Western States Petroleum Association
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President

February 24, 2015

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 15-PMAC-1
1516 Ninth Street
Sacramento, CA 95814-5512

Re. Western States Petroleum Association (WSPA) Comments on the February 10, 2015 Petroleum Market Advisory Committee (PMAC) Meeting – 15-PMAC-1

Dear Docket, CEC Staff, and Petroleum Market Advisory Committee Members:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-five companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, and four other western states. WSPA has a long history of involvement with the CEC to advocate for adequate, reliable, affordable, and clean energy supplies for California, including many years of testifying at, and providing comments on, the CEC's Integrated Energy Policy Report proceedings.

WSPA has two main comments to provide to the Commission and the PMAC. The first relates to both of the PMAC meetings to date, and the second relates specifically to the February 10th PMAC meeting. WSPA appreciates CEC staff ensuring this letter is distributed to the appropriate CEC staff and the PMAC members.

Confidential Petroleum Industry Information

WSPA writes to you today to oppose CEC disclosure of information in response to recent data requests to California Energy Commission ("CEC") staff by members of the CEC Petroleum Market Advisory Committee ("PMAC").

During the PMAC's meetings on both December 16, 2014 and February 10, 2015, PMAC members orally requested that CEC staff provide as much data as possible, in order for the PMAC to accomplish the committee's mission - including non-aggregated, proprietary, and confidential petroleum industry data to the PMAC. This sensitive and highly confidential data is protected by the terms of the

Petroleum Industry Information Reporting Act of 1980 ("PIIRA"), the CEC's own disclosure regulations, and the California Public Records Act ("CPRA"). These long-settled California legal requirements are exceptionally strong and CEC may not deviate from them by providing protected data to the PMAC.

At the February 10th meeting, CEC staff member Ryan Eggers delivered a presentation regarding the data collection activities of the CEC's Transportation Fuels Data Unit, which highlighted the three types of data collected: data collected pursuant to PIIRA; data collected from proprietary sources via subscriptions; and data collected from public sources of information. WSPA and its members have a long history of working cooperatively with the CEC to provide confidential data pursuant to PIIRA.

PMAC members have now requested that CEC staff provide members access to all three types of data collected by the CEC, including non-aggregated, company-specific data. However, PIIRA, the CEC's disclosure regulations, and the CPRA all recognize the sensitive and highly confidential nature of this type of data, and were specifically designed to protect it, ensuring that no "unfair competitive disadvantage to the person supplying the information" will result from data collection. Cal. Pub. Res. Code § 25364(b).

While PMAC members may certainly access publicly available data freely, data collected pursuant to PIIRA and other proprietary data are subject to strict confidentiality requirements under California law. In this letter, we provide background with respect to these requirements and the rationale for them. My staff, counsel, and I are available to meet with you to review this topic in greater detail at your convenience.

PIIRA's Extraordinary Reporting and Confidentiality Requirements

The California Legislature enacted PIIRA in 1980 in response to the gasoline crises of the 1970s. In an effort to increase the State's "capability to anticipate and/or assess the nature and extent of any energy shortage and the economic and environmental impacts thereof," SB 1444, eventually codified as PIIRA, Cal. Pub. Res. Code §§ 25350-25366, required utilities, major oil and gas producers, refiners, and marketers of petroleum products to provide the CEC with detailed, current data on supply, demand, production, and generating capacities on a quarterly basis. Assembly Committee on Resources, Land Use, and Energy, Bill Analysis (June 1980).

To encourage prompt and complete data submission, PIIRA provides strong confidentiality protections to information that is submitted to the CEC pursuant to the Act. Information presented to the CEC under PIIRA is to be held in confidence or aggregated to ensure confidentiality. Cal. Pub. Res. Code § 25364(b). If the release of non-aggregated information is requested, the CEC is obligated to provide the individual who submitted the information with notice and an opportunity to respond, and must provide a written explanation of its determination to release or not release the non-aggregated data. Cal. Pub. Res. Code § 25364(c). If the information in question relates to petroleum products and blendstocks reported by type, neither the CEC nor CEC staff is permitted to utilize that information for any purpose other than the statistical purposes for which it is supplied, or to permit anyone other than CEC members and staff to view individual reports. Cal. Pub. Res. Code § 25364(f).

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Maintaining the confidentiality of the sensitive information collected pursuant to PIIRA has been a cornerstone of the Act since its inception. The first draft of the legislation anticipated the confidentiality issues that collection of such sensitive information would entail, providing that "marketing or trade secret [information] ***shall be aggregated by the commission to the extent necessary to assure confidentiality***." S.B. No. 1444, Feb. 7, 1980 version, 1979-1980 Reg. Sess. (unenacted) (emphasis added).

And in subsequent drafts of SB 1444 as it evolved in the legislative process, PIIRA's protections only grew more robust. *See* S.B. No. 1444, Apr. 8, 1980 version, 1979-1980 Reg. Sess. (unenacted) (adding significant confidentiality provisions to proposed section 25364, including a requirement of formal notice prior to release of confidential information, and a written determination by the CEC if such information were to be released). By the time the Legislature enacted PIIRA in September 1980, PIIRA included strict confidentiality provisions to protect "anyone submitting information" from an "unfair competitive disadvantage." Office of the Legislative Analyst, Analysis of Senate Bill No. 1444 (August 15, 1980).

When the Legislature amended PIIRA in 1984 to extend the required data collection beyond the 1985 sunset date provided for by the initial enactment, California legislators took the opportunity to ***strengthen*** the Act's existing confidentiality provisions "to protect confidential information submitted by the industry." Department of Finance, Analysis of S.B. 1763 (Sept. 14, 1984); S.B. No. 1763, Aug. 28, 1984 version, 1983-1984 Reg. Sess. (unenacted). Recognizing that the California-specific forecasts of the supply and demand for petroleum would contain sensitive and highly confidential information, the Legislature amended PIIRA to ensure that examination of these reports would be confined to CEC members and CEC staff. Assembly Office of Research, Assembly Third Reading of S.B. 1763 (August 28, 1984).

The Legislature has consistently highlighted the importance of PIIRA's extraordinary confidentiality provisions in subsequent amendments to PIIRA. In 1992, when PIIRA was amended to allow for certain information to be shared with the Air Resources Board ("ARB") to calibrate a model, the Legislature ***specifically rejected language that would have allowed agencies other than ARB to access the information***, and required that ARB also maintain information shared by CEC in strict confidence. A.B. No. 3777, Apr. 21, 1992 version, 1991-1992 Reg. Sess. (unenacted). Lawmakers again explained that "the disclosure of [confidential information] would result in an unfair competitive disadvantage to the person supplying it." Assembly Committee on Natural Resources, A.B. 3777 Analysis (Apr. 6, 1992).

In 2000, when PIIRA was amended to require the disclosure of additional data, the amendments also extended CEC and staff prohibitions regarding use of reported information on petroleum products and blendstocks. Assembly Committee on Utilities and Commerce, S.B. 1962 Analysis (July 6, 2000). The Enrolled Bill Report for the amendments stressed that "***PIIRA confidentiality statutes prohibit the disclosure of any confidential or company-specific information outside the Commission. This is to ensure companies are protected from unfair competitive practices as a result of this information being fully disclosed.***" Enrolled Bill Report, S.B. 1962 (Aug. 24, 2000) (emphasis added).

PIIRA's confidentiality provisions are a key component of state law, and strict compliance with them is crucial to the continued function of the State's energy shortage contingency plan, which relies on

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PIIRA data. Respect for PIIRA's confidentiality provisions is paramount to maintaining the balance allowing the free flow of important data to CEC while ensuring that compliant entities can still operate in a fair marketplace.

CEC Disclosure Regulations and the California Public Records Act

Proprietary petroleum industry information may also be collected by the CEC outside the confines of PIIRA. Protection and disclosure of such information is subject to the requirements of the CEC's disclosure regulations, including the requirements of the CPRA.

The CEC adopted its disclosure regulations to delineate access to CEC records "and so that legitimate interests in confidentiality will be protected." 20 Cal. Code Regs. § 2501. The CEC crafted these regulations to "balance legitimate interests in access to public records with legitimate interests in maintaining confidentiality of certain kinds of information." California Energy Commission, *In the Matter of Proposed Amendments to the Commission's Regulations Pertaining to Data Collection and Disclosure of Commission Records*, Order No. 98-0415-4 (March 4, 1998) at 2.

Under these CEC regulations, when a private third party provides custody or ownership of a record to the CEC, it may designate that record confidential. 20 Cal. Code Regs. § 2505(a). Once information is designated as confidential, the CEC may release the information to another governmental body ***only if the records are necessary to perform official functions and the body agrees to keep the records confidential***. 20 Cal. Code Regs. § 2507(c)(3). Otherwise, the CEC is prohibited from disclosing confidential records unless it has received the written permission of all entities that have the right to maintain the information as confidential, or unless it is ordered to disclose the records by a court. 20 Cal. Code Regs. § 2507(a), (f).

Additionally, the CEC's disclosure regulations are to be construed in accordance with the CPRA. 20 Cal. Code Regs. § 2503(a). The CPRA exempts disclosure of trade secret information that is provided to the CEC. Cal. Gov. Code § 6276.44; § 6254(k); § 6524.15 ("***[n]othing in this chapter shall be construed to require the disclosure of…corporate proprietary information including trade secrets…***", emphasis added). Under California law, a trade secret is:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Cal. Civ. Code § 3426.1(d). If there is a necessity for preserving the confidentiality of the trade secret that outweighs the necessity for disclosure, the trade secret cannot be disclosed. Cal. Evid. Code § 1040(b)(2).

WSPA members provide proprietary information to the CEC and label it as trade secret material, the disclosure of which could have extremely negative consequences for the entities that provided such data. Our members are entitled to the protections provided by the CPRA and CEC's implementing regulations.

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Conclusion

In sum, both data collected pursuant to PIIRA and proprietary data otherwise provided to the CEC are protected by rigorous confidentiality provisions. PIIRA data typically must be presented in aggregated form, and access to much confidential and company-specific PIIRA data is strictly limited to CEC members and staff. Proprietary data provided to the CEC outside of PIIRA is subject to trade secret protection, and the strong interest in confidentiality of that data must be carefully weighed against any arguments for disclosure. Furthermore, even if confidential data is ultimately disclosed to another government body, it is still subject to strict confidentiality, and disclosure is limited tightly to information truly necessary to perform the body's functions.

These strong protections exist precisely to allow regulated entities to continue to operate in a marketplace free from unfair competitive practices while still ensuring the CEC receives the information it needs. Protection of this non-aggregated, proprietary, and highly confidential data is of great importance to WSPA and its members. We therefore encourage the CEC to adhere to all applicable confidentiality requirements, and to deliberately consider the potential negative impacts of releasing protected information when contemplating providing data to individuals outside the CEC.

PMAC has access to stores of publicly available and aggregated data—more than enough information to fulfill its mission to obtain expert knowledge on industry trends leading to market fluctuations, the impacts of those fluctuations, and other fuels markets issues. Jeopardizing the fairness of the market to disclose information that is not necessary to PMAC's purpose would run afoul of PIIRA, the CPRA, and the CEC's own disclosure regulations.

Characterization of the Boston Consulting Group's Initial Work for WSPA, "Understanding the Impact of AB32 – June 2012"

In the early portion of the February 10th meeting, comments were made relative to the 2012 report prepared for WSPA by the Boston Consulting Group (BCG). The report was characterized in a very negative fashion and an attempt was made to completely discredit the BCG work, which we find highly concerning.

In the 2012-13 time period, and at the suggestion of numerous parties, WSPA agreed to allow and partially fund a third-party expert review of the BCG report, "Understanding the Impact of AB 32." We were approached by the UC Davis Policy Institute on Energy, Environment and the Economy with a proposal to review and comment on the Boston Consulting Group's analysis, a proposal we accepted. That review was also funded by the Rockefeller Brothers Fund and the Alliance of Automobile Manufacturers.

In considering the critique of the BCG report, it is important to keep in mind that the PMAC individual was able to offer their critique precisely because WSPA voluntarily subjected the BCG report to expert review. Not only was it voluntarily subjected to expert review, but it was reviewed by a group at UC Davis, many of whom have been involved in the development of the LCFS and whom have obvious pride of authorship in the policy. To our knowledge, the other often-quoted studies on potential economic impacts from the state's AB32 policies have not been subjected to similar expert review.

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While the expert review noted several areas where they disagreed with BCG's assumptions, their report affirmed the essential conclusion that the Low Carbon Fuel Standard (LCFS) and other AB 32 policies will have a profoundly negative impact on the state's refiners and fuel markets.

The other element that is important to recognize is that the BCG work being referred to was performed before CARB revised the LCFS compliance schedule downward to only a 1% compliance rate, based on the court's direction. Since this early work BCG has performed numerous additional analyses to incorporate new CARB data and information.

WSPA is providing the following information in response to the February 10th PMAC meeting criticisms:

- The BCG response to the U.C. Davis Policy Institute's published review (below),
- The link http://policyinstitute.ucdavis.edu/?page_id=2307 to the U.C. Davis website where you can find:
    - The expert evaluation of the BCG report
    - The response from BCG
    - A model update to their initial report provided on March 28, 2013.

As indicated, BCG has performed many additional analyses for WSPA and has updated their LCFS information based on changes to the CARB LCFS program, and in particular in relation to BCG's projected volumes of low carbon intensity fuels and credits. BCG's most recent analysis can be found in Appendix 1 of the WSPA comments submitted to CARB for the February 19th, 2015 LCFS reauthorization hearing in the #40 comment package at http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=lcfs2015.

BCG Response to UC Davis Policy Institute on Energy, Environment and the Economy - May 8, 2013

"We appreciate the work the US Davis Institute for Energy, Environment and the Economy put into its review of the Boston Consulting Group analysis of the cumulative impacts of AB 32 policies on California refiners. The report issued Monday reflects the seriousness of this issue and the urgent need to address the economic implications of current policies.

We accept there are other assumptions that could be used in an analysis of this type and that different assumptions will lead to different conclusions. BCG was selected to conduct this analysis because of our broad and deep understanding of global refining economics. While there may be other plausible assumptions or scenarios, as the Institute report noted, we selected what we believe are the most plausible assumptions to make. We remain confident those assumptions best represent the decision-making process of California refiners.

We agree the BCG report did not look at potential impacts of AB 32 policies on other sectors of the California economy. As noted in the Institute's report, that was not the purpose of the study. However, that does not change the fact that AB 32 policies, including the Low Carbon Fuel Standard (LCFS), will result in profound disruptions to the state's transportation fuel supply market.

The UC Davis report notes that changes in the availability of low-carbon biofuels like sugar cane ethanol from Brazil or cellulosic ethanol, as well as increased adoption of alternative transport technologies like electric vehicles, will significantly change the LCFS compliance options for refiners. While we agree with those findings, they fail to recognize or acknowledge that these changes will not and cannot occur with sufficient speed or magnitude to avert the disastrous consequences of these policies in the next 2-3 years.

California fuel refiners and fuel consumers will begin to see and feel the disruptions identified by BCG in the next two to three years. Changes in the transportation fuel and technologies portfolios considered in the Institute's review will occur over the next 10 to 20 years – too late to prevent major and permanent damage to fuel supplies and markets in California.

While the UC Davis report noted on several occasions the very real potential for serious problems associated with the AB 32 policies, it declined to offer any practical or feasible solutions to the issues raised in the BCG analysis. This is unfortunate because the BCG report identifies several outcomes that will be quite harmful to consumers, refiners and the environment.

It is unfortunate that the UC Davis report continued to rely on data and information that is clearly incorrect even after those errors and inaccuracies were brought to the panel's attention.

The UC Davis report suggests that a different set of assumptions about job multipliers will change the likely impacts of AB 32 policies on refinery closures and job losses in California. However, given California's current economic slowdown, any additional job losses should be avoided if possible.

We are encouraged by recent changes that ARB has made to ease the cost of compliance with AB 32. While this will help all interested parties the biggest beneficiary will be consumers as they will eventually bear most of the cost of compliance.

We support the suggestion to develop leading indicators that policy makers can use to track compliance with AB 32. We also take this opportunity to strongly encourage policy makers to develop practical, viable and cost effective alternatives to the current legislation. The time to take action is now because without significant changes the market disruptions forecasted in the BCG report will begin to manifest themselves in the next 2-3 years at which point it will be too late to take corrective action."

WSPA looks forward to future PMAC meetings and dialogue with the CEC. Please do not hesitate to contact me at 480-498-7752, or my staff Gina Grey at 480-595-7121, if you would like to discuss either of these matters further.

Sincerely,

Catherine Reheis-Boyd

c.c. Michael Barr, General Counsel, Western States Petroleum Association
Ivan Rhyne, CEC

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