Decision 07-02-032 February 15, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California.	Rulemaking 04-01-025 (Filed January 22, 2004)

ORDER DENYING REHEARING OF DECISION (D.) 06-09-039

I. SUMMARY

In Commission Decision (D.) 06-09-039, we determined that environmental review pursuant to the California Environmental Quality Act ("CEQA") was not required in Phase II of Rulemaking (R.) 04-01-025 because the issues decided in Phase II do not constitute a "project" within the meaning of CEQA. South Coast Air Quality Management District ("SCAQMD"), Ratepayers for Affordable Clean Energy ("RACE"), and the City of San Diego ("the City") filed applications for rehearing of D.06-09-039, and the California Attorney General ("AG") filed an amicus curiae brief in support of the rehearing applications. We have reviewed all of the allegations of error raised in the rehearing applications and in the AG's amicus brief, and determine that cause does not exist for granting the rehearing applications.

II. BACKGROUND

We initiated this Rulemaking proceeding (R.04-01-025) on January 22, 2004. The purpose of the proceeding is "to establish policies, processes and rules to ensure reliable, long-term supplies of natural gas to California." (*Order Instituting Rulemaking* ("OIR"), p. 28 [Ordering Paragraph 1] (slip op.).) The proceeding was divided into two phases. Phase I dealt with policy matters related to interstate pipeline capacity contracts, liquefied natural gas access, and interstate pipeline access. (See

Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California ("*Opinion on Phase I Issues*") [D.04-09-022] (2004) ___ Cal.P.U.C.3d ___, p. 2 (slip op.).) Phase II is currently examining policy issues related to natural gas quality specifications, transmission capacity, cost allocation, and ratemaking provisions, among other issues. In D.06-05-017, issued on May 11, 2006 as part of Phase I of R.04-01-025,[1] we determined that environmental review pursuant to CEQA was not required in Phase I of R.04-01-025 because Phase I does not constitute a "project" within the meaning of CEQA. RACE challenged this determination in a petition for writ of mandate filed in the California Supreme Court on September 25, 2006. (*Ratepayers for Affordable Clean Energy v. California Public Utilities Commission*, California Supreme Court, Case No. S146858.) After filing its petition for writ of mandate, RACE sought a stay of Case No. S146858 so that it could eventually be consolidated with review of the Phase II CEQA issues, discussed herein. The Commission answered RACE's writ petition and denied that the writ should be issued, and also opposed RACE's stay request. On December 13, 2006, the California Supreme Court summarily denied RACE's petition for writ of mandate as to the Phase I CEQA issues, and also denied RACE's stay request.[2]

We issued the challenged decision, D.06-09-039, on September 21, 2006. In D.06-09-039, we took the following actions: (1) approved interconnection agreements and operational balancing agreements for liquefied natural gas ("LNG") providers; (2) endorsed the creation of an Infrastructure Working Group to enable all participants and state agencies to monitor system utilization and identify expansion needs; (3) clarified and expanded policies related to receipt points expansion on the Southern California Gas

[1] *Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California* ("*Opinion Regarding the Petition for Modification of Decision 04-09-022*") [D.06-05-017] (2006) ___ Cal.P.U.C.3d ___.

[2] RACE's application for rehearing of D.06-09-039 alleges that we erred in considering environmental review for Phase I separately from environmental review for Phase II. (RACE App., pp. 2-3.) This argument lacks merit because, as noted above, the California Supreme Court has already denied RACE's petition for writ of mandate as to the application of CEQA to Phase I.

Company ("SoCalGas") system; (4) modified SoCalGas' proposed revisions to its rules affecting open seasons related to local transmission capacity; (5) directed Pacific Gas & Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E") and SoCalGas to adopt specific backbone transmission planning standards; and (6) adopted rule changes to gas quality tariffs, including a Wobbe Index[3] range of 1279-1385 for SoCalGas and SDG&E, and adopting other changes to PG&E Rule 21 and SDG&E/SoCalGas Rule 30 to make the rules more consistent with each other. (D.06-09-039, pp. 2-3.)

Existing Rule 30 establishes various specifications for the quality of gas flowing in the utility systems, including specifications addressing: (a) heating value; (b) moisture/water content; (c) hydrogen sulfide; (d) mercaptan sulfur; (e) total sulfur; (f) carbon dioxide; (g) oxygen; (h) inerts; (i) hydrocarbons (i.e., hydrocarbon dew point); (j) dust, gums, and other objectionable matter; (k) hazardous substances; (l) delivery temperature; and (m) interchangeability of gas in utility systems. These existing gas quality specifications in Rule 30 allow for the flow of gas with a Wobbe Index number ranging from 1271 to 1437. (D.06-09-039, p. 108.)

Like D.06-05-017 in Phase I, D.06-09-039 also determined that CEQA review was not required in Phase II of R.04-01-025. (D.06-09-039, pp. 160-163, 177 [Conclusions of Law 47 & 48].) We found that "the narrowing of the parameters of the gas quality standards in SoCalGas Rule 30 is not an essential step culminating in action that may affect the environment and, therefore, is not a project under CEQA." (D.06-09-039, p. 177 [Conclusion of Law 47].) We reasoned that the current version of Rule 30, which permits a Wobbe range of 1271-1437, actually allows gas into California with higher Wobbe numbers than the gas that would be permitted under revised Rule 30, with a permissible Wobbe range of 1279-1385. (D.06-09-039, pp. 163, 181 [Ordering

[3] The Wobbe Index measures the interchangeability of gas, i.e., the ability to substitute one gaseous fuel for another in a combustion application without materially changing operation safety, efficiency, or performance, or materially increasing air pollutant emissions. Gas with a higher Wobbe number produces more heat because it burns hotter than gas with a lower Wobbe number.

Paragraphs 17-19].) In addition, we determined that revising gas quality standards would not lead to the importation of potentially hotter burning LNG gas, but rather "it would be the construction of new LNG terminals or receiving stations that would likely cause the potentially higher level Wobbe LNG gas to be introduced into California." (D.06-09-039, p. 163.) Because D.06-09-039 did not authorize the construction of any facilities related to LNG importation or consumption, but instead provided guidelines and parameters for the possible future use of LNG in California, we concluded that there was no causal link between the narrowing of gas quality parameters in D.06-09-039 and any alleged, direct or indirect, impact on the environment that would trigger environmental review pursuant to CEQA.

Timely applications for rehearing of D.06-09-039 were filed by the SCAQMD, RACE, and the City on October 27, 2006. The City also filed a motion to intervene in R.04-01-025.[4] On October 27, 2006, the Commission received an amicus curiae brief from the AG in support of the applications for rehearing of D.06-09-039. Responses to the rehearing applications were filed on November 13, 2006 by PG&E, Sempra LNG, Shell Trading Gas & Power, and SDG&E.

On January 23, 2007, SCAQMD filed petitions for writ of review of D.06-09-039 in the California Supreme Court and the California Court of Appeal, Second Appellate District, Division Four.

III. DISCUSSION

The applicants for rehearing and the AG (herein collectively referred to as "Applicants") argue that Phase II is a "project" within the meaning of CEQA which requires environmental review. Specifically, Applicants allege that the adoption of revised gas quality standards in D.06-09-039 has the potential to cause physical changes to the environment, and as such the Commission was required to conduct an

[4] The City's motion to intervene as a party is granted based on its close proximity to the North Baja LNG importation facility currently under construction off the coast of Baja California. Thus, the City is uniquely situated as a public entity, and its concerns regarding the possible impacts of D.06-09-039 are relevant to the issues considered by the Commission in the underlying decision.

environmental review pursuant to CEQA. SCAQMD further alleges that the Commission abused its discretion by adopting revised gas quality standards without legally sufficient evidentiary support.

A. Whether CEQA environmental review was required in Phase II of R.04-01-025

Applicants allege that D.06-09-039 constitutes an "essential step" toward LNG infrastructure development, which will ultimately lead to the importation and consumption of LNG in California, and which in turn may lead to physical changes in the environment. They further argue that the revised Wobbe Index numbers will result in the importation and consumption of hotter burning gas in California, which, in the view of Applicants, may have serious environmental impacts. Finally, Applicants claim that D.06-09-039 contemplates the future development of LNG projects which may result in new emissions and significant air quality impacts. (See SCAQMD App., pp. 2-10; RACE App., pp. 3-12; City of San Diego App., pp. 2-6; AG Amicus Brief, pp. 3-13.) As such, Applicants assert that environmental review pursuant to CEQA was required in Phase II of R.04-01-025.

In response to these arguments, PG&E, SDG&E, Sempra and Shell (herein collectively referred to as "Respondents") assert that our determination in D.06-09-039 that Phase II of R.04-01-025 is not a "project" within the meaning of CEQA is correct and is amply supported by relevant authority. Respondents argue that Phase II of R.04-01-025 is not a "project" under any of the prongs of the CEQA definition of a "project," i.e., it is not an "activity" under CEQA, and it will not cause "direct physical change in the environment" or a "reasonably foreseeable indirect physical change in the environment." Respondents further contend that D.06-09-039 constitutes general policy determinations by the Commission that are not subject to CEQA review, and also allege that the revision of certain gas tariffs to reflect a lower, stricter maximum Wobbe range does not implicate CEQA. Respondents also maintain that D.06-09-039 does not constitute an "essential step" leading to the undertaking of any specific gas supply project. (See Sempra Resp., pp. 1-13; PG&E Resp., pp. 1-4; Shell Resp., pp. 4-12;

SDG&E Resp., pp. 5-10.) As such, Respondents argue that environmental review pursuant to CEQA was not required in Phase II of R.04-01-025.

Generally, environmental review pursuant to CEQA is triggered when a public agency exercises its discretionary power to carry out or approve a project that may have a direct, or a reasonably foreseeable indirect, physical impact on the environment. (See Pub. Resources Code, § 21065; CEQA Guidelines, § 15002.)[5] Before CEQA is triggered, the public agency conducts a preliminary review to determine whether CEQA applies to the proposed activity. (CEQA Guidelines, § 15060.) If the activity is not a "project" as defined by CEQA, or falls within an exemption to CEQA, the inquiry does not need to proceed further, and environmental review is not required. (See, e.g., CEQA Guidelines, § 15378; Pub. Resources Code, §§ 21065 & 21080.) If the agency determines that CEQA is applicable to the project, the agency must consider whether the project will have a significant physical impact on the environment. (CEQA Guidelines, § 15002.) If it is determined that the project will not have a significant physical impact on the environment, the agency is to issue a negative declaration. (CEQA Guidelines, § 15002.) If the agency determines that the project will have a significant physical impact on the environment and that there is substantial evidence to support this determination, an environmental impact report must be prepared. (Pub. Resources Code, § 21080(d); CEQA Guidelines, § 15002.) As used in CEQA, "substantial evidence" does not include argument, speculation, or unsubstantiated opinion or narrative. (Pub. Resources Code, § 21080, subd. (e)(2).)

More specifically, Section 15060(c) of the CEQA Guidelines states that an activity is not subject to CEQA if: (1) it does not involve the exercise of discretionary powers by a public agency; (2) it will not result in a direct or reasonably foreseeable indirect physical change in the environment; or (3) it is not a "project" as defined in CEQA. (CEQA Guidelines, § 15060(c).) Public Resources Code Section 21065 and

[5] Chapter 3 of Division 6 of Title 14 of the California Code of Regulations may also be referred to herein as "CEQA Guidelines."

Section 15378 of the CEQA Guidelines define a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and which is any of the following: (a) an activity directly undertaken by any public agency; (b) an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or (c) an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378.)

In addition, in order for CEQA to apply, a project must have a significant effect on the environment. A "significant effect on the environment" is defined in Section 15002(g) of the CEQA Guidelines as "a substantial change in the physical conditions which exist in the area affected by the proposed project." (CEQA Guidelines, § 15002(g).) Thus, pursuant to the CEQA Guidelines, if an activity undertaken by a public agency does not meet the definition of a "project" as defined by CEQA and case law interpreting CEQA, the inquiry is at an end, and no environmental review is required. Only if the activity is determined to be a "project" does the obligation arise to examine whether the project will have a significant physical impact on the environment.

In analyzing whether an activity constitutes a "project" under CEQA, courts have generally look to the following factors: (1) whether the agency is undertaking a "specific new development project" (Pala Band of Mission Indians v. County of San Diego (1998) 68 Cal.App.4th 556, 568-69); (2) whether the activity involves "the issuance of permits, leases and other entitlements" to a private party by the public agency (Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 262); (3) whether the proposed activity is so unspecified and uncertain in nature that any environmental review would be meaningless, purely speculative and financially wasteful (Laurel Heights Improvement Ass'n v. Regents of the University of California (1988) 47 Cal.3d 376, 396; Pala Band of Mission Indians, supra, 68 Cal.App.4th at 576; Lake County Energy Council v. County of Lake (1977) 70 Cal.App.3d 851, 854-55; Topanga

Beach Renters Association v. Department of General Services (1976) 58 Cal.App.3d 188, 196); (4) whether the activity is primarily in the planning and/or policymaking stages of development (Pala Band of Mission Indians, supra, 68 Cal.App.4th at 576); and (5) whether the activity commits the public agency to any particular course of action or specifically identifies sites that will or may be used for future development (Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District (1992) 9 Cal.App.4th 464, 475-76; Stand Tall on Principles v. Shasta Union High School District (1991) 235 Cal.App.3d 772, 780-81).

Kaufman & Broad, supra, is particularly helpful in terms of examining what constitutes a "project" within the meaning of CEQA. In Kaufman & Broad, a school district's attempt to create a Mello-Roos district was challenged by a developer on the ground that the formation of the Mello-Roos district constituted a "project" for which environmental review was required under CEQA. The Court disagreed, stating that CEQA review was not required because the activity did not commit the district to any definite course of action, did not narrow the field of options and alternatives available for the district, and did not dictate how any funds would be spent. (Kaufman & Broad, supra, 9 Cal.App.4th at p. 476.) The Court specifically found that "[t]here is simply not enough specific information about the various courses of action available to the District to warrant review at this time." (Id.)

Similarly, in Pala, supra, the Court determined that there was a lack of substantial evidence to support plaintiffs' claim that the county's adoption of 10 tentatively reserved landfill sites might exert a significant environmental impact. The Court held that, because the sites were only tentatively reserved, preparation of an environmental impact report was premature and was not required under CEQA. (Pala Band of Mission Indians v. County of San Diego, supra, 68 Cal.App.4th at pp. 575-76.) The Court stated: "In our view, preparation of an EIR (including a program EIR) at the current planning stage would be premature in that any analysis of potential environmental impacts would be wholly speculative." (Id. at p. 576 (fn. omitted).)

Phase II is not a "project" requiring environmental review under CEQA because D.06-09-039 established the same sort of generally applicable policies and rules that were unsuccessfully challenged as to D.06-05-017 in Phase I of R.04-01-025.[6] (Ratepayers for Affordable Clean Energy v. California Public Utilities Commission, California Supreme Court Case No. S146858, Petition for Writ of Mandate Denied December 13, 2006.) Like Phase I, we merely established and/or revised the terms and conditions of access in Phase II that apply to all new gas supplies delivered to the California market. We did not grant any license, permit or approval for any specific gas supply project, and we did not authorize the construction or approve siting of any particular new LNG terminals or receiving stations. Neither D.06-09-039 nor any other decision or ruling issued in Phase II proposes that construction activity be undertaken by a public agency, or that an activity be undertaken by a person or entity supported by public agency contracts, permits, grants or licenses. Instead, in D.06-09-039, we established basic ground rules, including stricter gas quality specifications for SDG&E and SoCalGas and other terms and conditions of access for any pipeline or gas supply that may connect to California utility systems in the future. (See, e.g., D.06-09-039, pp. 171, 174, 180-81 [Finding of Fact 68, Conclusion of Law 15, Ordering Paragraphs 14, 17-19].) The policy determinations contained in D.06-09-039 are designed to provide greater clarity and guidance to the utilities and LNG project developers with respect to gas quality and interchangeability requirements, but do not grant any license or authorization for the receipt or sale of LNG in the California market. Examining the actions taken by the Commission in D.06-09-039, we are convinced that Phase II does

[6] It should be noted that, under certain circumstances, the authority to conduct environmental review will lie with agencies and public entities other than the Commission. For example, in 2005, Congress amended the federal Natural Gas Act to expressly grant the Federal Energy Regulatory Commission ("FERC") exclusive authority over the siting, construction, expansion or operation of LNG terminals. (*See* 15 U.S.C. § 717b(e)(1).) Pursuant to 15 U.S.C. § 717b(d), the only state agencies which retain authority over the siting of LNG terminals are those agencies with delegated federal authority under the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451, *et seq*., the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, or the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq*. In addition, if state land would be utilized for LNG operations, those state or local agencies which administer the use of, and public trust obligations for, such state lands would also retain jurisdiction.

not involve a "project" within the meaning of CEQA, and thus D.06-09-039 correctly determined that environmental review was not required.[7]

Applicants also claim that we were required to conduct an environmental review before revising gas quality specifications for SDG&E and SoCalGas because the revisions will have a significant effect on the environment.[8] However, the enactment of stricter gas quality regulations than those currently in place (the "baseline") would not result in any significant, adverse environmental effects, and as such CEQA review was not required. Public Resources Code Section 21068 defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068.) In addition, Section 15064(f) of the CEQA Guidelines provides that any alleged significant, adverse environmental effect must be supported by substantial evidence in the record before CEQA is triggered. (CEQA Guidelines, § 15064(f).) Section 15125(a) of the CEQA Guidelines further provides that the "physical environmental conditions" as they currently exist "will normally constitute the baseline physical conditions" by which an agency determines whether an alleged environmental impact is significant. (CEQA Guidelines, § 15125(a).) Thus, in order to prevail on their claim that revisions to the gas quality standards for SoCalGas and SDG&E require environmental review pursuant to CEQA, Applicants must show that such changes are likely to cause both significant and adverse environmental changes as compared to the baseline, and must demonstrate that substantial record evidence supports this determination.[9]

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[7] In their rehearing applications, the AG and the City assert that the Commission's policy of expanding natural gas supplies in California does not excuse the Commission from complying with CEQA. (AG App., pp. 13-16; City of San Diego App., pp. 6-8.) However, nowhere in D.06-09-039 or in any other decision or ruling in R.04-01-025 did we adopt such a position. We have uniformly maintained that the actions taken in R.04-01-025 are consistent with the requirements of CEQA. Thus, this allegation of error is inaccurate and lacks merit.

[8] In its rehearing application, RACE admits that "Phase 2 itself will not result in a direct physical change to the environment," but argues that the proceeding will cause indirect, foreseeable environmental impacts. (RACE App., p. 4.)

[9] The proper baseline for measuring possible adverse environmental effects is the permissible Wobbe Index range as it existed before the issuance of D.06-09-039, i.e., 1271-1437. (See, e.g., *Fairview*

(footnote continued on next page)

Reducing the upper Wobbe Index limit in D.06-09-039 does not create the potential for significant, adverse environmental impacts. As we noted in D.06-09-039, the current (or baseline) gas quality tariffs at issue permit the introduction of gas with a Wobbe Index number that far exceeds 1400, and all parties (including Applicants) supported revising these tariffs. (D.06-09-039, pp. 163, 169.) D.06-09-039 expressly lowered the high end of the permissible Wobbe Index range for SoCalGas and SDG&E from 1437 to 1385. (D.06-09-039, pp. 163, 181 [Ordering Paragraphs 17-19].) Logically, the narrowing of existing gas quality specifications by reducing the acceptable maximum Wobbe Index limit will have positive effects for the environment. Thus, the tightening of gas quality standards in D.06-09-039 will not cause significant, adverse environmental effects. Indeed, the fact that Applicants have argued for an even lower Wobbe Index maximum than that adopted by the Commission in D.06-09-039 demonstrates Applicants' belief that lowering the permissible Wobbe Index range (as the Commission did in D.06-09-039) is environmentally beneficial.[10]

Applicants' next argument with respect to CEQA is that D.06-09-039 constitutes an "essential step" toward LNG importation and consumption in California, and as such environmental review pursuant to CEQA was required in Phase II of R.04-01-025. However, D.06-09-039 is not an "essential step in a chain of events" that will culminate in a reasonably foreseeable physical change in the environment, and thus it is not a "project" requiring environmental review under CEQA. (See Kaufman & Broad, supra, 9 Cal.App.4th at p. 474 (emphasis in original).) As discussed above, in Kaufman

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Neighbors v. County of Ventura (1999) 70 Cal.App.4th 238, 243 (proper baseline is the amount of traffic currently permitted by existing conditional use permit); *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1315 (adopting baseline of the standards of existing permit); *Committee for a Progressive Gilroy v. State Water Quality Resources Control Board* (1987) 192 Cal.App.3d 847, 863 (defining the baseline as the currently approved discharge levels).)

[10] In the proceeding, SCAQMD argued for a Wobbe Index ceiling of 1360. (D.06-09-039, p. 114.) SCAQMD also argued that CEQA would not be triggered if the Commission adopted its proposed Wobbe Index ceiling of 1360, but would be triggered under the Commission's revised Wobbe Index ceiling of 1385. (D.06-09-039, p. 162.) SCAQMD's position is internally inconsistent.

& Broad, the Court determined that a school district's formation of a Mello-Roos district did not constitute a project under CEQA. The Court found that there was no causal link between the formation of the Mello-Roos district and any alleged environmental impact, and further determined that the formation of the district would not create a need for new schools, nor would the construction of new school facilities entirely depend upon the formation of the district. (Id.) Thus, the Court concluded that environmental review was not required with respect to the formation of the Mello-Roos district.

Similarly, no permit, license or other authorization for any LNG facilities will result from the issuance of D.06-09-039. As in Kaufman & Broad, D.06-09-039 will not create a need for additional gas supplies, LNG or otherwise. No LNG terminal or other facility will be sited, constructed or operated as a result of D.06-09-039. No importation of LNG will be permitted and no license or authorization for the receipt or sale of LNG in the California market will be granted due to our issuance of D.06-09-039. We simply adopted general policies and guidelines applicable to both existing and new gas supplies, and also adopted a more stringent Wobbe Index ceiling for SoCalGas and SDG&E. Thus, contrary to the argument of Applicants, D.06-09-039 is not an "essential step" leading to the importation and consumption of LNG in California, and as such environmental review pursuant to CEQA is not required.

The City also alleges that D.06-09-039 erred in not ordering parties who advocated a higher-range Wobbe Index ceiling to perform studies or oversee completion of studies regarding the possible impact of higher Wobbe numbers. (City of San Diego App., pp. 8-9.) According to the City, this violates Rule 2.4 of the Commission's Rules of Practice & Procedure, which requires a Proponent's Environmental Assessment ("PEA") to be included as part of any application to undertake a project governed by CEQA. However, as discussed above, we have concluded that D.06-09-039 does not implicate a "project" within the meaning of CEQA. As such, PEAs were not required pursuant to Commission Rule 2.4.

Thus, Applicants' allegations of error regarding whether Phase II of R.04-01-025 constitutes a "project" within the meaning of CEQA, and thus requires environmental review, lack merit.

B. Whether the adoption of revised gas quality standards in D.06-09-039 is supported by substantial evidence

SCAQMD argues that the adoption of 1385 as a Wobbe Index ceiling for SoCalGas and SDG&E was an abuse of discretion because, in SCAQMD's view, the record contains insufficient evidence about the possible air quality impacts of such a standard. (SCAQMD App., pp. 11-16.) SCAQMD further alleges that we erred in adopting revised gas quality tariffs, rather than simply adopting an interim gas quality standard to preserve the status quo, as proposed by SCAQMD. (SCAQMD App., pp. 14-15.) Finally, SCAQMD claims that we erred in concluding that a Wobbe Index ceiling of 1360, as advocated by SCAQMD, would unnecessarily constrain California's gas supplies. (SCAQMD App., pp. 15-16.) These allegations of error lack merit, since there is record evidence to support the challenged determinations in D.06-09-039.

During Phase II of R.04-01-025, we considered evidence submitted by various parties regarding the possible revision of the gas quality tariffs at issue and proposals regarding what would constitute an appropriate Wobbe Index ceiling for SoCalGas and SDG&E. The gas companies and the utilities generally supported a Wobbe Index limit of 1400, while SCAQMD and Southern California Edison Company ("SCE") advocated a Wobbe limit of 1360. (D.06-09-039, p. 149.) Thus, we were required to weigh conflicting evidence in arriving at a Wobbe Index limit of 1385.

We also considered the recommendations contained in the NGC+ Interchangeability Work Group's White Paper on Natural Gas Interchangeability and Non-Combustion End Use ("White Paper"). (Exh. 107, Attachment B.) The NGC+ Work Group is a group of industry stakeholders (including LNG importers, local distribution companies and interstate pipelines, appliance and turbine manufacturers, and power plant operators) under the leadership of the Natural Gas Council, an umbrella organization of natural gas industry trade associations. (D.06-09-039, pp. 142, 153.) The

White Paper[11] "recommends adopting a Wobbe range equal to plus and minus four percent of average historical gas subject to a maximum Wobbe of 1400." (D.06-09-039, p. 153.) Applying the White Paper recommendation to the five-year historical Wobbe Index average for SoCalGas (1332) results in a range of 1279 to 1385, which is the range we adopted in D.06-09-039. (D.06-09-039, pp. 153-54.) The Wobbe Index maximum of 1385 is more than that proposed by SCAQMD and SCE (1360), but less than that proposed by the gas companies and most of the utilities (1400).

In this proceeding, we weighed all of the evidence submitted by all parties, including those seeking rehearing of D.06-09-039, in establishing a Wobbe Index maximum of 1385 for SoCalGas and SDG&E. Evidence and testimony was submitted by the gas companies and some of the utilities in support of a proposed higher Wobbe Index maximum of 1400. (See, e.g., Exh. 103 (Baerman); Exh. 104 (Hower); Exh. 107 (Sasadeusz); Exh. 158 (Kuipers) at pp. 8-9.) However, we determined that the approach presented in the White Paper, and supported by the FERC, would best accomplish our goal of expanding natural gas supplies in California in an environmentally sound manner. This conclusion is supported by substantial evidence in the record, by the research and findings contained in the White Paper, and by recent statements from the FERC. As such, SCAQMD's allegation of error lacks merit.

SCAQMD next alleges that we erred in adopting revised gas quality tariffs, rather than simply adopting an interim gas quality standard to preserve the status quo, as proposed by SCAQMD. (SCAQMD App., pp. 14-15.) This allegation of error lacks merit because it presumes that the Wobbe Index range approved by the Commission in D.06-09-039 is permanent, inflexible, and cannot be altered in the future based on additional research and information. Indeed, in D.06-09-039, we recognized that additional research will likely be conducted in the future on issues including the impacts

[11] In the Decision, we also noted that the White Paper's recommendations have received the support of the FERC. (See D.06-09-039, p. 153; see also *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs* (2006) 115 F.E.R.C. ¶61,325 (2006).)

of higher Wobbe Index gas on emissions and end-use equipment performance. (D.06-09-039, p. 152.) In D.06-09-039, we in no way foreclosed the possibility of a future revision to the gas quality standards contained in D.06-09-039. However, we did determine that there was a present need for certainty regarding the permissible Wobbe Index ceiling in order to provide guidance for LNG producers, developers, and other federal, state and local agencies. (D.06-09-039, p. 152.) As such, we adopted a Wobbe ceiling of 1385 as a reasonable standard given the best information currently available, and this determination is supported by substantial evidence and does not constitute an abuse of discretion.

Finally, SCAQMD claims that we erred in concluding that a Wobbe Index ceiling of 1360, as advocated by SCAQMD, would unnecessarily constrain California's gas supplies. (SCAQMD App., pp. 15-16.) However, there is evidence in the record to support our finding that an improperly low Wobbe Index ceiling could constrain natural gas supplies and increase the delivered cost of gas. (See, e.g., Exh. 158 at p. 10 and R.T. Vol. 10, p. 1291 (Kuipers); R.T. Vol. 9, p. 1021 (Stewart).) Thus, SCAQMD's argument that our determination on this is issue is unsupported by record evidence lacks merit.

SCAQMD clearly disagrees with our conclusions regarding all of the issues discussed above, i.e., the appropriate Wobbe Index ceiling, the necessity of revising gas quality standards at this time, and whether a lower Wobbe ceiling would constrain natural gas supplies in California. However, SCAQMD's rehearing application fails to provide a basis for its assertion that the Commission's determinations on these issues are not supported by substantial evidence in the record. The fact that, in weighing the evidence in the record, we reached conclusions contrary to some of the positions advocated by SCAQMD does not mean that we failed to consider such arguments.

Thus, SCAQMD's allegation that the adoption of revised gas quality standards in D.06-09-039 is not supported by substantial evidence lacks merit.

IV. CONCLUSION

Rehearing of D.06-09-039 is hereby denied because no legal error has been demonstrated.

IT IS THEREFORE ORDERED THAT:

1. Rehearing of D.06-09-039 is denied.

This order is effective today.

Dated February 15, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners