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INFORMATIONAL HEARING

Transparency in the Pipeline: Addressing Gasoline Price Volatility in California

California's gasoline prices have been steadily increasing and displaying substantial volatility for decades. Over the past twenty years, gasoline prices in California have risen from a yearly average of $1.56 a gallon in 2002 to $5.41 a gallon in 2022.[1] This increase reflects nearly double the rate of overall inflation over that time span, which, if it were the only factor at play, would correspond to $2.60 per gallon gasoline prices in 2022.[2] In additional to a long-term trend of increased prices, price volatility is also a concern, with weekly price swings of $0.30 per gallon not uncommon.[3] Higher prices of gasoline fuel can have crippling effects for residents on fixed or limited incomes, especially those who rely on long commutes to get to work or home, or those who require driving as part of their job. Higher prices also take a toll on the overall economy, affecting all residents, with potentially higher prices for goods that use gasoline fuels to get to market.

Californians generally pay higher prices for gasoline compared to the rest of the country. According to the California Energy Commission (CEC), there are five main reasons why California retail gasoline prices are higher than the average price in the United States, specifically: higher taxes on gasoline, higher gasoline production costs, environmental program costs, California's shorter winter season (which corresponds to higher relative consumption of the more expensive to produce summer blend gasoline), and the isolated nature of the California fuels market.[4]

Gasoline prices at the pump in California have been increasing over time and showing concerning volatility month-to-month and even week-to-week, profoundly impacting the budgets of Californians. The long-term rise in prices, extraordinary price volatility, and

[1] U.S. Energy Information Administration (EIA); "California All Grades All Formulations Retail Gasoline Prices"; https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPM0_PTE_SCA_DPG&f=A
[2] U.S. Bureau Of Labor Statistics; "CPI Inflation Calculator"; https://www.bls.gov/data/inflation_calculator.htm
[3] EIA; "Weekly California All Grades All Formulations Retail Gasoline Prices"; https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPM0_PTE_SCA_DPG&f=W
[4] CEC; "What Drives California's Gasoline Prices?"; https://www.energy.ca.gov/data-reports/energy-insights/what-drives-californias-gasoline-prices

difference in gasoline prices compared to other states came to a head in the summer and fall of 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 $5.90 in October 2022.

Today's informational hearing will present to members of this committee, stakeholders, and the public, what is known about the factors that drive gasoline prices and to highlight aspects of gasoline production that are less transparent, but may still be contributing to high gasoline prices. The hearing will provide the opportunity to hear from regulators, market experts, and industry representatives about policy solutions to address high gasoline prices. Finally, we will discuss the objectives and structure of the Governor's proposals to increase transparency in gasoline pricing and to delegate to the CEC the authority to establish a penalty on windfall profits.

Findings

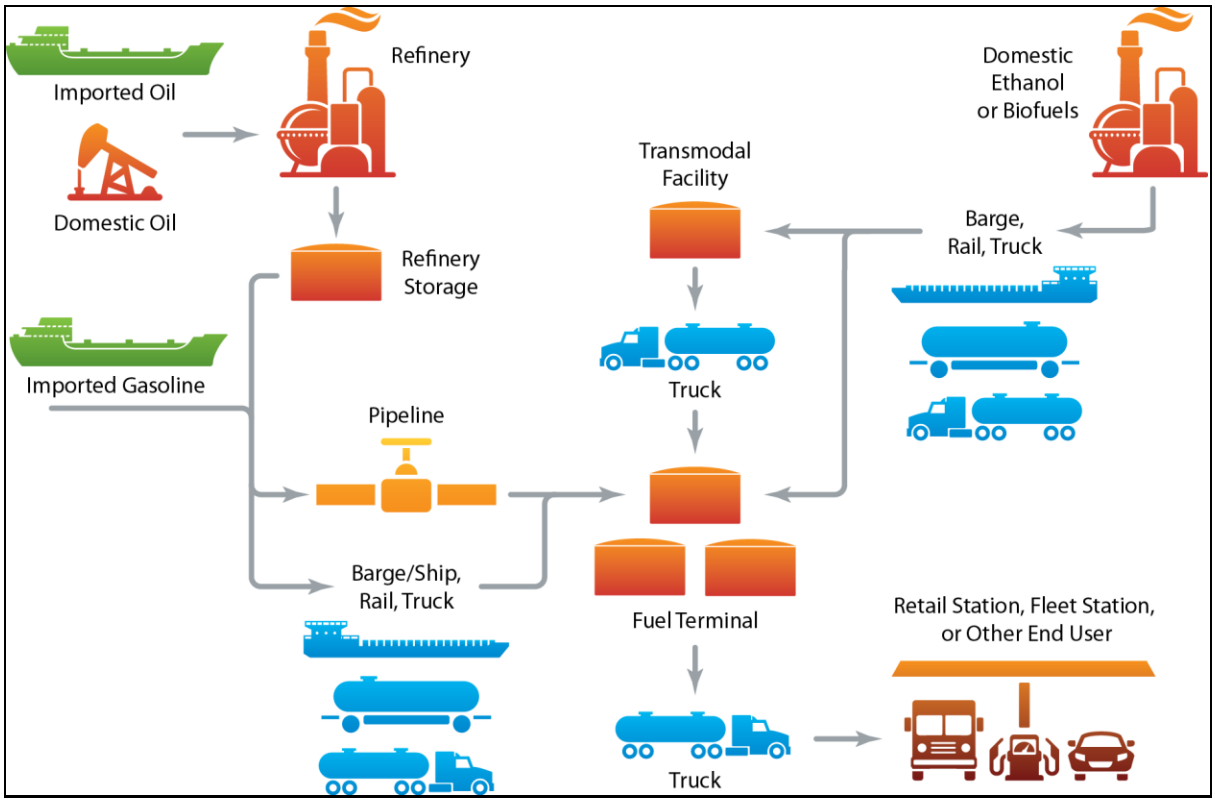
- *California's finished gasoline market is like an island. California and the West Coast are geographically isolated from refining hubs in the rest of the United States. Therefore, when local supplies are insufficient to meet demand in the state, prices can be impacted dramatically. This is especially true when unplanned refinery outages occur, or a backlog of planned maintenance compounds for multiple refiners in the state simultaneously. Ensuring the state tracks such maintenance operations and develops strategies to maintain adequate supply during outages will be important to minimize gasoline price volatility.*

- *The bottleneck effect of the small number of California refineries adding vulnerability to our gasoline market is concerning, particularly in light of increasing adoption of electric vehicles and California's stated goal of phasing out gasoline vehicles by 2035. The state thoroughly planning for, and mitigating against the stickiness of, this transition from fossil fuel transportation to electric-powered transportation will be critical for reducing gasoline price volatility and overall expense.*

- *California's gasoline market is a complex entity, and many of the activities in the market are opaque to regulators. Ensuring data transparency and access for regulators and the public (if protected against market sensitivity) will enable better understanding and investigations into a market critical to the health, safety, and economics of Californians.*

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. More detail into the various steps of this production process will be outlined below.

Figure 1 - Well to Wheel production, refining, and distribution of gasoline.[5]



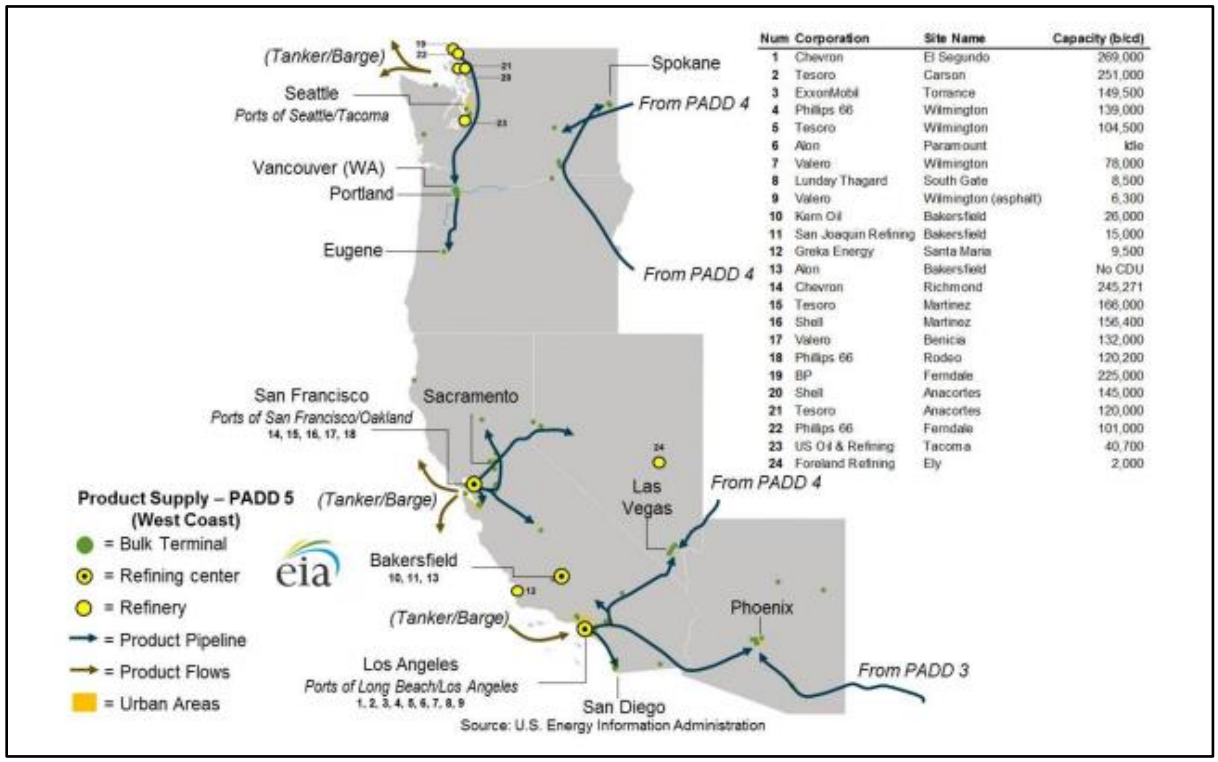
Origin of California's Crude Oil. Crude oil is the raw material that will eventually fuel the commutes of millions of Californians. More than two-thirds of the crude oil processed in California's refineries comes from out of state, with 59% sourced from outside of the U.S.[6] Fluctuations in the cost 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.[7]

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

[5] Dean Armstrong, National Renewable Energy Laboratory
[6] CEC; "Oil Supply Sources To California Refineries"; https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries
[7] 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,[8] and the second-largest consumer of motor gasoline.[9] 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).[10] *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.*[11]



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

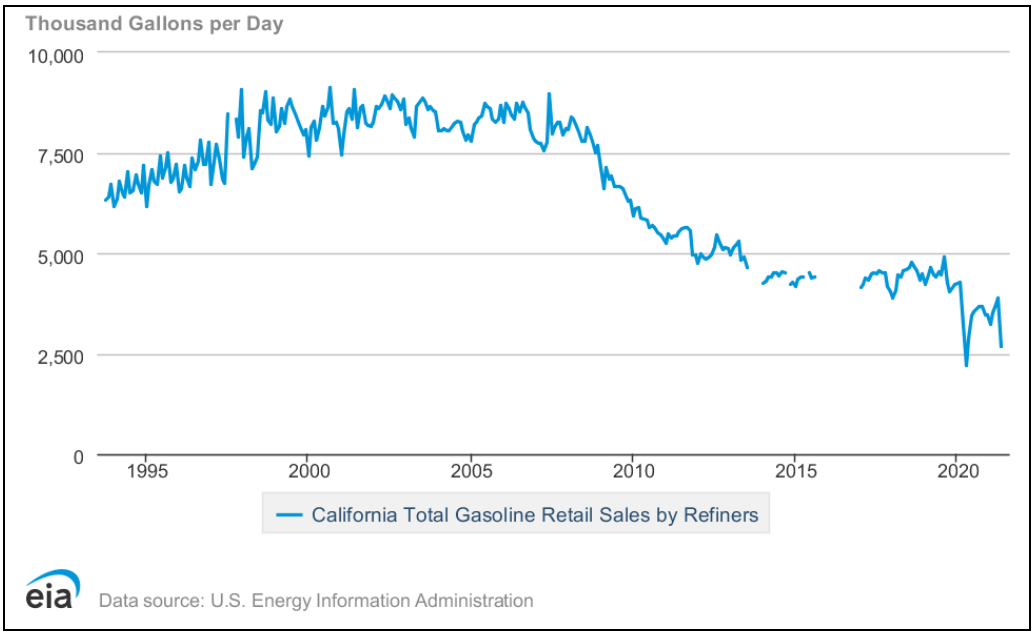
The relatively small number of California refineries makes our system vulnerable to unexpected disruptions. As shown in Figure 2, California's oil refineries and fuel distribution centers are isolated by time and distance from resupply sources. There are no pipelines that ship finished gasoline products *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

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

Torrance Refinery which was due to an explosion of the facility. The extended shutdown of 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.[12] 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.[13]

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.[14] 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.[15] With marine gasoline priced to account for the additional costs of shipping, it is an expensive—and delayed—backstop.

Figure 3 - California Total Gasoline Retail Sales by Refiners (1993-2022).[16] *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.*



[12] 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
[13] 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
[14] CEC; "What Drives California's Gasoline Prices?"; https://www.energy.ca.gov/data-reports/energy-insights/what-drives-californias-gasoline-prices
[15] 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
[16] 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

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.[17,18] These trends are expected to shrink the gasoline market, with a range of potential outcomes for 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.[19] 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 who delays maintenance on an older car in anticipation of replacing the car entirely in the near future.[20] The most extreme response 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.

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 be blended 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.[21,22,23] 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.[24]

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[17] 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.

[18] 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

[19] 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/

[20] 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/

[21] AAA; "Where Does Gasoline Come From"; https://www.aaa.com/autorepair/articles/where-does-gasoline-come-from

[22] 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

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

[24] CEC; "Estimated Gasoline Price Breakdown and Margins"; https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/estimated-gasoline-price-breakdown-and-margins

Most branded franchise retailers purchase gasoline at a delivered price called the "dealer tank 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.[25] 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 California Air Resources Board (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.[26] 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 particularly incentivized to set high prices.[27]

Playing the Spot Market. Market participants buy and sell gasoline for physical delivery within a short time frame on "spot markets." These spot markets are referred to as "physical" markets 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

[25] 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/

[26] 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

[27] 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

(OPIS), an industry news service which publishes only a spot market price. There are no requirements to publically disclose trades, the quantity exchanged, the 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 alleges in a recent lawsuit.[28] 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.[29]

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.

In California, fraudulent gasoline spot market trading is covered by California's commodities fraud statute.[30] 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."[31] In addition to the California commodities fraud statute, the federal Commodity Exchange Act makes unlawful certain types of "prohibited transactions."[32] 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."[33]

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 (PIIRA).[34] 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

[28] *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
[29] 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
[30] Corp. Code,§ 29536 (a), (b), (c), (d)
[31] Corp. Code § 29536 (c)
[32] 7 U.S.C. § 6c
[33] 7 U.S.C. § 6c(a)(2)(B)
[34] SB 1444, Holmdahl, Chapter 1055, Statues of 1980

to identify price and supply volatility more quickly and respond accordingly. The CEC incorporates these data into public reports on the petroleum industry.[35] 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 of the 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.[36] 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.

On December 5, 2022 Governor Gavin Newsom called for an Extraordinary Session of the Legislature to consider and act upon legislation necessary to:

a. Deter price gouging by oil companies by imposing a financial penalty on excessive margins, with any penalties collected to be returned to Californians.
b. Empower the CEC and the California Department of Tax and Fee Administration (CDTFA) to more closely review and evaluate costs, profits, and pricing in the refining, distribution, and retail segments of the market for gasoline in California.
c. Provide for greater regulatory oversight of the refining, distribution, and retail segments of the market to prevent avoidable supply shortages and excessive price increases.
d. Make conforming changes to existing law consistent with paragraphs (a), (b), and (c).

[35] 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
[36] SB 1322, Allen, Chapter 374, Statutes of 2022

On the same day as the formal proclamation was issued, SBX1-2 (Skinner, 2023) was introduced containing the concept and general framework for the Governor's windfall profits penalty proposal. Last week, on March 15th, 2023, Governor Newsom's office announced plans to amend SBX1-2 (Skinner, 2023) to create a watchdog division within the CEC to investigate alleged price gouging by the oil industry, and authorize the CEC to set through its rulemaking process a threshold above which profits would be penalized.[37] This Monday, March 20th, 2023 SBX1-2 (Skinner, 2023) amendments were put into print.

SBX1-2 (Skinner, 2023) – Version: 98 – Amended Senate March 20, 2023 8:20am. The Governor's extraordinary session proposal includes the following provisions. Note: the references to code sections listed in brackets below are sections proposed within the bill, not references to current law.

1) ***Reporting Updates.*** Significant updates to both the Petroleum Industry Information Reporting Act of 1980 (PIIRA) and the California Oil Refinery Cost Disclosure Act of 2022, which include reporting requirements to the CEC for all participants in the oil production supply chain, including refiners, marketers, importers, oil transporters, oil storers, oil producers, pipeline and port operators, and destination facilities. These reports are mandated to be generated annually, monthly, weekly, and daily, depending on the market participant and the specific data requested. [Sections 2-4, PRC §§ 25354-25355]

   Increases the civil penalty the CEC can levy against a person that fails to supply the specified data from $500-$2,000 per day to $5,000-$20,000 per day, up to a maximum of $500,000 per submission. Additionally allows the CEC to petition a court for an order compelling the person to provide the information. [Section 7, PRC § 25362]

2) ***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 without incurring the penalty. [Section 5, 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

[37] CalMatters; "Blocked by legislators, Newsom shifts oil profits penalty plan to regulators"; March 2023; https://calmatters.org/politics/2023/03/california-oil-profits-newsom/

consumers." The bill 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.
[Section 5, 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." [Section 5, PRC § 25355.5 (n)(3)]

3) ***State Auditor Review of Maximum Margin and Penalty.*** Mandates 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 are not effectively fulfilling their objective and recommends that they 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. [Section 5, PRC § 25355.5 (p)]

4) ***CDTFA Data.*** 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. Permits CDTFA to use any information in its possession, or requested, to prepare the report, including sales prices and contracts for rack sales, bulk sales, spot pipeline sales, dealer tankwagon sales, imported fuel transactions, and retail sales. Specifies the data collected is considered confidential information. 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. Specifies that CDTFA may provide any information to the AG, or that the AG may request from the CEC or CDTFA any information collected and that any data shared shall be treated confidentially by the AG. [Section 6, PRC § 25355.7]

5) ***Data Disclosure to the Legislature.*** Requires the CEC, upon request, to share confidential information to the Assembly Speaker, Senate Rules Committee, and the appropriate policy committees in the Assembly or the Senate and their staff members, so long as the information is provided in aggregated or other anonymized form, and

each person receiving the information agrees in writing to keep the information confidential. Requires aggregated or otherwise anonymized information disclosed to the Legislature shall be made available to the public no more than quarterly, if requested by the Legislature. [Section 8, PRC § 25364]

6) ***Exemptions.*** Considers any regulations, or amendments to regulations, adopted to implement the reporting updates by oil market participants, CEC and CDTFA reports to the Legislature, max margin and penalty determinations, and all other provisions of the Chapter as emergency regulations, remaining in effect for 2 years. Specifies the provisions of the Chapter are self-executing, and do not require any regulation to be effective. Exempts CEC contracts to implement the Chapter from Department of General Services review and State Contracting Manual or Public Contract Code compliance. [Section 9, PRC § 25367]

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. Exempts any contracting needed to perform the Assessment from Department of General Services review and State Contracting Manual or Public Contract Code compliance. [Section 10, PRC § 25371]

   Permits a civil penalty to be levied whenever a person fails to timely provide information the CEC deems necessary to conduct the Assessment. [Section 10, PRC § 25371.1]

8) ***Transportation Fuels Transition Plan***. Requires the CEC and 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. [Section 10, PRC § 25371.3]

9) ***Creation of the Division of Petroleum Market Oversight***. 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 pursuant to this bill. 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. [Section 10, PRC §§ 25372-25372.4]

10) ***Creation of the Independent Consumer Fuels Advisory Committee.*** Establishes the Committee within the CEC to advise the CEC and Division. The Committee shall consist of 8 members: 6 Governor-appointees, 1 Speaker-appointee, and 1 Senate Rules-appointee. The Governor's appointees shall have specified expertise.

    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.

    Provides no specific duty or meeting schedule of the Committee, except "as prescribed by the CEC." Grants the Committee access to all confidential information submitted to the CEC and Division, so long as members agree in writing to maintain confidentiality and sign nondisclosure agreements. [Section 10, PRC § 25373]

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