March 21, 2011

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

Docket ID: DOE-HQ-2011-0014

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 preliminary 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.

Question 1. How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

We urge DOE to make all their processes transparent and open for public comment where it makes sense. Making the process completely transparent to its stakeholders will allow for a clear understanding on how and why DOE changes rules and policies. However, we understand the need to strike a balance between the public's need for transparency in government decision making and meeting statutory requirements and deadlines.

Question 2. What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

Pursuant to DOE's Appliance and Equipment Efficiency Standards Program, all covered products must be tested using an approved DOE test procedure before the products can be sold. The Department's regulations also require that manufacturers certify basic models as compliant with applicable standards using the established test procedure. The requirement to test using the DOE test procedure provides the basis for both determining a model's compliance with the standard and comparing representative energy or water use across different manufacturers and models.

DOE currently permits manufacturers with models not applicable to the established test procedures (due to product innovation) to petition for a test procedure waiver in order to certify, rate, and sell such models. We support DOE's recent decision to improve the test procedure waiver process; however, we request that DOE be transparent throughout the waiver process and make the process open for public review especially as it pertains to modifications to established test procedures.

Question 3. Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

We believe that Federal appliance efficiency regulations are best enforced at the point of manufacture or point of import if the product is manufactured overseas. Setting appliance standards for products that are assembled on-site with many components are not well suited for regulation though a performance standard. This is exemplified by the problems encountered with the proposed walk-in performance standard. The performance standard is based on the combined energy consumption of whatever combination of components that is deemed the "covered product." In the case of walk-ins, multiple components are combined during testing to develop their "matched rating". Products with inferior efficiency characteristics can remain on the market if, during testing, they are combined with very efficient components. Later, these products can be sold with other less efficient components and the desired efficiency is not obtained. It makes more sense to define "covered equipment" as products that are sold as a single major component.

A more effective approach to equipment that is assembled on-site is either to set performance requirements for the major components that are sold separately from individual manufacturers (e.g., for walk-in refrigeration equipment the components may include the unit cooler, condensing unit, glass doors, etc.), or to have a set of prescriptive standards that will apply to the components of the on-site assembled equipment.

On October 13, 2009, Air-Conditioning, Heating, and Refrigeration Institute (AHRI), the industry trade organization representing manufacturers of residential central air conditioners, furnaces, and heat pumps, and the nation's leading energy efficiency advocacy organizations signed a consensus agreement that established new Federal standards for those products.[1] The proposed consensus agreement would establish different requirements for products depending upon whether they are destined for new construction or retrofits. However, it will be difficult for DOE to enforce these two tiers at point of sale, as the seller often does not know where or how the product will be used.

If the building standards for new construction were unhindered by the current Federal preemption restrictions on state energy standards in 42 U.S.C. 6297, states could set standards that would realize the

[1] Fact sheet on consensus agreement: https://www.aceee.org/files/pdf/1009hvac_fact_0.pdf.

energy, economic and environmental benefits of more stringent building standards for new construction. Under this construct, manufacturers could realize a separate calculated trade-off during the federal appliance proceedings which would compare the life cycle cost of a new product that minimally complies to the Federal standards with the existing product that needs repair in the immediate term. Such a construct would leave DOE in charge of allowable product efficiencies to be sold by the manufacturer and the states would be in charge permissible product efficiencies in new construction.

Question 5. Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

The CA IOUs request that the 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."[2] 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 to from Federal preemption "verge on the impossible"[3] under the current regulatory conditions.

Many states have compelling needs for stringent appliance efficiency standards, either due to energy costs, state policy goals, regional climate differences, or other factors. These needs often cut across multiple product types. As the federal government moves to cover more and more products, the states face ever narrowing opportunities to meet their energy and emissions reduction goals. 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.

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

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[2] 42 U.S.C. § 6297(d)(1)(B), (d)(1)(C)(i).

[3] *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).

[4] Clean Air Act Section 209

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.

Question 7. Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

We appreciate DOE's efforts to streamline or expedite regulatory processes, however, we ask DOE to balance expediency with ensuring a thorough analysis. Specifically, the CA IOUs are concerned about DOE's announcement regarding changes to its energy conservation standards rulemaking process.[5] In the announcement, DOE noted that

> *While the framework document and preliminary analysis provide useful information, there are more efficient ways of gathering data. Accordingly, in appropriate cases, the Department will gather the needed preliminary data informally and begin the public rulemaking process with the issuance of a proposed rule for public comment.*

Without further details on how DOE plans to implement these changes, it is difficult for stakeholders to understand the implications of these changes. If DOE plans to replace two stages of their rulemaking process (i.e., framework document and preliminary analysis) with "more efficient" methods, we are concerned that the analysis may not be adequate to account for all the factors that DOE is required to address.

It would be helpful to stakeholders if DOE posted an up-to-date rulemaking schedule on a monthly basis. In the past we have relied on DOE's Semiannual Regulatory Agenda, however, more frequent updates would support improved planning and enable stakeholders to provide more useful information to DOE.

Question 10. How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

Various factors that affect cost effectiveness of Federal energy conservation standards are subject to regional variability within the United States. For instance, climate variations may make the demand for certain products more price inelastic than for other products. Other regional attributes (e.g., differing utility costs over time) may also significantly factor into the cost effectiveness determination of energy conservation standards. We encourage DOE to explore methods to account for such regional variability and factor in electricity and gas costs that considers seasonal and time-of use patterns, similar to the Time Dependent Valuation (TDV) method used in California, when determining if proposed energy conservation standards are economically justifiable.

We also support the Department's intention, as announced in the recent Notice of Data Availability published by DOE's Appliances and Commercial Equipment Standards Program, to improve regulatory analysis by addressing equipment price trends using experience curve methodology (Docket No. EE–

[5] http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf

2008–BT–STD–0012).[6] Generally, we feel that this approach will more accurately reflect the costs of future regulations. We will be submitting more specific comments on this docket when appropriate.

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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[6] http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/rf_noda_fr_notice.pdf