June 19, 2012

Mr. Daniel Cohen
U.S. Department of Energy
Office of the General Council
1000 Independence Avenue, SW., Room 6A245
Washington, DC 20585–0121

Dear Mr. Cohen:

This letter comprises the comments of the Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE) in response to the U.S. Department of Energy's (DOE) Request for Information on Regulatory Burden. The signatories of this letter, collectively referred to herein as the California Investor Owned Utilities (CA IOUs) represent some of the largest utility companies in the Western United States, serving over 35 million customers.

We support the development of efficiency standards by DOE's Appliances and Commercial Equipment Standards Program to achieve energy and economic savings while maintaining or increasing consumer utility of the products and appliances covered. We believe existing appliance standards developed and updated by DOE over the past two decades have significantly limited the growth of energy consumption for covered products and have been a critical tool in reducing energy use in homes and businesses nationwide. We look forward to continue working closely with DOE and its stakeholders to establish cost effective energy conservation standards for products and appliances.

We support DOE's efforts to develop a plan for the retrospective analysis of its regulations and to identify rules and/or obligations on which it should immediately focus. We appreciate this opportunity to provide the following comments on this Request for Information. Our comments are ordered roughly in the order in which DOE has requested them. We urge the Department to consider the following recommendations.

1. **DOE should restructure its preemption waiver conditions to mimic those in the Clean Air Act, which presume a waiver is warranted unless it can be shown that the proposed standard level would present undue burden to consumers or industry.**

The CA IOUs request that DOE restructure its preemption waiver conditions. Currently, a state may receive a waiver from federal preemption of more stringent appliance efficiency standards if it can demonstrate "unusual and compelling State or local energy or water interests" that are "substantially different in nature or magnitude than those prevailing in the United States

generally."[1] This language sets a very high bar for waiver eligibility, and in fact the DOE has not granted a single waiver since this language was established by the National Appliance Conservation Act of 1987. National energy efficiency advocates have stated that they believe receiving a waiver from Federal preemption "verge on the impossible"[2] under the current regulatory conditions.

We believe these waiver conditions need to be addressed for two main reasons.

First, we believe it will be necessary so that the federal government can meet its energy intensity reduction goals, established in the Energy Security and Independence Act of 2007 (EISA). This goal, which adopted Executive Order 13423, mandates that beginning in FY 2008 a 9 percent reduction in energy intensity, and increases to a 30 percent reduction in FY 2015[3]. To achieve this lofty goal, DOE should allow states to pursue more aggressive appliance and equipment standards than those established at the national level. There are significant low-cost energy savings being left on the table with current preemption protocol.

Second, many states have compelling needs for stringent appliance efficiency standards, either due to energy costs, state policy goals, regional climate differences, or other factors. For instance, in California the Global Warming Solutions Act of 2006 (otherwise known as AB32) mandates a reduction in greenhouse gas emissions to 1990 levels by 2020. The California Energy Commission (CEC) also established a goal for net-zero-energy performance in residential buildings by 2020 and in commercial buildings by 2030. Aggressive mandates and goals likes these, which make California a leader in energy policy, are intended to be met using all cost-effective energy measures. With the current federal mandate on preemption, states like California are prohibited from optimizing on lowest cost measures, such as more stringent appliance and equipment standards for federally covered products. Moreover, as the federal government moves to cover more products, the states face ever narrowing opportunities to meet their energy and emissions reduction goals.

Third, with innovations in technology such as the use of RFID tags and quick response (QR) codes on appliances and equipment, manufacturer burden in distributing different products to regions with varying performance standards will be greatly reduced. Tags and QR codes can be used to quickly sort products for distribution purposes. Likewise, they facilitate enforcement of standards.

We urge the Department to allow greater flexibility for receiving preemption waivers for all products by altering the general waiver conditions. In particular, we refer the Department to the provisions regarding the waiver process for vehicle emissions standards contained in the Clean Air Act.

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[1] 42 U.S.C. § 6297(d)(1)(B), (d)(1)(C)(i).

[2] *See American Clean Energy and Security Act of 2009: Hearing on H.R. 2454 Before the Subcomm. on Energy and the Env't of the H. Comm. on Energy and Commerce*, 111th Cong. 4 (2009), *available at* http://energycommerce.house.gov/Press_111/20090424/testimony_delaski.pdf (statement of Andrew deLaski, Executive Director, Appliance Standards Awareness Project).

[3] http://www1.eere.energy.gov/femp/pdfs/overview_policy_mandates.pdf

The Clean Air Act authorizes the Environmental Protection Agency (EPA) to set national standards for vehicle emissions. These national standards preempt any state-level vehicle emissions standards, but the law specifically allows for California to petition for a waiver from preemption to allow for more stringent standards. The conditions for waiver eligibility require that the proposed California standards "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards,"[4] and will not be arbitrary or capricious or unnecessary to meet compelling or extraordinary conditions.

The waiver conditions contained in the Clean Air Act are an excellent example of balancing state and national interests. They allow flexibility for states to seek more appropriate regulations, while the limitation to a total of two possible standard levels prevents a 50-state patchwork of regulation. This model has been successfully applied to vehicle emissions standards for decades, and we believe it would work well for appliance efficiency standards.

We urge the Department to consider the adoption of a new preemption waiver process that would allow a state or group of states to petition for permission to set more stringent appliance efficiency standards under conditions similar to those contained in the Clean Air Act. These conditions should presume that a waiver is warranted unless it can be shown that the proposed standard level would present an undue burden to consumers or industry. Once a waiver petition for a given product class has been granted, any state should have the authority to automatically adopt the more stringent levels approved in the original waiver without petitioning the DOE. We believe that changes to the existing preemption policy for federal appliance efficiency standards are critical to improving energy efficiency and innovation required to meet state policy goals.

2. DOE should carefully reconsider the time between publication of a final rule and the compliance date for standards to reflect products' development cycle.

DOE currently prescribes a five-year gap between the publication of the final rule and the compliance date for standards for newly covered products. We believe that five years may be too long and unwarranted for products that have short to medium development cycles and for which the market is rapidly changing, such as lighting products and electronic equipment. The Consumer Electronics Association characterizes the consumer electronics market as the following, "[It] is dynamic, highly competitive, and characterized by rapid innovation, significant time-to-market pressures, and rapid rates of market penetration, and rapid transition from one technology to another."[5]

Moreover, one study suggests that consumer product development cycles typically take just under 2.5 years for new-to-the-world products (i.e. highly innovated products). For products and product lines with major revisions, (i.e. those potentially affected by a DOE standard), the average product development cycle is approximately 15 months. See Figure 1 below for a graphical representation of results.[6]

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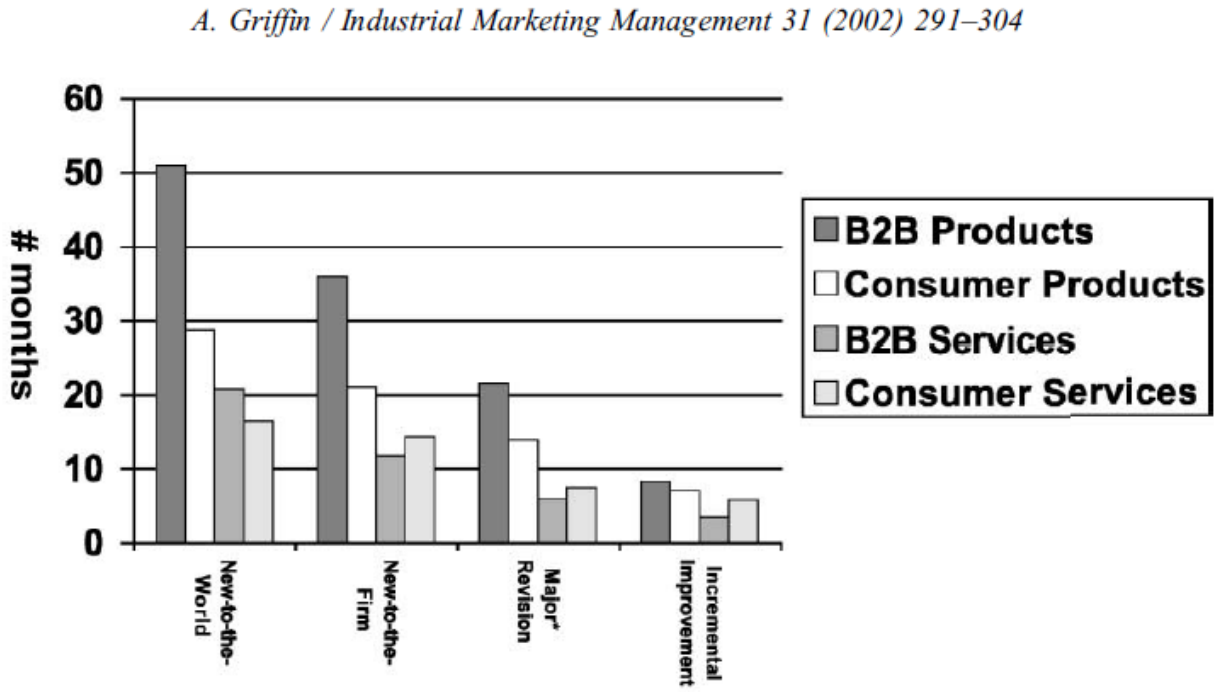
[4] Clean Air Act Section 209

[5] Consumer Electronics Association. 2006. Energy Efficiency & Consumer Electronics: Industry Trends and Opportunities for Collaboration. http://www.cee1.org/cee/mtg/09-06_ppt/cea.pdf

[6] Griffin, Abbie. (2001). Product Development Cycle Time for Business-to-Business Products. University of Illinois. Industrial Marketing Management. ftp://mail.im.tku.edu.tw/Prof_Shyur/PDM/Paper/Abbie.pdf

Figure 1. Average Product Development Cycles by Product Type[7]

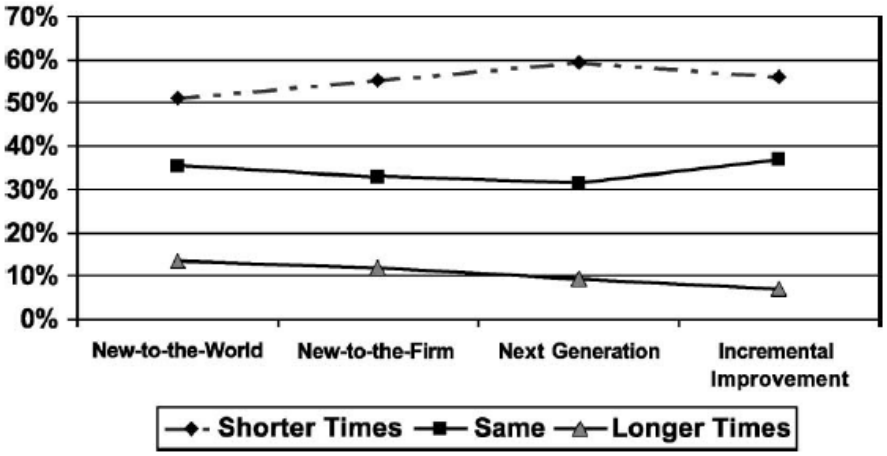


According to this study, on average, industrial firms have been taking 2.25 years to develop their more innovative projects. The study also indicated that a number of firms faced increasing competitive market pressure to reduce product development time; according to the study, many of these firms were successful in responding to this pressure by reducing development time. Figure 2 below shows that over 1/2 of the firms in the sample have decreased their cycle times. These firms have on average reduced cycle times by about 33% on average.

Figure 2. Percentage of Companies in Sample Whose Product Development Cycles Have Increased, Decreased, or Remained the Same Over Time[8]

[7] Ibid.

[8] Griffin, Abbie. (2001). Product Development Cycle Time for Business-to-Business Products. University of Illinois. Industrial Marketing Management. ftp://mail.im.tku.edu.tw/Prof_Shyur/PDM/Paper/Abbie.pdf



With this compelling evidence that product development cycles are significantly shorter than 5 years, we urge DOE to capitalize on the potentially large savings associated with a shorter time period between final rule and compliance dates. Additionally, this would ensure that standards are applicable to products on the market at the time of compliance. We recommend that this amount of time be decided on a case-by-case basis by DOE in each rulemaking with stakeholder input, and that 3 years be established as the maximum amount of time between final rule and compliance date, which is the amount of time that DOE prescribes for previously covered products.

3. **DOE's statutory six-year review of products should be updated to conduct reviews every 3 years in order to account for typical product development cycles with annual product releases and better capture savings opportunities.**

For reasons similar to those presented above, we recommend that certain products be reviewed every 3 years as opposed to 6 years to account for typical product development cycles with annual releases. Sectors such as lighting and electronics, which are rapidly advancing, would particularly benefit from a 3-year review cycle.

4. **DOE should apply a cost-based economic valuation method on a regional basis to determine cost effectiveness. Doing so would ensure a more accurate analysis of the potential effects of specific standards levels during the rulemaking process.**

We believe a cost-based approach for economic valuation should be used in DOE rulemakings in lieu of the price-based method using national electricity and gas price averages. We believe a cost-based metric is more appropriate than a price based metric (currently used by DOE) because electricity prices tend to incorporate social and political factors, which have the effect of distorting the true cost-effectiveness of measures. This cost-based economic valuation is used by both ASHRAE 90.1, and also for LEED (Leadership in Energy and Environmental Design) Certification of buildings, a program sponsored by the U.S. Green Building Council.

California uses an enhanced version of the above method known as Time Dependent Valuation (TDV), which is used by the California Energy Commission to evaluate cost-effectiveness of

appliance and building standards and codes. TDV accounts for seasonal and time-of use patterns in electricity and gas costs. We recommend that DOE use TDV as its primary method for evaluation of standard level cost-effectiveness.

Additionally, climate variations and differing utility costs over time across the country may make the demand for certain products more price inelastic than for other products. DOE should establish regions based on consideration of climate areas and areas with similar generation mixes. For instance, California and the Northwest share similar climate and generation mixes, and therefore should be considered its own region. DOE could also consider dividing regions by clusters of utilities using EIA data. This regional approach complements the TDV method, and would greatly enhance the evaluation of cost-effectiveness of different standard levels.

At a minimum, we recommend that DOE take a more forward looking approach to electricity and gas costs/prices by incorporating renewable portfolio standards (RPS) in projecting the future price of electricity. RPS are adopted individual by states and function as mandates or goals for increased use of renewable energy sources, such as wind, solar, biomass, and geothermal over specified time horizons. The Database of State Incentives for Renewables and Efficiency (DSIRE) has the most up to date information on RPS for each state; see Figure 1 below for a detailed graphical description of RPS by state.[9]

Figure 1. Renewable Portfolio Standards by State

We believe that a more refined method for establishing electricity and gas rates that incorporates forward-looking regional data will greatly enhance the cost-effectiveness analysis by providing more realistic results.

[9] http://www.dsireusa.org/

In conclusion, we would like to reiterate our ongoing support to DOE's Appliances and Commercial Equipment Standards Program to help limit the growth of energy consumption by products and equipment nationwide while saving consumers money and stimulating product innovation. We look forward to working closely with DOE in the future. Thank you for the opportunity to provide these comments.

Sincerely,

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