California State Assembly

UTILITIES AND ENERGY

COTTIE PETRIE-NORRIS
CHAIR

State Capitol, P.O. Box 942849
(916) 319-2083
FAX: (916) 319-2183

Wednesday, May 15th, 2024
1:30 p.m. – Swing Space, Room 1100

OVERSIGHT HEARING

Monitoring the Petroleum Industry: Update from the Division of Petroleum Market Oversight

Gasoline prices at the pump in California have been increasing over time and showing concerning volatility month-to-month, significantly impacting the budgets of Californians. In the last two years – 2022 and 2023 – California had two gasoline price spikes in September and October.[1] These prices were historic for California, topping near or above $6 per gallon for regular grade retail gasoline. The price spikes were not seen in regions outside the West Coast.

The long-term rise in prices, extraordinary price volatility, and difference in gasoline prices compared to other states came to a head throughout 2022. From a weekly average of $2.74 a gallon in May 2020, prices rose to a peak of $6.29 a gallon in June 2022, followed by a brief decline leading into another peak of $6.21 in October 2022.[2] The October 2022 spike led to prices over $2.50 higher than the U.S. average.

Higher prices of gasoline can have crippling effects for residents on fixed or limited incomes, especially those who rely on long commutes to get to work. Higher gasoline prices also take a toll on the overall economy, impacting goods that use gasoline fuels to get to market. While Californians pay among the highest retail prices for gasoline, California ranks twenty-first in the country for per capita spending on motor vehicle fuel, a result of California's low fuel consumption.[3] This low average consumption means those populations especially dependent on driving as part of their job or by necessity will be especially vulnerable to price spikes.

[1] Figure 9, pg. 14, Bailey, Andrea, et al., *Quarterly Petroleum Supply and Pricing Report, October 2023 Through December 2023.* CEC, Pub # CEC-200-2024-002.
[2] Figure 6, pg. 10, Gee, Quentin, and Aria Berliner and Alexander Wong. 2024. *2024 Transportation Fuels Assessment. DRAFT*. CEC, Pub # CEC-200-2024-003-D.
[3] Despite the state's car-centric reputation. Pg. 1; Droboniku, Gentian, et al., 2024. *2024 Review of the Price of Gasoline in California and Related Impact on State Revenues.* CEC and CDTFA. Pub #: CEC-200-2024-007.

On the demand side, gasoline demand in California peaked in 2005, and is expected to decline markedly over the next two decades.[4] The downward trend is driven by the state's decarbonization strategies to increase zero-emission vehicles on the road, prohibit sales of internal combustion engines,[5] and encourage more transit-oriented, dense development. Regardless, even under the most aggressive scenarios put forward by the California Energy Commission (CEC), millions of petroleum-fueled vehicles are anticipated to remain on California's roads beyond 2035 and will need fuel to operate.[6] The demand, while declining, is not going away. Moreover, many of the petroleum-fueled vehicles that remain will likely be owned by individuals and families unable to access newer or cleaner options. Ensuring gasoline is available, affordable, reliable, and equitable will be critical as the state makes its transition over the coming decades.

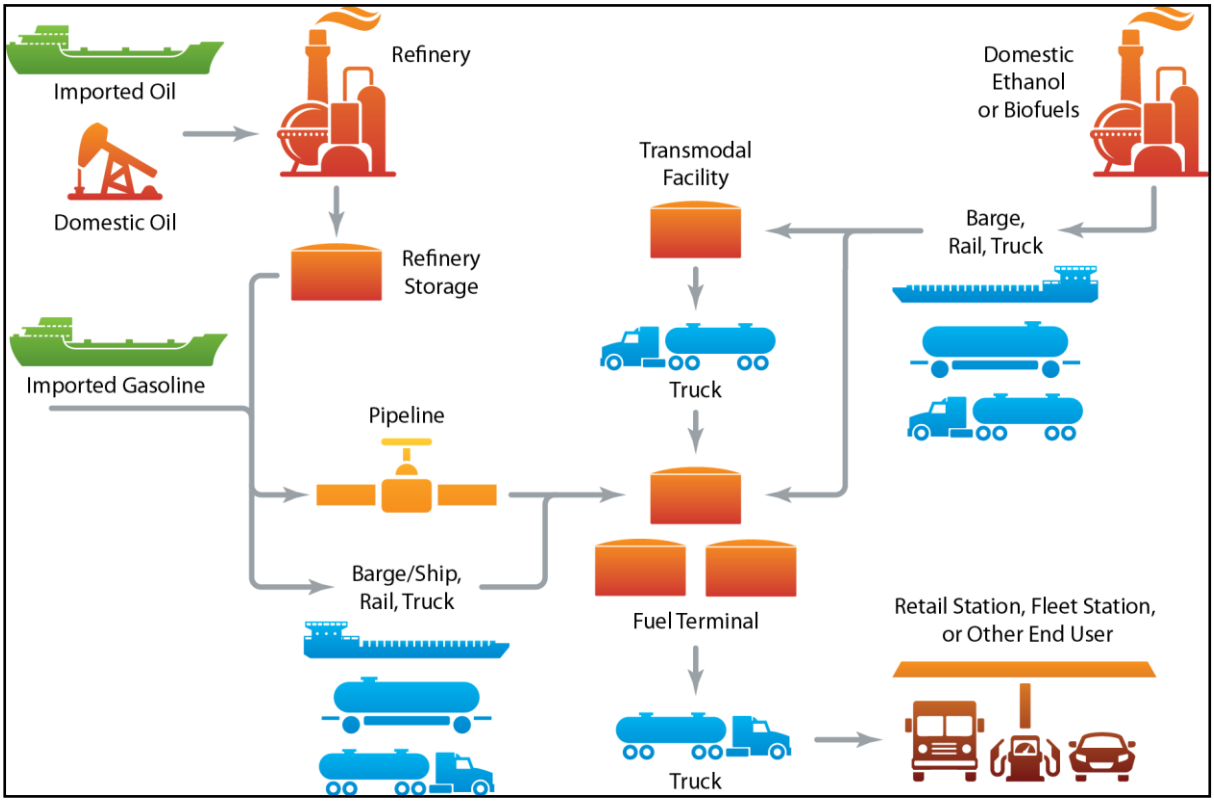
Responding to these changes in the supply and demand of gasoline in the state, and on the heels of the record-setting prices of 2022, Governor Newsom called for a Special Session of the Legislature in December 2022 to consider and act upon legislation to more closely review, monitor, and regulate the petroleum industry. On the same day as the formal proclamation was issued, SBX1-2 (Skinner, Chapter 1, Statutes of 2023) was introduced containing the concept and general framework for a windfall profits penalty proposal. That proposal was ultimately amended out, and instead the bill authorized the CEC to adopt a profit margin cap. The bill incorporated additional elements, including details on the membership of an expert advisory committee, the creation of a new "watchdog" Division of Petroleum Market Oversight, and required reporting to the Legislature, including a fuel transition plan to ensure an affordable and reliable supply while transitioning away from petroleum fuels. The amended version of SBX1-2 was voted on by both houses and signed by Governor Newsom on March 28, 2023.

Today's oversight hearing will provide an opportunity, following a year since the passage of SBX1-2, for this committee to receive an update on implementation of the law and the efforts underway to monitor the petroleum market in the state and region. The hearing will provide regulators, market experts, and industry representatives a chance to discuss policy solutions to address high gasoline prices and declining demand.

A Production Overview. Gasoline begins its journey to consumers as crude oil at petroleum refineries and then moves through stages of refining, transport, storage, and blending until final delivery to retail fueling stations. The inputs into the system could be imported or domestic crude; or, when refinery operations are down, imported finished gasoline. The refined or imported product then travels along various transit – pipeline, barge, ship, rail or truck – before reaching fuel terminals and eventually the end consumer, as depicted in Figure 1 below.

[4] Pg. ES-1, *Transportation Fuels Assessment, Ibid.*
[5] Governor Gavin Newsom, EO N-79-20; https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf
[6] Pg. ES-1, *Transportation Fuels Assessment, Ibid.*

Figure 1 - Well to Wheel production, refining, and distribution of gasoline.[7]



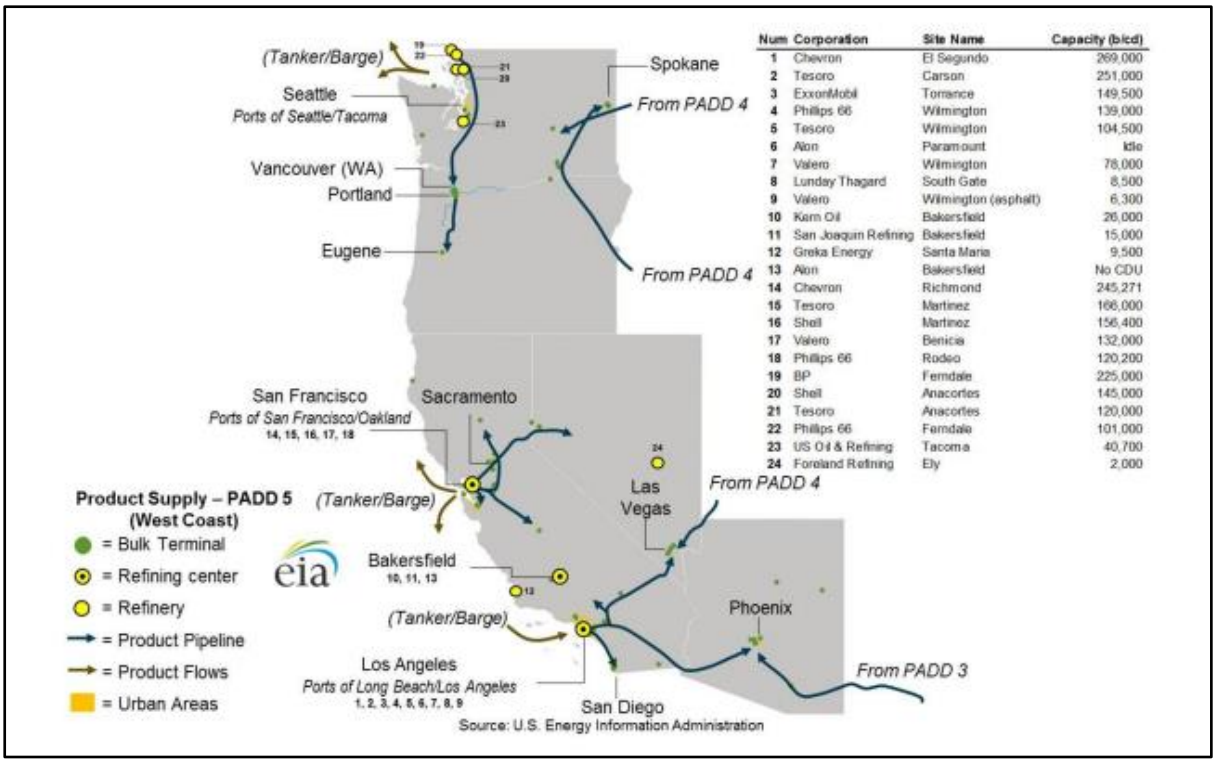
Origin of California's Crude Oil. Crude oil is the raw material that will eventually fuel the commutes of millions of Californians. More than two-thirds of the crude oil processed in California's refineries comes from out of state, with 59% sourced from outside of the U.S.[8] Fluctuations in the cost of crude oil make California's gasoline prices vulnerable to global disruptions, including supply chains or geopolitical instability. Currently, Russia's invasion of Ukraine is causing crude oil prices to increase and remain volatile. Gasoline prices are highly sensitive, so any shift in supply and demand changes what you pay at the pump. Crude oil production in California has decreased in recent decades from a peak of 402.23 million barrels in 1986 (accounting for 59.4% of California's refining output) to 135.15 million barrels in 2022 (25.9% of refining output), leading to increased dependence on crude oil imports from around the globe. Three countries (Ecuador, Saudi Arabia, and Iraq) accounted for approximately 50% of California's crude oil imports in 2021.[9]

Refining Crude Oil into Gasoline. California has 11 refineries that refine crude oil into gasoline fuel; the majority are located in and around the South Bay region in the Los Angeles Basin, some in the East Bay region of the Bay Area, and the smallest by volume produced is located in Bakersfield. These refiners produce transportation fuels, including the specially formulated gasoline that meets California's air quality standards, known as California Reformulated Gasoline Blendstock for Oxygenate Blending (CARBOB) gasoline. The

[7] Dean Armstrong, National Renewable Energy Laboratory
[8] CEC; "Oil Supply Sources To California Refineries"; https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries
[9] CEC; "Foreign Sources of Crude Oil Imports to California 2021"; https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/foreign-sources-crude-oil-imports-2

CARBOB specifications are unique to California; therefore, gasoline used in neighboring states generally does not meet CARBOB specification and cannot be used as a substitute source of our supply. The state's refineries process over 1.6 million barrels of crude oil per day for use in California (88%) or export (to other states as well as internationally, 12% combined). In 2021, California was the seventh-largest producer of crude oil among the 50 states, third-largest in crude oil refining capacity,[10] and the second-largest consumer of motor gasoline.[11] In addition to being isolated through the exclusive use of CARBOB, California's gasoline fuels market is geographically isolated from other locations in the U.S. that produce refined fuel products, as shown in Figure 2.

Figure 2 - Western Refineries and Product Flows (in 2015).[12] *Note: as of 2023, five of the listed California refineries do not produce CARBOB gasoline, while two have since combined with other facilities, leading to the 11 total refineries often referenced.*[13]



Num	Corporation	Site Name	Capacity (bicd)
1	Chevron	El Segundo	269,000
2	Tesoro	Carson	251,000
3	ExxonMobil	Torrance	149,500
4	Phillips 66	Wilmington	139,000
5	Tesoro	Wilmington	104,500
6	Alon	Paramount	Idle
7	Valero	Wilmington	78,000
8	Lunday Thagard	South Gate	8,500
9	Valero	Wilmington (asphalt)	6,300
10	Kern Oil	Bakersfield	26,000
11	San Joaquin Refining	Bakersfield	15,000
12	Greka Energy	Santa Maria	9,500
13	Alon	Bakersfield	No CDU
14	Chevron	Richmond	245,271
15	Tesoro	Martinez	166,000
16	Shell	Martinez	156,400
17	Valero	Benicia	132,000
18	Phillips 66	Rodeo	120,200
19	BP	Ferndale	225,000
20	Shell	Anacortes	145,000
21	Tesoro	Anacortes	120,000
22	Phillips 66	Ferndale	101,000
23	US Oil & Refining	Tacoma	40,700
24	Foreland Refining	Ely	2,000

The relatively small number of California refineries makes our system vulnerable to unexpected disruptions. As shown in Figure 2, California's oil refineries and fuel distribution centers are isolated by time and distance from resupply sources. There are no pipelines that ship finished gasoline products *into* California. While there are pipelines that connect California to other adjacent states, these pipelines only ship gasoline products *out* of California. As a result, refinery outages can more dramatically impact our supply and pricing. This was the case after the unexpected outage in February 2015 at the then-Exxon Mobil Torrance Refinery which was due to an explosion of the facility. The extended shutdown of

[10] as of January 2021
[11] U.S. Energy Information Administration; "California State Energy Profile"; https://www.eia.gov/state/print.php?sid=CA
[12] U.S. Energy Information Administration, *West Coast Transportation Fuels Markets*, September 2015; https://www.eia.gov/analysis/transportationfuels/padd5/pdf/transportation_fuels.pdf
[13] https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/californias-oil-refineries

the Torrance refinery, in combination with an earlier shutdown at the Tesoro Golden Eagle refinery, took 17.5% of California oil processing capacity offline, severely constraining gasoline supply. Gasoline prices were immediately affected, jumping substantially within days of the explosion and subsequent shutdown.[14] The gross profits of California's refineries rose in the first six months of 2015 to $0.88 per gallon of gasoline, relative to the 15-year average of $0.49 per gallon.[15]

Because the state's refined gasoline market is nearly self-sufficient (imported gasoline and blending components account for only 3% to 7% of supply), supplies of gasoline and diesel fuel from outside the state are not routinely needed to balance supply with demand.[16] When unexpected supply disruptions occur, it can be difficult to find immediate alternative sources of supply due to California's stringent CARBOB specifications and relative geographic isolation. The market frequently turns to imports brought in by ship to make up shortfalls, however, those can take 3 to 4 weeks to arrive in California. Moreover, the COVID-19 pandemic pushed freight rates to "astronomical" levels.[17] With marine gasoline priced to account for the additional costs of shipping, it is an expensive – and delayed – backstop.

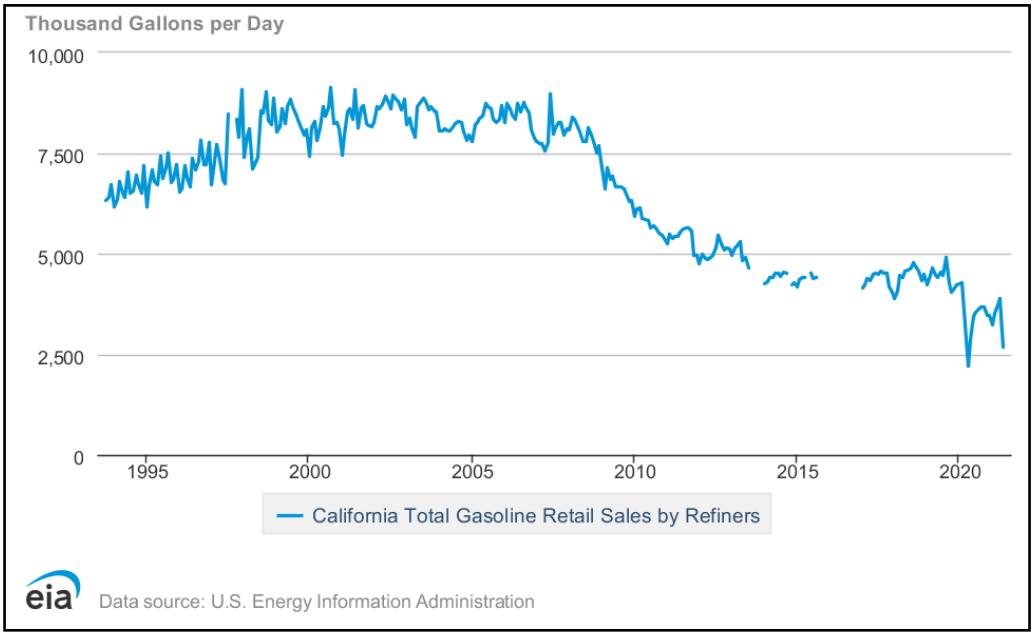
Refining Going Forward. The bottleneck effect of the small number of California refineries adding vulnerability to our gasoline market remains concerning, particularly in the context of the increased adoption of electric vehicles and California's stated goal of phasing out gasoline vehicles by 2035.[18,19] These trends are expected to shrink the gasoline market, with a range of potential outcomes to the refining industry. As shown in Figure 3, California retail sales of gasoline have been declining over the last decade.

This declining demand may lead refineries to transition to refining renewable fuels, as was recently the case with the Marathon Martinez refinery, which converted from producing gasoline to refining renewable diesel.[20] However, the extent of this transition across the industry may be limited by the supply of suitable feedstocks to produce renewable fuels. The anticipated reduction in the California gasoline market may also lead refiners to change their business practices, potentially foregoing production upgrades or cutting costs where possible at the expense of production, similar to a driver that delays maintenance on an older car in anticipation of replacing the car entirely in the near future.[21] The most extreme response

[14] Los Angeles Times; "Gas prices jump after Torrance refinery explosion"; February 2015; https://www.latimes.com/local/lanow/la-me-ln-portion-of-refinery-ordered-to-shut-down-20150219-story.html
[15] Los Angeles Times; "California oil refineries' gross profits nearly double in 2015"; July 2015; https://www.latimes.com/business/la-fi-gas-profits-20150722-story.html
[16] CEC; "What Drives California's Gasoline Prices?"; https://www.energy.ca.gov/data-reports/energy-insights/what-drives-californias-gasoline-prices
[17] David Hackett, Stillwater Associates, Presentation before the CEC, "CEC Hearing on California Gasoline Price Spikes, Refinery Operations, and Transition to a Clean Transportation Future," November 29, 2022; https://stillwaterassociates.com/wp-content/uploads/2022/12/SWA_Hackett_CEC-Hearing_112922.pdf
[18] Los Angeles Times; "Editorial: California electric car sales are zooming. Too bad they're mostly Teslas"; January 2023; https://www.latimes.com/opinion/story/2023-01-29/electric-vehicle-sales-tesla-equity#:~:text=They%20show%20that%2018.8%25%20of,sales%20in%20just%20two%20years.
[19] CARB; "California moves to accelerate to 100% new zero-emission vehicle sales by 2035"; August 2022; https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035
[20] Reuters; "Marathon partners with Neste on Martinez renewable fuels project"; March 2022; https://www.reuters.com/business/sustainable-business/marathon-petroleum-partners-with-neste-martinez-renewable-fuels-project-2022-03-01/
[21] CalMatters; "Who's to blame for California's high gas prices?"; October 2022; https://calmatters.org/commentary/2022/10/whos-to-blame-for-californias-high-gas-prices/

would be for some refineries, in the face of an evaporating market, to shutter altogether, though the profitability of the California fuels market makes that unlikely in the short-term.

Figure 3 - California Total Gasoline Retail Sales by Refiners (1993-2022).[22] *Note: Total sales to end users includes sales through retail outlets as well as all direct sales to end users that were not made through company-operated retail outlets, e.g., sales to agricultural customers, commercial sales, and industrial sales.*



Distribution and Retail Sales. After it is refined, base gasoline is distributed via pipelines, ships, and barges to distribution terminals located in and around major metropolitan areas. Distribution terminals have large storage tanks that hold gasoline, with each tank containing base fuels from many different refineries and oil companies, meaning all gasoline in the tank is the same at this point. Gasoline is delivered to service stations by tanker trucks that can hold up to 10,000 gallons of fuel. When the tanker truck is filled at the distribution terminal, a specific fuel additive package may blend with the base gasoline, changing the generic base gasoline into a branded product, though whether branded gasoline constitutes a functionally different product has been questioned by the CEC.[23,24,25] The branded wholesale gasoline price is based on the average statewide branded refined "rack" price: the price paid at the point where tanker trucks load their fuel from a distribution terminal's loading rack.[26] Most branded franchise retailers purchase gasoline at a delivered price called the “dealer tank

[22] U.S. Energy Information Administration, data release date June 1, 2022. https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=A103650061&f=M
[23] AAA; “Where Does Gasoline Come From”; https://www.aaa.com/autorepair/articles/where-does-gasoline-come-from
[24] Branded and unbranded gasoline: branded gasoline refers to fuel that is sold under a brand name (such as BP, Shell, Exxon, Chevron, and Valero), and will include proprietary fuel additives. Unbranded gasoline is typically sold by single-station retail outlets, small chain retailers, and supermarkets chain stores (such as Costco and Safeway). CEC; “Estimated Gasoline Price Breakdown and Margins”; https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/estimated-gasoline-price-breakdown-and-margins
[25] CEC; “Additional Analysis on Gasoline Prices in California”; October 2019; https://www.energy.ca.gov/sites/default/files/2019-11/Gas_Price_Report.pdf
[26] CEC; “Estimated Gasoline Price Breakdown and Margins”; https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/estimated-gasoline-price-breakdown-and-margins

wagon" price that is typically higher than the branded rack price. The gasoline is then delivered to fueling stations throughout California for retail sale.

Retailers selling branded gasoline are contractually obligated to purchase from the branded supplier, giving the branded refiner leverage to charge a higher price for gasoline that will likely be passed on to consumers.[27] Alternatively, if a retailer signs a branded contract that locks in a long-term low price for wholesale gasoline, the retailer may still be incentivized to raise their retail price if the overall average retail price of gasoline rises, increasing their profit margin without risk of losing sales to lower-priced competitors. This restriction to a single brand of wholesale gasoline may introduce artificial scarcity into the market if certain fuel brands are supply-constrained in an otherwise balanced market and, if individual branded fuels are slow to revert to a more normal price following a gasoline price spike, may prolong the spike even as the original drivers of the elevated prices are resolved. The system of contracts between gasoline distributors and retailers is complex and highly varied in contract terms and duration, which poses a significant barrier to regulators investigating the impact of the distributor-retailer interface on retail gasoline prices.

Distribution and retail margin, which includes distribution costs, marketing costs, and profits, is an analogous metric to refining margin. It is calculated by subtracting the wholesale gasoline price and taxes from the weekly average retail sales price. Retailers are responsible for covering the costs associated with running many businesses, including rents, wages, utility rates, and equipment maintenance, as well as costs more unique to the retail gasoline sector, including CARB-mandated equipment upgrades, environmental fees, and permitting fees. The average annual distribution and retail margin in California has been above the U.S. average every year since 2011, which may reflect higher operating costs in California as well as any additional profit being collected.[28] At the end of the day, the retailers set the price at the pump, and retailers selling a well-regarded brand of gasoline or those operating fueling stations with prime locations may be incentivized to set high prices.[29]

Playing the Spot Market. Market participants buy and sell gasoline for physical delivery within a short time frame on "spot markets." These spot markets transactions are referred to as "physical" trades because market participants use them to obtain supplies of actual product. As a result, physical markets are located at or near refinery hubs and the trades consummated on the spot market designate a delivery location and delivery timeframe. Refiners sell gasoline to distributors at a price set by the spot market: an exchange controlled by the five oil refiners that account for 98% of California's gasoline supply, along with a small group of traders. California's gasoline spot market is remarkably opaque. There is no public ledger of trades on the gasoline spot market, only voluntary reports to the Oil Price Information Service (OPIS), an industry news service which publishes only a spot market price. There are no requirements to publically disclose trades, the quantity exchanged, the

[27] Consumer Watchdog; "Legislation Targets Sky-High CA Gas Prices; Requires Oil Refiners To Disclose How Much They Make On Every Gallon of Gasoline Sold"; March 2022; https://consumerwatchdog.org/energy/legislation-targets-sky-high-ca-gas-prices-requires-oil-refiners-disclose-how-much-they-make/

[28] Data through 2018; CEC; "Additional Analysis on Gasoline Prices in California"; October 2019; https://www.energy.ca.gov/sites/default/files/2019-11/Gas_Price_Report.pdf

[29] Los Angeles Times; "Why California gas prices are so high and vary so widely: 'Mystery surcharge' and more"; March 2022; https://www.latimes.com/california/story/2022-03-14/gas-prices-vary-from-place-to-place

identity of those involved, or even the frequency of trades. This voluntary reporting system means a single reported trade can set the price of all gasoline in the state until the next trade is disclosed.

When the spot price is high, there is no incentive for the industry to report a trade that would immediately reduce the price of gasoline, even as the actual drivers of a price spike – whether global crude oil prices or supply disruptions – subside. This structure and lack of transparency makes the spot market vulnerable to manipulation, as the California attorney general's (AG) office has alleged in past lawsuits.[30] In that suit, the AG claims energy traders manipulated the spot market after the Torrance refinery went offline in 2015. In a more recent example, according to Robert McCullough, an economist who has studied energy markets for decades, the spot price for gasoline didn't change for two weeks during the gasoline price spikes in 2022, reinforcing concerns that the spot market was being exploited to extend the duration of the price spike.[31]

Spot market deals in California generally range between 420,000 gallons (10,000 barrels) to 2.1 million gallons (50,000 barrels). The spot market price is the largest component of the price on the wholesale "rack market," which is typically sold in gasoline truck volumes of about 8,000 gallons (approximately 190 barrels). The price at the rack market is typically reflected in the retail price within a couple of days. According to the CEC, spot market prices are the biggest driver of statewide gasoline prices, even though they represent a small portion of gasoline sales each day. According to OPIS, "Nearly every gallon of gasoline, diesel, and jet fuel sold on the West Coast references OPIS spot prices."[32]

In California, fraudulent gasoline spot market trading is covered by California's commodities fraud statute.[33] Under the statute, when buying or selling commodity contracts, it is unlawful to engage in certain fraudulent acts. Specifically, it is unlawful to "willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons."[34] In addition to the California commodities fraud statute, the federal Commodity Exchange Act makes unlawful certain types of "prohibited transactions."[35] More specifically, the Act prohibits a transaction that "is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price."[36]

Moving Toward Transparency. California has made a series of attempts to increase transparency in the oil and gas industry in response to high, variable, and generally unexplained gasoline prices. In response to gasoline shortages and high prices in the late 1970s, California passed the Petroleum Industry Information Reporting Act of 1980

[30] *The People of the State of California v. Vitol Inc.;* Xavier Becerra, et al. "Complaint for Violations of the Cartwright Act and unfair competition law for damages, injunctive relief, civil penalties, and other equitable relief," filed May 11, 2020, San Francisco County Superior Court. https://oag.ca.gov/system/files/attachments/press-docs/CGC-20-584456%20Public%20Complaint%20only.pdf
[31] Los Angeles Times; "Opinion: Who profits from Southern California's high gas bills? The problem is we don't know"; March 2023; https://www.latimes.com/opinion/story/2023-03-13/natural-gas-price-socalgas
[32] OPIS West Coast Spot Market Report. https://www.opisnet.com/product/pricing/spot/west-coast-spot-market-report/
[33] Corp. Code,§ 29536 (a), (b), (c), (d)
[34] Corp. Code § 29536 (c)
[35] 7 U.S.C. § 6c
[36] 7 U.S.C. § 6c(a)(2)(B)

(PIIRA).[37] The statute tasks the CEC to collect specified data reported by petroleum industry companies and analyze the data to understand the operations of the petroleum industry in California. PIIRA was intended to provide regulators with sufficient oil pricing information to identify price and supply volatility more quickly and respond accordingly. The CEC incorporates these data into public reports on the petroleum industry.[38] Under PIIRA's provisions, much of the data collected by the CEC must remain confidential to specific entities in the market.

The Petroleum Market Advisory Committee (PMAC), another effort to investigate the oil and gas industry, was spurred by stubbornly high gasoline prices in 2012 following an outage at the Chevron Richmond Refinery. The PMAC was established by the CEC in 2014 in response to then-Governor Jerry Brown's directive that the CEC work with the AG to develop a plan for responding to petroleum price volatility. The PMAC was instructed to provide expertise on factors leading to price increases and strategies for addressing gasoline price spikes. In September 2017, the PMAC issued its final report noting "several gasoline market anomalies that appeared to be new trends in California," including increasing retail margins and retail price differentials between California and the U.S. average, and increasing price differences among gasoline retail brands. The PMAC also evaluated policy options for addressing gasoline price volatility but did not reach a consensus on any other available approaches. Members of the PMAC cited a lack of sufficient staffing, support, access to data, and inability to compel participation by industry decision-makers as obstacles to the committee reaching more concrete findings and recommendations.

The California Oil Refinery Cost Disclosure Act, passed in 2022, requires refinery operators in California to submit monthly reports containing gasoline production, sales, and cost data, including the "gross gasoline refining margin": the difference, expressed in dollars per barrel, between the volume-weighted average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received by the refinery.[39] This effort to increase transparency in the refining sector will increase the volume of data available to regulators, who may then be able to more effectively manage the market, or may illicit public criticism of the industry by publicizing refinery profit margins. The effect of increased transparency on refinery profits, either through the increase in data availability or through public pressure if refining margins grow, remains to be seen.

SBX1-2 (Skinner, Chapter 1, Statutes of 2023). SBX1 2 incorporates several policies to address gasoline supply and pricing. The main elements of the new law are the authority for the CEC to establish a maximum gross refining margin and penalty, the creation of a new Division of Petroleum Market Oversight and a new Independent Consumer Fuels Advisory Committee, expanded reporting requirements by industry participants, the ability for the CEC to impose refinery maintenance and turnaround requirements, annual reporting on gasoline prices, a transportation fuels assessment, and transportation fuels transition plan.

[37] SB 1444, Holmdahl, Chapter 1055, Statues of 1980
[38] CEC; "Petroleum Industry Information Reporting Act Reporting Requirements - PIIRA"; https://www.energy.ca.gov/rules-and-regulations/energy-suppliers-reporting/petroleum-industry-information-reporting-act-piira
[39] SB 1322, Allen, Chapter 374, Statutes of 2022

1) ***CEC Setting Maximum Margin and Penalty.*** Permits the CEC, by regulation or order, to set a maximum gross gasoline refining margin ("max margin"). The gross gasoline refining margin is defined as the average wholesale rack price of gasoline minus the low carbon fuel standard and cap-at-the-rack program costs minus the refiner's crude oil acquisition costs and refined gasoline import costs; simplistically, it's a measure of the refiner's profit. The max margin would then be the maximum amount a California refiner could earn. [PRC § 25355.5]

   Requires if the CEC sets a max margin, it ***must*** set a penalty for any refiner exceeding that max margin. Establishes three tiers of penalty depending on how egregiously the refiner exceeds the max margin. Prohibits the CEC from setting the max margin unless it finds that "the likely benefits to consumers outweigh the potential costs to consumers." Statute does not detail what "benefits" are under the CEC's consideration, but does provide factors for the CEC to consider, which include:

   i. Whether it is likely the max margin and penalty will lead to a greater imbalance between supply and demand than would exist without the max margin and penalty.
   ii. Whether it is likely that the max margin and penalty will lead to higher average prices at the pump on an annual basis than would exist without them.
   iii. Whether the case-by-case exemptions from the max margin and penalty are sufficient to ensure refiners have the opportunity to demonstrate the need for a greater max margin.
   [PRC § 25355.5 (e)]

   Specifies that collected penalties shall be deposited in the Price Gouging Penalty Fund in the State Treasury to be used, upon legislative appropriation, to "address any consequences of price gouging on Californians." [PRC § 25355.5 (n)(3)]

   Statute requires the State Auditor to complete by March 1, 2033 an audit and performance review of the max margin and penalty, should the CEC set them. The audit shall examine whether the "intended goal to reduce gasoline price spikes and stabilize the gasoline fuel supply market for California consumers" is being achieved by the max margin and penalty. If the State Auditor determines that the max margin and penalty shall be terminated, the CEC shall cease implementing them no later than 180 days after the issuance of the audit report, unless subsequent legislation extends them. [PRC § 25355.5 (p)]

2) ***Creation of the Division of Petroleum Market Oversight (DPMO)***. Establishes the Division within the CEC as an independent authority whose director is appointed by the Governor, confirmed by the Senate, and staffed with economists, experts in the fuels market, and legal investigators. The Division shall provide oversight and analysis of the transportation fuels market, and provide guidance and recommendations to the CEC on the various reports and data gathering it will conduct. Empowers the Division with subpoena power, and allows confidential referrals of potential violations of law to the AG at any time. Treats data provided to

the Division as presumptively confidential and not subject to public disclosure. The Division shall publish an annual (aggregated and anonymized) report on recommendations to improve market performance, and the director shall appear, when requested, before the appropriate Legislative policy committees. [PRC §§ 25372-25372.4]

3) ***Creation of the Independent Consumer Fuels Advisory Committee (ICFAC).*** Establishes the Committee within the CEC to advise the CEC and DPMO. The Committee shall consist of eight members, 6 Governor-appointees, 1 Speaker-appointee, and 1 Senate Rules-appointee. The Governor's appointees shall have specified expertise. [PRC §§ 25373]

   Establishes revolving door protections for members of the Committee where no member—except the representatives from labor and the petroleum fuels industry—shall have been employed or otherwise received direct compensation from any oil market participant within a year both preceding and following their appointment.

4) ***Expanded reporting requirements by industry participants***. SBX1-2 revised and expanded the existing reporting requirements to the CEC to, among other things:

   a. Require pipeline operators and operators of ports through which refined gasoline is imported to annually report their capacities for all pipelines and ports used to transport refined gasoline.

   b. Require all importers of refined products and renewable fuels via marine vessel to submit reports to the CEC, as specified.

   c. Require non-refiners that commercially trade in gasoline, gasoline blending components, diesel fuel, or renewable fuel inventory to submit weekly reports to the CEC.

   d. Require refiners and non-refiners that consummate spot market transactions to submit a daily report to the CEC containing certain information for each transaction occurring in the preceding day, as provided, and require refiners to report maintenance activities, both planned and unplanned, to the CEC, as provided.

   e. Requires refiners to notify the executive director of the CEC of all plans to undertake turnaround and planned maintenance, and to include specified information, including the drawdown of inventory levels of gasoline and gasoline blending components controlled by the refiner and at other storage locations.

   f. Requires the operators of refineries to report additional information, including the net gasoline refining margin per barrel of gasoline sold in that month, and

requires the CEC to post on its internet website certain information related to the net gasoline refining margin.

5) ***Refinery turnarounds and maintenance.*** Statute authorizes the CEC to impose requirements governing the timing of turnaround and maintenance for refineries developed through consultations with the Labor and Workforce Development Agency, labor and industry stakeholders.

6) ***Annual report on the price of gasoline.*** Requires the CEC and CDTFA to submit a report to the Legislature by March 1, 2024, and annually thereafter, which reviews the price of gasoline in California and its impact on state revenues for the previous year. Specifies the data collected are considered confidential. Mandates CDTFA records requests shall be provided within 30 days of notice; failure to provide records may result in the CEC imposing a civil penalty, up to a maximum of $10,000 per day. [PRC § 25355.7]

7) ***Transportation Fuels Assessment.*** Requires the CEC to submit an assessment to the Legislature by January 1, 2024, and every three years following, which identifies methods to ensure a reliable supply of affordable and safe transportation fuels in California. The Assessment shall include estimates for the level of transportation fuels regionally, statewide, and locally, and provide any proposals it deems appropriate for instituting mandatory reserve levels. The Assessment shall evaluate the price of transportation fuels, and consider market demand at regular intervals, out to 20 years. It shall also include an analysis of refinery maintenance operations, and evaluate ways to manage necessary maintenance among the various facilities. Statute permits a civil penalty to be levied whenever a person fails to timely provide information the CEC deems necessary to conduct the Assessment. [PRC §§ 25371-25371.1]

8) ***Transportation Fuels Transition Plan***. Requires the CEC and the California Air Resources Board (CARB) to prepare a Transportation Fuels Transition Plan by December 31, 2024. The Plan shall include a discussion of how to ensure that the supply of petroleum and alternative transportation fuels is affordable, reliable, equitable, and adequate to meet the demand for those transportation fuels described in CARB's most current Scoping Plan. The Plan shall identify mechanisms to plan for and monitor progress toward the state's transition away from petroleum fuels. [PRC § 25371.3]

Implementation of SBX1 2

Activity/Element	Due Date	Status
Maximum gross refining margin.	N/A	CEC held two workshops (November 28, 2023 and April 11, 2024). March 27, 2024. CEC released a Request for Information to solicit input

		on whether and how to structure a margin and penalty. (Responses were due by May 3, 2024) CEC plans to make a decision by the end of 2024.
DPMO	N/A	New director was appointed by the Governor in August 2023, and confirmed by the Senate Committee on Rules on April 24, 2024. DPMO is currently hiring six positions; two investigative counsel roles tentatively filled by 5 candidates currently serving as assistant district attorneys. DPMO has sent two letters to the Governor and Legislature regarding gasoline prices.
ICFAC	No specific date, but is required to inform the shaping of the gross refining margin and penalty.	Speaker of the Assembly and Senate pro Tem each appointed their respective appointees in 2023. Administration has not appointed remaining six members.
Expanded reporting requirements by industry participants	Daily, weekly, monthly, and annual reporting requirements on industry participants	CEC is collecting data. Some concerns raised about lack of standardization and updates to forms.
Refinery turnarounds and maintenance	N/A	CEC plans to hold workshop in May 2024 to review draft regulations. CEC intends to adopt regulations at the July 2024 business meeting.

Annual report on the price of gasoline	March 1, annually	Released Friday, May 4, 2024
Transportation fuels assessment	January 1, 2024, and every three years	Draft assessment released April 12, 2024. May 3, 2024 – Draft presented at CEC-CARB joint agency workshop. Final report expected summer 2024.
Transportation Fuels Transition Plan	December 31, 2024	May 3 - CEC-CARB joint agency workshop introducing the Transportation Fuels Transition Plan. Working group currently being assembled, first meetings in late Q2 2024. Final plan expected by end of 2024.

DPMO sends letters regarding gasoline price increases. In September 2023, DPMO Director Tai Milder sent letters to the Governor and Legislature providing an interim update. The letter noted that the average price for gasoline was $5.78 per gallon, 25¢ higher than the previous week, and 52¢ higher than the previous month. DPMO cited three reasons for the higher gasoline prices: 1) an increase in global crude oil prices; 2) refinery maintenance events causing decreases in supply that "refiners did not adequately prepare for by increasing inventories and imports;" and 3) an unusual spot market transaction on September 15, 2023 that has had an outsized impact on gas prices, causing prices to jump $0.50 per gallon.

Director Milder suggested the situation highlighted "several market flaws that make California gasoline prices vulnerable to price spikes." These include: spot market volatility and its outsized impacts on prices, lack of spot market liquidity, inadequate inventories, of gasoline and blend stocks, and refinery undersupply during maintenance. On September 27, 2023, Governor Newsom directed DPMO to identify "initial proposals" of potential spot market reforms. In addition Governor Newsom, as he had the previous year, directed CARB to allow for an early transition to winter-blend gasoline in order to quickly increase fuel supply.

On January 31, 2024, DPMO sent a letter to the Governor outlining two policy options that can improve how California's spot market functions and help protect consumers. Specifically, DPMO recommended near-term options: 1) publishing a California spot market report and 2) establishing minimum inventory and resupply obligations on refiners. The CEC moved forward with adopting new spot market reporting requirements, utilizing the authority

in SBX1-2, including utilizing emergency regulations. On March 26, 2024, the California Fuels and Convenience Alliance (CFCA) filed a lawsuit against the CEC for failing to observe the requirements of the California Environmental Quality Act (CEQA) and the California Administrative Procedures Act (APA) and other provisions of California law. The lawsuit remains active.

Moving Forward. California is in a period of transition in its petroleum market. Supply is tightening, as demand has declined over the past decade. These trends are unlikely to subside. Rather, more volatility – not less – is likely if the state does not strategize and appropriately plan for smoothing the transition. The passage of SBX1-2 has provided the opportunity for more transparency into the petroleum market, and the potential for better collaboration between the state and industry, market observers, participants, and analysts. However, much work remains. The new DPMO is staffing up; the CEC's Energy Assessments Division is hiring; and, as noted above, the ICFAC has yet to be fully appointed or established. Despite this, early action in data collection and analysis, understanding and categorizing spot market activity, and publishing fuels and pricing assessments may provide valuable guidance moving forward. Petroleum has powered our economy for decades, and is likely to remain for decades to come. Moreover, those still reliant on gasoline in the coming decades may be the most vulnerable to its pricing volatility and its climate change impacts. Ensuring gasoline is affordable, reliable, and equitable will be critical as the state makes its transition over the coming decades.

# # # # #