



September 24, 2019

Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: [EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov)

**Re: Earthjustice and Sierra Club’s Comments in Support of Alternate Draft Resolution E-5007**

Earthjustice and Sierra Club write to express our support for Alternate Draft Resolution E-5007 (“the Alternate”). As originally proposed, Resolution E-5007 would inexplicably award Southern California Gas Company (“SoCalGas”) shareholder incentives for activities related to the development of efficiency codes and standards (“C&S”) despite actively working against the adoption of more stringent standards.<sup>1</sup> The Alternate provides much needed accountability, finding instead that “[t]here is a serious question whether SoCalGas merits recovery for its Codes and Standards advocacy.”<sup>2</sup> To ensure these questions are fully vetted and that the appropriate consequences result from SoCalGas’ actions, the Alternate also properly requires the California Public Utilities Commission (“Commission”) to issue an Order to Show Cause (“OSC”), “giving parties the opportunity to address and resolve issues regarding the 2016 and 2017 [C&S] awards.”<sup>3</sup>

While Earthjustice and Sierra Club support the Alternate’s contemplated OSC regarding SoCalGas’ 2016 and 2017 C&S activities, we also note that a Motion of the Public Advocates Office (“PAO Motion”) for an OSC related to SoCalGas’ continued 2018 C&S activities remains

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<sup>1</sup> Draft Resolution E-5007 at 30 (July 11, 2019); Decision 18-05-041, Decision Addressing Energy Efficiency Business Plans, Application 17-01-013 et al., at 139, 141–44 (May 31, 2018), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K706/215706139.PDF> (stripping SoCalGas of its “role in statewide codes and standards advocacy” due to the “potential for SoCalGas to misuse ratepayer funds” following the discovery of “internal emails among SoCalGas managers discussing the potential for the proposed standards to raise the cost of some gas furnaces and thereby encourage fuel switching away from natural gas”).

<sup>2</sup> Alternate Resolution E-5007 at 2 (Sept. 12, 2019).

<sup>3</sup> *Id.* at 31.

pending.<sup>4</sup> The PAO Motion should be granted and consolidated with the OSC for 2016 and 2017 C&S activities so that the entirety of SoCalGas' actions related to C&S can be collectively scrutinized. Indeed, Earthjustice and Sierra Club have serious concerns that in response to the PAO Motion, SoCalGas misled the Commission in stating that "SoCalGas and its consultant have not engaged in any advocacy under the statewide Energy Efficiency ('EE') Codes & Standards program (federal or statewide) since July 10, 2018."<sup>5</sup> From an initial investigation, it appears that SoCalGas has continued to actively work to undermine federal efficiency standards through direct participation in trade groups such as the American Public Gas Association ("APGA"). These concerns are best addressed through an OSC that spans SoCalGas C&S activities from 2016 to the present.

The APGA, an entity with an apparent climate denier as its President and CEO,<sup>6</sup> purports to represent the interests of publicly owned gas utilities. Yet SoCalGas, an investor-owned utility, is both a financial contributor and participant. SoCalGas' 2018 General Order No. 77-M filings identifies \$50,000 in total contributions to the APGA, a \$25,000 increase from the year prior.<sup>7</sup> SoCalGas also travels to APGA conferences, speaking on topics such as "Threats &

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<sup>4</sup> Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure, Rulemaking 13-11-005 (July 15, 2019), <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M312/K060/312060052.PDF>.

<sup>5</sup> Response of Southern California Gas Company (U 904 G) to the Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure, Rulemaking 13-11-005, at 1 (July 30, 2019), <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M313/K821/313821404.PDF>.

<sup>6</sup> See APGA, APGA Staff, <https://www.apga.org/aboutus/staff> (Bert Kalisch, President & CEO); Attach. A, Nov. 19, 2013 Email from Bert Kalisch to Joseph Bast, then President of the Heartland Institute (describing the Heartland Institute as "an outstanding public policy think tank"), Nov. 26, 2013 Email from Joseph Bast to Aaron Stover, Frank Lasee, Jeff Judson, James Taylor, and Jay Lehr (stating "Bert is a global warming skeptic . . . understands that environmental groups are targeting his industry and will come down full force once they vanquish the coal guys, and his members are small town Red state types who 'get it' as well"). The Heartland Institute works to seed mistrust of climate science. See Joseph Bast, *Winning the Global Warming War*, The Heartland Institute (Feb. 17, 2017), <https://www.heartland.org/news-opinion/news/winning-the-global-warming-war> ("Real peer-reviewed science shows the human impact on climate is probably too small to measure and not worth trying to prevent or undo."); Justin Gillis and Leslie Kaufman, *Leak Offers Glimpse of Campaign Against Climate Science*, New York Times (Feb. 15, 2012), <https://www.nytimes.com/2012/02/16/science/earth/in-heartland-institute-leak-a-plan-to-discredit-climate-teaching.html>.

<sup>7</sup> Compare SoCalGas Pursuant to CPUC General Order No. 77-M for the Year Ended December 31, 2018, at 29, 46, [https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Website/Content/Utilities\\_and\\_Industries/Energy/Energy\\_Programs/Electric\\_Costs/Historical\\_Data/SoCalGas%20Annual%20GO%2077M%20Report%20-%202018%20Redacted.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Energy_Programs/Electric_Costs/Historical_Data/SoCalGas%20Annual%20GO%2077M%20Report%20-%202018%20Redacted.pdf) (\$25,000 membership and \$25,000 non-charitable contribution) with SoCalGas Pursuant to CPUC General Order No. 77-M for the Year Ended December 31, 2017 at 45, [https://www.socalgas.com/regulatory/documents/2017\\_REDACTED\\_SCG\\_GO-77.pdf](https://www.socalgas.com/regulatory/documents/2017_REDACTED_SCG_GO-77.pdf) (listing only \$25,000 non-charitable contribution).

Trends in California” and is an active participant in the APGA’s Direct Use Task Group (“DUTG”).<sup>8</sup>

Through its involvement in the DUTG, SoCalGas appears to continue to work to weaken efficiency standards. The mission of the DUTG is to “[c]ounter the regulatory and legislative threats to the direct use of natural gas by advocating policies, regulations & legislation that promote natural gas direct use.”<sup>9</sup> Among its stated 2018 accomplishments are “[m]ultiple meetings” with the U.S. Department of Energy (“DOE”) regarding “appliance efficiency standards and the process for establishing standards” and filing of a Petition for Rulemaking with DOE (“Petition”), together with the American Gas Association, Natural Gas Supply Association, and National Propane Gas Association, requesting the withdrawal of proposed standards for residential water heaters and the issuance of an interpretative rule establishing a separate class for furnaces and water heaters “using condensing combustion technology.”<sup>10</sup> The Petition was filed on October 18, 2018, well after SoCalGas asserted it no longer engaged in federal efficiency standards advocacy. Notably, the California Energy Commission “strongly” opposed the Petition, stating that the “effect of granting the petition would be to put a cap on the energy efficiency of gas furnaces and water heaters by distinguishing products based on technologies that drive improvement in energy efficiency. This is an untenable approach to energy efficiency standards.”<sup>11</sup> In seeking to create a separate class of appliances that specifically rely on inefficient combustion technology, the Petition would foreclose the transition to more efficient solutions.

SoCalGas’ representation to this Commission that it has “not engaged in any advocacy” on federal efficiency standards while continuing to finance and participate in trade associations working to weaken efficiency standards is of serious concern and appears to violate its obligation to “never to mislead the Commission or its staff by artifice or false statement” under Rule 1.1. SoCalGas’ potential disregard for Commission orders, its material misrepresentation, and its continued efforts to undermine efficiency codes and standards, potentially at ratepayer expense,

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<sup>8</sup> Attach. B, APGA Annual Conference, General Session Program (George Minter of SoCalGas speaking on “Threats & Trends in California” on July 30, 2019); Attach. C, Nov. 29, 2018 Email from Daniel Lapato, APGA Director of Government Affairs, to Undisclosed Recipients (listing attendees to the December DUTG in-person meeting, including Deanna Haines, SoCalGas Director, Energy & Environmental Policy); Attach. D, APGA, Slide Presentation for January 30, 2019 DUTG Meeting, at Slide 4 (identifying SoCalGas as DUTG participant).

<sup>9</sup> Attach. D at Slide 5.

<sup>10</sup> *Id.* at Slide 6; Petition for Rulemaking Before the Office of Energy Efficiency and Renewable Energy, United States Department of Energy, at 2, 4, 9 (Oct. 18, 2018), <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0063>. SoCalGas contributed close to \$1 million to the American Gas Association in 2018. SoCalGas Pursuant to CPUC General Order No. 77-M for the Year Ended December 31, 2018, at 29.

<sup>11</sup> Attach. E, CEC Comments Re: Energy Conservation Program: Energy Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking (Mar. 1, 2019).

through third party intermediaries such as the APGA demand a full investigation. The Commission should approve Alternate Draft Resolution E-5007, with the modification that the Commission issue an OSC that encompasses SoCalGas C&S activities, and the appropriate consequences for those activities, from 2016 to the present.

Thank you for your consideration of these comments.

Respectfully submitted,

/s/

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Cc: Parties to Service List of R.13-11-005  
Erica Petrofsky, [erica.petrofsky@cpuc.ca.gov](mailto:erica.petrofsky@cpuc.ca.gov)  
Peter Lai, [peter.lai@cpuc.ca.gov](mailto:peter.lai@cpuc.ca.gov)  
Edward Randolph, [edward.randolph@cpuc.ca.gov](mailto:edward.randolph@cpuc.ca.gov)

**Attachment A – Nov. 19, 2013 Email from Bert Kalisch to Joseph Bast, then  
President of the Heartland Institute**

**From:** Joseph Bast [mailto:jbast@heartland.org]  
**Sent:** Tuesday, November 26, 2013 4:30 PM  
**To:** Aaron Stover; Sen.Lasee; Jeff Judson; James Taylor; Jay Lehr  
**Subject:** Threats to the natural gas industry  
**Attachments:** Direct Use Task Force Report 8 23.docx

Gentlemen,

I may have told you earlier about the meeting Aaron Stover and I had – I'm getting a sense of de javu writing this, but too late now -- with **Bert Kalisch, president of the** American Public Gas Association in Wash DC last week, but I don't think I had this attachment to send you. It was very nice of him to share this strategy document with me... please don't forward it to others.

Their big issue is "direct use," that is, use of natural gas rather than electricity in homes and businesses. Enviro's see that as an obstacle to their vision of a completely electric world powered by wind and solar.

The APGA is small, just 10 full-time staff and about a \$4 million budget. They aren't likely to support us. But Bert is a global warming skeptic, is working to get Steve Goreham to speak at their next annual meeting, understands that environmental groups are targeting his industry and will come down full force once they vanquish the coal guys, and his members are small town Red state types who "get it" as well.

I'm hoping it will be easier to get APGA to speak out on climate change than AGA and the other bigger organizations, and that Aaron can get access to APGA members and through them, some of their biggest customers and other industry folks who see the threat and can contribute.

Joe

Joseph Bast  
President  
The Heartland Institute  
[REDACTED]  
Chicago, IL 60606  
Phone [REDACTED]  
Email [REDACTED]  
Web site <http://www.heartland.org>

[Support The Heartland Institute today!](#)

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**From:** Bert Kalisch [mailto:[REDACTED]]  
**Sent:** Tuesday, November 19, 2013 7:27 AM  
**To:** Joseph Bast  
**Subject:** RE: APGA

Joe—

Here is the document I mentioned. For a small organization like ours, the scope is overwhelming.

Thanks  
Bert

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**From:** Joseph Bast [mailto: [REDACTED]]  
**Sent:** Tuesday, November 19, 2013 8:19 AM  
**To:** Bert Kalisch  
**Subject:** Re: APGA

We enjoyed it as well, looking forward to working with you.

Joe

*Sent from my Verizon Wireless 4G LTE DROID*

Bert Kalisch < [REDACTED] > wrote:

Joe—

I really enjoyed our visit yesterday. The Heartland Institute is an outstanding public policy think tank that has performed very well under your leadership.

As we discussed, I followed-up with Audrey and there is an opportunity for a pro/con piece in the next issue of The SOURCE magazine. The piece would need to be in to Audrey by December 10<sup>th</sup>. Our Annual Conference Committee meets in late January to make final decisions on speakers. I am hopeful that Steve Goreham will be selected. In any event, there will be room for at least one piece next year on natural gas penned by Steve and/or Heartland.

Best wishes for a successful DC visit and your 17 meetings, a safe return to the Windy City, and a wonderful Thanksgiving holiday with your family.

Thanks  
Bert

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Bert Kalisch  
American Public Gas Association

[REDACTED]  
[REDACTED]  
Washington, D.C. 20002  
[REDACTED]  
[REDACTED]

[www.apga.org](http://www.apga.org)



**PLEASE JOIN US AT THESE UPCOMING EVENTS:**

**2014 Gas Supply Conference & APGA Winter Board & Committee Meetings**

January 26-29, 2014 | Tempe Mission Palms Hotel | Tempe, Arizona | <http://www.apga.org/tempe>

**2014 APGA Marketing Sales Trends and Training Conference & 2014 SIF Operations Conference**

March 23-25, 2014 | Sandestin Golf and Beach Resort | Destin, Florida | <http://www.apga.org/destin> or  
[www.apgasif.org/2014SIFOps](http://www.apgasif.org/2014SIFOps)

**2014 Government Relations Conference & APGA Board and Committee Meetings**

May 4 - 7, 2014 | Westin Arlington Gateway | Arlington, VA

**2014 Annual Conference**

July 20-23, 2014 | Resort at Squaw Creek-Lake Tahoe | Olympic Valley, California

**APGA Fall Board & Committee Meetings and Gas Utility Management Conference**

November 2-5, 2014 | Sandestin Golf and Beach Resort | Destin, Florida



**American Public  
Gas Association**

**ABOUT APGA**



**Attachment B – APGA Annual Conference, General Session Program**



# APGA ANNUAL CONFERENCE

## GENERAL SESSION PROGRAM



### SUNDAY, JULY 28

- 12:00 PM **REGISTRATION DESK OPEN & EXHIBIT SETUP**
- 12:00 PM **OPTIONAL TOURS & EXCURSIONS**
- 5:30 PM **WELCOME RECEPTION**

### MONDAY, JULY 29

- 7:00 AM **CONTINENTAL BREAKFAST WITH EXHIBITORS**
- 8:00 AM **WELCOME TO THE APGA ANNUAL CONFERENCE!**  
Pledge of Allegiance and National Anthem: Alonzo Weaver ~ Memphis, TN  
Moderator: Owen Reeves, APGA Chairman  
Gas System Director ~ Henderson Municipal Gas, KY
- 8:15 AM **CHAIRMAN'S UPDATE: PROTECTING OUR FUTURE**  
Owen Reeves, APGA Chairman  
Gas System Director ~ Henderson Municipal Gas, KY
- 8:45 AM **NATURAL GAS SUPPLY & DEMAND**  
Dragos Neacsu, Fundamentals Advisor ~ BP North America Gas & Power
- 9:30 AM **NETWORKING BREAK WITH EXHIBITORS**
- 9:55 AM **MEMBER RECOGNITION & DOOR PRIZES**
- 10:00 AM **GILD OF ANCIENT SUPPLERS AWARD PRESENTATION**
- 10:15 AM **APGA SYSTEM OVERALL ACHIEVEMENT RECOGNITION (SOAR) AWARDS**
- 10:45 AM **4-3-2-1 LEADERSHIP: TOOLS YOU CAN USE NOW**  
Motivational Speaker ~ Major General Vinny Boles
- 11:45 AM **GENERAL SESSION ADJOURNS**
- 12:00 PM **OPTIONAL TOURS & EXCURSIONS / FREE TIME**
- 1:00 PM **GOLF TOURNAMENT: THE CLUB AT SPRUCE PEAK**



# APGA ANNUAL CONFERENCE

## GENERAL SESSION PROGRAM



### TUESDAY, JULY 30

7:00 AM **CONTINENTAL BREAKFAST WITH EXHIBITORS**

8:00 AM **WELCOME!**

Moderator: Sam Davis, APGA First Vice Chairman  
General Manager & CEO ~ Lake Apopka Natural Gas District, Winter Garden, FL

8:15 AM **THREATS & TRENDS IN CALIFORNIA**

George Minter, Regional Vice President, External Affairs and Environmental  
Strategy ~ Southern California Gas Company (SoCalGas)

9:00 AM **APGA AWARDS PRESENTATIONS:**

- Public Gas System Achievement
- Personal Achievement
- Harry M. Cooke Personal Service
- Safety Management Excellence
- Marketing & Sales

9:45 AM **NETWORKING BREAK WITH EXHIBITORS**

10:05 AM **MEMBER RECOGNITION & DOOR PRIZES**

10:10 AM **RECOGNITION OF RETIRING APGA BOARD MEMBERS**

10:15 AM **WHAT ARE WE DOING TO PROMOTE THE DIRECT USE OF NATURAL GAS?**

Gerald Howard, CEO ~ National Association of Home Builders

11:00 AM **INNOVATION & CREATIVE THINKING: BEST APPROACHES TO  
PROBLEM SOLVING**

Motivational Speaker ~ Chic Thompson

11:45 AM **GENERAL SESSION ADJOURNS**

12:00 PM **CONCURRENT BREAKOUT SESSIONS & BOX LUNCH:**

- Operations & Safety
- Government Relations Update  
David Holt, President ~ Consumer Energy Alliance
- APGA Past Chairmen Networking

2:30 PM **APGA BOARD OF DIRECTORS' MEETING**

5:30 PM **CHAIRMAN'S RECEPTION**

6:30 PM **CHAIRMAN'S DINNER & ENTERTAINMENT**

- APGA Distinguished Service Award Presentation
- Entertainment: Comedian Buzz Sutherland



# APGA ANNUAL CONFERENCE

## GENERAL SESSION PROGRAM



### WEDNESDAY, JULY 31

- 7:00 AM **BREAKFAST BUFFET**
- 8:00 AM **APGA RESEARCH FOUNDATION BOARD OF DIRECTORS' MEETING**
- 9:00 AM **THE PRESIDENT'S REPORT**  
Bert Kalisch, President and CEO ~ American Public Gas Association
- 9:45 AM **APGA ANNUAL BUSINESS MEETING**
- 10:30 AM **ADJOURNMENT**

### APGA ANNUAL MEETING AGENDA

**CALL TO ORDER:** Owen Reeves, APGA Chairman

**TREASURER'S REPORT:** Alonzo Weaver, APGA Treasurer  
2019 Financial Report  
2020 Dues Proposal

**APGA 2019-2020 RESOLUTIONS:** John Leary, APGA 2<sup>nd</sup> Vice Chairman

**NOMINATING COMMITTEE REPORT:** Greg Henderson, APGA Past Chairman

**PASSING THE GAVEL:** Owen Reeves to Sam Davis

**CHAIRMAN'S 2019-2020 THEME:** Sam Davis, Incoming APGA Chairman

**GRAND PRIZE DRAWINGS**

#### CONFERENCE LOCATION:

The Lodge at Spruce Peak (formerly Stowe Mountain Lodge)  
7412 Mountain Road | Stowe, Vermont 05672 | Phone: 802.760.4700 | [www.sprucepeak.com](http://www.sprucepeak.com)

#### CONFERENCE INFORMATION:

[www.apga.org/stowe](http://www.apga.org/stowe)

The conference hotel is currently sold out.

A list of alternate accommodations may be found at [www.gostowe.com](http://www.gostowe.com).

*If you currently have a hotel reservation but will not need it, please contact Sheila Deringis at [sderingis@apga.org](mailto:sderingis@apga.org) before cancelling with the hotel.*

**Attachment C – Nov. 29, 2018 Email from Daniel Lapato, APGA Director of Government Affairs, to Undisclosed Recipients**

**From:** [Daniel Lapato](#)  
**To:** [Undisclosed recipients:](#)  
**Bcc:** [mavanzi@csu.org](mailto:mavanzi@csu.org)  
**Subject:** December DUTG In-Person Meeting  
**Date:** Thursday, November 29, 2018 11:28:13 AM  
**Attachments:** [Updated December 12 DUTG agenda.docx](#)

**[External Email - Be careful! DO NOT open attachments or click links from unknown senders or unexpected email.]**

**To: Members of the Direct Use Task Group**  
**From: Dan Lapato, APGA**  
**RE: December DUTG In-Person Meeting**

Committee members,

Our December in-person DUTG meeting is scheduled for December 12<sup>th</sup> and will be held at:

McCarter & English's DC office.  
 1301 K Street, NW, Suite 1000 West  
 Washington, DC 20005

Attached is the agenda for the meeting. We are planning on starting the meeting at 9:00am EST and ending at 3:00pm EST. The focus of the meeting is to briefly recap DUTG's past work and then focus on crafting the task force's next several years. In addition to our December 12<sup>th</sup> meeting, APGA will be hosting a dinner at 7:00 p.m. EST at McCormick & Schmicks in Crystal City, Virginia.

Below is the list of attendees to the meeting and the dinner. Please let me know if you are planning on attending the December 12 meeting and the December 11<sup>th</sup> dinner.

DUTG December 12th In-Person Registration List		
Attendee	December 12th Meeting	December 11th Dinner
Dave Kearney	x	Maybe
Sasha Benjamin	x	x
Mike Gundersen	x	x
Greg Stunder	x	
Arthur Corbin	x	
Barton Day	x	x
Dave Schryver	x	
Neil Leslie	x	
John Gregg	x	x
Audrey Anderson	x	x
Owen Reeves	x	
Mike Clevens	x	Maybe
Deanna Haines	x	x
Bert Kalisch	x	
Erin Kurilla	x	x
Katy Garcia	x	x
John Leary	x	x
Sue Kristjansson	x	
Mark Krebs	x	x
Kyle Rodgers	x	x

Dan Lapato	x	x
Doug MacGillivray	x	x
Rich Worsinger		x

There are multiply hotel choices near McCarter & English's DC office however being mid-December many of their prices start at \$300/night. For those who are interested, we are also including links to two hotels in nearby Crystal City (across the river in Virginia). Generally speaking it is about a 15 minute taxi/uber ride to McCarter & English's DC office.

Hotels:

[Westin Crystal City](#)

[Crystal Gateway Marriott](#)

Please contact me if you have any questions.

Thank you,  
Dan

Daniel Lapato  
Director of Government Affairs  
American Public Gas Association  
and Chief Operating Officer of the APGA Research Foundation  
201 Massachusetts Avenue, NE, Suite C-4  
Washington, DC 20002  
202-464-2742

**PLEASE JOIN US AT THESE UPCOMING APGA EVENTS:**

**APGA Winter Board and Committee Meetings**

January 27-29, 2019 | The Westin Cape Coral | Cape Coral, FL | [www.apga.org/capecoral2019](http://www.apga.org/capecoral2019)

**APGA Gas Supply Conference, Marketing & Sales Trends & Training Conference (MSTTC), and Policy & Technology Conference**

January 29-31, 2019 | The Westin Cape Coral | Cape Coral, FL | [www.apga.org/capecoral2019](http://www.apga.org/capecoral2019)

**APGA Spring Board & Committee Meetings and Government Relations Conference**

May 5-8, 2019 | The Alexandrian | Alexandria, VA | [www.apga.org/governmentrelations2019](http://www.apga.org/governmentrelations2019)

**2019 APGA Annual Conference**

July 28-31, 2019 | Stowe Mountain Lodge | Stowe, VT | [www.apga.org/stowe](http://www.apga.org/stowe)

-  
[ABOUT APGA](#)

**Attachment D – APGA, Slide Presentation for January 30, 2019 DUTG Meeting**





# Direct Use Task Group

## January 30, 2019



**American Public Gas Association**

**Westin Cape Coral Resort  
Cape Coral, FL**

# DUTG - What is it?



# DUTG Background

- ▶ 2013 - APGA Direct Use Task Force established to
  - ▶ Analyze threats facing the direct use of natural gas
  - ▶ Identify strategies to address threats
  - ▶ Final Report to APGA Board in May 2014
  
- ▶ 2014/2015 - Direct Use Task Group (DUTG) formed as a result of the findings.

# Who are the participants?

- ▶ APGA members
- ▶ Investor-owned utilities
  - ▶ Spire
  - ▶ Southern California Gas Company
  - ▶ Chesapeake Utilities
  - ▶ In discussions with other IOU's
- ▶ Also, partnered with AGA, NGSAs, Propane Association, State Natural Gas Associations (AL, FL, GA & TN), various builder associations and Appliance Manufacturers Association on specific projects

# Strategic Plan

- ▶ **Mission:** Counter the regulatory and legislative threats to the direct use of natural gas by advocating policies, regulations & legislation that promote natural gas direct use.
- ▶ **GOALS:**
  - ▶ Fair, balanced and transparent DOE rulemaking process for appliance efficiency standards
  - ▶ Legislation changing DOE efficiency parameters to include primary energy
  - ▶ Fair, balanced and transparent building codes and standards making processes
  - ▶ Eliminate legislative and regulatory restrictions to the direct use of natural gas

# Annual Review

## 2018 Accomplishments

- ▶ Active in DOE proceedings
  - ▶ Multiple meetings with DOE regarding separation of advocacy and regulatory functions, appliance efficiency standards and the process for establishing standards
  - ▶ Participated in Process Rule proceeding through comments and testimony
- ▶ Filed Joint Petition for DOE Rulemaking on Separate Product Classes with AGA, NPGA and NGSAs (also support from Appliance Manufacturer Associations)
- ▶ Completed Phases 1 & 2 of Genius Campaign consumer research and message development and began work on Phase 3 to launch campaign
- ▶ Helped finalize and socialize GTI's air emissions reporting tool
- ▶ Hired contractor to develop state level LCOE tool to compare direct use to electrification
- ▶ Participated in World Gas Conference through paper and presentation
- ▶ Submitted comments and testified in California regulatory and legislative proceedings

# Since Inception

- ▶ **Furnace rule**
- ▶ Gas policy and technology conference
- ▶ Onboarded a lobbyist
- ▶ Participated in California appliance standards hearing on instantaneous water heaters
- ▶ Filed petition with DOE re: modelling flaw “random vs economic decision making”

# Strategic Priorities

- ▶ Strategic Priority #1:
  - ▶ Make the Direct Use of Natural Gas an integral part of U.S. Energy and Environmental Policy
    - ▶ Grow presence of direct use
    - ▶ Cultivate broad coalition of support
    - ▶ Enhance APGA's role as subject matter expert and knowledge center for the direct use of natural gas



# Strategic Priorities

- ▶ **Strategic Priority #2:**
  - ▶ Communicate the benefits of the Direct Use of Natural Gas for Society
    - ▶ Identify new and/or reform existing regulations, policies and rules that unfairly negatively affect the direct use of natural gas
    - ▶ Assess oppositional arguments
    - ▶ Examine the role of natural gas under various future policy and market scenarios

# Next Steps on Strategic Plan

- ▶ Expand each actionable area with more detail
  - ▶ Specific tactics
  - ▶ Timelines and deadlines
  - ▶ Ownership
  - ▶ Assignment
- ▶ Project management system
  - ▶ This is not a spiral bound booklet that sits on a shelf!



# Questions?

**Attachment E – CEC Comments Re: Energy Conservation Program: Energy Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking (Mar. 1, 2019)**

**CALIFORNIA ENERGY COMMISSION**

DAVID HOCHSCHILD, CHAIR  
1516 NINTH STREET, MS 32  
SACRAMENTO, CA 95814-5512  
(916) 654-3992  
FAX (916) 651-3767  
[www.energy.ca.gov](http://www.energy.ca.gov)

R.13-11-005  
Earthjustice and Sierra Club Comments  
Attachment E  
Page 1 of 4



March 1, 2019

Mr. Eric Stas  
U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Avenue, SW  
Washington, DC 20585-0121  
via [www.regulations.gov](http://www.regulations.gov)

RE: Energy Conservation Program: Energy Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking  
Docket Number: EERE-2018-BT-STD-0018  
Regulation Identifier Number: Not Assigned

Dear Mr. Stas:

The California Energy Commission is the primary energy policy and planning agency for the State of California. One of the chief mandates of the Energy Commission is to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy and water in the state by prescribing standards for minimum levels of operating efficiency for appliances that consume a significant amount of energy or water on a statewide basis.

The Commission strongly opposes the petition from the American Public Gas Association, American Gas Association, and other gas industry petitioners (Gas Industry Petitioners) to protect non-condensing technologies in residential furnaces and commercial water heaters as a performance characteristic or feature and to withdraw the U.S. Department of Energy's (DOE's) proposed rulemakings for both standards. The petition fails to produce any evidence or analysis either contrary or additional to that already contained in the federal rulemaking records, ignores or misunderstands DOE's long-standing test for creating new product classifications, and ultimately requests that DOE take actions that are arbitrary and capricious when viewed in light of DOE's substantial record on these appliances. The effect of granting the petition would be to put a cap on the energy efficiency of gas furnaces and water heaters by distinguishing products based on technologies that drive improvements in energy efficiency. This is an untenable approach to energy efficiency standards.

The issues Gas Industry Petitioners raise are neither novel nor recent. In the March 12, 2015, Notice of Proposed Rulemaking (NOPR) on proposed efficiency standards for residential non-weatherized gas furnaces, DOE provided a comprehensive account of its reasoning for not separating condensing and non-condensing furnaces into two product categories,<sup>1</sup> and did so again in its supplemental notice of proposed rulemaking (SNOPR) issued September 23, 2016.<sup>2</sup> Gas Industry Petitioners have previously made similar arguments with respect to commercial water heaters as well, and DOE similarly dismissed these arguments in its May 31, 2016, Notice of Proposed Rulemaking.<sup>3</sup> In both rulemakings, DOE properly considered venting technology and installation as part of its cost analysis to determine if standards were economically justified. When including these installation costs, the proposed standards satisfied DOE's applicable statutory and regulatory requirements for promulgating technologically feasible and economically justified standards. Gas Industry Petitioners' request provides no new evidence or analysis that is not already contained in the federal rulemaking records and that has not already been fully considered by DOE.

Were DOE to nonetheless proceed to grant Gas Industry Petitioners' request, it would be an arbitrary and capricious action under the federal Administrative Procedures Act (See 5 U.S.C. § 706.). The petition does not offer any new evidence, reasoning, or facts to support findings that could lead to a different conclusion than that already reached by DOE in its extensive and repeated treatment of this issue in both rulemaking records. See, *Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199, 1209 (2015).

DOE has consistently taken the position that the particular technology used to deliver utility to a consumer is not a basis for a product classification; rather than the *method of providing the utility*, the *utility provided to the consumer* is the determining factor, exclusive of manufacturer, installer, or even consumer costs. As discussed in both rulemakings, both condensing and non-condensing furnaces and commercial water heaters provide the same utility to the consumer—heating space or water. Condensing combustion products provide this utility at lower fuel costs due to increased fuel efficiency and lower environmental impacts due to reduced fuel consumption, resulting in significant direct and indirect benefits to American residents and businesses. As DOE notes, in contrast with residential clothes dryers, where in some cases consumers may have been denied the utility of the product (the ability to dry clothes) absent a different product classification, no such problem exists for venting technologies in furnaces or commercial water heaters. Rather, as analyzed by DOE in both rulemaking records, installation costs may be slightly higher—but the product functionality remains the same, so separate product classes are inappropriate under the Energy Policy and Conservation Act (EPCA).

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<sup>1</sup> 80 Fed. Reg. 13137-38 (Mar. 12, 2015)

<sup>2</sup> 81 Fed. Reg. 65752 (Sept. 23, 2016)

<sup>3</sup> 81 Fed. Reg. 34440, 34462-34463 (May 31, 2016)

Moreover, the Gas Industry Petitioners are unlikely to be able to come up with any new evidence, reasoning, or analysis to support a different outcome than that already described by DOE in its rulemaking records:

- Commercially available products exist to address the so-called orphaned water heater scenario where a common chimney is being utilized by both an atmospherically vented furnace and water heater. The FasNSeal 80/90 by DuraVent allows for combined venting of an atmospheric appliance and a condensing appliance.<sup>4</sup> This product was formally introduced at the 2015 AHR Expo industry event.<sup>5</sup>
- In Canada, residential gas furnaces without an integrated cooling component and manufactured on or after December 31, 2012, are required to have a minimum Annual Fuel Utilization Efficiency (AFUE) of 90% (i.e., they must be condensing).<sup>6</sup> There are more than five years of implementation of this mandatory standard from which to draw installation experience and solutions to any challenges.
- If there is a specific instance where it is impossible to install a condensing gas furnace, heat pump products are readily available as replacements. Gas Industry Petitioners have not provided evidence of such an instance, but have made clear their opposition to any solution that would rely on fuel-switching to electricity. Fuel-switching, however, is a cost impact, not a utility impact, as it does not disrupt service to the consumer of warm air or hot water. These costs were included in the DOE's life-cycle cost analysis in its supplemental proposed rule for residential furnaces.

Gas Industry Petitioners have asked that DOE, contrary to the letter and intent of EPCA, lock in a particular technology and set a ceiling on the fuel efficiency of residential furnaces and commercial water heating equipment. Gas Industry Petitioners have not provided any additional evidence or information that consumers or businesses would be denied the *utility* of being able to heat their homes or heat water, and have not acknowledged readily available solutions. Rather, Gas Industry Petitioners request DOE abruptly issue interpretive rules and withdraw proposed standards on grounds that are neither necessary nor consistent with the evidentiary record and DOE's previous well-supported reasoning. In short, granting this request would be arbitrary and capricious.

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<sup>4</sup> See <http://www.duravent.com/Product.aspx?hProduct=49>.

<sup>5</sup> See [http://duravent.com/docs/product/FNS8090\\_W.pdf](http://duravent.com/docs/product/FNS8090_W.pdf).

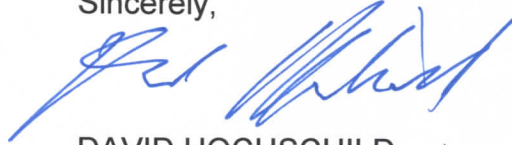
<sup>6</sup> See <https://www.nrcan.gc.ca/energy/regulations-codes-standards/products/6879>.

Mr. Eric Stas  
March 1, 2019  
Page 4

R.13-11-005  
Earthjustice and Sierra Club Comments  
Attachment E  
Page 4 of 4

The Commission appreciates the opportunity to comment on this petition. If there are any questions about the attached comments, please contact Patrick Saxton at (916) 654-4274, or at [Patrick.Saxton@energy.ca.gov](mailto:Patrick.Saxton@energy.ca.gov).

Sincerely,



DAVID HOCHSCHILD  
Chair