

BEFORE THE
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
UNITED STATES DEPARTMENT OF ENERGY
WASHINGTON, D.C.

Docket Number EERE-2014-BT-STD-0031/ RIN NO. 1904-AD20

**SUPPLEMENTAL COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION
ON THE NOTICE OF DATA AVAILABILITY**

November 6, 2015

The American Public Gas Association (APGA) submits these comments in response to the October 23, 2015 notice in the Federal Register (80 Fed. Reg. 64370) reopening of public comments in this proceeding on the notice of data availability (NODA) published by the Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE) on September 14, 2015 (80 Fed. Reg. 55038).¹ In the NODA, DOE indicated that it had “completed a provisional analysis of the potential economic impacts and energy savings that could result from promulgating amended energy conservation standards for residential non-weatherized gas furnaces (NWGFs) that include two product classes defined by input capacity ...” (*Id.*) DOE asked for “comments, data, and information regarding this analysis” (*id.* at 55045), such comments to be filed by October 14, 2015.

On September 15, 2015, the American Gas Association (AGA) and APGA submitted a data request (Joint Request²), noting that filing meaningful comments “is impossible without being provided additional data by DOE underlying and explaining the NODA and the accompanying spreadsheets, and then having a technical conference to discuss the data.” (Joint

¹ APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1000 public gas systems in 37 states, and over 700 of these systems are APGA members.

² [Http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=EERE-2014-BT-STD-0031-0168](http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=EERE-2014-BT-STD-0031-0168).

Request at 1.³) The Joint Request asked DOE for an extension of time to review and analyze the requested data before filing comments.

DOE declined to respond to the Joint Request before the October 14, 2015 DOE deadline for initial comments, so APGA (and others) filed comments (including an analysis by the Gas Technology Institute) in accordance with the terms of the NODA on October 14. APGA pointed out in its comments, among other things, that it was handicapped in its analysis by DOE's refusal to provide the requested data, but nonetheless, based on the data accompanying the NODA, did point out some of the serious shortcomings in the NODA. APGA's comments were posted to the DOE website on October 16.⁴

On October 15 (at around 11:43 a.m.), APGA was served electronically with a DOE email indicating that DOE "has issued a pre-publication *Federal Register* notice reopening the comment period regarding the Notice of Data Availability (NODA) concerning residential furnaces. The comment period is reopened for an additional 14 days after publication in the *Federal Register*. (October 15, 2015)." Later on October 15 (at around 8:16 p.m.), APGA was served electronically with a DOE email indicating that DOE was posting "documents regarding the notice of data availability for energy conservation standards for residential furnaces."

The pre-publication notice indicated that DOE was reopening the public comment period in response to the Joint Request from APGA and AGA (*see* 80 Fed. Reg. at 64371). The pre-publication did not share with the reader why DOE declined to inform APGA/AGA (or the public generally) before the October 14 comment deadline that it was intending to provide the requested data and extend the comment deadline. Nor did the pre-publication notice address why certain parties allied with the DOE position on furnace rules seemed to be aware of the deadline extension prior to its issuance. And, finally, the pre-publication notice did not address the serious due process ramifications of posting on October 16 APGA's timely-filed comments

³ In addition, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) submitted a data request on September 15.

⁴ <http://www.regulations.gov/#!docketBrowser;rpp=25;po=50;dct=PS;D=EERE-2014-BT-STD-0031-0180>.

so that the parties allied with DOE could respond to those comments on November 6 in response to the pre-publication notice.

DOE obviously knew well ahead of the October 14 deadline that it was going to produce additional data regarding the NODA in response to the Joint Request and to extend the deadline for comments, as such decisions are not made on the spur of the moment. It also knew that given the October 14 deadline set forth in the NODA, parties like APGA, unless timely informed of an extension, would be spending their limited resources on legal and analytical input so that comments could be filed on the October 14 date designated in the NODA. Yet, DOE remained silent (as least as to those parties seeking the data and seeking more time), knowing full well that its actions would prejudice those parties that filed comments timely.

Unfortunately, it appears to APGA that these actions by DOE were premeditated and, as noted, are highly prejudicial to APGA and like-situated parties; APGA has expressed these sentiments to the DOE Secretary in a letter dated October 22, 2015 (attached). APGA has also determined that the expenditure of additional of its limited resources at this time to conduct analyses using the data released on October 15 would not be an efficient use of its limited resources, as DOE appears determined to pursue a pre-set course without regard to the data in the record. Since insanity is often defined as doing the same thing over and over again and expecting a different outcome⁵ and since DOE seems impervious to data showing pronounced flaws in its life-cycle cost analysis, APGA will defer any further analyses until a supplemental NOPR is issued in this proceeding, accompanied by the necessary technical support document.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By: Bert Kalisch
APGA President and CEO

November 6, 2015

⁵ This definition is often attributed to Albert Einstein, though that attribution appears problematic.



AMERICAN PUBLIC GAS ASSOCIATION

October 22, 2015

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: DOE Docket No. EERE-2014-BT-STD-0031

Dear Secretary Moniz:

On behalf of the American Public Gas Association (APGA),¹ I want to communicate our strong concerns regarding recent developments related to the Department of Energy's Notice of Proposed Rulemaking (NOPR) on Energy Conservation Standards for Residential Furnaces in the above-referenced docket. Specifically, our concerns relate to the manner in which a data request and request for an extension of the deadline for comments on the recently issued Notice of Data Availability (NODA) related to furnace size were handled.

DOE issued a NOPR in this proceeding in March 2015, in response to which many objections were filed indicating, among other things, a serious flaw in the methodology used to justify a condensing-only standard for non-weatherized gas furnaces. DOE then issued a NODA that appeared in the September 14th Federal Register seeking comment by October 14 on the NODA analysis of the potential economic impacts and energy savings that would be obtained through the creation of a separate product class for small furnaces that would be exempt from the 92% nationwide standard DOE proposed in the March NOPR.

On September 15th, the day after the NODA issued, APGA and the American Gas Association (AGA) (collectively, the Associations) sent a letter to DOE requesting answers to specific technical questions (copy attached) so that the Associations would have a better understanding of the updated or revised input parameters, values, and methodologies contained in the Life Cycle Cost spreadsheet included with the NODA and hence could

¹ APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 37 states and over 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

respond to the NODA with meaningful comments. The letter also requested additional time following DOE's data response to file comments.

The Associations received no response from DOE regarding their September 15 requests, and as a result, filed their respective (albeit truncated) comments in a timely manner on October 14th. On October 15th, DOE released a notice reopening and extending the NODA comment period 14 days. In addition, later on the same day (October 15th) DOE released the answers to the Associations' September 15th data request.

Hence, since DOE neglected to communicate to the Associations its intent regarding the data request and extension request, significant resources were expended by the Associations to complete their technical analysis based on insufficient data and to draft and file timely comments on October 14. Now the Associations are supposed to gear up (i.e., spend additional precious and limited resources) to review the DOE data response and file additional comments, which redundancy could have been avoided by a timely telephone call or email from DOE to the affected parties (and proper public notice). DOE's failure to provide the public timely notice of its intent is inexcusable and underscores why so many citizens in this country are growing increasingly skeptical of governmental competence and integrity.

In addition, and equally troubling to APGA, it appears that certain of the groups supporting DOE's furnace NOPR (e.g., the American Council for an Energy-Efficient Economy, the Appliance Standards Awareness Project and the Alliance to Save Energy) did not submit comments on October 14 because they were aware that DOE would be reopening the comment period. It was APGA that requested an extension, not any of the aforementioned groups; yet, we were not made aware of DOE's action to reopen the comment period. The advocates of the furnace rule, who appear to be the only ones aware that an extension would be granted, held off filing comments; they now have an additional 14 days to review the timely-filed comments of the Associations, as well as to take advantage of the additional data requested by the Associations.

These actions by DOE, which appear intended to further tilt the playing field to the advantage of its allies, are not tolerable in a society dedicated to due process, and hence we are writing this letter to indicate our very strong objection to these tactics and to request action by you to restore fairness to a proceeding that has been anything but that.

Sincerely,



Bert Kalisch
President & CEO



September 15, 2015

By email and U.S. mail

Mr. John Cymbalsky
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

Re: Energy Conservation Program for Consumer Products: Energy
Conservation Standards for Residential Furnaces, Docket No. EERE-014-
BT-STD-0031.

Dear Mr. Cymbalsky:

On September 14, 2015, the Department of Energy (DOE) published a Notice of Data Availability (NODA), 80 Fed. Reg. 55038, and released two spreadsheets, one on consumer impacts (life-cycle costs/payback periods) and one on national impacts (national energy savings and net present value of national benefits). The NODA states that DOE "has completed a provisional analysis of the potential economic impacts and energy savings that could result from promulgating amended energy conservation standards for residential non-weatherized gas furnaces (NWGFs) that include two product classes defined by input capacity." (80 Fed. Reg. at 55038.) DOE solicits "comments, data and information" that may improve its analysis (*id.* at 55045), and provides parties 30 days from the NODA publication date (*i.e.*, until October 14) to provide these comments.

The American Gas Association (AGA) and the American Public Gas Association (APGA), collectively, the Associations, have been active participants in the subject proceeding and are interested in filing meaningful comments in response to the NODA. However, that is impossible without being provided additional data by DOE underlying and explaining the NODA and the accompanying spreadsheets, and then having a technical conference to discuss the data. The Associations are therefore submitting the accompanying data request, along with a request for a technical conference some 20 days after the data is provided, and a comment date that is at least 60 days after the technical conference.

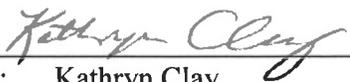
The Associations are working under the assumption that DOE's request for comments and information is a good faith attempt to explore the indicated subject matter, and it is in that spirit that we ask for the necessary data identified in the attachment and the additional time to analyze the data and provide substantive comments.

Mr. John Cymbalsky
U.S. Department of Energy
Page 2

Please contact us with any questions. Thank you in advance for your consideration of these requests.

Respectfully submitted,

AMERICAN GAS ASSOCIATION


By: Kathryn Clay
Vice President, Policy Strategy

AMERICAN PUBLIC GAS ASSOCIATION


By: David Schryver
Executive Vice President

cc: Ms. Johanna Hariharan
Ms. Brenda Edwards

**Data Request of AGA/APGA
Regarding DOE NODA**

Addition information is needed from DOE to permit an understanding and evaluation of the updated or revised input parameters, values, and methodologies contained in the NODA LCC spreadsheet.

NODA LCC Spreadsheet Data Request

- 1) An updated version of input spreadsheet “rf_nopr_analysis_inputs_2014-02-06.xlsm” that was released with the NOPR LCC spreadsheet. The input spreadsheet contains key information on the LCC calculations and methodology for:
 - contractor markups
 - implementation of the new AHRI shipment data
 - implementation of the new AEO forecast
 - implementation of the new EIA pricing data
 - implementation of updated NWGF input capacity percentiles
- 2) Supporting data and detailed descriptions of changes in building shell efficiency calculations in the NODA LCC spreadsheet as mentioned on page 16 of “Res Furnace_NODA_2015-09-04.pdf.” This is currently referenced in general terms as “described in the LCC spreadsheet.”
- 3) Supporting data and detailed descriptions of changes in climate indices used to adjust energy use as mentioned on page 16 of “Res Furnace_NODA_2015-09-04.pdf.” This is currently referenced in general terms as “described in the LCC spreadsheet.”
- 4) Supporting data and detailed descriptions of the “updated engineering analysis” that is referenced in the “NODA Analysis Update” sheet under the “Prod Price” changes.
- 5) Clarification as to whether or not changes have been made to the “NWGF Switching” sheet that was omitted from the descriptions of changes in the “NODA Analysis Updates” Sheet of the NODA LCC spreadsheet.

Technical Support Documentation

Information requested in this section focuses on descriptions typically included in a DOE technical support document that are needed for a reasonable understanding of changes included in the NODA LCC spreadsheet.

- 1) Describe the “bug” in the “AFUE Existing” assignment and what was done to correct the bug, with references to specific locations in the NODA LCC spreadsheet.
- 2) Describe the methodology and rationale for choosing 1.3 vs. 1.7 oversizing factors in the “Furnace & AC Sizing” Sheet of the NODA LCC spreadsheet.

- 3) Describe the methodology used to arrive at the Net Cost percentages included in Tables III.2 and III.3 of "Res Furnace_NODA_2015-09-04.pdf."
- 4) Describe methodology/logic of implementing dual standard scenario, and downsizing options.
- 5) The NODA LCC spreadsheet provides a dropdown box (see cell D23 in the Summary tab of the LCC spreadsheet) that provides options for various Standard Scenarios. The options in the dropdown box include Dual Standard selections for input capacities for small furnaces with thresholds of less than or equal to 70, 75, 80, 85 and 90 kBtus/hr. However, the tables included in the NODA do not include the LCC or the NIA spreadsheet results for these scenarios. Please provide the LCC and NIA spreadsheet results for each of these scenarios in a similar fashion that the other scenario results were presented in the NODA.