



AMERICAN PUBLIC GAS ASSOCIATION

November 28, 2016

Via email and U.S. Mail

Hon. Rickey R. Hass
Acting Inspector General
U.S. Department of Energy
Office of Inspector General
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Hass:

The American Public Gas Association (APGA) filed a complaint with the Inspector General (IG) on November 18, 2015 (attached); in the year since that filing, APGA has made repeated requests with the IG office for a definitive status report regarding its complaint, the last such request being on April 26, 2016, which was responded to by a Ms. Grebasch as follows: "I am in the process of reaching out to our Office of Investigations to ascertain the status of our inquiries. I hope to have an update for you tomorrow, April 26th." No such update has been forthcoming in the intervening seven months.

APGA writes today both to request action on its year-old November 2015 complaint and to supplement that complaint with additional facts that underscore the waste, abuse and mismanagement at the Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE), which has occurred in the context of the same rulemaking proceeding referenced in our November 2015 complaint, namely Docket No. EERE-2104-BT-STD-0031, regarding the setting of efficiency standards for non-weatherized gas furnaces.

APGA pointed out in its November 15 complaint the abuse of process by EERE in extending the date for comments on the Notice of Data Availability (NODA) the day *after* comments were due. Why is that significant? It is significant and highly prejudicial because DOE knew that those opposing its proposed rule, such as APGA, would be required to expend significant time and resources to do the technical work to rebut the NODA within a condensed period of time, and that the only parties that would benefit from the belated extension were those parties supporting DOE, which would have time to review and respond to the comments of those (like APGA) which filed timely in opposition to the NODA.

Now, to add insult to injury, DOE has again belatedly issued an extension of a comment date that can only benefit those supporting DOE. As a follow-up to the NODA, DOE published a Supplemental Notice of Proposed Rulemaking (SNOPR) on September 23, 2016,¹ The SNOPR provided for comments to be filed on November 22, 2016. In response to the pre-publication of the SNOPR, APGA and the American Gas Association (AGA) on September 12 filed a request

¹ Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0230>.

for an extension of the comment period and asked for a DOE ruling within seven (7) days, noting that: "It is very important that DOE avoid the sort of delay and resulting confusion that was associated with the Associations' joint request for additional time and data responses related to the Notice of Data Availability (NODA)."² APGA and AGA filed again on September 26,³ and again on October 28,⁴ for the comment date to be extended and for DOE to provide adequate notice of same. In the meantime, many other requests for extension of the comment date were filed.⁵

Because DOE remained silent regarding the many requests for extension of the November 22 comment date and because of the intense work associated with responding to the SNOPR timely, APGA and its consultant did the work required to file (and did file) APGA's comments on the November 22 deadline. Shortly after 5 pm on November 22, 2016, DOE issued an email notice that the comment date was being extended to January 6, 2017. DOE, which obviously decided well before November 22 to extend the date, nevertheless waited until after 5 pm on the due date to notify the public of the extension. Again, the prejudice of such action to adverse parties like APGA who play by the rules, assuming the regulatory agency that is making the rules will do the same, is self-evident.

EERE is toying with the public, specifically those stakeholders that believe DOE is acting irresponsibly in proposing rules for which the scientific support is seriously flawed. The only question is whether the IG now takes appropriate action or simply look the other way, as it apparently has to date regarding APGA's November 2015 complaint regarding EERE's misfeasance. Due process and fairness should be the hallmarks of regulation by administrative agencies like DOE, and yet it is clear that EERE does not share that view.

APGA has suggested many times that it would like to speak directly and in person with the IG office regarding its complaint, and APGA repeats that offer. APGA, of course, understands that we are in a transition period between administrations, but suggests that that is no excuse for procrastinating regarding abuse-of-process issues that are tainting an ongoing administrative proceeding and that are being committed by bureaucrats that will likely remain at DOE without regard to a change in the administration.

Respectfully submitted,



Dave Schryver
APGA Executive Vice President

² Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0220>.

³ Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0232>.

⁴ Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0242>.

⁵ E.g., by Spire, Inc.; the Air-Conditioning, Heating, and Refrigeration Institute; the Heating, Air-Conditioning & Refrigeration Distributors International; the Air-Conditioning Contractors of America; Lennox International; etc.