**VIA: ELECTRONIC MAIL**

June 15, 2023

Chair McCallon &
Members of the Stationary Source Committee
South Coast Air Quality Management District (South Coast AQMD)
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**Re: Agenda Item No. 3 - Proposed Amended Rule 1153.1**

Dear Chair McCallon and Members of the Stationary Source Committee:

The undersigned organizations are grateful for the opportunity to provide comments on Proposed Amended Rule 1153.1. This is the first major regulation targeting Nitrogen Oxide (NOx) emissions after the adoption of the 2022 Air Quality Management Plan (AQMP). As such, it is a critical regulatory proceeding that could set the template for future action. Overall, we are pleased that the South Coast AQMD staff will adopt the nation's first zero-emission standard for a small subset of stationary source categories covered under this rule. Given this is the first of many rules that will include zero-emission standards for stationary sources, it is critical to ensure it sets a good precedent for future rulemakings. For that reason, the points below provide feedback on the most recent iteration of the rule.

## I. The Cost-Effectiveness Threshold Must Be Inflated Per the Clear Direction of the Final 2022 AQMP This Board Adopted.

The 2022 AQMP is abundantly clear in describing how the cost-effectiveness threshold would be applied: "This benefits-based screening threshold would be inflated through time to the dollar year used in a control measure-specific socioeconomic analysis."[1] The socioeconomic analysis for this rulemaking uses 2023 dollars, yet the staff presentation still references the

[1] *See* 2022 Final AQMP, at 4-83, *available at* http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/final-2022-aqmp.pdf?sfvrsn=16.

"$325,000 threshold established in 2022 AQMP," which was established using 2021 dollars.[2] We want to make sure stakeholders do not get misled that $325,000 is a fixed benchmark for rules done under this AQMP, no matter the year.

The Stationary Source Committee will recall that the 2022 AQMP was a compromise. Several organizations advocated to get rid of the cost-effectiveness threshold because it is not required by California law, unduly restricts measures that the South Coast AQMD could consider, and fails to reflect cumulative benefits of technologies in communities overburdened by pollution, amongst other arguments. Some in regulated industry asked that the cost-effectiveness approach from prior air plans remain intact. We do not seek to re-litigate the ultimate compromise that South Coast AQMD staff struck between industrial stakeholders who wanted to keep the old approach to using cost-effectiveness and our effort to let health be the driver of regulations. But, we need regulations to incorporate the compromise struck in the 2022 AQMP.

Adjusting the health-based cost-effectiveness threshold for inflation was included in the AQMP because the value of a dollar goes down every year. If the $325,000 per ton threshold were frozen in time, the health benefits it represents would decrease every year, because a dollar in 2021 is worth less in 2023 and will become even less in 2024 and beyond. Juxtaposed with the economic data that staff uses for the Best Available Retrofit Control Technology (BARCT) assessment for this rulemaking, which includes data and forecasting well beyond 2021, it is clear this simple recalculation must be done expeditiously.

While it is unclear if this correction would impact BARCT recommendations for these source types, it is undoubtedly important to clarify and reaffirm the approach outlined in the 2022 AQMP for rulemakings moving forward.[3]

*Recommendation:*

*Ensure rulemakings properly comply with the promises made in the Final 2022 AQMP to adjust cost-effectiveness thresholds through time.*

## II. The Current Approach of Assuming Natural Gas Will Be Abundant and Cheap for Decades Does Not Comport with Reality.

On December 1, 2022, the California Public Utilities Commission (CPUC) "adopted a new framework to comprehensively review utility natural gas infrastructure investments in order to help the state transition away from natural gas-fueled technologies and avoid stranded assets

[2] Stationary Source Committee Meeting 6-16-2023, Agenda Item No. 3, at Slide 8.
[3] Moreover, this issue is not just related to this rule. In agenda item 5, which looks at Proposed Rule 1173, the staff presentation uses a $36,000 cost effectiveness threshold despite clear direction from the 2022 AQMP that the VOC threshold "would be inflated by the consumer price index annually." Final 2022 AQMP, at 4-83.

in the gas system."[4] There is a cognitive dissonance between air quality planning and these proceedings happening at the state level. The current BARCT assessment assumes electricity prices will go up over the next two decades, but natural gas prices are predicted to go down.

These assumptions arise from South Coast AQMD's use of the gas and electricity rate projections included in the California Energy Commission's (CEC) California Energy Demand Update 2022-2035[5] – which assumes gas demand will remain steady through time despite California's many policies to reduce fossil fuel use and corresponding greenhouse gas emissions.[6]

The economic assumptions underpinning the analysis that fossil methane will be cheap and abundant ignore many factors. For example, as more and more people and entities leave the gas system, this means fewer and fewer users will have to pay for the fixed infrastructure costs of the gas system. It is not clear why gas prices in the South Coast Air Basin would defy the tenets of economics and remain abundantly cheap for decades to come.

The same year CEC published the document staff is using, the agency published another report, "The Challenge of Retail Gas in California's Low-Carbon Future," which does takes

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[4] CPUC Creates New Framework to Advance California's Transition Away from Natural Gas, Press Release, (December 1, 2022), *available at* https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-creates-new-framework-to-advance-california-transition-away-from-natural-gas.

[5] California Energy Demand Update *available at* https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2022-integrated-energy-policy-report-update-2.

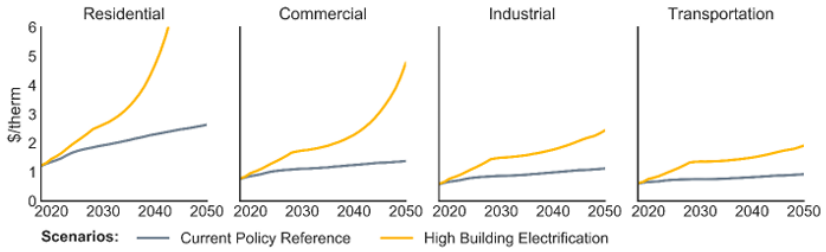
[6] The Environmental Defense Fund (EDF) filed significant comments on the gas assumptions portion of the Integrated Energy Policy Report (IEPR). In particular, EDF pointed out "Currently, the IEPR preliminary model projects stable future gas demand…

> EDF highlights two concerns around these projections. First, stable gas demand is at odds with California's climate policies aimed at reducing fossil fuel use—including natural gas demand. These state policies include the Senate Bill 32 targets of reducing California's greenhouse gas emissions by 40% below 1990 levels by 2030, the Assembly Bill 1279 target of reaching net zero by 2045, the California Air Resources Board (CARB) 2022 Scoping plan targets of reducing total fossil fuel consumption by 86% below 2022 levels by 2045, the California Public Utilities Commission (CPUC) decision to eliminate gas extension subsidies, and various local ordinances on gas appliances…
>
> Second, EDF contends that it is unreasonable to assume constant demand beyond a future point in time simply because no existing projections are available. It is true that no future projection can be made with 100% confidence and accuracy; and that confidence will decline further out into the future the projection is made. However, the entire IEPR process has uncertainty of projections baked in, and holding this one element constant is not worthy of the IEPR process. To project *no change* and assume constant future gas demand beyond a certain point, however, would be to overlook existing market trends of electrification and various state policies."

EDF Comments on Gas Demand Forecasts in IEPR, (May 2, 2023).

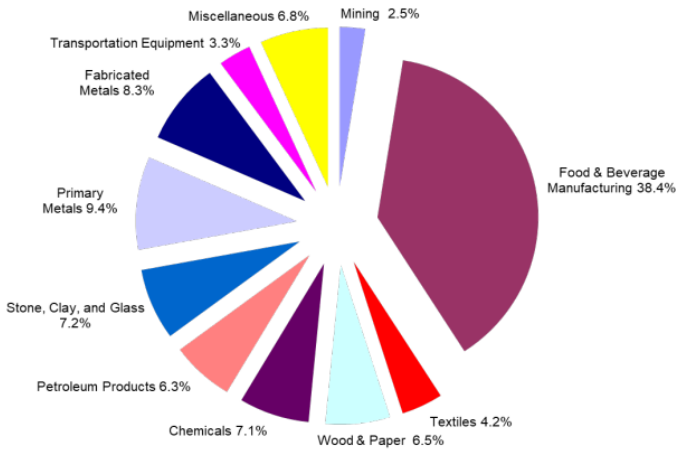
future demand and future customer base into account, and that work finds that gas rates will increase steadily over time especially as California implements its programs to curb air and climate pollution.[7] For example, the chart below shows that building electrification at a high level will result in increased rates for industrial facilities.

**Figure 25: Gas Rates by Sector in the High Building Electrification Scenario**




The context for the assumptions staff uses in the BARCT analysis is important as well. While the South Coast AQMD's primary regulatory concern is reducing traditional criteria pollutants, there is overwhelming consensus that we must dramatically drive down the use of methane to stave off the worst consequences of climate change. The sector being discussed today – food and beverage manufacturing – is far and away the largest methane-burning non-refining industrial sector in SoCal Gas territory. The chart below[8] shows that food and beverage manufacturing burns close to 4 times the methane as the next largest sector.

**FIGURE 19 INDUSTRIAL GAS DEMAND BY BUSINESS TYPE COMPOSITION OF INDUSTRY (2021)–**




[7] CEC, *The Challenge of Retail Gas in California's Low Carbon Future*, *available at* https://www.energy.ca.gov/sites/default/files/2021-06/CEC-500-2019-055-F.pdf.
[8] California Gas & Electric Utilities, 2022 California Gas Report, at 126.

As such, this industry will be a priority target for addressing greenhouse gas emissions moving forward. Moreover, we are disappointed in the regulated industry's approach to this rulemaking, which appears to note the facilities covered under this rule can be wed to a climate destructive fuel in methane to power their baking operations for decades to come. For example, the American Baking Association recently wrote in commercialbaking.com that "[w]ith proper maintenance, commercial bakery ovens can operate for up to 30-40 years."[9] Since the last compliance date for this rule is in 2036, the factual predicate of the ABA's arguments here is that some commercial ovens in the South Coast Air Basin could be run by burning methane as far out as when the United States celebrates its tricentennial – or 2076.[10] This makes no sense given many of the companies regulated here have significant climate pledges that require deep cuts to their greenhouse gas emissions well before 53 years from today.

While the lobbyists and lawyers in industry try to center the debate on the electrical grid in the transition to zero-emissions, we encourage the Governing Board to have more information on the perils of remaining a combustion-centric air basin for our stationary and area sources, including the affordability impacts of being the last remaining users of the gas system once it becomes a stranded asset.

*Recommendation*

*Direct staff to provide more frequent updates through this rule & other rulemakings about the work to transition away from gas and the impacts on cost-effectiveness projections.*

## III. The Technology Assessment Is Unduly Narrow and Should Be Expanded.

The technology assessment scheduled for one year prior to compliance needs to be a more robust and well-rounded exercise. While the regulated industry would like to focus solely on equipment availability, this unduly myopic approach will not equip future board members to put this rule in context. In particular, staff should add the following topics to this review: 1) an update on health studies articulating impacts to those with prolonged close exposure to burning gas (e.g., bakery workers); 2) an updated analysis of the revised health impacts and associated dollar values attached to those impacts (e.g., a new health benefits cost-effectiveness threshold, represented in 2026 dollars); 3) an update on the gas transition work and a review of the forecasted gas rates moving forward; and 4) an update on additional technologies that could help defray any costs associated with transitioning to electric technologies (e.g. industrial heat pumps).

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[9] Joanie Spencer, *Proposed oven ruling: Sustainability solution or operational setback?*, *available at* https://commercialbaking.com/proposed-oven-ruling-sustainability-solution-or-operational-setback/.

[10] The end date for the rule is 2036, so all equipment must be replaced with the methane burning equipment that meets the standards by that date. The outer projection for the American Baking Association is potentially 40 years for an oven. So, facilities that wait to the end date, could be operating their methane burning equipment until 2076.

*Recommendation*

*Direct staff to expand the technology assessment to include impacts on health of workers, impacts of health from air pollution more broadly, an update on the gas transition work that is proceeding in California, and additional technologies that could help defray any costs associated with transitioning to electric technologies.*

**IV. Technology Investments.**

On June 2, 2023, South Coast AQMD staff presented a new version of this proposed rule that changed the prior version of the regulation dramatically. Instead of having zero-emission standards across all categories – even if not for several years – the new rule language only preserves zero-emission standards for four categories, about 25% of the equipment, cutting the proposed emission reductions in half. Zero-emission options for categories like tortilla ovens and larger batch ovens are not being presented to you because the cost-effectiveness exceeded the threshold as presented – even in cases where projected costs were based on very rough and contingent long-term forecasts and/or where projected costs came in very close to the threshold. Given that the proposed rule does not provide a zero-emission market signal for technology development for large categories of equipment, the AQMD should work to find federal and/or state funds to develop a $15 million program to encourage the development of zero-emission commercial ovens. These monies could come from state or federal funds, such as the Food Production Investment Program at the California Energy Commission.

There is a clean air, public health, and climate imperative to develop better incentive programs to push this industry to zero-emission operations. Where the Air District will not pursue life-saving regulations to eliminate combustion, it must work with relevant agencies like the California Energy Commission, the Department of Energy, and other agencies that have identified the food and beverage manufacturing space as a key sector to advance decarbonization and stave off the worst impacts of climate change.

*Recommendation*

*Direct staff to develop a food and beverage zero-emission technology fund by seeking state and federal funds.*

We appreciate your consideration of these comments, and we look forward to adoption of this rule to get one step closer to wrapping up the environmental justice nightmare that has been the RECLAIM program.

Sincerely,

Adrian L. Martinez

Adrian Martinez
**Earthjustice**

**[*Additional Signatories Continued on Next Page*]**

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