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**California IOUs Comment on Notice of Proposed Action**

*Additional submitted attachment is included below.*



Pacific Gas and  
Electric Company®



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October 7, 2019

Docket Number: 19-AAER-04  
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Dear Mr. Saxton:

This letter comprises the comments of the Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE) in response to the California Energy Commission (Energy Commission) Notice of Proposed Action (NOPA) regarding the adoption of expanded definitions for general service lamps (GSLs) to align with the United States (U.S.) Department of Energy (DOE) January 19, 2017 Final Rules for GSLs, general service incandescent lamps (GSILs), and other supplemental lamp types.

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 California as well as the Western U.S., serving over 32 million customers. As energy companies, we understand the potential of appliance efficiency standards to cut costs and reduce consumption while maintaining or increasing consumer utility of the products. We have a responsibility to our customers to advocate for standards that accurately reflect the climate and conditions of our respective service areas, so as to maximize these positive effects.

The Energy Commission has a decades-long history of influencing the national narrative of GSL regulation, first through the creation of its 2006 California Appliance Efficiency Regulations, Title 20, GSL Standards (which created a blueprint for what the national standards would become), and second by including the GSL provisions in the Energy Independence and Security Act (EISA) in its state statutory language. EISA enacted two tiers of national standards for GSLs: the first tier phased in from 2012 through 2014, depending on lamp lumen range, and the second tier, commonly known as the EISA backstop, will take effect in 2020. Per the recommendations of the Energy Commission, EISA included a provision that allowed California and Nevada to adopt the federal standards earlier than 2020. The Energy Commission held an early adoption rulemaking for EISA GSL standards; on December 3, 2008, the Energy Commission adopted an accelerated effective date for the EISA GSL standards. The Tier 1 standards were accelerated by one year in California (becoming effective between 2011 and 2013, depending on lamp lumen ranges) and the Tier 2 standards became effective on January 1, 2018 in California.

The CA IOUs have long supported the Energy Commission's leadership in GSL regulation, and similarly strongly endorse the Energy Commission's current endeavor to align its GSL, GSIL, and supplemental lamp type definitions with DOE's 2017 Final Rules, which expanded the scope of lamps that are classified as providing "general service" applications. The Energy Commission properly exercised its authority to regulate these covered products under the exemption to preemption provisions as described in

42 U.S.C § 6295(i)(6)(A)(vi). Despite the DOE's recent actions to withdraw the 2017 definitions, the CA IOUs maintain that the 2017 Final Rules were properly finalized and assert that California has the authority to enact them under its codified preemption exemption. It is imperative that the Energy Commission implement these definitions with haste to ensure that California consumers realize the energy and monetary savings afforded by the expanded scope of GSL regulation. We thank the Energy Commission for the opportunity to remark on this NOPA and encourage the Energy Commission to carefully consider the analyses and comments below.

**1. The CA IOUs believe that DOE's pending withdrawal of the 2017 Final Rules establishing the expanded definitional scope for GSLs, GSILs, and supplemental lamp types will be deemed unlawful in court and should not impede the Energy Commission's adoption plans.**

By finalizing the withdrawal of the 2017 Final Rules, DOE has placed itself in imminent danger of disregarding its statutory obligations with respect to these products. The CA IOUs fully anticipate that DOE's actions will be overturned upon judicial review. Given that, the Energy Commission can align with the 2017 Final Rules. The CA IOUs assert that the withdrawal of the 2017 Final Rules is unprecedented and likely unlawful for several reasons:

- a. DOE's actions constitute backsliding because the lamp types contained in the expanded scope are subject to the backstop requirement. By proposing to reintroduce previously discontinued exemptions to the GSIL definitions, thereby removing those lamps from the GSL definition and an efficiency requirement, DOE would be in violation of the statutory restrictions against 'backsliding' outlined in the Energy Policy and Conservation Act (EPCA).
- b. DOE is overstepping its statutory authority from Congress by re-exempting certain GSLs and GSILs; DOE may only maintain or discontinue exemptions. As it is authorized to do by statute,<sup>1</sup> DOE chose to discontinue exemptions and codified its decision in the 2017 Final Rules. The exemptions in question were discontinued on January 19, 2017; DOE cannot legally retroactively reinstate them as planned. To the extent DOE re-exempts lamps from the GSIL and/or GSL definitions, it will have acted beyond the expressed scope of its statutory authority.
- c. By withdrawing the 2017 Final Rules, DOE will set a dangerous precedent for the lawful integrity of any Final Rule should DOE later find that rule unfavorable. Because Congress has prohibited DOE from decreasing energy efficiency standards in any rulemaking,<sup>2</sup> DOE cannot circumvent this limitation by voiding the 2017 Final Rules in lieu of conducting an affirmative rulemaking; legal determinations are reserved to the courts.

Not only have these arguments been articulated by countless energy efficiency advocates and interest groups,<sup>3</sup> they have also been echoed in a comment letter<sup>4</sup> submitted to DOE on May 3, 2019 by Attorneys General representing 17 states, including California. Notably, four other states (Vermont, Nevada, Colorado, and Washington State) have already adopted the expanded definitions and backstop into their respective state statutes. The Energy Commission's action to adopt the expanded scope for GSLs, GSILs, and other supplemental lamp types is critical to affirm the chronicle describing the unprecedented DOE actions regarding GSLs that has been set forth by proponents of energy efficiency and consumer protection.

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<sup>1</sup> 42 U.S.C. § 6295(i)(6)(A)(i)(II)

<sup>2</sup> 42 U.S.C. 6295(o)

<sup>3</sup> <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0450>

<sup>4</sup> <https://oag.ca.gov/system/files/attachments/press-docs/gslcomments-ags.may-3.2019.final-submission.pdf>

**2. The codified 45 lumens per watt (LPW) federal backstop (herein referred to as “the backstop”) has been triggered; therefore, California is free to exercise its authority to enforce GSL standards, including adoption of the expanded definitions, as described in 42 U.S.C §6295(i)(6)(A)(vi).**

Congress amended EPCA in significant and relevant ways in 2007 by expanding California’s preemption exception to adopt the backstop or any regulation adopted pursuant to state statute in effect as of December 17, 2007. These amendments allowing California exceptions to preemption are entirely inconsistent with the notion that DOE could unilaterally revoke them. Indeed, there is no reference to such authority in the legislative history for the EISA. DOE’s attempt to sidestep this lack of authority by claiming the 2017 Final Rules were “not consistent with the best reading of the statute”<sup>5</sup> is misplaced.

The Energy Commission properly found that the backstop had been triggered, and enacted requirements for GSLs adhering to that backstop provision effective January 1, 2018. The backstop provision was triggered when DOE failed to meet its statutory deadlines for the completion of a standard rulemaking on GSLs; these deadlines have long passed and any attempt for DOE to meet them at this late date are insufficient to comply with the statutory requirements. While DOE has recently stated its belief that the backstop has not been triggered, the CA IOUs continue to maintain that the backstop requirement has long been triggered and that DOE’s determination is founded in flawed analyses.<sup>6</sup> DOE has failed to meet the numerous timeframes for action required by statute. First, DOE did not initiate a rulemaking by January 1, 2014 to determine whether to amend GSL standards and exemptions. While DOE claims that a 2013 Framework document fulfilled this requirement, DOE has been clear that further actions taken in support of this Framework document were not a standards consideration as required under the statute (due to limitations under the Appropriations Rider). Second, if the Secretary did find that GSIL standards should be amended, then DOE needed to publish a Final Rule no later than January 1, 2017 (because DOE was prohibited from making this determination prior to 2017, the Secretary failed to make this determination by the required date). The fact that DOE now seeks to satisfy the requirements of the statute through a determination on GSIL standards<sup>7</sup> does not change the fact that the backstop has been triggered, nor does it void California’s preemption exception.

DOE’s recent determinations<sup>8</sup> on preemption are flawed for several reasons. First, DOE has wrongly determined that the second exception, which allows California to adopt the backstop two years ahead of its Federal effective date, does not apply because “DOE has not yet made the determination on whether to amend standards for GSILs, and thus no obligation currently exists for DOE to issue a Final Rule setting standards for these lamps in accordance with the 42 U.S.C. 6295(i)(6)(A)(i) – (iv).”<sup>9</sup> However, the CA IOUs contend that DOE was not afforded an unlimited timeline to complete a rulemaking on GSLs, and it indisputably failed to complete the clauses outlined in the statutory scheme by the deadlines established by Congress,<sup>10</sup> thus triggering the backstop. The fact that Congress expressly permitted California and Nevada to implement the backstop on January 1, 2018,

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<sup>5</sup> 84 FR 46665

<sup>6</sup> See the PG&E and SDG&E letter to DOE concerning DOE’s Notice of Proposed Rulemaking to withdraw the 2017 Final Rules for a more detailed analysis of the backstop requirement: <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0348>

<sup>7</sup> <https://www.regulations.gov/document?D=EERE-2019-BT-STD-0022-0001>

<sup>8</sup> <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0450>

<sup>9</sup> Ibid.

<sup>10</sup> 42 U.S.C. § 6295(i)(6)(A)(i)-(iv)

is incompatible with DOE’s reading that those states needed to wait for the federal backstop requirement to trigger on its own on January 1, 2020.

DOE has also made an improper judgement that California’s specific exception allowing it to adopt standards for covered GSL products “does not apply since there are no California efficiency standards for GSLs in effect as of the date of enactment of EISA 2007.”<sup>11</sup> The CA IOUs believe that California is entitled to expand its definition of GSLs to be coextensive with the products covered in 42 U.S.C. § 6295(i)(6)(A)(vi)(III), which include the 2017 expanded GSL definitions. California’s ability to regulate covered products was triggered at the same time as the backstop. While DOE claims that a state statute delimiting GSLs needed to have been in place before EISA was finalized in 2007, the CA IOUs contend that this is an impossible requirement, given that Congress had not even issued a statute on GSLs at that time. Rather, the CA IOUs maintain, and the legislative record supports, that this preemption exemption simply requires that the statute governing the authority of the Energy Commission to regulate appliances needed to be in place by December 17, 2007, a requirement that was met by California by the codified deadline.<sup>12</sup> Because DOE’s recent withdrawal of the 2017 Final Rules will very likely be found to be unlawful, California can rest assured that the expanded scope of GSL definitions is within the purview of the EPCA “covered products” umbrella, and thus can adopt them by exercising its exemption to preemption.

Lastly, DOE has failed to adhere to the plain requirements of EPCA<sup>13</sup> by disregarding its limited rulemaking authority set forth by Congress. DOE is required to initiate a rulemaking that addresses GSL lamps; however, that rulemaking has two specific scope requirements.<sup>14</sup> Those provisions require that the rulemaking (1) not be limited to incandescent lamp technologies and (2) consider a minimum standard of 45 LPW for GSLs. While DOE has recently issued a Notice of Proposed Determination (NOPD) regarding GSILs, this proposed rulemaking fails to meet these scope requirements. The current rulemaking is specifically limited to incandescent lamp technologies and does not consider a 45 LPW minimum standard. While DOE indicates that a further rulemaking will follow to address these scope requirements, the statute requires this assessment to be part of a single rulemaking process. DOE is not authorized to break up the statutory requirements for initiating a rulemaking into several smaller, unrelated rulemakings. Thus, the recent NOPD is non-compliant with DOE’s required rulemaking scope and does not bear on the Energy Commission’s proceedings.

### **3. The Energy Commission has a unique opportunity to secure critical energy savings for California and lead the country in enacting forward-looking energy policy.**

California has consistently been a leader in enacting progressive energy efficiency policies that have benefitted the environment and consumers alike. The 2017 Final Rules (and the associated backstop)

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<sup>11</sup> <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0450>

<sup>12</sup> Two California statutes were in place prior to the EPCA deadline that permit Energy Commission to issue regulations relating to covered products. First, the Warren-Alquist State Energy Resources Conservation and Development Act (California Public Resources Code, §§ 2500, et seq.) established the Energy Commission in 1974. California Public Resources Code sections 25213, 25218(e), and 25402(a)-(c) authorize the Energy Commission to adopt rules and regulations to reduce energy consumption and increase energy efficiency standards. Second, on October 12, 2007, California AB 1109 Environmental Protection—Hazardous Substances and Waste—Lights and Lighting went into effect. This bill codified into law Public Resources Code Section 25402.5.4, which requires that the Energy Commission adopt minimum efficiency standards and regulations to reduce electrical consumption for lighting. This statute also defines “general purpose lights” that must meet certain efficiency standards and excludes others, but provides that the Energy Commission may revisit those categories and allows inclusion of lamp types that were previously excluded if it follows certain protocols. Thus, in advance of the EPCA deadline for it to regulate “these covered products” (December 17, 2007), California had in place multiple statutes by which the Energy Commission could issue regulations to reduce energy consumption and increase energy efficiency of covered lamp types.

<sup>13</sup> 42 U.S.C. § 6295(i)(6)(A)(ii)

<sup>14</sup> Ibid.

represent some of the most effective appliance standards to date at reducing greenhouse gas emissions and ensuring consumer utility. Due to its exceptional history of promoting bold environmental policy, coupled with its unique exemptions to preemption for GSL regulations, California stands as an important driver of the savings potential for these products in the marketplace.

CA IOU analyses indicate that California holds a large portion of the market for GSLs, GSILs, and the other supplemental lamp types in question. Of the anticipated 12.7 quadrillion British thermal units (quads) of nationwide savings afforded by the implementation of the full expanded scope, backstop, and sales prohibition on January 1, 2020, 1.4 quads are attributed to California alone (or 11 percent) through the year 2050 and are at risk of being lost. Further, CA IOU analyses strongly suggest that the potential to achieve these savings is “front-loaded” and will diminish quickly as the effective date for implementation of the 2017 Final Rules edges further from the original statutory timeline. Specifically, if the California effective date is delayed by two years, the energy savings total drops to 1.19 quads through 2052, a 21 percent loss in total 30-year savings. In other words, if standards implementation is delayed for decorative and directional lamps until January 1, 2021, California can expect to lose 1,844 gigawatt-hours (GWh) of energy savings. Similarly, savings lost for these products nearly doubles to 3,118 GWh if standards are made effective two years past the original intended date of implementation. As such, the Energy Commission’s adoption and implementation pace for this rulemaking is of the utmost importance. The CA IOUs strongly advise urgency to lock-in the maximum amount of potential savings for Californians.

The CA IOUs would like to reiterate support of the Energy Commission’s effort to adopt the 2017 Final Rules’ expanded definitions for GSLs, GSILs, and other supplemental lamp types. Such action is well within the legal authority of the Energy Commission and protected and permissible under EISA. Failure to adopt the definitions contained in the 2017 Final Rules would be a tremendous loss for the consumers of California and the decade’s worth of efficiency advancements that California has championed for lighting products. The CA IOUs thank the Energy Commission for the opportunity to be involved in this process and respectfully encourage the Energy Commission to carefully consider the recommendations outlined in this letter.

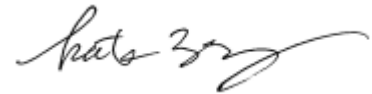
Sincerely,



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