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A Sempra Energy® utility

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Subject: **Supplemental Comments of Southern California Gas Company and San Diego Gas & Electric Company to the Second Draft Air Quality Management Plan (Proposed Control Measures CMB-04 and CTY-01)**

Dear Mr. Cassmassi:

As you know, on March 30, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E)) submitted written comments on the District's Second Draft Air Quality Management Plan (AQMP). With your prior approval, we refrained from detailing our concerns about the proposed natural gas specifications contained in control measures CMB-04 and CTY-01 in the hope that we could work with District staff to identify mutually acceptable revisions to those draft measures. The District granted an extension to submit written comments to these measures, and although we have not yet reached a final resolution with District staff, we remain optimistic that we will do so in the near term.

Unfortunately, the extension to submit comments expires today, and because the most recent versions of CMB-04 and CTY-01 remain unchanged, we must submit these comments in opposition to those control measures as currently written. In spite of our opposition, we are committed to continuing to work closely with District staff to identify revisions that we can support prior to the adoption of the AQMP.

To briefly summarize SoCalGas and SDG&E's position on these measures as written:

- The CPUC has exclusive jurisdiction over gas quality specifications, having recently issued a decision that tightened the gas quality specification and set a maximum Wobbe Index (WI) limit of 1385.
- The SCAQMD does not have the legal authority to establish a maximum WI limit of 1360 for natural gas delivered to the Basin.
- Moreover, the SCAQMD's proposed WI limit would violate the Commerce Clause of the United States Constitution.

- Finally, the SCAQMD has not demonstrated that the proposed WI limit of 1360 is necessary or even cost-effective.
  - The CPUC WI limit of 1385 was based on a careful and precise balancing of concerns and interests, after an extensive, fact-finding process, during which the SCAQMD's proposed WI limit of 1360 was assessed and rejected.
  - The SCAQMD's proposed WI limit will likely eliminate 20% or more of current natural gas supplies, without any demonstrated benefit to air quality.
  - Neither treatment nor blending of natural gas supplies are viable options.
  - The SCAQMD has itself admitted that further study is needed regarding the emissions-related impacts, if any, of higher WI natural gas.
  - CMB-04, therefore, should be converted into a study measure.
  - In addition, the SCAQMD should drop CTY-01 from the AQMP.

We note at the outset that District staff has indicated that it retains the right to adopt such rules as are necessary to address emissions-related problems that may be discovered in the interim period being discussed (2008-2010). We further note that the District's authority to adopt rules includes a wide spectrum of options, provided, of course, that they are justified and supported by the data and the facts, and that they are not in conflict with federal and state law, rules and regulations. Although as discussed below, we submit that the SCAQMD's authority to adopt rules is limited, we stand ready to work with the District to identify options consistent with the District's authority.

I. PROPOSED CONTROL MEASURE CMB-04 SHOULD BE CONVERTED INTO A STUDY MEASURE, BECAUSE AS CURRENTLY WRITTEN, IT IS UNLAWFUL UNDER CALIFORNIA AND FEDERAL LAW AND THERE IS NO EVIDENCE THAT IT IS NECESSARY OR COST-EFFECTIVE.

SoCalGas and SDG&E strongly oppose CMB-04 as set forth in the Second Draft AQMP. CMB-04 would establish a maximum Wobbe Index limit of 1360 Btu/scf for natural gas supplied to customers within the District's jurisdiction from outside the area. More significantly, the AQMP identifies no emission reductions associated with CMB-04, but states that the objective of this control measure is to minimize potential future emission increases from the combustion of natural gas with a Wobbe Index higher than 1360, in stationary applications.

SoCalGas and SDG&E oppose CMB-04 for several reasons, both legal and technical. First, the District does not have the legal authority to adopt CMB-04 under California or federal law. Moreover,

even if the District did have the legal authority to adopt CMB-04, the District has failed to provide statutorily-required evidence that CMB-04 is necessary, appropriate and cost-effective.

A. The District Lacks the Legal Authority to Establish a Maximum Wobbe Index Limit.

The District does not have the legal authority to set a maximum Wobbe Index limit of 1360 for natural gas delivered to the South Coast Air Basin, in conflict with the maximum Wobbe Index limit of 1385 already established by the California Public Utilities Commission (CPUC) in D.06-09-039 for the service territories of SoCalGas and SDG&E. The CPUC's legal authority to regulate the rates, terms and conditions of service of public utilities is vested by Article 12 of the California Constitution, subject to control by the Legislature. The CPUC clearly has both the jurisdiction to establish a maximum Wobbe Index limit of 1385 and the power to enforce this limit. "The commission may supervise and regulate every public utility in the State and may do all things…which are necessary and convenient in the exercise of such power and jurisdiction." Cal. Pub. Util. Code § 701. Furthermore, "[e]very public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission." Cal. Pub. Util. Code § 702.

The District may not regulate matters over which the CPUC has been granted regulatory power that the CPUC has exercised. "In such matters, the jurisdiction of the PUC is exclusive." *Southern Cal. Gas Co. v. City of Vernon*, 41 Cal. App. 4th 209, 215 (1995). Upon adoption, the CPUC maximum 1385 Wobbe Index became state law. *Leslie v. Superior Court*, 73 Cal. App. 4th 1042, 1046 (1999) ("The powers granted the PUC, including its rules and regulations, constitute general state laws.") The SCAQMD is prohibited from adopting rules that are in conflict with state law, rules and regulations. Cal. Health & Safety Code §§ 40440, 40441.

Although it cannot adopt regulations that conflict with the CPUC's own regulations, the District has the authority to "represent the citizens of the Basin in influencing the decision of other public and private agencies whose actions might have an adverse impact on air quality in the basin." Cal. Health & Safety Code § 40412. Similarly, the SCAQMD has the responsibility "for securing the cooperation of other public entities in the implementation of the plan." Cal. Health & Safety Code § 40441. The District's authority to represent citizens of the Basin and to secure cooperation of other public entities, however, does not give rise to the authority to substitute its own judgment when a sister agency does not completely agree with the District's position. Here, the SCAQMD actively participated in the CPUC proceeding that led to D.06-09-039 and urged the CPUC to adopt a Wobbe Index of 1360. The CPUC carefully considered and balanced a broad range of concerns and policies before reaching its decision in favor of a Wobbe Index of 1385, and the District has no authority to substitute its own judgment to the contrary. The District overreaches its jurisdiction when it attempts to circumvent the application of the

CPUC rule in the Basin by attempting to establish its own, more stringent maximum Wobbe limit. Thus, proposed CMB-04 directly conflicts with the CPUC's adoption of D.06-09-039.

In its *Response to Comments Document*, the District erroneously takes the position that "[c]ontrol measure CMB-04 is not in conflict with current CPUC regulation since it proposes a maximum WI of 1360 Btu/scf, which is in the range of 1290-1385 Btu/scf of the CPUC regulation." *Response to Comments on the Draft 2007 Air Quality Management Plan* at 461 (February 2007) (hereinafter, "*Response to Comments Document"*). This response ignores the fact that the CPUC expressly rejected the District's proposal to set a maximum Wobbe Index of 1360. Having failed to convince the CPUC that a maximum 1360 Wobbe Index is appropriate, the District now proposes to adopt its own rule establishing a 1360 Wobbe Index. This end-run around the CPUC rule ignores the careful balance struck by the CPUC in setting the permissible range of Wobbe levels in the state, a balance that was carefully struck to accommodate adequate and affordable supplies of natural gas while at the same time ensuring safety, environmental quality and other considerations. Altering that balance, as the District attempts to do, by reducing the range of available gas supply, would directly thwart the CPUC's determination either by rendering ineligible significant gas supplies from within and outside the state or by imposing such significant additional costs (*e.g.*, for gas treatment) as to alter fundamentally the cost of supplying gas to California customers.

Furthermore, the District's abrogation of the CPUC-established Wobbe limit would effectively allow the District to extend its authority beyond the jurisdictional boundaries of the Basin. The SDG&E and SoCalGas transmission and storage system is operated on an integrated basis. The system of pipelines delivering natural gas to the Basin does not begin and end at the SCAQMD's jurisdictional lines. Compliance with a stricter limit within the Basin would effectively require bringing all natural gas in the system – including natural gas consumed outside of the District's geographic jurisdiction – to a level below the District's maximum Wobbe limit of 1360. Thus, in addition to fundamentally altering the delicate balance struck by the CPUC, the District's proposed limit also would inevitably affect gas supplies in areas beyond the South Coast Air Basin. Indeed, quite contrary to the District's response to comments, CMB-04 would clearly and directly conflict with CPUC D.06-09-039.

In its *Response to Comments Document*, the District points to Rule 431.1, its regulation of the sulfur content of gaseous fuels, as authority for the SCAQMD to set natural gas specifications. *Response to Comments Document* at 250. The SCAQMD's reliance on its own rules as authority to regulate fuels is misplaced and does not demonstrate that the District has the authority to adopt CMB-04. As stated previously, the CPUC the primary state authority to regulate public utilities. Cal. Pub. Util. Code § 701. California law grants the CPUC numerous specific powers for the purpose of regulating public utilities; "however, the commission's powers are not limited to those expressly conferred on it: the Legislature

further authorized the commission to do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient in the exercise of its jurisdiction over public utilities. Accordingly, the commission's authority has been liberally construed, and includes not only administrative but also legislative and judicial powers." *San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 915 (1996). In contrast, the SCAQMD's limited authority within the Basin does not include the power to adopt regulations that conflict with the CPUC gas quality standards. In this context, where the CPUC already has established statewide gas quality standards, the District cannot act in a manner that would be contrary to the CPUC's regulation.

The District also should not extrapolate unduly from the very limited occasions in which it may have concurrent jurisdiction with the CPUC. The only support for allowing the SCAQMD to exercise concurrent authority with the CPUC is found in *Orange County Air Pollution Control District v. Public Utilities Commission*, 4 Cal. 3d 945 (1971). However, this case does not provide support for the SCAQMD's attempt to circumvent CPUC D.06-09-039 because it is limited to its unique facts. *Orange County Air Pollution* came before the court after the District denied a permit to construct a power plant under its rules and the CPUC overruled the district's denial by granting the utility a certificate of public convenience and necessity for the construction. The court held "the commission must share its jurisdiction over public utilities regulation where that jurisdiction is made concurrent by another (especially a later) legislative enactment." *Id.* at 954. While it is appropriate for the District and the CPUC to have concurrent jurisdiction with respect to such matters as the construction of power plants within the district, where their authority is independent and complementary, it is not appropriate for the SCAQMD to have concurrent jurisdiction with the CPUC in other circumstances – as in the setting of natural gas specifications requiring compliance via an integrated system of pipelines spanning southern California. The legislature did not contemplate granting such pervasive authority to the SCAQMD as evidenced by the clear proscription of the SCAQMD's authority. See Cal. Health & Safety Code §§ 40440, 40441. Indeed, the SCAQMD is but only one of ten regional air pollution control agencies which exercise jurisdiction over portions of SDG&E and SoCalGas' systemwide service territory. Furthermore, the regulation of natural gas specifications is designated as a matter of paramount statewide governance notwithstanding certain local attributes. See, e.g., *Orange County Air Pollution Control District*, 4 Cal. 3d 945 n.5 (The supply of telephone service, construction and maintenance of telephone lines within a city, and the control of city streets at railroad crossings have all been designated as matters of statewide concern.).

In summary, where the CPUC has carefully struck a balance among several competing considerations in establishing natural gas quality standards for the service territories of public utilities subject to CPUC jurisdiction, the District cannot upset that balance by setting different limits within those service territories. Put another way, the District has no authority to adopt a maximum Wobbe Index that

the CPUC has expressly rejected, particularly when that maximum Wobbe Index effectively would apply beyond the SCAQMD's geographic boundaries.

B. The District's Proposed Wobbe Index Limit Would Violate the Commerce Clause of the United States Constitution.

The Commerce Clause of the United States Constitution grants Congress the authority to regulate interstate commerce. U.S. Const. Art. I, § 8, Clause 3. The Commerce Clause, in its negative aspect, is a limitation on the regulatory authority of the states. Although a state, and in appropriate circumstances, its political subdivisions and agencies, have power to regulate commercial matters of local concern, an agency's regulations violate the Commerce Clause if they are discriminatory in nature or impose an undue burden on interstate commerce. Discrimination against interstate commerce in favor of local business or investment is per se invalid, save in a narrow class of cases in which it can be demonstrated, under rigorous scrutiny, that there are no other means to advance a legitimate local interest. *C&A Carbone v. Town of Clarkstown*, 511 U.S. 383, 391 (1994); *Maine v. Taylor*, 477 U.S. 131 (1986). Because the SCAQMD's proposed maximum 1360 Wobbe Index limit would result in discrimination against natural gas suppliers outside of California, it violates the Commerce Clause.

A state or local regulation is considered discriminatory if it: discriminates against interstate commerce on its face; is facially neutral but has a discriminatory purpose; or is facially neutral but has a discriminatory effect. *Granholm v. Heald*, 544 U.S. 460 (2005). Although the SCAQMD's proposed maximum 1360 Wobbe Index does not initially appear to be discriminatory on its face or in its purpose, the effect of the proposed limit in fact would be to discriminate against out of state natural gas suppliers. The District's proposal to prohibit the supply of natural gas with a Wobbe Index greater than 1360 would have the effect of disqualifying natural gas from the Rocky Mountains and delivered by the Kern River Pipeline to central and southern California; this is approximately 20 percent of existing supplies.

The District argues that the 1360 limit is not intended to prohibit continued purchase of gas from the Rocky Mountains. Nevertheless, the limit's ***effect*** would require SoCalGas and SDG&E, and customers in their service territories, either to refrain from purchasing such existing supplies, or to implement significant and expensive gas treatment and to incur such other costs as to materially increase the effective price of obtaining such gas. This discriminatory effect is unconstitutional under the Commerce Clause.

The District erroneously suggests that gas blending throughout the system might avoid the unconstitutional discriminatory effect. Unfortunately, this suggestion ignores the physical constraints of SoCalGas' and SDG&E's interconnected pipeline system. Blending cannot enable SoCalGas to meet the District's limit and escape the choice of either not accepting certain gas supplies or of incurring the significant cost of treating such supplies. There are many physical and operational reasons why SoCalGas can not achieve a maximum Wobbe Index of 1360 throughout its system. Gas flows according to customer demand, not as directed by SoCalGas. Pursuant to the orders of the CPUC, SoCalGas operates an Open Access system, and is required to accept customer gas at various receipt points if the gas complies with the gas quality specifications as established by the CPUC, SoCalGas has a fundamental obligation to accept CPUC-compliant natural gas and to serve its customers with natural gas pursuant to rules and regulations adopted by the CPUC. In order for SoCalGas to deliver gas to customers in the transmission and distribution network, it must maintain a pressure gradient. In general, gas quality will vary across the system depending on demand, supply and location. Gas quality cannot be managed to a particular source by redirecting gas flows in this transmission and distribution network without compromising delivery reliability.

The District has acknowledged that it intends to discriminate against new supplies of natural gas derived from liquefied natural gas (LNG), some or all of which will almost certainly come from outside California. As noted below, even discriminating against ***new*** natural gas supplies derived from LNG is not constitutionally permitted unless there are sufficient local benefits. The District has not demonstrated that the proposed 1360 Wobbe Index will achieve sufficient local benefits to justify the burdens on interstate commerce. In fact, the Second Draft AQMP is replete with references that CMB-04 is not needed for attainment (which is the purpose of the AQMP process) and that more analysis will be required prior to adopting a rule to impose the 1360 Wobbe Index limit.

The Supreme Court stated in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), "[w]here the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits… If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." The putative "local purpose" of the District's proposed limit of 1360 must be viewed in the proper context. In adopting D.06-09-039, the CPUC reduced the maximum Wobbe Index for SDG&E and SoCalGas from approximately 1437 to 1385. The CPUC made this reduction after a comprehensive two-year regulatory review process in which the SCAQMD actively participated. Equipment operators are currently meeting emission requirements under CPUC regulation while utilizing

natural gas with a Wobbe number greater than 1360. The question is thus whether the District's more stringent level would in fact produce sufficient additional environmental benefit to warrant the very dramatic discriminatory impact (*i.e.*, of disqualifying 20 to 30 percent of existing gas supply, or of necessary treatment costs).

CMB-04 fails under any reasonable *Pike* analysis. First, statements in the Draft AQMP confirm that the potential net local benefits derived from imposing a more stringent (i.e., 1360) Wobbe Index limit than that adopted by the CPUC are at best unknown and require additional study. The SCAQMD concedes that "[p]rojected emission reductions are uncertain at this time, and require further analysis. The control measure may only reduce future emission increases rather than provide emission reductions." Furthermore the SCAQMD concedes that these measures are not even needed for attainment, but rather to prevent any future increase in emissions attributed to the use of higher Wobbe natural gas. As noted elsewhere in these comments, SoCalGas' best estimate is that the District's more stringent limit compared to the CPUC WI limit of 1385 might prevent additional emissions of oxides of nitrogen (NOx) in the range of 0.1 tons per day distributed over thousands of stationary sources across a large geographic area (Area Source). The District would still have to model the emissions changes to determine the air quality impacts. This amount represents less than $1/10^{th}$ of one percent of the current stationary source NOx inventory in the basin and less than $2/10^{th}$ of one percent of the targeted reductions in the Air Quality Management Plan for sources utilizing natural gas. Moreover, these reductions, if any, can be addressed much more appropriately by working with customers to tune combustion equipment or by taking other mitigating actions. By contrast, the SCAQMD's proposed maximum 1360 Wobbe Index either would disqualify major quantities of the region's existing and potential future natural gas supply or would create very substantial economic costs and other local burdens. The SCAQMD has suggested that an alternative compliance option could be to remove the higher hydrocarbons from the gas. In order to comply with this SCAQMD's proposal, however, current estimates suggest it would take at least three to four years and hundreds of millions of dollars to construct and bring into operation numerous treatment plants that would be necessary just to treat supplies of natural gas in the system that exceed the 1360 limit.

Although the exact benefits of the SCAQMD's proposal are uncertain, it is certain that these substantial costs of complying with the proposal would be passed on to California customers through increases in natural gas prices. Even though the ultimate price for the SCAQMD's proposed maximum 1360 Wobbe limit would be paid by California consumers, it still runs afoul of the Commerce Clause. *Alliance For Clean Coal v. Miller*, 44 F.3d 591 (7th Cir. 1995). In *Miller*, the court invalidated the Illinois Coal Act under a Commerce Clause challenge for its protection of Illinois coal producers over out-of-state producers. The Act was an attempt to prevent Illinois electric utilities from switching to low-sulfur western coal as an option to comply with the Clean Air Act. The Court stated "the fact that Illinois rate-

payers are footing the bill does not cure the discriminatory impact on western coal producers." *Id.* at 596. Similarly, the fact that California consumers would pay the cost of the SCAQMD's proposed maximum 1360 Wobbe limit does not insulate the proposal from invalidation under the Commerce Clause.

In the absence of the further analysis and study referenced in the Second Draft AQMP, there is no basis to argue that the burden on interstate commerce is justified. Moreover, because any net incremental environmental benefit of the District's more stringent limit would both be very small and could be achieved by alternative means, the District's proposed limit fails under a *Pike* analysis. CMB-04 would have a significant discriminatory effect on interstate commerce that is not warranted to protect local interests, and therefore, would violate the Commerce Clause.

C. The District Has Not Demonstrated That Restricting Wobbe Index To 1360 Is Necessary Or Cost Effective.

By the District's own admission, "[t]he [California Clean Air Act] requires the District Governing Board to determine that the AQMP is a cost-effective strategy …. In addition, the Plan must include an assessment of the cost-effectiveness of available and proposed measures … [and] the District must consider other factors … includ[ing] technological feasibility, emission reduction potential, rate of reduction, public acceptability, and enforceability." See, Cal. Health & Safety Code §§ 40913, 40922, and *Proposed Modifications to the Draft 2007 Air Quality Management Plan* at 1-4 & 6-12 (February 2007) (hereinafter, "*Proposed Modifications Document*").

The District has not met this requirement. The District repeatedly acknowledges in its *Response to Comments Document* that the emissions reductions that would result from a restricted Wobbe Index are uncertain and require further analysis. See, e.g., *Response to Comments Document* at 108 ("the projected emission reductions from the introduction of natural gas with a Wobbe index greater than 1360 are uncertain at this time and would require further analysis"); 247 ("we simply do not know how many types of equipment will perform on high-Wobbe gas"); 252 ("[t]here are no technical studies, reports, or evidences that demonstrate the differential increase in NOx emissions from combustion of gas with a maximum WI of 1385 versus 1360"); and 253 ("[a]dditional analyses are required to refine inventory, emission reductions and costs associated with [CMB-04]") (February 2007). Moreover, the District does not even attempt to provide a cost-effectiveness ranking for CMB-04. *Proposed Modifications Document* at 6-13 (February 2007). Because the District has not demonstrated that CMB-04 is necessary or cost-effective, it is improper for the District to include the proposed control measure in the AQMP at this time.

D. Existing information suggests that restricting Wobbe Index to 1360 is neither necessary nor cost effective.

Although the District has not conducted a cost-effectiveness analysis, there are several facts that lead us to believe that restricting Wobbe Index to 1360 is neither necessary nor cost effective, particularly during the term of the current AQMP update (calendar years 2008 - 2010).

1. During the term of the current AQMP update, SCAQMD is not expected to see large volumes of natural gas derived from LNG and those supplies that may arrive will be geographically limited.

Only one LNG terminal, Energia Costal Azul (ECA), will likely be in operation before 2012. The initial sendout capacity of ECA will be approximately 1 Bcf/day. About half of the gas will be consumed by customers located in Mexico. A large portion of the gas destined for southern California from ECA will be consumed in the San Diego area with the balance arriving at the interstate pipeline system near Blythe where it will be delivered along with other traditional supply sources serving California customers. Given these limiting conditions it is assumed that for the next two to three years the likely amount of gas derived from LNG that will be delivered to the SCAQMD will not exceed 0.4 Bcf/day.

2. Based on conservative estimates, the 0.4 Bcf/d volume of natural gas with a Wobbe Index above 1360 that may enter the District's jurisdiction during the term of this AQMP will not result in significant emissions increases.

SoCalGas' best estimate is that the District's more stringent Wobbe Index limit would prevent additional emissions of oxides of nitrogen (NOx) of no more than 0.1 tons per day. This amount represents less than $1/10^{th}$ of one percent of the current inventory of ozone precursors in the basin and less than $2/10^{th}$ of one percent of the targeted reductions in the Air Quality Management Plan. Any small potential emissions increase can be reduced or eliminated by equipment adjustments and other more cost effective measures if needed.

3. Treatment of natural gas supplies is not a viable option.

Proposed control measure CMB-04 assumes that a Wobbe Index of 1360 can be achieved by removing complex hydrocarbons and/or adding inert gases like nitrogen.
Our analysis indicates that it would cost hundreds of millions of dollars to build and operate numerous treatment plants, scattered throughout the region, just to comply with this limit. Ironically, these new

treatment plants will generate significant additional emissions due to the need for additional compressors and truck or rail trips to haul away liquid materials that would be stripped from the gas.

4. Blending of natural gas supplies is not a viable option.

In the Second Draft AQMP, District staff has added a fourth method of control for proposed control measure CMB-04: "Blending natural gas from different sources so that end users supply meets a WI of 1360 BTU/scf in South Coast AQMD." However, blending is neither a viable nor a technically sustainable control method. In most cases, blending cannot physically be done because of the locations where current and proposed future supplies enter or will enter our integrated gas supply system. Even in those cases where it might be physically possible to blend supplies, there is no guarantee that there will be supplies available for blending or that those supplies would have a Wobbe Index sufficiently below 1360.

There are many physical and operational reasons why blending is not a feasible nor reliable long-term method for SoCalGas to comply with a maximum Wobbe Index of 1360 throughout its system. To begin with, as noted above, gas flows according to customer demand and their choice of commodity supply purchase locations, and not as directed by SoCalGas. If a gas customer is located physically closer to a source of above 1360 WI gas, than to a source of below 1360 WI gas, then that customer is likely to pull in and burn above 1360 WI gas. Although it might be hypothetically possible for SoCalGas to maintain a pressure gradient that would cause the below 1360 WI gas to flow towards this gas customer and "blend" with the above 1360 WI gas, practically attempting to do so is likely to compromise the reliability of the delivery system as a whole, reducing overall system supply and potentially causing other gas customers not to have adequate gas supply volume, regardless of WI. Secondly, pursuant to the orders of the CPUC, SoCalGas operates an Open Access system, and is ***required*** to accept customer gas at various receipt points, so long as the gas complies with the gas quality specifications as established by the CPUC, which means accepting 1385 WI gas. Consequently, gas producers only need to process their gas streams enough to reach a 1385 WI limit, and no further. Finally, the ability to blend is highly vulnerable to the vicissitudes of nature and other forces outside SoCalGas' control. Earthquakes and rain-related landslides have caused pipelines to rupture in the past. In one incident two years ago, a landslide in a remote area ruptured a natural gas transmission line that provided CARB-compliant natural gas that required blending with non-CARB-compliant natural gas, in order to be used as fuel for natural gas transit buses. Because the rupture prevented blending, the transit agency could not operate its natural gas buses and was then forced to use older, more polluting diesel buses, while the line was being repaired.

Because of these reasons, blending is simply not feasible.

5. Impacts to existing and potential future gas supplies could be significant.

As identified in our comments to the First Draft AQMP, the proposed control measure could adversely affect 20 to 30 percent of SoCalGas' ***current*** gas supplies. This is because 20 to 30 percent of our current supplies have a Wobbe Index over 1360. In response to a concern raised by Western States Petroleum Association (WSPA) regarding the impact this could have on natural gas prices, District staff responded that "[t]he District has no intention to curtail existing supplies." *Response to Comments Document* at 461. Yet, as currently written, CMB-04 would yield this very result.

The majority of our current natural gas supplies by volume that have a Wobbe Index over 1360 are produced outside SCAQMD's jurisdiction – in the Rocky Mountains, Coastal areas of California and San Joaquin Valley. Therefore, SCAQMD's proposed exemption for natural gas supplies from within the SCAQMD's jurisdictional area does nothing to protect these substantial current natural gas supplies. Moreover, as we have previously discussed, years of experience working with our integrated natural gas system suggests that we cannot reliably use blending as a means to continue accepting existing natural gas supplies with a Wobbe Index above 1360. In its *Response to Comments Document* the District notes that "SoCalGas Wobbe Index data for the basin for the recent 5-year period [demonstrates that] the WI in the basin does not exceed 1360 Btu/scf with current supplies." *Response to Comments Document* at 251 and 461. The District, however, is misinterpreting SoCalGas' data, disregarding the fact that the data represent averages on a systemwide basis, where there are a number of sources of gas with average WI of 1360 or above.

Therefore, the concerns expressed by SoCalGas, SDG&E, WSPA and others that proposed control measure CMB-04 could adversely affect approximately 20 to 30 percent of our *existing* gas supplies are serious and valid concerns. To the extent that the proposed control measure would prevent the delivery of these supplies, it would raise the costs associated with delivering natural gas supplies and significantly affect the reliability and price of natural gas and electricity to energy consumers. These impacts are made more significant when one considers impacts on potential future natural gas supplies.

E. <u>The District should study the impacts that higher Wobbe Index natural gas will have within the District's jurisdiction</u>.

As previously noted, throughout its *Response to Comments* document, the District acknowledge that additional study is necessary regarding the effects and cost-effective control of higher Wobbe Index gas. The District even commits to such study, stating that:

> "The District will continue to research the air quality effects associated with 'hot gas' combustion to determine if rule development is warranted. Rule development would necessitate a thorough analysis of emission reduction potential, cost-effectiveness, potential socioeconomic and adverse environmental impacts, and other impacts (e.g.,

> constrains on fuel supply). Such analyses would be performed with input from all stakeholders and be presented to the District Governing Board prior to their consideration of a proposed rule."
> See, *Response to Comments Document* at 387.

The District also acknowledges that the result of such additional study may be a determination that no rule is necessary or appropriate. See, *Response to Comments Document* at 387 ("The District will further evaluate this issue in details *[sic]* when ***and if*** rulemaking goes forward" (emphasis added)).

SoCalGas and SDG&E agree that additional study is necessary not only to accurately determine any increases in emissions associated with an increase in the Wobbe Index, but also to identify and assess any cost-effective measures for mitigating these increases. However, for the reasons set forth above, and because third parties may argue that AQMP control measures are federally enforceable against the District once the United States Environmental Protection Agency approves the measures for inclusion in the California State Implementation Plan (thus potentially removing the District's discretion to change course during rulemaking), SoCalGas and SDG&E feel strongly that additional study must be conducted before any gas quality measure is added to the AQMP.

For the above reasons, SoCalGas and SDG&E strongly urge the District to convert CMB-04 into a study measure. To demonstrate our commitment to this issue, SoCalGas and SDG&E will aid the District's study effort by, among other things, monitoring and periodically reporting on the Wobbe Index of natural gas supplies that we supply into the South Coast Air Basin during calendar years 2008 through 2010.

II. PROPOSED CONTINENCY MEASURE CTY-01 SHOULD BE DELETED FROM THE AQMP.

SoCalGas and SDG&E strongly oppose CTY-01 as set forth in the Second Draft AQMP. Beginning in 2008, CTY-01 would reduce RECLAIM allocations to offset any potential emission increase resulting from the introduction of natural gas with a Wobbe Index greater than 1360.

While we appreciate that the District has moved LTM-02 into a contingency measure category (CTY-01), we respectfully request that the measure be removed from the AQMP. For the reasons noted in the December 1, 2006 SoCalGas and SDG&E comments, further RECLAIM adjustments can be made only when the Board makes reasonable findings that such reductions are technologically feasible and cost-effective. *See* Health & Safety Code §§ 40440(b)(1) (authorizing the District to require the use of "best available retrofit control technology for existing sources"), 40406 (defining BARCT as the "maximum degree of reduction achievable, taking into account environmental, energy and economic impacts . . ."), and 40703 (requiring the District to make findings of cost-effectiveness). Although implicitly acknowledged in its *Response to Comments Document*, (e.g., Responses 18-2 and 18-25), the District

suggests that it can somehow require reductions that do not meet these conditions. Given that the District has no current or reasonably anticipated basis for making the technological and economic findings that would be necessary to support CTY-01, the District should remove CTY-01 from the AQMP.

Moreover, there are other important reasons why CTY-01 should be removed at this time. Although we would argue that the proposed measure cannot be made individually enforceable as a component of the AQMP, the District runs a significant risk whenever it includes a measure that it may later decide not to implement, regardless of whether the District actually takes credit towards attainment for the measure as providing net emissions reductions. As the District is well aware, once it includes measures in an Air Quality Management Plan, its subsequent ability to remove the measure may be severely limited. When, as in this case, the measure itself does not contain any emissions reduction commitment and when, as noted above, the District's ability even to make the required threshold findings remains so speculative, there is no benefit to the District from including the measure. Furthermore the SCAQMD has stated that this measure is not included for attainment reasons. Indeed, there may be substantial risk in doing so. Of course, not including the measure at this point in time does not prevent the District from reinserting a similar measure in a future Air Quality Management Plan should the District later have more of a basis for doing so.

Conclusion

For the reasons set forth above, SoCalGas and SDG&E strongly oppose CMB-04 and CTY-01 as set forth in the Second Draft AQMP. We strongly urge the District to convert CMB-04 to a study measure, and we also commit to work with the District in its study efforts. We also urge the District to remove CTY-01 from the AQMP.

We look forward to continuing discussions with the District staff and Board regarding proposed measures CMB-04 and CTY-01. In the meantime, should you have any questions regarding our comments or require additional information, please do not hesitate to contact the undersigned at 213-244-8851.

Sincerely,

Lee Wallace

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