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August 15, 2018

Hon. Herb J. Wesson, Jr.  
President  
Los Angeles City Council  
200 N. Spring Street  
Los Angeles, CA 90012

Re: **Council File 18-0203, PROPOSED PLAN TO ESTABLISH AN ANNUAL CITYWIDE OIL WELL AND GAS FACILITIES COMPLIANCE INSPECTIONS PROGRAM**

Hon. Herb J. Wesson, Jr., President Los Angeles City Council:

Council Motion #18-0203 (Wesson-Bonin) instructs the Office of Petroleum and Natural Gas Administration and Safety, with the assistance from the Planning Department, to report to the City Council (Council) with a plan to implement annual compliance checks of oil well and gas facilities throughout the City of Los Angeles (City). On May 23, 2018, the Petroleum Administrator of the Office of Petroleum and Natural Gas Administration & Safety reported on the office's study of petroleum related inspection programs within the City and proposed that the Council enact an ordinance creating an "Annual Oil Well and Facilities Compliance Inspection Program." The stated purpose of the proposed inspection program would be, among other things, to undertake local enforcement of State and Federal regulations and requirements for the operation and maintenance of oil and natural gas facilities by adding an additional local layer of regulatory auditing, permitting, inspection, and certification processes, and by requiring the issuance of annual compliance permits by local authorities.

If enacted, the proposed annual inspection program would include, among many other new local regulatory activities:

- Creation and management of a well inspection protocol, facility checklist, well checklist, and public health screening checklist to be used in performing site inspections and to document the infrastructure and compliance of the oil and gas facilities in the City;

- Conducting physical site visits to each oil well, injection well, observation well, gas well, and associated production facilities across the City each year; and
- The performance of annual inspection audits of production facilities to ensure that equipment, practices, and procedures are in accordance with the regulations, orders and any applicable approval documents.

Further, the proposed annual inspection program purports to have broad scope, encompassing “oil well and gas facilities” and “oil and gas infrastructure” located within the City. Regardless of the intent of this broad but vague statement of scope, the proposed program cannot apply to California Public Utilities Commission (CPUC)-regulated facilities and equipment necessary to the distribution, transmission, and storage of natural gas.

Southern California Gas Company (SoCalGas) appreciates this opportunity to comment on the Petroleum Administrator’s report. As part of the Council’s consideration of the proposed program, SoCalGas writes to highlight practical considerations and the important legal and jurisdictional distinctions between facilities such as wells and pipelines that are used for the production of oil and gas and the facilities used by a state-regulated public utility, like SoCalGas, for the storage, transportation, and distribution of natural gas to its ratepayers throughout the region (SoCalGas’ storage, transportation, and distribution facilities are referred to hereafter as “SoCalGas Facilities”).

SoCalGas is a regulated public utility under the jurisdiction of the CPUC. SoCalGas’ natural gas pipelines and underground natural gas storage wells are used to support region-wide energy reliability and to facilitate the cost-efficient and effective delivery of natural gas to the residents and businesses of Los Angeles and southern California. As explained below, application of the proposed annual inspection program to SoCalGas’ Facilities would be preempted by State and Federal law. And, insofar as it applied to SoCalGas’ Facilities, the proposed inspection program also would impermissibly interfere with ongoing efforts to implement and enforce new and enhanced standards for the maintenance and safe operation of natural gas pipelines and underground natural gas storage facilities.

SoCalGas operates many thousands of miles of natural gas transmission and distribution pipelines and four underground storage facilities in Southern California, including two (Aliso Canyon and Playa del Rey) located in part within the City of Los Angeles. SoCalGas’ underground natural gas storage facilities make use of gas wells to inject and withdraw gas from the subsurface reservoir where the gas is stored. Storage wells are regularly maintained, inspected, and serviced in accordance with applicable regulations. SoCalGas’ underground storage facilities are an integral part of its natural gas transportation and distribution system and help provide reliable and affordable service to our customers.

At the State level, because SoCalGas is a public utility regulated by the CPUC, the City lacks jurisdiction to impose or enforce safety standards for SoCalGas’ Facilities. That prohibition not only precludes the City from imposing new or supplemental regulations for SoCalGas’ Facilities; it also prohibits the City from enforcing standards and regulations imposed by other agencies, such as the CPUC. The California Constitution states, “[a] city, county, or other public body

may not regulate matters over which the Legislature grants regulatory power to the [Public Utilities] Commission.”<sup>1</sup> Thus, under the California Constitution, as to matters over which the CPUC has been granted regulatory power, the CPUC’s jurisdiction is exclusive. The Public Utilities Code generally authorizes the CPUC to regulate a public utility’s operations.<sup>2</sup> Courts accordingly recognize that only the CPUC may impose and enforce rules and standards for the safety of the operation and maintenance of SoCalGas’ natural gas facilities.<sup>3</sup> With regard to underground gas storage facilities, the CPUC exercises its plenary regulatory authority over SoCalGas’ Facilities in conjunction with California’ Division of Oil, Gas, and Geothermal Resources (DOGGR), to which the legislature has expressly delegated general responsibility for the oversight of drilling, operation, and maintenance of oil and gas wells.<sup>4</sup> Consistent with that delegation, DOGGR and the CPUC have entered into a memorandum of understanding explaining their concurrent jurisdiction over underground gas storage wells. To the extent that it may be intended to apply to SoCalGas’ Facilities, the proposed inspection program would be precluded as a matter of State law because the legislature has not delegated to the City any authority to participate in safety regulation for SoCalGas’ Facilities.

In addition to preemption of the proposed annual inspection program as a matter of State law as it may apply to SoCalGas’ Facilities, the federal Pipeline Safety Act (PSA), 49 U.S.C. § 60104, expressly preempts state and local safety regulation of intrastate and interstate natural gas facilities and prohibits inspections by state and local governmental authorities except as authorized by the United States Department of Transportation – Pipeline and Hazardous Materials Safety Administration (PHMSA).<sup>5</sup> Federal regulatory authority in this area governs all aspects of the storage and transportation of natural gas relating to “the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.”<sup>6</sup> Because Congress intended to prevent natural gas pipelines and storage facilities from being subjected to conflicting state and local safety regulations, state and local authorities may participate in safety regulation only with authorization from PHMSA.

The proposed annual inspection program therefore cannot be applied to SoCalGas’ Facilities because the City has not been certified by PHMSA to participate in the regulation or enforcement of safety standards for SoCalGas’ Facilities. Moreover, for purposes of preemption by the PSA, it is irrelevant that under the proposed inspection program the City inspectors would be tasked with enforcing regulations that may have been properly promulgated by a certified authority such as the CPUC. The “preemptive effect” of the Pipeline Safety Act “means not

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<sup>1</sup> California Constitution, Article XII, section 8.

<sup>2</sup> Cal. Pub. Util. Code §§ 701, 706; State of California Rules Governing Design, Construction, Testing, Operation, and Maintenance of Gas Gathering, Transmission, and Distribution Piping Systems, CPUC Gen. Order 112-F § 102.1.

<sup>3</sup> *Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal. App. 4th 209 (city pipeline permitting requirements held preempted).

<sup>4</sup> California Public Resources Code § 3106(a).

<sup>5</sup> See *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 877 (9th Cir. 2006) (affirming holding that the “PSA preempted the City’s attempts to regulate the safety and inspection of the [pipeline].”).

<sup>6</sup> 49 U.S.C. § 60102(a)(2)(B).

merely that” the City “is prevented from establishing its own safety standards, but that it is prevented from supplementing the federal safety enforcement mechanism with its own.”<sup>7</sup>

Finally, SoCalGas notes that even if the proposed annual inspection program lawfully could be applied to SoCalGas’ Facilities by the City, applying the inspection program to SoCalGas’ Facilities and operations is duplicative of existing agency efforts. SoCalGas’ pipelines and underground storage wells are comprehensively regulated and inspected by state and federal authorities with extensive experience and expertise in the operation and maintenance of natural gas facilities. Therefore, local inspection and regulation will likely only result in increased administrative burden and cost, and also runs the risk of imposing a duplicative regulatory environment and inconsistent regulatory obligations, which could impair the safety and operation of SoCalGas’ Facilities.

We thank you for the opportunity to provide input. We trust the information presented above provides some clarity regarding the unique aspects of SoCalGas’ facilities and the regulatory structure within which it operates.

Thank you,



Neil Navin  
Vice President – Gas Transmission and Storage  
Southern California Gas Company

cc: Honorable Mike Bonin, Los Angeles City Councilmember  
Honorable Nury Martinez, Los Angeles City Councilmember  
Members, Los Angeles City Energy, Climate Change, and Environmental Justice  
Committee  
LA City Board of Public Works  
Uduak-Joe Ntuk, Petroleum Administrator Office of Petroleum and Natural Gas  
Administration & Safety, Los Angeles City

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<sup>7</sup> *ANR Pipeline Co. v. Iowa State Commerce Comm’n*, 828 F.2d 465, 472 (8th Cir. 1987).