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CONTACT: Dave Schryver, Executive Vice President

Phone: (202) 464-0835

Email: dschryver@apga.org

Court Vacates DOE Furnace Rule

Washington, D.C. (April 24, 2014) –Today, the U.S. Court of Appeals approved a joint motion to vacate a direct final rule (DFR) concerning furnace efficiency standards issued by the Department of Energy (DOE) in 2011 (76 Fed. Reg. 67037). In March, the American Public Gas Association (APGA), DOE, and the other parties filed a joint motion for vacatur in the case styled as *American Public Gas Ass'n v. Department of Energy*, D.C. Cir. No 11-1485. By approving this motion, the court vacated the original rule and remanded the proceeding for notice and comment rulemaking.

APGA filed its petition for review with the court in December 2011 to challenge the DFR. By establishing a 90 percent fuel efficiency standard for furnaces in the northern region of the United States, the DFR would have eliminated non-condensing gas furnaces from the northern region and likely driven many consumers in that region to less efficient electric furnaces.

DOE and APGA began meeting in fall 2012 to discuss a possible settlement through a court-supervised mediation process, which resumed in January 2014. As part of the settlement that eventuated from these discussions, DOE agreed to withdraw the DFR and initiate a traditional notice and comment rulemaking for new furnace efficiency standards.

Bert Kalisch, APGA's President & CEO, stated, "Without the courage of APGA's Board of Directors to proceed with this lawsuit, there would be no settlement today. APGA knew it was important to stand up for the interests of natural gas customers, natural gas utilities and overall efficiency in this litigation. While APGA is not a large association, our members recognized two essential wrongs in this rulemaking: first, trying to implement a change via direct final rule on a contested and complex matter with many stakeholders; and, second, adopting an efficiency standard that benefits a few to the detriment of many. Because of the DFR's disregard for fuel switching as a result of the inability of many American consumers to afford the significant costs required to retrofit their home's venting system, today marks an overall energy and emission savings victory for the country. APGA looks forward to working with DOE and other stakeholders on a new furnace efficiency standard that serves the best interests of American consumers, regardless of region or financial wherewithal."

The DFR mandated an increase in annual fuel utilization efficiency (AFUE) from 78 percent to 90 percent for natural gas furnaces installed in 30 northern states. The federal minimum efficiency for natural gas furnaces was also increased from 78 percent to 80 percent in southern states.

Under the DFR process, unless DOE received adverse comments that DOE believed provided a reasonable basis for withdrawing the DFR, the rule and its minimum efficiency standards would stand as the new efficiency standards. Despite receiving comments opposing the standards from over 30 stakeholder groups including APGA, DOE ruled that it did not receive adverse comments warranting withdrawal of the DFR.

The furnace rule would have taken effect in May 2013. Instead, DOE will now develop new efficiency standards for gas furnaces. In this new rulemaking, APGA urges DOE to consider regional impacts on consumers when setting appliance efficiency standards.

APGA is a longstanding supporter of energy efficiency, and will continue to be. In fact, the direct use of natural gas is one of the most efficient uses of energy at 90 percent compared to 27 percent for electricity. However, the furnace rule in the DFR, in an attempt to increase energy savings, would have inadvertently deterred consumers from purchasing more efficient direct use natural gas appliances due to the high upfront costs associated with the only furnace type—condensing furnaces—that could meet the DFR-established 90 percent standard. Consequently, consumers would be incented by the DFR to buy electric appliances that are initially cheaper to install, but ultimately less efficient and therefore more costly in the long term.

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APGA is the national association of municipally and publicly-owned local distribution systems. There are about 1000 public gas systems serving more than 5 million customers. These public gas utilities are not-for-profit retail distribution entities that are 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.