.

"Bulk Terminal" means a storage and distribution facility not open to the public that is used primarily for wholesale marketing of petroleum products and oxygenates with a minimum storage capacity of 50,000 barrels.

"Broker" means an entity that negotiates contracts of purchase and sale of spot market transactions that is not classified as a refiner or a trader.

"Bunkering" means the physical transfer of marine fuels from one marine vessel to another marine vessel.

"CARB" means the California Air Resources Board.

"Cardlock Retail Fuel Outlet" means a facility, normally unattended by any operator, that dispenses refined petroleum products to consumers as a sole or predominant activity of their business operation.

"CEC" means the California State Energy Resources and Conservation and Development Commission or the California Energy Commission.

"Central Coast Region" means a geographic area in California that includes the counties of Monterey, San Benito, San Luis Obispo and Santa Barbara.

"Contract Identification Number" means the unique identification number for a transaction, which reporting entities can self-assign based on internal requirements but must be alpha-numeric and not exceed 25 characters.

"Contract Position Identification Number" means the sequence number for each transaction under a spot market contract.

"Counterparty" means the entity identified by the reporting form filer as either the buyer or seller of a contract transaction.

"Crude Oil Pipeline System" means a facility that receives its supply from pipeline gathering systems, tanker or barge, and has its terminals located at a refinery or waterside terminal and from which crude oil is shipped directly to one or more refineries in California or transported out of state. A crude oil pipeline system includes all points of origin, terminals, working tank storage capacity, and points of interconnection with crude oil pipeline systems operated by others.

"Dealer Tank Wagon (DTW)" means a delivered wholesale price for gasoline transported by tanker truck to a retail fuel outlet.

"Delivery Chain" means the list of all parties involved in final settlement from originating buyer to supplying seller.

"Desert Region" means a geographic area in California that includes the counties of Riverside and San Bernardino.

"Ending Inventory" means the quantity (measured in thousands of barrels) of crude oil, petroleum products or oxygenates that is held as stocks at a refinery, bulk plant, public storage facility or tank farm at the end of a designated reporting period.

"EPA" means the United States Environmental Protection Agency.

"Exchange" means a transaction in which title or interest in petroleum products or crude oil stocks are transferred between firms in return for other petroleum products or crude oil stocks.

"Exchange Futures for Physical (EFP)" means a negotiated and simultaneous exchange of a futures position for a corresponding cash position, priced as a differential to a NYMEX futures reference product.

"Exporter" means a firm that is the owner of record at the point of loading for crude oil, petroleum products or oxygenates destined for export from California and has exported 20,000 barrels or more of any combination of crude oil, petroleum products or oxygenates during any month of the current or previous year.

"Exports" mean crude oil, petroleum products or oxygenates transported to destinations outside of California by means of marine vessel, rail car, tanker truck, or pipeline.

"Firm" means any person or entity engaged in any activity included in the Cal. Code of Regulations, Title 20, Public Utilities and Energy Division 2, Chapter 3, Article 3, Section 1361 et seq.

"Floating Price" means a pricing method for a spot market transaction in which the buyer and seller agree that the cash price will be determined at some future time and agree on an event or a specific timeframe and pricing reference from which the cash price will be set.

"Franchisee" means a retailer or distributor authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

...[skipping "Gross Production" through "Imports"]

"Independent Retail Fuel Outlet Operator" means a firm, other than a Refiner or Major Petroleum Products Marketer, that owns or leases a retail fuel outlet, that is engaged in the trade or business of purchasing refined petroleum products and reselling these products to consumers without substantially changing the form of these products.

"In-tank Transfer" means the change of ownership of inventory of refined petroleum product or renewable fuel on the books and records of a terminal operator where the buyer and seller are both terminal customers in the same storage tank in California.

"Inter-tank Transfer" means the change of ownership of inventory of refined petroleum product or renewable fuel where the seller delivers material from one tank to a different tank owned or leased by the buyer and where the buyer and seller are both terminal customers.

"Lease" means a crude oil or natural gas producing property.

...[skipping "Lease Storage Facilities" through "Maximum Throughput"]

"Mountain Region" means a geographic area in California that includes the counties of Alpine, Amador, Calaveras, El Dorado, Inyo, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sierra, Siskiyou, Trinity and Tuolumne.

"Net-Out" means a type of settlement that is consummated through an exchange of cash, instead of through physical delivery of the product.

"Non-California Fuel" means finished motor gasoline and No. 2 diesel fuel that does not meet CARB standards sold in California at retail locations that dispense transportation fuels.

"Non-California Fuel Transporter" means a firm that owns or operates tanker trucks that are used wholly or in part to deliver 5,000 gallons or more of fuels that do not meet CARB regulations to retail locations in California during any month of the current or previous year.

"North Coast Region" means a geographic area in California that includes the counties of Del Norte, Humboldt, Lake and Mendocino.

"Northern California Region" means a geographic area in California that includes the counties of Santa Cruz, Santa Clara, San Mateo, San Francisco, Merced, Stanislaus, Alameda, San Joaquin, Tuolumne, Calaveras, Mono, Alpine, Amador, Sacramento, Solano, Napa, Marin, Sonoma, Yolo, El Dorado, Placer, Sutter, Colusa, Lake, Mendocino, Glenn, Butte, Nevada, Sierra, Yuba, Plumas, Tehama, Lassen, Shasta, Trinity, Humboldt, Del Norte, Siskiyou, Mariposa, Madera, Modoc, Contra Costa, San Luis Obispo, Kern, Inyo, Tulare, Kings, Monterey, San Benito and Fresno.

"Notice of Readiness (NOR)" means a communication provided by a marine vessel owner or agent that the vessel has arrived and is ready for loading or discharge at a designated berth within a designated period of time.

"Number of Sites" means the number of different locations for a specified region of California that receive DTW fuel during a reporting period.

"OPEC" means the Organization of the Petroleum Exporting Countries.

The countries belonging to this organization are subdivided into the following geographic regions:

(a) "Middle East OPEC" means the countries of Iran, Iraq, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates.

(b) "Non-Middle East OPEC" means the countries of Algeria, Libya, Nigeria and Venezuela.

"Operator" means any person drilling, maintaining, operating, pumping, or in control of any well as defined by the California Public Utilities Commission or by the California Department of Conservation's Division of Oil and Gas, & Geothermal Resources.

"PIIRA" means the Petroleum Industry Information Reporting Act.

"Pipeline" means a crude oil pipeline system or product pipeline system.

"Pipeline Delivery Subcycle" means the contract subcycle for pipeline deliveries given by the pipeline company transporting the product.

"Pipeline Exports" mean crude oil, petroleum products or oxygenates that are transported to destinations outside of California by means of a pipeline.

"Pipeline Imports" means crude oil, petroleum products or oxygenates that are transported to California from destinations originating outside of California by means of a pipeline.

"Pipeline Gathering System" means a pipeline system that collects crude oil from lease storage facilities and delivers it to a crude oil pipeline system.

"Pipeline Storage Tanks" means a storage facility owned by a pipeline firm and located at the points of origin and at terminals of pipeline segments used to maintain normal pipeline operations.

"Position Sequence Number" means the location identifier assigned by the pipeline company shipping the product.

"PPM" means parts per million.

"Price Basis" means the type of pricing method agreed upon between counterparties for a trade.

"Pricing Event" means a pricing occurrence for floating price contracts that was agreed to at the time of contract that relates to a specific date or range of dates associated with the title transfer that determines the value of the settlement.

"Producing Property" means property that produced crude oil during the reporting period in an amount as to require reporting of production to the California Department of Conservation's Division of Oil and Gas, & Geothermal Resources.

"Product Pipeline System" means a system that transports petroleum products from refineries or bulk terminals or marine facilities to other terminals or interconnections with

other pipelines; a product pipeline system does not include interconnections within a terminal facility or those lines connecting public storage facilities to one another. A product pipeline system includes all points of origin, terminals, working tank storage capacity and points of interconnection with product pipeline systems operated by others.

"Public Storage Facility" means a public liquid bulk storage, terminal, or warehousing operation for hire in which the owner or operator of the facility has no ownership interest in any of the materials stored on contract with its customers.

"Pump-over Transfer" means the transfer of physical inventory and ownership of refined petroleum product or renewable fuel on the books and records of a terminal operator from one storage tank to another where the buyer and seller are both terminal customers.

"Rail Car" means a railroad car that is used to transport crude oil, petroleum products or oxygenates via a network of railroad tracks.

...[skipping "Rail Exports" through "San Joaquin Valley Region"]

"Service Station" means a retail fuel outlet, normally attended by one or more operators, that dispenses refined petroleum products to ultimate consumers as the sole or predominant activity of their business operation.

"Settlement" means the final step in a transaction and represents either transfer of ownership involving the physical exchange of securities or payment and verification of the quantity of product exchanged, whichever is later.

"Shipment Issued Entity" means the party that a request for shipment was tendered to by a purchaser of product.

"Southern California Region" means a geographic area in California that includes the counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Imperial.

"Spot Market Transaction" means a trade in which petroleum products, including blendstocks for finished petroleum products, are purchased on the spot for delivery by pipeline, inter-tank transfer, pump-over transfer, in-tank transfer, marine vessel, rail car discharge, or imports.

"Stocks" mean volumes of crude oil, petroleum products or oxygenates (corrected to 60 degrees Fahrenheit less basic sediment and water) of domestic origin held at refineries, bulk plants, public storage facilities or tank farms. Crude oil and petroleum products in transit by pipeline are excluded. Stocks include foreign stocks held at refineries, bulk plants, public storage facilities or tank farms only after entry through Customs for domestic consumption. Stocks of foreign origin held in bond and/or in transit by pipeline are excluded.

...[Skipping "Support Staff" through "TEOR"]

"Terminal Operator" means a firm that owns, leases or operates a bulk terminal, tank farm or public storage facility and provided storage services of 50,000 barrels or more of any combination of crude oil, petroleum products or oxygenates during any month of the current or previous year and includes refiners.

"Trader" means an individual, company, or other entity that does not have a refining presence in California but either sells or takes possession of refined petroleum products or renewable fuels, or both, via spot market transactions.

"Transportation Fuel Product" means gasoline, blending components, diesel fuel, aviation fuel, and renewable fuels.

"Truck Stop Retail Fuel Outlet" means a facility, normally attended by one or more operators, that is accessible to operators of heavy duty on-road motor vehicles and dispenses refined petroleum products to ultimate consumers as a sole or predominant activity of their business operation.

"Usable Storage Tank Capacity," when used in connection with crude oil or petroleum product pipeline systems, bulk terminals, tank farms and public storage facilities, means the total liquid storage volume less that volume that cannot be used for normal operations (tank heel, basic sediment, and water, corrected to 60 degrees Fahrenheit).

"U.S.C." means United States Code.

NOTE: Authority cited: Sections 25213, and 25218(e), and 25367, Public Resources Code. Reference: Section 25354, Public Resources Code.

§ 1364. Reporting Periods.

(a) For purposes of this article, and unless otherwise indicated, each day shall be a reporting period for those entities required by Section 1366 to file daily reports. Daily reports filed pursuant to this article shall be submitted not later than 9:00 a.m. on the day following the close of the reporting period for which the information is submitted. Reports shall be deemed submitted as of the date of electronic transmittal, provided that the report is properly and legibly completed.

(ab) For purposes of this article, and unless otherwise indicated, each calendar week for the reporting period shall start on Friday for those entities required by section 1366 to file weekly reports. Weekly reports filed pursuant to the article shall be submitted no later than five (5) calendar days following the close of the weekly reporting period for which the information is submitted. Reports shall be deemed submitted as of the date of the postmark, facsimile or electronic transmittal, provided the report is properly and legibly completed.

(bc) For purposes of this article, and unless otherwise indicated, each calendar month, beginning with the first calendar month of the year following the effective date of this article, shall be a reporting period for those entities required by Section 1366 to file monthly reports. Monthly reports filed pursuant to this article shall be submitted not later than the thirtieth (30th) day following the close of the reporting period for which the information is submitted. Reports shall be deemed submitted as of the date of postmark, facsimile or electronic transmittal, provided that the report is properly and legibly completed.

(ed) Annual reports required by this article shall be submitted not later than February 15 of each year and shall contain the information required by Section 1366 for the preceding calendar year.

NOTE: Authority cited: Sections 25213, ~~and 25218(e)~~, and 25367, Public Resources Code. Reference: Section 25354, Public Resources Code.

§ 1366. Requirement to File.

(a) Every refiner and nonrefiner, including importers, brokers, and traders as defined in Section 1363.2, that consummates a spot market transaction shall file a daily report containing all of the information specified in Appendix D, Sections I and II, for each transaction or settlement, respectively, occurring the preceding day. No report shall be required for a reporting period in which no transaction or settlement occurs.

(ab) Each refiner, as defined in Section 1363.2, shall file weekly reports for each California refinery containing all of the information specified in Appendix A, Section I.

(bc) Each refiner, importer, exporter and major petroleum products transporter, as defined in Section 1363.2, shall file weekly reports containing all of the information specified in Appendix A, Section II.

(ed) Each refiner, terminal operator and major petroleum products storer, as defined in Section 1363.2, shall file weekly reports containing all of the information specified in Appendix A, Section III.

(de) Each refiner, as defined in Section 1363.2, shall file weekly reports containing all of the information specified in Appendix A, Section IV.

(ef) Each refiner, as defined in Section 1363.2, shall file monthly reports for each California refinery containing all of the information specified in Appendix B, Section I.

(fg) Each refiner, as defined in Section 1363.2, shall file monthly reports for each California refinery containing all of the information specified in Appendix B, Section II.

(gh) Each refiner, importer, exporter, non-California fuel transporter, marine fuels

distributor and major petroleum products transporter, as defined in Section 1363.2, shall file monthly reports containing all of the information specified in Appendix B, Section III.

(hi) Each refiner, terminal operator and major petroleum products storer, as defined in Section 1363.2, shall file monthly reports containing all of the information specified in Appendix B, Section IV.

(ij) Each refiner, as defined in Section 1363.2, shall file monthly reports containing all of the information specified in Appendix B, Section V.

(jk) Each refiner as defined in Section 1363.2, shall file monthly reports containing all of the information specified in Appendix B, Section VI.

(kl) Each major petroleum products marketer, as defined in Section 1363.2, required to file Form EIA782B published by the United States Department of Energy shall file monthly reports containing all of the information specified in Appendix B, Section VI.

(lm) Each refiner, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section I.

(mn) Each refiner, terminal operator and major petroleum products storer, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section II.

(no) Each major crude oil transporter, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section III, for each crude oil pipeline system.

(op) Each major petroleum products transporter, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section IV, for each petroleum product pipeline system.

(pg) Each major crude oil producer, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section V.

(qr) Each refiner, major petroleum products marketer and independent retail fuel outlet operator, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section VI.

(rs) Each refiner, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section VII.

(st) Each refiner, terminal operator, major petroleum products storer and marine facility operator, as defined in Section 1363.2, shall file annual reports containing all of the information specified in Appendix C, Section VIII.

(tu) Unless otherwise indicated, if a company, by its various activities, satisfies two or more of the definitions in Section 1363.2, it shall file a separate report for each such activity.

(uv) Any company required by this article to submit Petroleum Information Reports, which company contains divisions, departments, or subsidiary companies, shall report on behalf of all such divisions, departments, or subsidiaries, provided that such divisions, departments, or subsidiaries would otherwise be required to report pursuant to the provisions of this article.

(vw) All reports required by this section shall be on such form and in such format as the Executive Director may require, except as provided below.

(wx) Any person required by this article to submit Petroleum Information Reports may in lieu thereof, submit a report made to any other government agency, provided that the requirements of Public Resources Code Section 25354(g) are satisfied, provided that the Executive Director of the CEC approves in writing to the applicant that the alternative submittal of substitute report information is acceptable and provided that such substitute report is expressed in identical units to those required by this article.

(xy) Any person or company required by this article to submit Petroleum Information Reports in a specific form designated by the CEC may in lieu thereof, electronically submit the required information in a different format, provided that the Executive Director of the CEC approves in writing to the applicant that the alternative format of submittal is acceptable.

NOTE: Authority cited: Sections 25213, 25218(e) and 25354, and 25367, Public Resources Code. Reference: Section 25354(a), (b), (f), (l) Public Resources Code.

...[skipping sections 1367-1371 and Appendixes A-C]

Appendix D Daily and Event-based Reporting Requirements

I. The California Daily Spot Transactions Report shall contain the information detailed below in subsections A through FF. This report is required for each spot market transaction for a transportation fuel product that either occurs in California or involves a transportation fuel product that will be delivered on the spot within the California fuels market.

A. The date and time of the transaction.

B. The contract identification number for the transaction.

C. The position sequence number for the transaction.

D. The contract position identification number for the transaction.

E. The trading counterparty entity company or organization name.

F. The trading counterparty entity contact name.

G. The spot market trading location. Transactions that occur at any point north of the southernmost point in Kern County shall be attributed to the San Francisco spot market. All other transactions shall be attributed to the Los Angeles spot market.

H. Indication that the reporter of the transaction is either a buyer or seller.

I. Type of transportation fuel product for the transaction. Types of products are gasoline, blending components, diesel fuel, aviation fuel, or renewable fuels.

J. Name of transportation fuel product for the transaction. For gasoline products, the name of the product shall indicate the octane and the specification of the gasoline product. Enter the specific product name from the following list:

1. Gasolines: CARBOB, AZBOB, RBOB, CBOB, or Conventional.
2. Blending Components: Alkylate, Isomerate, Naphtha, Reformate, GTAB, or other gasoline blendstocks (specify name).
3. Diesel fuels: CARB ULSD, EPA ULSD.
4. Aviation Fuels (Commercial and Military): Jet A (including bonded turbine) and JP-5, Aviation Gasoline.
5. Renewable Fuels: Renewable Diesel, Renewable Naphtha, Sustainable Aviation Fuel, Biodiesel.

K. Volume of product contracted in thousands of barrels.

L. Contract delivery month for the transaction.

M. Contract method of delivery. For transactions that involve more than one delivery method, list all methods used. Delivery methods may include, but are not limited to:

1. Pipeline
2. Pump-Over
3. In-Tank Transfer
4. Barge
5. Marine Vessel, or
6. Other (specify)

N. Name of barge or product tanker, if applicable.

O. International Maritime Organization number of the vessel carrying transacted product, if applicable.

P. Location of delivery where title transfer is to take place.

Q. Pipeline delivery subcycle. Include descriptors such as, but not limited to:

KM West Any

KM South L3

KM North FH

C1, C2, C3, C4, etc.

R. Start date of delivery of transacted product.

S. End date of delivery of transacted product.

T. Type of price basis method used for the contract, such as exchange of futures for physical (EFP), fixed price, fixed date range, floating date range, or other type.

U. Reference product for the price basis method used for EFP transactions.

V. Reference month for the price basis method.

W. Price differential between the agreed-upon price and the reference price in cents per gallon.

X. For floating price contracts, the type of event or pricing dates agreed to at the time of the contract that will be the basis for the price. For event-based pricing, include the event trigger and the duration of the pricing window. Pricing event types may include, but are not limited to:

Title Transfer (TT) date

3-day wrap (around pump date)

NOR (Notice of Readiness)

1/1/1 (day before, day of, day after)

Month average

For contracts wherein pricing dates were agreed to at time of contract, indicate "fixed dates".

Y. For floating price contracts, the date of the event on which pricing will be based.

Z. Date agreed upon at the time of the transaction when floating pricing is to start, if applicable.

AA. Date agreed upon at the time of the contract when floating price is to end, if applicable.

BB. New York Mercantile Exchange (NYMEX) price for referenced price basis in cents per gallon, if applicable.

CC. Cash price of the EFP transaction in cents per gallon, if known at the time of contract transaction.

DD. The company name of the broker or executing trader, if any, used to facilitate the transaction.

EE. The first and last name of the contact person for the broker or executing trader, if any, used to facilitate the transaction.

FF. Indication if the transaction was reported to the Oil Price Information Service (OPIS) and, if so, who reported it.

NOTE: Authority cited: Sections 25213, 25218(e), 25354, and 25367, Public Resources Code. Reference: Section 25354(l), Public Resources Code.

II. The Daily Spot Settlements Report shall contain the information detailed below in subsections A through X. This report is required for each settlement of a spot market transaction for a transportation fuel product that either occurs in California or involves a transportation fuel product that will be delivered on the spot within the California fuels market. Each settled transaction reported in the California Daily Spot Settlements Report must have a contract identification number that matches the contract identification number of a transaction previously reported in a California Daily Spot Transactions Report.

A. The date and time of the transaction.

B. The contract identification number for the transaction.

C. The contract position identification number for the transaction.

D. The name of the trading counterparty's company, organization, or other entity. For transactions that involve more than one counterparty, include only the party that is the final recipient counterparty.

E. The first and last name of the contact person from the trading counterparty.

F. Date of the settlement.

G. Type of settlement.

H. Type of transportation fuel product. Types of products are gasoline, blending components, diesel fuel, aviation fuel, or renewable fuels.

I. Name of transportation fuel product. For gasoline products, the name of the product shall indicate the octane and the specification of the gasoline product. Enter the specific product name from the following list:

Gasolines: CARBOB, AZBOB, RBOB, CBOB, or Conventional.

Blending Components: Alkylate, Isomate, Naphtha, Reformate, GTAB, or other gasoline blendstocks (specify name).

Diesel fuels: CARB ULSD, EPA ULSD.

Aviation Fuels (Commercial and Military): Jet A (including bonded turbine) and JP-5, Aviation Gasoline.

Renewable Fuels: Renewable Diesel, Renewable Naphtha, Sustainable Aviation Fuel, Biodiesel.

J. Volume of product delivered in thousands of barrels for each settlement.

K. Actual delivery method. Delivery methods may include, but are not limited to:

1. Pipeline

2. Pump-Over

3. In-Tank Transfer

4. Barge

5. Marine Vessel, or

6. Other (specify)

L. Marine vessel name for barge or product tanker, if applicable.

M. International Maritime Organization number of the marine vessel carrying the product, if applicable.

N. Location of final delivery where title transfer took place.

O. Pipeline batch designation, if applicable.

P. Delivery chain sequence. The sequence must follow the industry standard convention right to left, with originating party (buyer) on the right, party bought from (seller) to the left, until final supplying party on the far left.

Q. For floating price contracts, the type of event or pricing date(s) agreed to at the time of the contract that will be the basis for the price. For event-based pricing, include the event trigger and the duration of the pricing window.

R. For floating price contracts, the date of the event on which pricing was based.

S. Start date of actual settlement pricing window, if applicable.

T. End date of actual settlement pricing window, if applicable.

U. Invoiced volume of refined petroleum product in barrels.

V. Invoiced price of refined petroleum product in cents per gallon.

W. Date request for shipment issued for pipeline tender by seller or buyer.

X. Shipment contact information for all shipment companies involved with the transaction. Include identification of each shipment company and first and last name of the contact person at each respective shipment company involved.

NOTE: Authority cited: Sections 25213, 25218(e), 25354, and 25367, Public Resources Code. Reference: Section 25354(l), Public Resources Code.

EXHIBIT E

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 #:	254713
Document Title:	CEC Reply to Comments
Description:	N/A
Filer:	Andrea Baley
Organization:	California Energy Commission
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Docketed Date:	2/28/2024



RESPONSE TO PUBLIC COMMENTS RECEIVED

Revised SB X1-2 Spot Market Reporting Requirements
CEC Docket No. 23-OIR-03
OAL File No. 2024-0215-02E

LEGEND

Commenter	Comment Nos./Date
Abate-A-Weed Incorporated (AAW)	AAW 1 / February 19, 2024
American Petroleum & Convenience Store Association (APCA)	APCA 1-3 / February 19, 2024
A T Industrial Products Corporation (AT)	AT 1 / February 19, 2024
California Delivery Association (CDA)	CDA 1-3 / February 20, 2024
Hills Flat Lumber Co. (HFL)	HFL 1 / February 19, 2024
Idemitsu Apollo Corporation (IAC)	IAC 1-25 / February 20, 2024
National Federation of Independent Businesses (NFIB)	NFIB 1-4 / February 19, 2024
Star Milling Co. (SMC)	SMC 1 / February 20, 2024
Steve Uhler (U)	U 1-10 / February 16, 2024
Western States Petroleum Association (WSPA)	WSPA 1-13 / February 16, 2024

Responses to comments are organized below by topic. Topics are underlined. Responses to comments are indented. Responses apply to all comments grouped together above, including situations in which multiple paragraphs are grouped above one response.

FINDING OF EMERGENCY

COMMENT NO. IAC 18: The commenter recognizes that the Legislature authorized OAL to treat these regulations as emergency regulations, but that procedural safeguards still apply.

RESPONSE: The CEC appreciates the recognition that the statute provides that these regulations qualify as emergency regulations. The CEC has not acted arbitrarily or capriciously, ignored due process, or acted beyond the scope of its authority in adopting these regulations. These regulations simply tailor the data reporting requirements to the data the CEC has determined is necessary to carry out its responsibilities under pre-existing and recently enacted statutory directives. The CEC has

been engaged with stakeholders on these issues since updated legislation became effective on March 28, 2023. The statute directs the CEC to collect data so that the causes of petroleum price volatility can be better understood and addressed. These regulations are tailored to collect this data and are within the authority of the CEC to implement. No due process rights have been violated in establishing these reporting requirements and they are not arbitrary or capricious; they have been tailored to implement updated statutory requirements and result in data the CEC can use to explore and address market volatility as directed by the Legislature.

COMMENT NO. AAW 1: The commenter asserts that no emergency exists.

COMMENT NO. WSPA 3: The commenter asserts that the CEC failed to provide supporting facts for its finding of emergency and instead simply cited the emergency authority in Public Resources Code section 25367, and therefore failed to satisfy the APA. The commenter states that the Legislature lacks the power to deem regulations to be emergencies and suggests that the statute relied upon for this rulemaking, Public Resources Code section 25367, is merely an urgency statute. The commenter notes that an urgency statute is not a sufficient basis, in and of itself, to support a finding of emergency.

COMMENT NO. IAC 22: The commenter asserts that the CEC is not obligated to adopt these regulations as emergency regulations, and it would be prudent for the CEC to instead use “a formal rulemaking process.”

COMMENT NO. U 2: The commenter notes that the CEC opened a docket related to this rulemaking (23-OIR-03) on October 2, 2023, and suggests that this allowed sufficient time for a regular rulemaking. The commenter suggests that the only motivation for using the emergency rulemaking process was appearances and asserted that gasoline price spikes do not justify use of the emergency rulemaking process.

RESPONSE: Public Resources Code 25367 states “regulations or orders implementing [Chapter 4.5 of Division 15 of the Public Resources Code] shall be considered by the Office of Administrative Law as an emergency”. This language is unambiguous and automatically deems these emergency regulations. The legislature’s power to deem regulations to be

emergencies is well-established.¹ When the legislature delegates quasi-legislative (i.e., rulemaking) power to agencies via statute, it may also determine which APA procedures such agencies must follow in carrying out that power.² The legislature may subject agency rulemaking to only part of the APA process, or it may exempt the rulemaking from the APA entirely, as it did in several sections of SB X1-2 not at issue here. Here, the legislature determined that regulations adopted by the CEC to implement petroleum market reporting requirements, including the spot market reporting requirements in section 25354(l), are subject to the emergency rulemaking process. The proposed regulations are not based merely on an urgency statute, but rather on the specific statutory provision above, which deems these regulations to be emergency, along with the relevant facts stated in the finding of emergency.

COMMENT NO. WSPA 1: The commenter asserts that the proposed regulations fail to meet the statutory requirements for an emergency rulemaking and that the CEC improperly mischaracterized it as such. Specifically, the commenter asserts that the CEC failed to provide the information required by Government Code section 11346(b)(2), including facts explaining the failure to address the situation through nonemergency regulations. The commenter suggests that the finding of emergency is undermined by inclusion of specific facts regarding the historical context of gasoline price spikes in California.

RESPONSE: The CEC carefully prepared the proposed regulations consistent with the Administrative Procedure Act (APA) as it applies to Chapter 4.5 of Division 15 of the Public Resources Code. The CEC did not bypass the procedural safeguards of the APA. Pursuant to the enabling legislation, SB X1-2,³ these regulations are deemed to be an emergency and therefore subject to the APA emergency rulemaking procedure.⁴ Accordingly, the CEC followed the procedural safeguards of the APA's emergency rulemaking procedure, including those enumerated in Government Code sections 11346.1 and 11349.6 and in the California Code of Regulations, title 1, sections 48 and 50. Government code section

¹ E.g., Pub. Resources Code, § 25545.12; Pub. Util. Code, § 7713; Health & Saf. Code, § 57013; Gov. Code, § 8574.44; Food & Agr. Code, § 11502.5; Food & Agr. Code, § 12812; Food & Agr. Code, § 12841; Water Code § 13260(f)(2).

² See Gov. Code, § 11346, subd. (a) ("This chapter shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*" (emphasis added).)

³ Stats. 2023, 1st Ex. Sess. 2023, ch. 1.

⁴ Pub. Resources Code, § 25367.

11346.1 governs findings of emergency *made by an agency*. In this instance, the proposed regulations are deemed to be an emergency *by statute* and this status conferred by statute supersedes the requirements in Government Code section 11346.1(b)(2) requiring the agency to make a finding of emergency, demonstrate the existence of an emergency, and explain why the situation could not have been addressed through non-emergency means. Nevertheless, the CEC has acted with expediency. The proposed regulations implement a complex statutory reporting requirement that took effect less than eight months ago. The self-executing provisions of the statute resulted in new data being provided to the CEC and time was necessary to collect, process, and analyze enough of this data to begin to identify gaps in reporting, inconsistencies in interpretation, and other areas that needed clarification and revision to the reporting requirements.

COMMENT NO. WSPA 2: The commenter acknowledges that agencies have discretion in making a finding of emergency but asserts that courts are not bound by an agency's decision and ultimately decide whether an agency's statement of facts supports its finding of emergency. The commenter cites *Poschman v. Dumke*, ((1973) 31 Cal.App.3d 932, 941), to support the assertion that an agency's finding of emergency must contain more than statements of motivation or statements that the proposed action is supported by sound policy.

RESPONSE: As noted above, the proposed regulations are deemed to be an emergency by statute. As such, the commenter's assertions, as well as the holding of *Poshman v. Dumke*, do not apply. As discussed in the response to Comment No. WSPA 3, the legislature's power to deem regulations to be emergencies is well-established.

COMMENT NO. WSPA 4: The commenter characterizes the emergency procedure as extraordinary and requests that, going forward, the CEC use the emergency regulation procedure sparingly. The commenter cites *Schenley Affiliated Brands Corp. v. Kirby*, (21 Cal. App. 3d 177, 194 (1971)), to support the assertion that an agency abuses the emergency rulemaking power when it habitually uses it without credibly stating a genuine emergency.

RESPONSE: As noted above, the proposed regulations are deemed to be an emergency by statute. As such, the commenter's assertions, as well as the holding of *Poshman v. Dumke*, are not applicable here. In adopting SB X1-2, the Legislature found that "[f]undamental change is necessary to

prevent future extreme price spikes and price gouging by oil companies.”⁵ The proposed regulations will ensure the CEC gathers accurate data, which is the first step in understanding these price spikes and crafting solutions to address the problem. In the meantime, inflation is impacting consumers and there is the very real possibility that without immediate action these price spikes will continue unabated, further affecting the ability of consumers to afford daily necessities. Recognizing the need for immediate action, the Legislature deemed any regulations implementing the Petroleum Industry Information Reporting Act of 1980,⁶ as modified by SB X1-2, to be emergency.

COMMENT NO. IAC 24, 25: The commenter asserts that it is not clear “a legitimate emergency exists such that the CEC needs to bypass formal rulemaking” considering the motivating event for this activity was the 2022 retail gasoline price spikes and since then SB X1-2 was adopted, establishing self-executing daily reporting obligations that are already underway.

RESPONSE: The proposed regulations are deemed to be emergency by statute. See response to Comment Nos. AAW 1, WSPA 3, and U2. The 2022 retail gasoline price spikes occurred shortly before the Governor convened a special legislative session that led to the enactment of Senate Bill (SB) X1-2. As noted in the finding of emergency, another price spike occurred in September of 2023. The SB X1-2 reporting requirements gave the CEC greater visibility into the spot market in the fall of 2023 and the DPMO determined that this spike appeared to have been caused by unusual spot market trading activity. The proposed regulations make important clarifications to those reporting requirements to further enhance the CEC’s ability to understand and prevent further price spikes.

SECTION 1366

COMMENT NO. WSPA 6, 10: The commenter asserts the proposed regulations do not reflect real-world practice and contain misunderstandings of how market transactions work. The commenter offers an explanation of industry practice associated with reversals, described as a cancelled invoice, and rebooks, described as a reissuance of a cancelled invoice, and asserts that a more frequent reporting cycle will cause more reversals and rebooks to be reported.

⁵ Senate Bill (SB) X1-2, Stats. 2023, 1st Ex. Sess. 2023, ch. 1, section 1.

⁶ Pub. Resources Code, Ch. 4.5, §§ 25350 – 25367.

The commenter requests that the CEC require a monthly report, instead of a daily report.

RESPONSE: The transaction complexity described by the commenter was considered as part of this rulemaking and directly informed the proposed regulations. To account for this complexity, the proposed regulations split reporting into two steps, a transaction report and a settlement report. As explained in the Informative Digest⁷, Section 1366, and in Appendix D, sections I and II, the transaction report captures information on the initial agreement whereas the settlement report captures information available after a transaction is settled.

COMMENT NOS. IAC 3, 9, 10: The commenter asserts that the definition of “nonrefiner” is overbroad, inconsistent with the statute, and creates inconsistency with and incoherence in the regulatory definitions, and would produce unnecessarily duplicative reporting.

RESPONSE: The use of the term “nonrefiner” in the proposed regulations is consistent with the use of the term as used in Public Resources Code section 25354(l) to refer broadly to persons who consummate spot market transactions. The proposed regulations use the term in a similarly broad manner, while providing several illustrative examples. Per the terms of the statute and proposed regulations, only nonrefiners (and refiners) *who consummate spot market transactions* are subject to the spot market reporting requirements. Thus, this term is not overbroad and will not lead to duplicative reporting. Moreover, the reference to “nonrefiner” in section 25354(k) is not the same use as in (l) and is not intended to limit the use of the term as it applies to spot market transactions.

COMMENT NO. IAC 11: The commenter asserts that the “definitions create internal ambiguities and incoherence” because the definition of importer contains a threshold for volume of business whereas the definitions of broker and trader do not.

⁷ NOPA, p. 4 (“To account for the complexity of spot market transactions and ensure timely reporting of required information, the proposed regulations bifurcate the daily spot market reporting into a trading phase and a settlement phase. This will allow the CEC to efficiently gather information about transactions close in time to contract formation, and to subsequently collect information on final settlement terms and delivery details after parties settle the transactions.”)

RESPONSE: The definitions of "importer", "trader", and "broker" do not create internal ambiguities or incoherence. These terms are used for different purposes in different parts of the regulatory scheme and, in some instances, such as the hypothetical posed by the commenter, overlap one another. Importantly, these terms are provided only as illustrative examples of the types of nonrefining entities subject to the reporting requirement. Public Resources Code section 25354(I) and the first sentence of section 1366 make clear that all refiners and nonrefiners that consummate spot market transactions are subject to the spot market reporting requirements. The CEC recognizes that not all nonrefiners that consummate spot market transactions fit within the defined classes of importer, broker, or trader, and therefore used the term "nonrefiner" in the broad sense intended by the statute. See response to Comment Nos. IAC 3, 9, 10.

APPENDIX D, SECTIONS I-II

COMMENT NO. IAC 2, 6: The commenter asserts that the use of the phrase "occurs in California" is vague and ambiguous, making it unclear which transactions are covered. The commenter suggests that the CEC intends to regulate transactions that occur outside of California, such as a sale of fuel "from Korea for delivery in Nevada [that is] delivered into a pipeline that originates at a California port and runs through California to Nevada" or a "sale of fuel from Japan to Alaska ... that enters a pipeline in Alaska [and involves] a party ... located in California at the time of the transaction."

RESPONSE: The reporting requirements detailed in these appendices, which are derived directly from Public Resources Code section 25354(I), are limited exclusively to transactions on the "spot market." A spot market is a fairly specialized concept, but one that is essential to and universally known in the petroleum industry. It describes the market in which deals are made "on the spot" and physical product changes hands immediately or shortly thereafter.⁸ Deals in the spot market are always done in bulk (typical volumes range from 5,000 to 50,000 barrels) and always involve a physical product to be exchanged at a specific location such as refinery

⁸ California Energy Commission, Petroleum Watch (Feb. 2022), available at <https://www.energy.ca.gov/media/6765>.

gates or other major pricing hubs located at specific terminals.⁹ These markets are carefully tracked by industry participants, price reporting agencies, and government entities as they have an outsized influence on the price at the pump.¹⁰ The proposed regulations clarify and refine a statutory reporting requirement that applies to this highly technical market environment in which sophisticated entities trade in large volumes of petroleum products.

The phrase identified by the commenter, “occurs in California”, is unambiguous as it is used in the context of the proposed regulations. The definition of “spot market transaction” makes clear that reportable transactions involve the transfer of physical custody of the petroleum products.¹¹ This definition directly informs the reporting requirements. Specifically, section 1366 provides that specified entities that “consummate[] a *spot market transaction* shall file a daily report containing all of the information specified in Appendix D, Sections I and II, for each transaction or settlement, respectively, occurring the preceding day.” (emphasis added). This language in 1366, together with the definition of “spot market transaction” restricts the reporting requirement to trades involving the purchase of a physical product for delivery. The Legislature and the CEC are interested in these transactions because of their direct impact on the price of fuel products in California.

Far from introducing ambiguity, the phrase “occurs in California” in Appendix D, Sections I and II removes all doubt as to the scope of the reporting requirements.¹² Setting aside the last clause, which accounts for imports effectuated through spot market transactions, the sentence at issue indicates that the reporting requirement applies to *spot market transactions* that occur in California. This language clarifies that the reporting requirement is triggered where the spot market transaction *itself* (i.e., the *purchase* of a physical product *for delivery on the spot*) occurs in

⁹ OPIS, Oil Spot Pricing, available at <https://www.opisnet.com/product/pricing/spot/> (last accessed Feb. 22, 2024); OPIS Staff, Pricing 101: Spot Fuel Markets Made Simple (Mar. 10, 2023), available at <https://www.opisnet.com/blog/spot-fuel-markets-made-simple/>.

¹⁰ *Id.*; McKinsey&Company, Spot market, available at <https://www.mckinseyenergyinsights.com/resources/refinery-reference-desk/spot-market/> (last accessed Feb. 22, 2024).

¹¹ Express Terms, § 1363.2 (“‘Spot Market Transaction’ means a trade in which petroleum products...*are purchased* on the spot *for delivery* by [various methods].” (emphasis added).)

¹² Appendix D, Section I (“This report is required for each *spot market transaction* for a transportation fuel product that either occurs *in California* or involves a transportation fuel product *that will be delivered on the spot within the California fuels market*.”)

California. The intransitive nature of the operative verb “occurs” makes clear that the reporting requirement is triggered by the transaction, rather than the location of or an action by a particular party involved in the transaction.

Furthermore, these particular reports are a small component of the broad reporting construct known as the Petroleum Industry Information Reporting Act of 1980, as that law was modified by SB X1-2 in 2023.¹³ The statute makes clear that this program applies to the import and export of petroleum products as well as other types of activities *in California* related to these products (e.g., capacity and inventories at refineries; transportation to or from refineries, etc.).¹⁴

The regulatory language works in concert with the statutory scope of the program and is limited by the express terms to *spot market transactions* that occur in California. Parties engaging in these transactions know the location of these trades and there is no ambiguity in the proposed regulations as to what transactions are reportable under Appendix D, Sections I and II.

COMMENT NOS. IAC 7, 8: The commenter asserts that the regulations, if applied to the “purchase and sale of transportation fuels wholly outside California” would violate the Commerce Clause. The commenter also notes it does not expect OAL to resolve this assertion as part of its review but notes that this assertion goes to the question of clarity of the regulations.

RESPONSE: Please see response to Comment No. IAC 2, 6. When read in context with the statutory and regulatory provisions and with an understanding of how spot market transactions are made (which any entity covered by this regulation would reasonably be aware of), it is clear that the regulations would not extend to transactions that occur wholly outside of California.

COMMENT NO. IAC 14: The commenter asserts that the regulations bifurcate reporting between the initiation of the transaction and its settlement and this creates an unsupported duplicative reporting requirement.

¹³ Public Resources Code §§ 25350 – 25367.

¹⁴ See Pub. Resources Code §§ 25354 subdivisions (a)(1), (b), (i), (j), and (m), 25355, 25355.5 (referencing imports, exports, or both.)

RESPONSE: The proposed regulations refine and clarify an existing statutory reporting requirement. The statute requires daily reports of information, some of which is available at the time of an initial transaction along with certain information that is only available upon settlement. Currently, entities subject to the reporting requirement have to resubmit the same form once additional information becomes available upon settlement. The proposed regulations clarify the statutory reporting requirement and eliminate this redundant and duplicative reporting by allowing entities to submit separate reports for the transaction and settlement phases. To the extent that additional information is collected under the proposed regulations, the CEC is authorized to do so by Public Resources Code sections 25354 and 25367.

APPENDIX D, SECTION I, PARAGRAPH G

COMMENT NO. WSPA 7: The commenter asserts that the proposed regulations are ambiguous because the term “spot market trading location” is not defined. The commenter expresses confusion about how to differentiate the term “spot market trading location” from the delivery location and how to define the geographic boundaries of the spot market trading location.

RESPONSE: The phrase “spot market trading location” is unambiguous in the context used. Paragraph G implements and clarifies section 25354(l)(1), which requires entities to report the “identity of the spot market where the transaction occurred.” The second sentence of this paragraph states “[t]ransactions that occur at any point north of the southernmost point in Kern County shall be attributed to the San Francisco spot market. All other transactions shall be attributed to the Los Angeles spot market.” Therefore, the spot market trading location is either San Francisco or Los Angeles, as determined by where the spot market transaction (i.e., the *purchase* of a physical product *for delivery on the spot*) occurs relative to southernmost point of Kern County. Parties engaging in these transactions know the location of these trades and there is no ambiguity in the proposed regulations as to what location is being asked for in Appendix D, Section I, Paragraph G.

APPENDIX D, SECTION II, PARAGRAPH G

COMMENT NO. WSPA 8: The commenter asserts that the proposed regulations are ambiguous because the term “Type of Settlement” is not defined, aside from two examples of settlement types that are defined in section 1363.2 (“Book Transfers” and “Net-Out”).

RESPONSE: The proposed regulations use the term settlement in the common meaning of the term. Transactions subject to this reporting requirement happen on standardized commodity markets on a daily basis and commonly understood settlement types are used for these transactions. The proposed regulations expressly allow reporting of any of those settlement types, including those examples defined in section 1363.2.

APPENDIX D, SECTION II, PARAGRAPH U & V

COMMENT NO. WSPA 9: The commenter asserts that the proposed regulations are ambiguous because the term “Invoice” is not defined. The commenter asserts it is unclear if the CEC intends the industry to report received invoices or approved invoices, and notes that sellers and buyers often report different dates for the settlement.

RESPONSE: “Invoice” is a commonly used and understood accounting term. The word “invoiced” is used in the proposed regulations to describe two requirements for the “settlement” report, invoiced volume and invoiced price. As these reporting requirements appear exclusively in the settlement report, they are only required after the final step in the transaction has taken place.

SECTION 1364. REPORTING PERIODS

COMMENT NO. AT 1: The commenter expresses concern that the 9:00 a.m. reporting deadline will increase costs for spot market participants.

COMMENT NO. NFIB 2: The commenter asserts that the 9:00 a.m. deadline will require employees to work after hours to complete reports before the start of the business day.

COMMENT NO. IAC 4, 13: The commenter asserts that the 9:00 a.m. deadline for reporting is extremely burdensome and the CEC has not explained why this deadline is needed. The commenter notes that a copy of the express terms was

issued on February 6, 2024, in which the daily reporting deadline was 5:00 p.m. and that the CEC issued a corrected version of the express terms on February 7, 2024 in which the daily reporting deadline is listed as 9:00 a.m.

RESPONSE: The information collected under the proposed regulations, including the market price, is available to reporters the day each transaction or settlement takes place. Existing law requires most of this information is to be submitted to the CEC on the day following the transaction or settlement. Under the current reporting requirements, the CEC already receives spot market reports from industry earlier than 9:00 a.m. the following day. Information collected by these reports is currently transmitted to the market, often at the time of the transaction. For these reasons, the CEC has concluded that compliance with this requirement is possible and there is nothing to indicate it would be unduly burdensome. As stated in the NOPA, the CEC needs this information immediately as evidence indicates that not all spot market transactions are reported to the Oil Price Information Service (OPIS), which serves as the benchmark for pricing spot market products. The 9:00 a.m. deadline will ensure the CEC can understand how the Oil Price Information Service (OPIS) spot market price is being determined and, as explained in the necessity statement in the NOPA, provide oversight of the market in as close to real-time as possible. As noted in Comment Nos. IAC 4 and 13, the CEC erroneously issued a copy of the NOPA (including the finding of emergency) and express terms on February 6, 2024, that listed 5:00 p.m. as the daily reporting deadline. That version did not reflect the internal consensus on the appropriate deadline and the CEC quickly issued a corrected NOPA and express terms with the correct deadline on February 7, 2024. The February 7 documents superseded the February 6 documents, were noticed to the public at least five business days before submission to OAL as required by Government Code 11346.1(a)(2), and are the documents submitted to OAL on February 15, 2024. To avoid any confusion, the CEC noted that the February 7 documents superseded the February 6 documents both in the docket description and in the message circulated to subscription lists and identified the changes made for the public's awareness.

MISCELLANEOUS COMMENTS

COMMENT NO. AAW 1: The commenter expresses concern that the proposed regulations will increase costs for small petroleum businesses, impacting their ability to deliver gas to rural and independent stations.

COMMENT NO. APCA 1: The commenter expresses concern that the proposed regulations will further tighten the gasoline market in California, increase burdens on spot market participants, and thereby harm independent gas stations.

COMMENT NO. APCA 2: The commenter asserts that the proposed regulations will harm underserved and rural communities.

COMMENT NO. AT 1: The commenter expresses concern that the proposed regulations will increase costs for spot market participants who will pass costs onto customers. The commenter also asserts that no cost analysis was provided for the proposed regulations.

COMMENT NO. CDA 1: The commenter expresses concern that the proposed regulations will discourage fuel imports and spot market participation, leading to restricted fuel supply and increased costs.

COMMENT NO. HFL 1: The commenter expresses concern that the proposed regulations will increase gas prices and indirectly impact shipping costs.

COMMENT NO. U 4: The commenter expresses concern that the proposed regulations will lead to permanent increases in the price of gasoline.

COMMENT NO. NFIB 2: The commenter asserts that the proposed regulation will impose a large number of new reporting requirements, increase costs for industry participants, and impact the cost of fuel.

COMMENT NO. IAC 12: The commenter asserts that application of these regulations to resellers will negatively impact independent gas stations that disproportionately serve disadvantaged communities and the rulemaking record does not show that this impact has been considered.

COMMENT NO. IAC 17: The commenter asserts that these regulations will cause smaller entities to leave the market and may “artificially restrict how transactions themselves are conducted so as to align with the required fields” and that this will “exacerbate the current supply challenges” and harm the markets and consumers and was not what the Legislature intended.

COMMENT NO. NFIB 3: The commenter asserts that the proposed regulation is likely to drive industry participants who deal in imported fuel out of the California market, leading to reduced fuel supply and decreased competition, and thereby increasing fuel costs.

COMMENT NO. SMC 2: The commenter expresses concern that the proposed regulations will increase the costs and complexity of selling fuel in California and drive fuel suppliers out of California, thereby reducing fuel supply and increasing fuel costs.

RESPONSE: The proposed regulations clarify and refine existing daily reporting requirements set by statute. Market participants have provided the CEC with daily reports since July of 2023. The transactions subject to these reporting requirements are also already reported to news agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange at nearly same-day intervals. The CEC does not expect the proposed regulations to change any market interactions within California.

COMMENT NO. U 6: The commenter asserts that the petroleum industry is characterized by “just in time production” and that the proposed regulations could cause a shift to “just in case production”, and that this would decrease the supply of petroleum products and permanently increase costs.

RESPONSE: The proposed regulations refine and clarify an existing statutory reporting requirement for transactions that are already reported to news agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange at near same day intervals. There is no support for the assertion that requiring the reporting of similar information to the CEC would change any market interactions within California.

COMMENT NO. U 1: The commenter states that he did not receive notice of this rulemaking and suggests that the CEC overlooked the notice requirement.

RESPONSE: The notice provided by the CEC satisfied Government Code section 11346.1(a)(2). In addition to sending the NOPA on February 7, 2024, to all individuals who have expressed interest in this matter by signing up for the relevant subscription topics (Rulemaking on Procedural Changes, General Transportation and Petroleum, SB X1-2 Implementation), notice of consideration of the matter at the February 14,

2024, business meeting was sent on February 2, 2024, to everyone interested in general CEC proceedings and the CEC published the NOPA on February 7, 2024 as backup materials for the February 14, 2024, business meeting. Through these varied distribution channels, the CEC has ensured that everyone interested in CEC rulemakings on this subject received timely notice five working days before the CEC submitted the regulations to OAL on February 15, 2024.

COMMENT NOS. AAW 1, APCA 3, CDA 2, HFL 1, NFIB 1, SMC 1, WSPA 5, WSPA 13: The commenters express concern that insufficient time was provided for public input.

RESPONSE: Public Resources Code 25367 states “regulations or orders implementing this chapter shall be considered by the Office of Administrative Law as an emergency”. The CEC is using the Emergency Rulemaking process as directed by the California State Legislature. The timelines for public notice and OAL review are set by the Administrative Procedure Act.

COMMENT NO. IAC 23: The commenter asserts that the CEC has not responded to requests for it to conduct a formal rulemaking and that the five-day comment period afforded these regulations is insufficient.

RESPONSE: The CEC responded to two petitions for rulemaking in 2023 related to the Petroleum Industry Information Reporting Act (PIIRA), as amended by SB 1322 and SB X1-2. The CEC denied both petitions, in large part because they were submitted before the relevant laws had taken effect, making the petitions premature as the CEC had yet to determine whether a rulemaking was necessary to implement the statute that, by its own terms, is self-executing. The CEC is not aware of any requests for formal rulemaking that have gone unanswered. The public notice and comment periods for the instant rulemaking are set by the Administrative Procedure Act.

COMMENT NO. CDA 3: The commenter expresses support for the CEC’s goal of preventing price spikes and price gouging.

COMMENT NO. HFL 1: The commenter expresses support for the CEC’s efforts to stop market manipulation and price gouging.

COMMENT NO. IAC 1: The commenter notes support for the CEC's goals of the rulemaking to increase transparency, decrease price spikes, and increase liquidity in the marketplace.

RESPONSE: No response needed. The CEC appreciates the support offered for these goals.

COMMENT NO. WSPA 5: The commenter agrees that it is critically important for California citizens to have access to affordable fuel supplies and to be protected from price spikes resulting from market influences. However, the commenter asserts that addressing these issues will require consideration of years of market data, which the commenter asserts is not possible under the proposed rulemaking.

RESPONSE: The CEC intends to continually work with industry on fuel pricing issues. The proposed regulations are not intended to and do not attempt to resolve these issues in one fell swoop. Rather, this rulemaking clarifies a statutory reporting requirement that took effect in July 2023. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively.

COMMENT NO. U 3: The commenter questions why it is more important to investigate price spikes for gasoline than for electricity and asserts that the electric utility industry and California state policies use price spikes as a means to control production costs.

RESPONSE: SB X1-2 directly charges the CEC with understanding the petroleum market and investigating gasoline price spikes. The CEC is following the direction and charges given to it by the California State Legislature.

COMMENT NO. U 5: The commenter requests that the CEC file the Form 400 for this rulemaking in Docket No. 23-OIR-03 and include any delegations pursuant to 1 CCR 101.

RESPONSE: The Form 400 is not a substantive part of the rulemaking package. However, the CEC intends to post the final rulemaking package in Docket No. 23-OIR-03 once it is approved by OAL, including the certified Form 400.

COMMENT NO. WSPA 10: The commenter asserts that the proposed regulations will not address long-term market supply imbalances or the outsized

influence of independent price reporting agencies. The commenter asserts the proposed regulations will instead generate outdated data, that the CEC will publish this data, and that this will impede market transparency.

RESPONSE: The CEC intends to continue to work with industry on fuel pricing issues and general supply concerns. The proposed regulations are not intended to and do not attempt to resolve these issues in one fell swoop. Rather, this rulemaking clarifies a statutory reporting requirement that took effect in July 2023. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively.

COMMENT NO. IAC 15: The commenter asserts the regulations require details that do not align with how transactions are processed and will not “capture the structure and nuance of a given transaction.”

RESPONSE: This rulemaking clarifies a statutory reporting requirement that took effect in July 2023 and under which entities have been submitting daily reports for more than seven months. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively. Much of the information required by the proposed regulations is already reported to price reporting agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange.

COMMENT NO. IAC 16: The commenter asserts that the reporting requirements assume the information is “automatically or routinely captured every time a trade occurs” but this is “not the case” and compliance will require “extensive staffing and technological infrastructure to managing these reports.”

RESPONSE: The majority of the information required by the proposed regulations, which revise and clarify the statutory reporting requirements, is the basic information required to engage in a transaction (e.g., price, volume, counterparty, trading location, delivery method). The statutory reporting requirement clarified by the proposed regulations took effect in July 2023 and entities have been submitting daily reports pursuant to the statute for more than seven months. The clarifications in the proposed regulations will eliminate unnecessary overreporting that currently occurs. Much of the information required by the proposed regulations is already reported to price reporting agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange.

COMMENT NO. WSPA 11: The commenter asserts that the CEC will require reporting of settlement information at the time of contract execution and on a daily basis thereafter. The commenter is concerned that this will create confusion, fail to represent real-time gasoline prices, and make it more difficult for market participants to identify the real-time direction of the spot market.

RESPONSE: As specified in Section 1366 and Appendix D, Section II, the proposed regulations do not require settlement information to be provided until 9:00 a.m. on the day after a settlement, which is defined in 1363.2 as the final step in a transaction. There is no indication that terms and aspects of a transaction would change after it has been finalized. The proposed regulations require a “transaction” report detailed in Appendix D, Section I to be submitted to the CEC by 9 a.m. on the day after a transaction takes place. Together, these reports will provide the CEC with a much better picture of the spot market, including real-time gasoline prices.

COMMENT NO. WSPA 12: The commenter suggests that the CEC improve CEC Form M1322 to better capture the relationship between operational costs and refining margins.

RESPONSE: CEC Form M1322 collects information required to be reported by Public Resources Code section 25355 and is not in the scope of the proposed regulations, which primarily revise and clarify the spot market reporting requirements enumerated in Public Resources Code section 25354(l).

COMMENT NO. IAC 5, 19: The commenter asserts the rulemaking package is procedurally flawed because the CEC does not appear to have identified each document upon which it relied and “has not adequately considered the fiscal impact or indirect effects of the rulemaking.”

RESPONSE: The CEC has complied with all procedural requirements in adopting these regulations. The NOPA contains an affirmative list of documents the CEC relied on in drafting these regulations. Government Code section 11346.1(b)(2)’s requirement for identifying documents relied upon is not a broad reference to any conceivable document but is specific to “each technical, theoretical, and empirical study, report, or similar document.” The CEC did not rely on any documents that meet this description other than those listed in the NOPA. The APA does not preclude an agency from also using the expertise of its own staff,

experience gained from implementing a program, information gleaned from conversations with stakeholders, other agencies, industry experts, and other sources of information or knowledge in developing regulations and does not require that every conceivable source that may have contributed to the formulation of a regulation be rigorously documented. With regard to fiscal impact the CEC has determined that these regulations have no fiscal impact to any agency, including the CEC. Current agency resources are sufficient to process the updated reporting requirements. As discussed in the response to Comment No. IAC 21 below, the CEC has concluded that the regulations will not result in any indirect impacts.

COMMENT NO. IAC 20: The commenter asserts that the CEC incorrectly claims that it does not anticipate any costs to itself as a result of these regulations.

RESPONSE: The CEC is already receiving and processing reports from the industry. These regulations remove the requirement to submit data the CEC has found is not needed and adds more detail about the exact data the CEC has determined is needed to meet the agency's obligations under statute. The CEC does not anticipate any costs or savings to itself as a result of these regulations because it believes it can process these more tailored reports with existing staff resources and further automation of internal processes.

COMMENT NO. IAC 21: The commenter asserts the CEC has failed to conduct a CEQA analysis for this action and that CEQA applies because smaller market participants will be squeezed out, resulting in a decrease in fuel availability, requiring consumers to travel further to purchase fuel, resulting in more air emissions and traffic or alternatively increased refiner production, which will result in increased truck traffic delivering fuel.

RESPONSE: As detailed in the memorandum made available to the public as backup materials for the February 14, 2024, CEC business meeting on February 7, 2024, the CEC's adoption of the proposed regulations is not a project for the purposes of CEQA.¹⁵ The proposed regulations clarify a reporting requirement imposed by statute on certain participants in the

¹⁵ Chad Oliver, Memorandum re: California Environmental Quality Act Compliance for Emergency Regulations Implementing Revised SB X1-2 Spot Market Reporting Requirements (February 5, 2024), available at <https://www.energy.ca.gov/filebrowser/download/5990>.

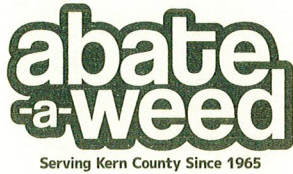
petroleum market. The action to clarify reporting requirements through regulations does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but implements an administrative process. No changes to the operation of the market, availability of petroleum, or indirect changes to consumer behavior are expected to result from adoption of these clarified reporting requirements. Therefore, the adoption of the proposed emergency regulations is not a project and is not subject to CEQA. Even if adoption of the proposed regulations was a project, it would fall under the Class 6 exemption¹⁶ as data collection activities and would also be exempt from CEQA under the common sense exemption for the reasons stated above.¹⁷

¹⁶ Pub. Resources Code, § 15061(b)(2); Cal. Code Regs., tit. 14, § 15061(b)(2); Cal. Code Regs., tit. 14, § 15306.

¹⁷ Pub. Resources Code, § 15061(b)(3); Cal. Code Regs., tit. 14, § 15061(b)(3).

EXHIBIT F

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 #:	254757
Document Title:	Combined Marked Comments
Description:	N/A
Filer:	Andrea Bailey
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	3/1/2024 8:47:41 AM
Docketed Date:	3/1/2024



AAW

Abate-A-Weed
INCORPORATED
9411 ROSEDALE HIGHWAY
BAKERSFIELD, CA 93312

2/19/24

Greetings,

My name is Darrell Feil. I am the Owner of Abate-A-Weed in Bakersfield, California and the former Chair of the National Federation of Independent Business. We are a small 22-person company that provides weed and insect control for industrial, commercial, and residential properties in Kern County. As a small business owner, the price of fuel is always a concern, and I fear that this rule will do more harm than good. I am not involved in the fuel trading market, but I know that more regulation, more paperwork, and more administrative burdens disproportionately impact the smaller players. As things get more expensive for these smaller players, I know they will not be able to compete with the more established refiners and, as a result, will not be able to deliver gas to the rural and independent stations I rely on. This will only raise my costs.

At the very least, I do not understand why this rule is being pushed through so quickly. There is no emergency today, and you have not provided enough time for the public to understand what you are doing and provide additional perspectives. I fear that the rule is not well thought-out and ask that you press pause until the market participants are able to weigh in.

Sincerely,

Darrell Feil
Owner
Abate-A-Weed



To Whom It May Concern,

The American Petroleum and Convenience Store Association (“APCA”) represents the owners of over 2,000 independent gasoline and convenience stores in California. Among other things, APCA’s goal is to represent the interests of these owners when important issues touching on their business arise. Our members work every day to deliver the best experience possible to customers.

[Obviously, gasoline is at the heart of the business of our members. Accordingly, APCA took special interest in the emergency regulation the California Energy Commission (“CEC”) delivered to the Office of Administrative Law (“OAL”) last Thursday, February 15 (“Proposed Regulation”). APCA writes this comment letter to respectfully request that CEC and OAL pull down the Proposed Regulation. APCA believes this will allow stakeholders like APCA’s members and others to work with CEC to develop a regulation that will work instead of one that is likely to further tighten the gasoline market in California.

APCA’s members rely heavily on resellers and traders to provide gasoline. The reason for this is simple. While branded gas stations have contracts with big refineries that are obligated to provide gasoline even when production is down, independent gas station owners typically do not. Instead, independent gas station owners must turn to spot-market participants who purchase imported gasoline and sell to a wide group of buyers. Without this group, independent gas stations are at risk of running low on gasoline or even out of gasoline when production contracts. That has been more and more of a reality lately. The Martinez and Rodeo refineries both ceased producing gasoline in the past years and many spot-market sellers have left the California market.

The Proposed Regulation includes requirements that would make it harder for the spot-market participants on which APCA’s members rely to do business in California. The Proposed Regulation heaps these burdens on all spot-market participants and does so for transactions that do not involve California gasoline. If they leave, independent gas stations may find themselves entirely at the whims of big refineries who will put the needs of independent gas stations behind those of their branded stations.

[This is not only a major problem for APCA’s members, but also a major problem for their customers. Independent gas stations are often the majority of gas stations available in underserved and rural areas. Thus, the people who are likely to be most hurt by the Proposed Regulation are people in these areas.

[APCA and its members have not had enough time to review the proposed regulation. CEC’s sweeping plan is likely to have a big impact on the entire state, including APCA and its

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Sacramento, CA 95814
Apc.us

members. More time should be provided for review and more opportunities should be provided for stakeholder discussion. We ask that CEC and OAL pull down the regulation to allow that to happen.] 3

If you have any questions, please do not hesitate to contact me at 916-826-2075 or via email at bobbie@apca.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bobbie Singh-Allen', written over a horizontal line.

Bobbie Singh-Allen

President

AT

From: [Denise](#)
To: [Oliver, Chad@Energy](#)
Cc: [OAL Reference Attorney@OAL](#)
Subject: Comments on OAL File Number 2024-0215-02E
Date: Monday, February 19, 2024 12:36:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

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Dear Mr. Oliver,

As a small business owner already struggling to keep our doors open this is yet another government action that will burden us even more than we already are. Doing business in California is extremely difficult. California is not competitive with most other states and this is just another example of more of the same of California government overreach.

My Company, A T Industrial Products Corporation has been in the business of work place safety since 1997. My operating expenses increase every year while sales, revenues and profits stay nearly the same. Your claim that this rule will keep gas prices down when in all reality (because we work in the private sector and understand how business works) the rule will, without a doubt increase red tape and bureaucracy to free-market gas transactions. Honestly, how in the world can a business be expected to file reports with a 9am deadline for the prior days transactions without incurring additional costs? The increased costs will be passed on at some point to the customers who are already nearly tapped out. Additionally, no one has provided any analysis regarding the cost of this emergency rule. As the customer, I hope you will do your due diligence and fully assess how these requirements will impact costs before pushing them through. There doesn't appear be anything that clearly states the benefit of increased regulations (the very thing California is infamous for) and market monitoring by the Commission that will outweigh the increased operational costs for fuel.

] 1

Respectfully Submitted,
Denise H. Duncan

DENISE H. DUNCAN
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3633 POMONA BLVD

POMONA, CA 91768



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6540 Alder Park Circle
Roseville, CA 95678
(916) 704-2392

February 20, 2024

RE: California Energy Commission & Office of Administrative Law reconsideration of proposed regulation in Docket 23-OIR-03

To Whom it May Concern:

On behalf of the California Delivery Association ("CDA"), which represents businesses engaged in the time-sensitive transportation of goods and services, I write to request that the California Energy Commission and Office of Administrative Law reconsider the proposed regulation in Docket 23-OIR-03.

Since 1987, the CDA has served as a non-profit association that advocates for and advances the common interests of messenger and courier companies across California. The CDA is the only California-based organization that monitors state legislative and regulatory actions to assess the impact on couriers and delivery companies. When the association identifies an issue that would affect the messenger and courier industry, it advocates on behalf of its members. I write to raise the association's concerns about how the proposed regulation would affect our members and the messenger and courier industry.

The messenger and courier industry is heavily impacted by fuel prices. Higher fuel prices increase the cost of transportation and ultimately result in higher costs for our members and the businesses and consumers who rely on messenger and courier services. Reflecting this sensitivity, the CDA website provides a link to a third-party website that monitors gas prices in different areas in the State, so that our members can find the most affordable places to fill up.

[From our perspective, we are concerned about the proposed regulation and the process with which it has been adopted. Our members know that the cheapest gas is usually found outside the refinery-brand chains, at independent stations and membership-based retailers (like Costco). In our understanding, those stations in particular rely on flexibility in the ability to source their gas through different sellers or resellers in the spot market.

We are concerned that the burdens and costs created by the reporting requirements in the new regulation will drive participants out of the spot market and discourage fuel imports. That, in turn, will restrict supply and increase prices, which would greatly affect our members' businesses. We are also concerned that the reporting regulations are being pushed through on an "emergency" basis with no meaningful time for comment and with what appears to be little engagement with the industry about the most sensible way to proceed.] 1] 2

[We join the California Energy Commission in wanting to avoid price spikes and price gouging. But we ask the agency to defer and reconsider its regulation while it considers the potential unintended consequences and their impact throughout California economy.] 3

Sincerely,

A handwritten signature in black ink that reads "Michael Williams".

Michael Williams
Executive Director
California Delivery Association

HFL



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To Whom It May Concern:

[I applaud the California Energy Commission's efforts to stop market manipulation and price gouging, but I respectfully provide these comments to ask that you do not rush to impose requirements that I fear will significantly impact gas prices. Many businesses, especially those in rural northern California, depend on the cost of fuel to remain stable. My company, Hills Flat Lumber in Grass Valley, works closely with trucking and delivery fleets to get products to market. My bottom line is closely tied to the costs I pay for shipping, which rise and fall with the cost of fuel. So, I am skeptical of any regulation that will make it more expensive to sell fuel in the state. My skepticism rises in situations like here where the regulation is quickly put together without industry collaboration and without being fully vetted with economic experts. Otherwise, we may end up with rules that sound good on paper but end up driving up costs without any real benefit. Therefore, it would be prudent for the California Energy Commission to conduct a full and formal rulemaking process before it changes how the daily spot market is controlled.] 1

Jeff Pardini
Owner
Hills Flat Lumber
Grass Valley, CA



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February 20, 2024

By Email

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California Energy Commission
Docket Unit
Docket No. 23-OIR-03
715 P Street, MS-4
Sacramento, CA 95814
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Re: Comment on Emergency Rulemaking
OAL File No. 2024-0215-02E:
Revised SB X1-2 Spot Market Reporting Requirements

Dear All,

On behalf of Idemitsu Apollo Corporation (“Idemitsu”), we appreciate the opportunity to comment on the above captioned rulemaking (the “Emergency Rule”) by the California Energy Commission (“CEC”). Idemitsu shares the CEC’s stated goals and wants to collaborate with CEC to help see those goals through. The short time afforded industry participants like Idemitsu to review and comment on the Emergency Rule (made even shorter by the intervening long weekend) has, however, limited Idemitsu’s ability to do so. Idemitsu therefore respectfully submits these comments with the respectful request that CEC slow down the process to open the door to the involvement of all affected market participants.

Idemitsu is a fuel reselling company located in Sacramento, California. Idemitsu is not a refiner in the United States. Rather, it is a reseller that buys and sells products, primarily to jobbers and independent gas stations. The volume of fuel Idemitsu is responsible for is only a small fraction of what refiners can produce on a single day. Nonetheless, Idemitsu plays an important role in the California transportation fuels market. Small resellers like Idemitsu keep refiners competitive by providing an alternative to refinery-direct sales. Moreover, Idemitsu plays a critical role for independent gas stations that are prevalent in economically disadvantaged and rural areas. This is because large refiners must supply their own branded gas stations first, meaning that independent gas stations cannot turn to these large refineries when the market is tight. Instead, it is resellers like Idemitsu who step in to ensure these independent gas stations

have fuel for their customers. So, for example, Idemitsu does not sell in markets located near refineries, such as San Francisco or Los Angeles. Rather, Idemitsu sells in outlying markets away from refineries, such as in rural agricultural areas.

[As pertinent here, SB X1-2 created a new “daily report” requirement for “[r]efiners and nonrefiners” that “consummate spot market transactions,” Pub. Resources Code § 25354(l), and the CEC has now prepared the Emergency Rule for the asserted purpose of amending and adopting regulations to implement the daily reporting requirement. Idemitsu understands that CEC’s rulemaking goals are to (1) increase transparency, (2) decrease price spikes, and (3) increase liquidity in the marketplace. **Idemitsu agrees with and supports those goals.**] 1

In reviewing the Emergency Rule, Idemitsu is concerned that the CEC will not be able to achieve its stated goals. This is particularly true with respect to the goals of avoiding price spikes and increasing liquidity. Market changes—such as a decrease in refinery production (and corresponding increased reliance on costly fuel imports) and a decrease in the number of spot market participants—have already limited supply in the State. Idemitsu is concerned the Emergency Rule will exacerbate this supply problem. Idemitsu believes that the right course for CEC to achieve its objectives is to engage all affected parties before promulgating these market-shaping rules. Idemitsu stands ready to engage with CEC in such a process.

Against that background, Idemitsu notes that the Emergency Rule raises a number of concerns relevant to OAL’s review and the Rule’s practical effect, including (among other things) the following:

- [• The Emergency Rule lacks clarity in what transactions are covered and potentially reaches interstate transactions that have no or little connection to the California transportation fuels market.] 2
- [• The Emergency Rule has expanded the definition of “nonrefiner” in a manner that (a) goes beyond and is inconsistent with the statute, (b) creates inconsistency and incoherence in the regulatory definitions, and (c) would produce unnecessarily duplicative reporting.] 3
- [• The Emergency Rule imposes onerous reporting fields and conventions that go beyond what the statute requires and do not cleanly align with how transactions are actually processed and structured. Moreover, CEC has set a completely infeasible and unreasonable 9:00 a.m. deadline for the daily reports. Idemitsu notes that the prior version of the Emergency Rule circulated on February 6 of this month had a deadline of 5:00 p.m. on the following day, and the deadline appears to have been dramatically changed (to the tune of eliminating an entire work day to prepare the data) without any further explanation or consultation with affected parties. Idemitsu is concerned that, by

imposing such unreasonable and unnecessary burdens, CEC will drive participants out of the market, thus harming rather than helping the California fuel market.

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- The Emergency Rule is procedurally flawed, including because, among others, CEC does not appear to have identified each technical and empirical study, report, or similar document on which CEC has relied and has not adequately considered the fiscal impact or indirect effects of the rulemaking. These failures will undermine the ability to provide meaningful judicial review of the regulation and are symptomatic of the unnecessarily rushed process that occurred without meaningfully consulting with the industry and/or providing the required notice.

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Accordingly, Idemitsu requests that OAL disapprove the Emergency Rule and/or that CEC withdraw the Emergency Rule, pending further discussions with all affected market participants.

Market Background

To provide context for many of its comments below, Idemitsu notes that the California transportation fuels market has undergone significant changes in recent years. As noted above and as CEC is no doubt aware, the California fuel market has undergone substantial changes that have decreased supply. For example, California's refinery capacity has significantly decreased because of the conversion of two refineries (Marathon Martinez and Phillips 66 Rodeo) to biodiesel production.¹ Idemitsu understands that these conversions may have decreased California's fuel production by 120,000 barrels per day.² This, of course, has a significant negative impact on overall production capacity in California. In the CEC's Transportation Fuel Supply Outlook, 2017 (cited as supporting the Emergency Rule),³ the Commission concluded that California's transportation fuel market was "nearly self-sufficient" because of refinery production.⁴ At that time, gasoline production was around 1 million barrels per day.⁵ But overall refining production has dropped since then. Even isolated from other changes, the conversions of Martinez and Rodeo represent a more than 10% reduction in gasoline supply from California

¹ See Tom Vacar, KTVU Fox, "2 of 5 Bay Area refineries to stop making gasoline," Oct. 11, 2023, *available at* <https://www.ktvu.com/news/2-of-5-of-bay-area-refineries-to-stop-making-gasoline>.

² See CEC, "California Oil Refinery History," *available at* <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/californias-oil-refineries/california-oil> (last accessed February 17, 2024) (noting the closure of Phillips 66 Santa Maria in January 2023).

³ See CEC, "Transportation Fuel Supply Outlook, 2017," *available at* <https://www.energy.ca.gov/publications/2017/transportation-fuel-supply-outlook-2017>.

⁴ Transportation Fuel Supply Outlook, 2017 at 43.

⁵ Transportation Fuel Supply Outlook, 2017 at 25.

refineries.⁶ As a result, the California market is now more reliant on imports of gasoline and gasoline components from other countries to stay balanced. This market contraction sits atop other idiosyncrasies of the California fuel market, including the state's strict and unique product specifications for gasoline. These factors further combine to isolate the California market.

Importing gasoline is expensive, and that expense has driven many market participants out of the market already. Gasoline imports require infrastructure that is limited in capacity (storage and draft) and expensive to access for independent importers. By contrast, because of their advantages in assets and financial means to handle large-volume imports, large refiners are better positioned to be able to import gasoline. As a result, the number of spot-market participants has decreased significantly in California in recent years. For example, Idemitsu understands that Glencore, Vitol, Cosmo, WestPort, Astra, Trafigura, Mercuria, and Freeport have all exited the California market.

The Emergency Rule Lacks Clarity on What Transactions Are Covered and Improperly Threatens to Regulate Transactions Outside of California.

Idemitsu is concerned about the clarity of what transactions are and are not covered by the Emergency Rule. Idemitsu respectfully submits that this lack of clarity may be addressed by further study and discussion with industry participants prior to the issuance of regulations.

[CEC's proposed daily spot transaction and settlement reports, set forth in the addition of Appendix D, Sections I and II to Title 20, Division 2, Chapter 3, Article 3 of the California Code of Regulations ("CCR"), purport to require market participants to report the consummation and settlement of "each spot market transaction for a transportation fuel product that either occurs in California or involves a transportation fuel product that will be delivered on the spot within the California fuels market." The Emergency Rule does not define what it means for a transaction to "occur[] in California" (in contrast to, e.g., involving a delivery "on the spot within the California fuels market"). Given the broad and ambiguous use of the phrase "occurs in California," it appears that CEC is intending to require reporting on transactions for deliveries *outside* the California fuels market and that have no or only a remote nexus to the California market. This would only confuse CEC's data collection efforts and violate federal law.

For example, CEC's regulation could be read to require reporting on a transaction where one party sells fuel from Korea for delivery in Nevada simply because the fuel was delivered into a pipeline that originates at a California port and runs through California to Nevada. Similarly,

⁶ This reduction is not limited to gasoline. For example, California refinery sales of ultra low sulfur diesel have dropped from a production of 1,252.8 thousand gallons per day in August 2019 to 752.4 in March 2022. See U.S. Energy Information Administration, "California No 2 Diesel Ultra Low Sulfur Less than 15 ppm Retail Sales by Refiners," available at <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=A723650061&f=M> (last accessed February 17, 2024).

CEC’s regulation could be read to mean that a transaction that involves the sale of fuel from Japan to Alaska (and that enters a pipeline in Alaska) as a transaction taking place “in California” simply because a party involved in the transaction was located in California at the time of the transaction. It makes no sense to include either of these transactions in CEC’s data collection.⁷

Imposing reporting requirements on transactions that govern the purchase and sale of transportation fuels wholly outside of California raises two principle concerns. First, CEC will be collecting irrelevant data on transactions that have no impact on the price of gasoline in California, which could ultimately skew the market monitoring reports.⁸

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[Second, such an application of the Emergency Rule would violate the Commerce Clause. The Commerce Clause provides that “Congress shall have Power . . . [t]o regulate Commerce . . . among the several States,” U.S. Const., art. I, § 8, cl. 3, and by implication, it permits only *incidental* regulation of interstate commerce by the States; direct regulation is prohibited. *Edgar v. MITE Corp.*, 457 U.S. 624, 640 (1982). “The Commerce Clause also precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.” *Id.* at 642–43. And “even when a state statute regulates interstate commerce indirectly, the burden imposed on that commerce must not be excessive in relation to the local interests served by the statute.” *Id.* at 643. Here, the Emergency Rule, if interpreted as broadly as CEC apparently intends, would impose reporting obligations directly on transactions in interstate commerce and that involve sales outside of California. Moreover, the only reason for CEC to gather such information is to limit the margins of sales in the California market based on sales in other states—effectively creating the kind of protectionist regime that the Supreme Court has repeatedly rejected. *See, e.g., Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989).

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[To be clear, Idemitsu does not expect OAL to resolve a constitutional challenge as part of its review. But OAL is required to ensure the *clarity* of a proposed regulation, so that “the meaning of regulations will be easily understood by those persons directly affected by them.” Gov. Code § 11349(c). Here, the regulation lacks clarity on its face, and the serious constitutional concerns further confirm why OAL should disapprove the regulation as submitted. *Cf. People v. Garcia*, 2 Cal. 5th 792 (2017) (discussing how statutes should be interpreted to

⁷ The question of where a transaction “occurs” is all the more confusing given that the Emergency Rule identifies only two options for the “spot market trading location”: San Francisco spot market (defined to include Kern County and anything North of it), and the Los Angeles spot market (defined to include everything else). Emergency Rule, App. D, I.D.

⁸ Indeed, the breadth of the Emergency Rule’s collection efforts belies CEC’s explanation that its mandate from SB X1-2 was to “submission of spot market transaction reports to the CEC detailing trades for petroleum products that influence California gasoline prices.” Emergency Rule at p. 4.

avoid constitutional concerns). Instead, any regulation would have to be limited to trades taking place on the *California* spot market for ultimate delivery to customers in California.

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The Emergency Rule's Expanded Definition of "Nonrefiners" Is Inconsistent with the Statute, Creates Confusion, and Is Overbroad and Unnecessary.

Similarly, the Emergency Rule's definition of "nonrefiners" would benefit from further consideration.

[The Emergency Rule's definition of "nonrefiners" stretches beyond the boundaries of the statute. SB X1-2 amends Section 25354(l) of the Public Resources Code to require daily report from "refiners and nonrefiners." SB X1-2 does not define "nonrefiners" directly, but the immediately preceding subsection (Section 25354(k)) is a weekly reporting requirement applicable to "nonrefiners, *such as proprietary storage companies*, that commercially trade in gasoline, gasoline blending components, diesel fuel, or renewable diesel fuel inventory not subject to contractual supply obligations." Pub. Res. Code § 25354(k) (emphasis added).

The Emergency Rule, however, adopts a much broader view of "nonrefiner." The Rule defines that term to include "importers, brokers, and traders as defined in Section 1363.2." 20 CCR § 1366(a) (proposed). The term "brokers" and "traders" did not even exist in the prior version of Section 1363.2. The Emergency Rule thus had to add new definitions of "trader" (broadly defined to mean "an individual, company, or other entity that does not have a refining presence in California but either sells or takes possession of refined petroleum products or renewable fuels, or both, via spot market transactions") and "broker" (defined as an "entity that negotiates contracts of purchase and sale of spot market transactions that is not classified as a refiner or a trader").

For several reasons, this new and expanded definition of "nonrefiner" is inconsistent with the statute and existing law. *See* Gov. Code § 11349(d) (requiring OAL to review regulations for "[c]onsistency," meaning "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law"). It also creates a lack of clarity and confusion.

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[First, under traditional rules of statutory construction (including the doctrines *ejusdem generis*, *expressio unius est exclusio alterius*, and *noscitur a sociis*),⁹ the illustrative and more limited use of the term "nonrefiner" in Section 25354(k) operates to inform and limit the meaning of "nonrefiner" in Section 25354(l). As interpreted by CEC, essentially any individual, person, or company that is a party to a spot market transaction has an independent daily reporting obligation. If that were what the Legislature really intended, it could have just said, "Any person

⁹ *See Dyna-Med, Inc. v. Fair Employment Housing Comm'n*, 43 Cal. 3d 1379, 1391 & nn. 12-14 (1987) (explaining the canons).

that consummates a spot market transaction shall submit a daily report” Instead, the Legislature used the phrase “Refiners and nonrefiners,” suggesting a more limited scope. There is no logical reason why the reporting obligations need to be expanded in this way, and doing so would create unnecessary duplication and burdens.

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[Second, CEC’s regulatory definitions create internal ambiguities and incoherence. For example, CEC defines “nonrefiner” to include an “**importer**,” which in the pre-existing (and proposed) regulation is defined to mean the following:

[A] firm that is owner of record at the point of discharge for crude oil, petroleum products or oxygenates imported to California and has imported 20,000 barrels or more ... during any month of the current or previous year. Importer also includes firms delivering 5,000 gallons or more of non-California fuels to a site in California by tanker trucks.

20 CCR § 1363.2. As defined, “importer” is properly and sensibly limited to “firms” that have a significant volume of business specifically in the California market. The definitions of “broker” and “trader,” in contrast, have no territorial or volume limits whatsoever, and may include individuals. Thus, an importer who consummates spot market transactions is exempt if they import 19,000 barrels per month to the State, but an out-of-state reseller who makes one transaction involving the California market would be covered. That makes no sense. That lack of clarity within CEC’s own regulatory definitions is further reason to disapprove of and reconsider the Emergency Rule.

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[Third, the rulemaking would benefit from industry input and CEC’s consideration of the economic impact of adopting such a broad definition of “nonrefiner,” as extending the reporting obligations in this manner will likely drive participants out of the market. Resellers, like Idemitsu, play an important role in bringing balance and competitive pressures to lower prices in petroleum markets and expand access to underserved communities. Based on data from the CEC, independent gas stations had a 31.5% share of the gasoline market in 2019.¹⁰ But, independent gas stations made up either the majority or plurality of gas stations available in *every single California county where 20% or more of the population fell below the poverty line*.¹¹ It is these

¹⁰ See California Energy Commission, Petroleum Watch (October 2020), available at https://www.energy.ca.gov/sites/default/files/2020-10/2020-10_Petroleum_Watch_ADA.pdf (last accessed February 16, 2024).

¹¹ See California State Council on Developmental Disabilities, California Poverty Levels by County, available at <https://scdd.ca.gov/wp-content/uploads/sites/33/2019/03/Exhibit-A-SCDD-California-Poverty-Levels-by-County.pdf> (last accessed February 16, 2024) (identifying Butte, Del Norte, Fresno, Glenn, Imperial, Kern, Kings, Lake, Madera, Mendocino, Merced, Tehama, Trinity, Tulare, and Yuba counties as having populations where 20% or more of the population fell below the poverty line). For the CEC and OAL’s convenience, Attachment 1

populations who will be most negatively affected by the Emergency Rule. But, there is no evidence in the regulation or in the documents cited therein that any consideration has been given to the impact of the regulation on these independent gas stations. CEC should carefully consider retracting the Emergency Rule to investigate the issue and should amend the regulation to ensure that these communities will not be forced to bear even more hardship.

While only providing a small fraction of total petroleum sales into the state, resellers, unlike refiners, are not partial to making refinery-direct sales and are therefore able to provide a steady supply of product to independent gas stations, which are more prevalent in rural and poor areas. But in regulating resellers like refiners, CEC will make it increasingly difficult for these smaller entities to compete, which will disincentivize them from participating in the California spot market. Without these resellers, an important check on refinery trades that serves to balance the market will cease to exist.

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The Emergency Rule's Reporting Obligations Go Beyond the Statute, Are Unduly Burdensome, and Will Not Produce Meaningful Information.

[The Emergency Rule is also inconsistent with the statute and lacks clarity in the way that it expands the daily reporting obligation. For example:

- The Emergency Rule requires that reports for each day's transactions be electronically submitted by **9:00 a.m.** the following day. This requirement is extremely burdensome. Appendix D.I (daily report for initiated transactions) requires 32 separate fields. Appendix D.II (daily report for settled transactions) requires 24 separate fields. For many individuals and companies, there will be no way to comply with that deadline without hiring staff dedicated just to CEC reporting or requiring existing personnel to work overtime or special graveyard shifts. While CEC contends that the 9:00 a.m. deadline is "to allow CEC staff to analyze spot market activity soon after it occurs," CEC fails to explain what analyses the Commission intends to conduct, why a 9:00 a.m. deadline specifically is necessary, or what interventions they intend to do.¹²

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- [• The Emergency Rule bifurcates reporting on both the initiation of the transaction and its settlement, with different fields required for each. *See* Proposed § 1366(a); App. D, §§ I, II. While CEC contends that this bifurcated reporting is intended to

consolidates the information CEC provided regarding independent gas stations with the poverty statistics provided by SCDD.

¹² Indeed, as of February 6, CEC proposed a version of the Emergency Rule using a deadline of 5:00 p.m. the following day. CEC never explained the basis for the abrupt change, what exactly CEC intends to do with the information each morning, or why a 9:00 a.m. deadline specifically is necessary. And it appears that CEC failed to consult with anyone in the industry or consider the economic and administrative impact of the deadline change.

“streamline” the reports and save “both industry and the CEC time and effort,” the reality is that CEC is merely doubling the work that entities must do to complete the reports. Nothing in the statute supports imposing this duplicative burden.

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- The Emergency Rule requires an extremely detailed specification of fields apparently intended to make CEC’s analysis easier but is not aligned with how transactions are necessarily processed. And the fields, as detailed as they are, still will not necessarily capture the structure and nuance of a given transaction.¹³

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[The extremely burdensome nature of CEC’s reporting demands (also discussed below) heightens the problems with adopting such a broad definition of “nonrefiner” and requiring duplicative reporting. CEC’s field specifications and deadline seem to assume that the demanded information is somehow automatically or routinely captured every time a trade occurs—as if all a person needs to do is click a button saying “Run Report,” and everything will automatically get transmitted and sent to CEC. That is not the case. There is no way for an entity to comply with CEC’s demands without devoting extensive staffing and technological infrastructure to managing these reports.

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[The effect—whether intended or not—will thus be to isolate California even further. Refiners and large entities that do substantial business in the State may have the resources and incentives to create the systems and processes necessary to comply with the reporting requirement. Smaller entities may not and thus will be incentivized to leave the market entirely. Likewise, the Emergency Rule may artificially restrict how transactions themselves are conducted so as to align with the required fields, rather than allowing market participants to freely trade amongst each other using the terms and conditions that make sense for the individuals involved.

Ultimately, California will find itself with a dearth of entities willing to sell gas into the state, which will only exacerbate the current supply challenges created from California’s limited permissible gasoline blends and the risk of disruptive price spikes affecting commuters. SB X1-2 was intended to prevent “anticompetitive conduct” and “price gouging,” Sec. 1(f), (i), yet the Emergency Rule would create a regime that disproportionately burdens small entities and reduces competition, harming the market and consumers. That is not what the Legislature intended.

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¹³ For example, by mandating the reporting of the volume of product contracted on a given day (App. D. I(K)), the CEC will be unable to account for variable option trading that may result in a final sale price and volume unknown at the time of the transaction. And if CEC then uses this data to establish margin caps, it will be doing so without properly understanding the transaction in question.

The Emergency Rule Is Procedurally Flawed.

[We recognize that, as part of SB X1-2, the Legislature authorized OAL to treat any proposed implementing regulations as emergency regulations. *See* Pub. Res. Code § 25367(a). Nonetheless, that does not mean that CEC is free to act arbitrarily or capriciously, to ignore due process, or to act beyond the scope of its authority. In short, procedural safeguards still apply. We respectfully submit that the Emergency Rule at issue here warrants a much fuller procedure than what two business days allow.] 18

[***Failure to Identify All Materials Relied On***

Even in the context of an emergency regulation, an agency must “identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies.” Gov. Code § 11346.1(b)(2). This critical requirement allows the public to understand and comment on the basis for the agency’s rule, and it allows a court to meaningfully review the rule upon any challenge. Here, however, Idemitsu believes that CEC has not provided all materials on which it has relied. Providing those materials would be helpful to the regulated community, as it would provide important information to assist in understanding the Emergency Rule.

For example, CEC states that it developed the specific reporting requirements “through internal analyses and engagement with the industry.” Notice of Emergency Rule, at 10. But no such internal analyses are identified in the description of materials relied, nor is there any further description of what the engagement with the industry entailed or how or why it supported CEC’s rule. The CEC appears to have engaged with only a select segment of the industry that did not include fuel resellers or potentially affected industries such as independent gas stations, jobbers, small businesses, agricultural businesses, manufacturers, and a host of others. But even the select segment CEC did consult has come out *against* the Emergency Rule as unreasonably burdensome and adopted *without* adequate input from that segment of industry.¹⁴

As another example, CEC cites, as material it relied on, a DPMO Interim Update on California’s Gasoline Market September 2023 (“DPMO Update”).¹⁵ As pertinent here, that Update reported that, “on Friday September 15, 2023, an unusual transaction took place on the California spot market that caused the price of gasoline to increase by nearly \$0.50 per gallon on the spot market.” Update at 3. And CEC’s Emergency Rule references that “unusual transaction on the gasoline spot market” as a reason for the “enhanced reported requirements implemented through this rulemaking.” Notice of Emergency Rule at 5. Yet the cited DPMO Update document contains just two paragraphs generally describing the event, with no further discussion, analysis, or explanation of what the supposed “unusual transaction” was or why

¹⁴ *See, e.g.*, Comments from Western States Petroleum Association, (February 16, 2024), TN# 254547.

¹⁵ Available at <https://www.energy.ca.gov/media/8748>.

enhanced reporting requirements would have avoided the issue, nor did CEC's Notice provide any further explanation.

Presumably, there is *some* more detailed report or analysis on what that transactions was, and that information is critical to understanding whether CEC's "enhanced reporting requirements" are actually tailored to the problem CEC is purportedly trying to solve. But without further identification of what that analysis or document is and what happened, the public and courts have no real way to assess the rationality of CEC's approach.

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Failure to Acknowledge Fiscal Impact

CEC contends that it "does not anticipate any costs to itself or other state agencies as a result of this emergency rulemaking action." Idemitsu questions whether this is correct. CEC's Emergency Rule (a) significantly expands the number of entities required to report, resulting in duplicative reports; (b) imposes additional and highly specified field reporting obligations; and (c) demands that all reports must be submitted by 9:00 a.m. the next day on the premise that CEC will be promptly reviewing each day's transactions by the following morning. It seems highly unlikely that CEC will be able to process all of this additional information without additional cost. **Again, Idemitsu appreciates the goal of improving transparency into the spot market.** The question is how to achieve that goal efficiently and without harming the market. Idemitsu is concerned is that CEC has simply taken a maximalist approach without adequately considering the costs, burdens, and feasibility either for the reporting parties or for itself.

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Failure to Conduct a CEQA Analysis

CEC contends that the Emergency Rule is not a "project" subject to CEQA, purportedly "because the proposed rulemaking relates to an informational reporting requirement, and so does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." That finding significantly underestimates how the Emergency Rule will impact the California gas market and distort the way transactions are handled, including by squeezing out smaller market participants in favor of bigger companies and refineries. Indeed, CEC's Emergency Rule *does* threaten physical change. For example, a decrease in fuel availability from independent gas stations is likely to cause affected populations to have to travel farther to fill up their tanks (increasing greenhouse gas emissions, street and highway traffic, and noise while reducing air quality, all while costing consuming more in the process). And, as another example, decreased availability from resellers will mean increased refinery production and an increase in truck traffic delivering fuel (increasing greenhouse gas emissions, traffic, and noise while reducing air quality, all while costing consumers more in the process). Both of these (and other outcomes of the Emergency Rule) will increase greenhouse gas emissions, traffic, and noise while reducing air quality, all while costing consumers more in the process. CEC should conduct a full CEQA evaluation to further refine its proposal.

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* * *

[While SB X1-2 authorizes the CEC to adopt its implementing regulations through emergency rules, CEC is by no means obligated to do so. Given the complexity of regulating the spot market, including establishing set margin caps and defining reporting metrics to monitor individual transactions that can range in duration, structure, and allocation of risk, it would be prudent for CEC to adopt regulations through a formal rulemaking process. Doing so would present all affected market participants with the opportunity to engage with the CEC and provided much-needed insight on how to properly frame reporting requirements in a way that will not hamstring future transactions. It would also allow CEC to consult with industry and market experts and adopt regulations supported by academic studies or industry standards, none of which are cited in the Emergency Rule.] 22

[CEC's current rulemaking docket already includes a number of comments, including requests for it to conduct a formal rulemaking; yet it does not appear that CEC has responded to or even considered these comments. Taking action without regard to public comments is, in and of itself, arbitrary and capricious. The CEC has considered public comments in the past when choosing to adopt emergency regulations and should do so here. *See* CEC Resolution 22-1012-7. Even ignoring these prior comments and requests for formal rulemaking, an emergency action with a five-day comment period is hardly sufficient to support reasoned decision-making. Worse, a five-day comment period that starts before a three-day weekend leaves only two (2) business days for any affected party to read and understand how they may be impacted by what is proposed, much less be able to provide valuable comments to assist the CEC to develop a workable regulation that furthers rather than undermines the goals of the statute. And, the last of those days (Tuesday, February 20), falls on the first day of a major industry conference—the Western Petroleum Marketers Association conference—meaning that many market participants will be out of the office almost the entire duration of the comment period. Moreover, it is not clear that a legitimate emergency exists such that CEC needs to bypass formal rulemaking or otherwise accelerate its initial plans to promulgate a rule later this summer. *See* CEC's November 3rd Workshop Presentation, 23-OIR-03 (TN# 252883). The petroleum products industry has been producing and distributing California transportation fuels for many years now. The signature event motivating the Emergency Rule was the 2022 retail gasoline price spikes.] 23

[Since that time, however, the Legislature passed SB X1-2, which establishes self-executing daily reporting obligations that are currently underway, obviating the need for CEC to act on an emergency basis without a complete deliberative process.] 24

For all of the above reasons, Idemitsu respectfully submits that OAL should disapprove the Emergency Rule, and CEC should re-engage with industry—including representatives from all relevant segments of the market—in considering a new and more balanced rulemaking.] 25

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Regards,

Maureen F. Gorsen
Partner

Attachment

Attachment 1

County	Percent Below Poverty Level	Number of Independent Gas Stations ¹⁶	Independent Gas Stations Determination
Butte	21.3%	55 out of 95	Majority
Del Norte	21.7%	6 out of 14	Plurality
Fresno	26.9%	185 out of 358	Majority
Glenn	20.3%	12 out of 22	Majority
Imperial	24.1%	51 out of 83	Majority
Kern	23.1%	194 out of 367	Majority
Kings	21.6%	28 out of 61	Plurality
Lake	24.6%	21 out of 41	Majority
Madera	22.1%	31 out of 75	Plurality
Mendocino	20.2%	41 out of 60	Majority
Merced	24.2%	53 out of 113	Plurality
Tehama	21.5%	21 out of 40	Majority
Trinity	20.1%	12 out of 20	Majority
Tulare	28.3%	122 out of 228	Majority
Yuba	20.8%	27 out of 41	Majority

¹⁶ For purposes of this analysis and to provide the most conservative understanding of the prevalence of independent gas stations in the counties listed, we have assumed that all “unknown” gas stations are branded.



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February 20, 2024

To Whom it May Concern,

RE: Request for Reconsideration of proposed regulation in Docket Number 23-OIR-03

On behalf of the National Federation of Independent Business ("NFIB"), which represents and serves more than 13,000 small and independent business owners in California, I write to respectfully request that the California Energy Commission and Office of Administrative Law reconsider the proposed regulation in Docket Number 23-OIR-03. CEC should carefully study how it will affect small businesses and should slow down the regulatory process to allow adequate time for interested parties to participate in that process.

] 1

Since 1943, NFIB has served as the voice of small business, advocating on behalf of America's small and independent business owners nationwide and in all 50 states. NFIB is nonprofit, nonpartisan, and member-driven. When NFIB identifies an issue that affects small businesses, it advocates on behalf of its members. The proposed regulation came to NFIB's attention, and I write to raise NFIB's concerns about how the proposed regulation might impact small businesses.

As an initial matter, I note that the timing of the proposed regulation has substantially limited the opportunity for interested parties to comment. CEC made its proposed rule available online on February 6 (but subsequently uploaded different iterations of the proposed rule). CEC then submitted its rule to OAL as an "emergency regulation" on at the end of the day on February 15, kicking off a five (5) calendar day comment period. That comment period extends over a holiday weekend, leaving interested parties only two (2) business days to comment. This timing has substantially reduced interested parties' time to engage in meaningful discussion with CEC regarding the regulation.

] 2

The proposed regulation appears highly likely to increase the costs of fuel in California. First, the regulation appears to impose massive reporting requirements on a broad swath of the fuel market. What is more, the regulation sets a deadline of 9:00 AM the day following a trade for companies to report on the trade. That raises the prospect of employees having to work off hours to complete reports before the start of the business

day. This seems like it can only increase costs for industry participants, and NFIB is concerned that these increased costs will end up in the cost of the product (fuel) those participants sell.] 3

[Second, the regulation appears likely to limit fuel supply in California. While much of the fuel sold in California may come from refineries in the state, imported fuel makes up a substantial portion of the market. Indeed, imported fuel plays an important role when the supply of California-refined fuel dips. The proposed regulation appears likely to drive industry participants who deal in imported fuel out of the California market. This will decrease competition among industry participants and decrease the volume of available fuel. Both of these outcomes will increase the cost of fuel in California.] 4

Increased fuel costs mean increased costs to do business. Compounding the many variables that are already increasing costs for small businesses by piling on regulations that will drive up fuel costs is a bad idea, and CEC should reconsider.

Very truly yours,

Tim Taylor
Legislative Director
NFIB California

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Taylor", with a stylized flourish at the end.

Tim Taylor
NFIB California Legislative Director
National Federation of Independent Business (NFIB)

SMC
Star Milling Co.®

Member of California Grain & Feed Dealers Assn.

23901 Water Street, P.O. Box 1987, Perris, CA 92570
Phone (951) 657-3143
Fax (951) 943-2400
www.starmilling.com

To Whom It May Concern:

I am Paul Cramer, Vice President of our family business, Star Milling Company in Perris, California. Star Milling is a small company of 90 employees. The business specializes in manufacturing and distributing farm, pet, and domestic animal food. We distribute across the state, nation, and world. Affordable fuel is critical to our business. We need fuel for the machinery and equipment we use to produce feed. But our business also relies on the fleet of trucks and delivery vehicles that ensure our products are delivered on time. I am also actively involved in the California Farm Bureau and the National Federation of Independent Business, as well as other local small business and community causes. I know this regulation will have an impact on many, if not most, of the members of those organizations.

[I only learned about the CEC's emergency rule regarding spot-market fuel reporting this weekend. I do not think I or other market participants have had enough time to learn what is in the regulation, consider what impact it might have, and provide our input to the CEC. Does this regulation really need to be on the books right now? Can't we slow things down a bit?] 1

[The regulation looks like it is going to raise fuel prices, not lower them. Given the importance of fuel to my business, I appreciate that CEC is trying to keep prices down. But it seems to me that the regulation is going to decrease the supply of fuel, which will only raise prices. I can tell you that when the supply goes down, the price goes up. We only have a handful of refineries here in California. If we drive out other suppliers (like importers), I have to think supply is going to go down. The regulation looks like it will drive out suppliers because it is going to make selling fuel in California more expensive and more complicated. There are other markets for fuel and I am worried that lots of companies are going to take their business elsewhere. We need it here. Please reconsider.] 2

Respectfully,



Paul Cramer
Vice President

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 #:	254570
Document Title:	OIR-2023-03 Comments on 2024-0215-02E AKA 23-OIR-03 emergency rulemaking
Description:	N/A
Filer:	Chester Hong
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/20/2024 1:05:28 PM
Docketed Date:	2/20/2024

OIR-2023-03 Comments on OAL 2024-0215-02E AKA CEC docket 23-OIR-03 emergency rulemaking

Attached to this Acrobat file (PDF) are my comments on OAL 2024-0215-02E AKA CEC docket 23-OIR-03 emergency rulemaking.

The files are:

OIR-2023-03 Rebuttal to necessity for emergency rulemaking.pdf
OIR-2023-03 Understanding Just In Time production.pdf
OIR-2023-03 Request Form 400 be filed in docket 23-OIR-03.pdf
OIR-2023-03-TN-0252468_Memo to Open New Docket.pdf

My comments are available in docket 23-OIR-03 when the Energy Commission completes my filing in the docket listed below.

See docket log <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-OIR-03> this docket was opened October 2, 2023 offering ample time for a regular rulemaking.

[Perhaps the Energy Commission has overlooked notifying the public who have requested rulemaking notices, I did not receive such a notice for this emergency rulemaking.] 1

thanks,

Steve Uhler
sau@wwmpd.com

OIR-2023-03 Rebuttal to necessity for emergency rulemaking

[The Energy Commission opened docket 23-OIR-03 for the subject matter of this rulemaking on October 2, 2023, offering ample time for a regular rulemaking.

The need to urgently understand price spikes in the cost for gasoline appears to be driven by a need to recover from a lack of knowledge of the effect over appearances.] 2

[Why is more important to investigate spikes in prices for gasoline than spikes in prices for electricity?

Consider that a gallon of gasoline has the energy equivalent of 32 kilowatt-hours of electricity.

Gasoline at \$4.00 a gallon costs 12.5 cents a kilowatt-hour.

Gasoline at \$6.50 a gallon costs 20.3 cents a kilowatt-hour.

This is a increase of 7.8 cents a kilowatt-hour.

It is not uncommon for the electric utility industry, and California State policies to use such a spike and more, as a means to control production costs.] 3

[Perhaps appearances are the only reason the State Legislature and the Energy Commission are wanting to act through a emergency regulation.] 2

[Care should be taken to not cause permanent price increases that will in the long run cause consumers to pay more to cover the costs of implementing the proposed regulations, and the resulting additional cost to the industries that work to provide the gasoline many Californians need to live in this state.] 4

[When the public sees a \$25.00 increase to fill their automobile with 10 gallons of gasoline, they feel unprotected, and the legislature feels the heat, this does not justify skipping rulemaking steps intended to ensure better regulations.] 2

Notwithstanding the legislature's call for a emergency rulemaking, the OAL should deny the use of emergency rulemaking for this matter.

Steve Uhler
sau@wwmpd.com

U

OIR-2023-03 Request Form 400 be filed in docket 23-OIR-03

[Please file Form 400 in docket 23-OIR-03.

Please include any delegations pursuant to 1 CCR 101.] 5

[§ 101. Digital Signature Acceptance.](#)

[§ 50. Special Requirements for Submission of Emergency Regulatory Actions.](#)

[§ 6. Hard-Copy Submission of Regulatory Actions.](#)

[§ 6.5. Electronic Submission of Regulatory Actions.](#)

[PRC 25217.5.](#) See attached file identifying the chair of the commission as director of the agency known as the Energy Commission.

[California Energy Commission Organizational Chart](#) See attached file identifying the current chair of the commission.

Steve Uhler
sau@wwmpd.com

OIR-2023-03 Understanding Just In Time production

It appears the Energy Commission wishes to have greater visibility of the petroleum industry.

The Notice Of Propose Action contains this statement:

"The new spot market reporting requirements give the CEC and DPMO greater visibility into the pricing, contracting, and marketing practices of participants at multiple levels of the petroleum supply chain. This in turn provides greater transparency into and enables more effective oversight of the petroleum industry."

[We live in a world driven by the wonders of Just In Time production.

We enjoy lower costs of living that Just In Time production provides.

In a multi-product industry such as the petroleum industry, the costs of production and value streams of each product change the costs of each other.

Perhaps the world came to know through the pandemic, that supply chains can easily collapse over lack of inventory and means of production. We saw increases in prices and some products became unavailable.

Care should be taken so to not replace Just In Time with Just In Case production to ensure no penalties for the petroleum industry. This will cause permanent higher costs to the consumer and unavailable petroleum industry products.] 6

[The Energy Commission appears to have no problem with spiking energy prices in the electric utility industry as a means to control loads on the electric grid in a attempt to control the costs of production.] 3

[Perhaps the Energy Commission should educate themselves in Just In Time production in the petroleum industry before proceeding.] 6

Steve Uhler
sau@wwmpd.com

WSPA

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 #:	254547
Document Title:	WSPA Comments on the Proposed Emergency Rulemaking Revising SB X1-2 Spot Market Reporting Requirements
Description:	N/A
Filer:	System
Organization:	Western States Petroleum Association
Submitter Role:	Public
Submission Date:	2/16/2024 4:23:28 PM
Docketed Date:	2/16/2024

*Comment Received From: Western States Petroleum Association
Submitted On: 2/16/2024
Docket Number: 23-OIR-03*

**WSPA Comments on the Proposed Emergency Rulemaking
Revising SB X1-2 Spot Market Reporting Requirements [Docket
#23-OIR-03]**

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

February 16, 2024

California Energy Commission
Docket Unit, MS-4
Docket No. 23-SB-02
715 P Street
Sacramento, California 95814

Uploaded to CEC Docket / Emailed to staff@oal.ca.gov

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814

RE: WSPA Comments on the Proposed Emergency Rulemaking Revising SB X1-2 Spot Market Reporting Requirements [Docket #23-OIR-03]

Thank you for the opportunity to comment on the California Energy Commission's (CEC) proposed emergency rulemaking action to revise certain industry reporting regulations authorized by the Petroleum Industry Information Reporting Act of 1980 (PIIRA), Chapter 4.5 of Division 15 of the Public Resources Code. 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. We reserve the right to amend these comments or add to the docket as necessary to reflect additional materials or changes in the CEC's decisions.

This letter serves as WSPA's comments both to CEC and the Office of Administrative Law (OAL) on the emergency regulations. If and when the regulations are submitted to OAL, WSPA requests that OAL disapprove the regulations for the reasons described below.

I. CEC's Proposed Regulations Fail to Meet the Statutory Requirements for "Emergency" Rulemaking

As we have explained in our prior comments, WSPA is deeply troubled that the CEC has chosen to implement major revisions to the long-standing PIIRA reporting regulations on a purportedly "emergency" basis. Improperly characterizing this rulemaking as an "emergency" bypasses important procedural safeguards enacted by the Legislature to ensure all Californians have a fair opportunity to review and comment on significant new regulatory proposals.

Under the California Administrative Procedure Act (APA), adopting proposed regulations on an emergency basis requires – first and foremost – a finding that a genuine "emergency" exists. Cal. Gov. Code (GC) § 11346.1(b)(1). APA defines an "emergency" as "a situation that calls for *immediate* action to avoid serious harm to the public peace, health, safety, or general welfare." GC § 11342.545 (emphasis added). To avoid abuse of the emergency rulemaking provisions, the Legislature provided specific instructions on the factual findings required to constitute an "emergency" under the APA:

A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations . . . , the finding of emergency **shall include facts explaining the failure to address the situation through nonemergency regulations.**

GC § 11346.1(b)(2) (emphasis added). The finding of emergency must be in writing and “include . . . a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.” *Id.*

] 1

[Though California agencies generally have some discretion in making a finding of an “emergency,” courts are not bound by the agency’s decision, but are the ultimate arbiter of whether the agency’s statement of facts properly supports the agency’s finding of an “emergency.” *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 941. This finding is not merely a formality for the agency. “The finding of and statement of facts constituting an emergency must be more than mere ‘statements of the motivation’ for the enactment and provide an adequate basis for judicial review.” *Id.* Agency statements that the proposed action is supported by sound policy are also insufficient if they “do not reflect a crisis situation, emergent or actual.” *Id.* at 942.] 2

[The CEC’s Notice fails to meet the basic requirements of the APA emergency rulemaking statutes. The Notice offers no explanation for why the CEC did not address the last two years of gasoline price spikes it cites through regularly noticed, nonemergency regulations. The CEC Notice does not discuss what imminent harm will purportedly befall the State if these regulations are considered on regular notice, and nothing in the CEC Notice “compels or justifies the view that [consideration on regular notice] would seriously affect public peace, health and safety or general welfare.” See *id.* at 942. Rather, the Notice concedes in the very first two sentences of its “Finding of Emergency” that the most recent gasoline price spikes have been happening over “the past two years” and “can occur at any time.” CEC Notice, p. 2. It also describes multiple efforts taken by the Legislature and Governor for several years to address the perceived problem, including the adoption of Senate Bill (SB) X1-2 nearly a year ago. *Id.*, pp. 2-3. Moreover, most of the documents the CEC cites in the Notice were created and released years ago (*i.e.*, 2017, 2019, 2022), and have been the subject of substantial discussion and debate by the Legislature, the Governor and CEC since those times. The CEC claims throughout the Notice that the proposed regulations are generally necessary to improve agency oversight and market transparency, but these claims are irrelevant to the finding of whether a true “emergency” exists sufficient to dispense with regular public notice and comment.

] 1

[Rather than provide supporting facts for its finding of “emergency,” as required by the APA, the CEC simply cites to Public Resources Code section 25367, which reflects the Legislature’s opinion that an “emergency” exists and its direction to the CEC to adopt (and its order to the Office of Administrative Law (OAL) to consider) implementing regulations on an emergency basis. Cal. Pub. Res. Code § 25367 (“[T]he adoption of, or amendment to, regulations or orders implementing this chapter shall be considered by the [OAL] as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare.”) But only the reviewing courts, not the Legislature or the implementing agency, retain final authority

to determine whether an “emergency” has been proven on the facts as required by the APA. Indeed, the APA *itself* suggests that legislative determinations are not enough under the law to manufacture an “emergency” where none exists on the facts. For example, even though the Legislature can give a statute immediate effect by deeming it an “urgency statute” – “necessary for immediate preservation of the public peace, health, or safety,” Cal. Const. art. IV, § 8(d) – that is *still* not enough to establish an “emergency” under the Government Code. See GC 11346.1(b)(2) (“The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.”) If the Legislature wanted to forego the APA process entirely, it could have been much more explicit about saying so.] 3

[Lastly, WSPA urges that, going forward, the emergency regulation procedure be used sparingly. California courts have noted that it can be “a possible abuse of the emergency power when the enacting agency repeatedly and habitually resort[s] to it without a credible statement of genuine emergency.” *Schenley Affiliated Brands Corp. v. Kirby*, 21 Cal. App. 3d 177, 194 (1971). The CEC should reserve its use of this extraordinary procedure for situations that truly merit it.] 4

[WSPA agrees that these issues are critically important to ensuring that California’s citizens “have adequate and economic supplies of fuel” and are protected from price spikes resulting from structural market influences. But effectively addressing these issues will require proper consideration of years of relevant market data and of the functioning of the industry as a whole. *This proposed rulemaking would bypass that.* Given the importance and complexity of the issues involved, the CEC should not short-change a thorough assessment in order to arrive at workable and effective regulations, and Californians deserve adequate time to review and comment on whatever system emerges from that assessment.] 5

II. The Proposed Emergency Regulations Contain Ambiguous or Misleading Terms and Definitions That Must Be Corrected

The submittal of these regulations on an emergency basis, without providing time for adequate public review and comment, has also resulted in the inclusion of regulatory terms that are ambiguous or do not reflect real-world practice, and contain misunderstandings of how market transactions work.

[For example, the CEC should be aware of standardized industry practice associated with reversals and rebooks. A “reversal” (or “credit memo”) refers to a cancelled invoice, while a “rebook” refers to a reissuance of a previously cancelled invoice. Reversals and rebooks are a standard, unavoidable business practice. Typically, a reverse/rebook occurs within a few days of the initial invoice – but can sometimes happen months afterward. Therefore, when an invoice is issued it cannot be known with certainty that it is a final invoice. If the CEC seeks more frequent reporting cycles, more reversals/rebooks will appear. With a multi-part daily report, the CEC should expect to spend a significant amount of time reconciling these commonplace occurrences, which would likely lead to some confusion with the data being reported. Again, a better approach would be to have a monthly report (e.g., report the January invoice data at the end of February).] 6

Other terms are also not clearly defined or defined at all, including the following:

- [• “Spot Market Trading Location” (see Proposed Appendix D, I.G) – the CEC offers no definition for this term, and WSPA is unsure how this is different than the delivery location, and how to define the geographic boundaries of any such “trading location.”] 7

- “Type of Settlement” (see Proposed Appendix D, II.G) – Aside from providing two definitional examples of settlement types in proposed Section 1363.2 (“Book Transfer” and “Net-Out”), the CEC does not define the term or outline other acceptable “settlement types” that could be reported in the form.] 8

- “Invoice” (see Proposed Appendix D, II.U & II.V) – It is unclear whether the CEC intends for industry to report received invoices or approved invoices in this data category. Sellers and buyers often report different dates for the settlement, which could lead to inconsistent reporting from company to company.] 9

III. The CEC’s Proposed Regulations Will Not Address the Inherent Structural Influences Driving Price Volatility, and Will Only Reduce the Quality of Information Available to the Market

WSPA also has serious concerns that the emergency regulations as currently drafted will not address the two critical factors the Division of Petroleum Market Oversight (DPMO) recently identified as driving gasoline price volatility in California; *i.e.*, long-term market supply imbalances and the outsized influence of independent price reporting agencies in a market characterized by diminishing numbers of transactions. Rather, the proposed regulations would require a flood of additional transaction data with little or no connection to real-time gasoline pricing, which, once published by CEC, would only increase the amount of outdated or inaccurate data available to buyers and sellers, and ultimately impede market transparency.] 10

For example, the CEC is proposing to mandate additional daily reporting of both the trading and settlement phases of gasoline spot transactions. As we previously explained,¹ there is often a time lag between contract execution and settlement dates for daily spot market transactions. Final settlement prices are often only determined weeks or months later, and do not have an appreciable influence on the real-time gasoline spot market. This means that settlement data reported at the time of contract execution may not accurately reflect updated information about the fuel ultimately purchased. Indeed, depending on the contract, pricing may be subject to multiple revisions after the settlement date. Reporting of this settlement information on a daily basis will only create confusion, will not be representative of real-time gasoline prices, and will muddy the waters as buyers and sellers try to assess the real-time direction of the daily spot market. Therefore, we recommend monthly reporting for settlements, which would not only allow the collection of more complete and accurate data but also would put these lagging indicators in their proper time perspective for the market.] 11

Our concerns about the mandated reporting of inaccurate and/or ambiguous data extend to the novel reporting form (Form M1322) adopted by the CEC to obtain information about operational costs and gross and net refining margins. The Form’s separation of operational costs from refining margins does not adequately capture the relationship between the two categories, and could present a misleading or inaccurate picture of how margins are impacted by certain types

¹ WSPA has provided an explanation of these issues in several prior submittals to the CEC, including its Petition for Formal Rulemaking Regarding SB 1322 Implementation (Jan. 6, 2023); Request for Reconsideration of WSPA Petition for SB 1322 Rulemaking and Stay of Penalties (Feb. 15, 2023); Petition for Formal Rulemaking (May 11, 2023); Comments on SB 2 Implementation (May 30, 2023); Request for SB X1-2 Data Reporting Clarifications (June 9, 2023); Comments on Transportation Fuels Assessment Report workshop (Sept. 11, 2023); and Comments on General Rulemaking Proceeding for Developing Regulations, Guidelines, and Policies for Implementing SB X1-2 and SB 1322 [Docket #23-OIR-03]; Comments on the January 17, 2024, Staff Webinar on SB X1-2 Implementation – Revised CEC Spot Contract Forms [Docket #23-SB-02] (Jan. 31, 2024). These submittals are incorporated herein by reference.

of operational costs. This is critical information in the context of CEC's consideration of potentially imposing a margin cap.

] 12

[Equally important to WSPA, the CEC's proposed emergency regulations do not address fundamental structural market supply imbalances or the outsized market impacts of price reporting based on incomplete or selective transaction information disclosed by a very few price reporting agencies. DPMO identified these as two of the central factors contributing to gasoline market price volatility. Californians deserve a transparent discussion about the declining number of refineries in California and the State's active efforts to further reduce in-state refining – both resulting in a shrinking California gasoline supply-side market and increased susceptibility to market impacts from a small number of spot gasoline transactions. As DPMO recognized, these factors have a substantial impact on gasoline price volatility. In our view, addressing price volatility at the pump requires the CEC and the state to have a serious and direct conversation with stakeholders and California consumers about the long-standing structural obstacles to gasoline supply in this State, and what measures can be taken to address these challenges.

] 10

We recommend that the CEC withdraw the emergency rulemaking documentation and set these issues for regular public notice and comment, in order to allow a meaningful discussion with industry stakeholders, better understanding of how data is being used and can be most efficiently reported, and cooperation on implementable solutions.

SUMMARY

[WSPA appreciates the time and effort the CEC staff have invested to date in its conversations with industry. These issues are complex and devising workable solutions can be extremely challenging. But we continue to ask the CEC to involve industry in the process closely, and to hear and incorporate input from industry and others reflecting how the real-world gasoline spot market works and how to best gather real-time, accurate information about it. In WSPA's view, these issues cannot be effectively understood or resolved in a rushed "emergency" rulemaking that deprives Californians of proper public notice, review and comment. We urge the CEC to withdraw the current "emergency" process and continue the consideration of these proposed regulations with regular public notice and comment. Aside from California law requiring those steps, we believe a regularly noticed process is much more likely to yield a complete picture of the market, the real-world obstacles involved in collecting accurate real-time data, and what a efficient and workable reporting system might look like.

] 13

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

Sincerely,



Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary

EXHIBIT G

Notice of Exemptions

TO: Office of Planning and Research
1400 Tenth Street, Room 212
Sacramento, California 95814

FROM: California Energy Commission
715 P Street
Sacramento, California 95814

Project Title: Revised SB X1-2 Reporting Requirements [Regulations]

Project Location: Statewide

Description of Nature, Purpose, and Beneficiaries of Project: Adoption of emergency regulations to implement and clarify the spot market reporting requirements in Public Resources Code section 25354(l). On March 28, 2023, Governor Newsom signed Senate Bill (SB) X1-2 (Stats. 2023, 1st Ex. Sess. 2023, ch. 1), which took effect June 28, 2023 and requires, among other things, refiners and nonrefiners that consummate petroleum spot market transactions to submit daily reports to the California Energy Commission. (Public Resources Code Section 25354(l).) The CEC developed regulations to implement and clarify the statutory reporting requirements and approved adoption of the regulations in article 3, chapter 3 of title 20, California Code of Regulations.

Name of Public Agency Approving Project: California Energy Commission

Name of Person or Agency Carrying Out Project: California Energy Commission

Exempt Status: (Check One)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption: State type and section number: Class 6 Information Collection, Section 25306;
- ☐ Statutory Exemption: State code number: _____
- ☒ Other: Adoption of the amendments not a “project” for CEQA purposes, and is otherwise exempt from CEQA requirements pursuant to the “common sense” exemption (CEQA Guidelines, 15061, subd. (b)(3)).

Reasons why project is exempt: The above-described activity is not a project under section 15378(b)(2), because it pertains to continuing administrative activity related to policy and procedure making. In addition, the activity implements and clarifies an informational reporting requirement established by SB X1-2. Accordingly, the regulations clarifying the process and informational requirements for the spot market reports are exempt pursuant to the Class 6 categorical exemption. Additionally, the activity is exempt under section 15061(b)(3) because there is no possibility that the activity may have a significant effect on the environment.

Lead Agency Contact Person:

Chad Oliver
California Energy Commission

(916) 891-8569
Chad.Oliver@energy.ca.gov

Signature: Chad Oliver

Date: 2/20/2024

Title: Staff Counsel



Signed by the Lead Agency

Date received for filing by OPJ

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.