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12-AAER-1
DATE <u> MAR 21 2012 </u>
RECD. <u> MAR 21 2012 </u>

March 21, 2012

VIA E-MAIL
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California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-AAER-1
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Implementation of SB 454 – Appliance Efficiency Enforcement Rulemaking:
Comments of Pacific Gas and Electric Company, Southern California Edison Company,
Southern California Gas Company and San Diego Gas and Electric

I. INTRODUCTION

Thank you for the opportunity to provide comments on the Appliance Efficiency Enforcement Rulemaking. Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and San Diego Gas and Electric (herein referred to as the investor-owned utilities (IOUs) appreciate the depth of the California Energy Commission's (CEC) engagement in coordinating this collaborative effort to engage stakeholders in the development of this rulemaking.

The IOUs respectfully request additional clarification on the specific issues the State has identified that led to initiation and passage of Senate Bill (SB) 454. A clarification of the areas of concern is required to help the IOUs effectively address specific details in this rulemaking related to administrative procedures, the activities that would constitute a violation, and the potential monetary penalties. In addition, the IOUs request clarification on which delivery channels and appliances apply to this rulemaking to more effectively respond with specific recommendations.

The IOUs administer energy efficiency programs that help our customers save energy, save money, and help the environment. The IOUs' primary responsibilities in managing their energy efficiency (EE) portfolios are to ensure (1) the offered energy efficiency programs and services are readily accessible to customers; (2) participating customers realize value and are satisfied with their EE experience; (3) the EE programs reduce energy consumption for the customers and for the State and do so cost-effectively; and (4) customers obtain incentives and rebates in a timely manner. Any actions that could negatively impact the customers' experience and make it more difficult for the IOUs to meet their energy savings goals established by the

California Public Utilities Commission (CPUC) must be carefully considered throughout this rulemaking. Additionally, the IOUs offer the following remarks.

II. THE CEC IS BEST SUITED TO ENFORCE CALIFORNIA'S APPLIANCE EFFICIENCY REGULATIONS

With the authority established in SB 454 and Section 25402.11 of the Public Resources Code, the CEC is best suited to enforce stakeholder compliance with California's Appliance Efficiency Regulations. While the IOUs are not in a position to act in any enforcement capacity for other agencies, we look forward to working with the CEC and other stakeholders to establish an effective process for compliance with Title 20.

III. THE IOUS SUPPORT INCREASING A CULTURE OF COMPLIANCE IN CALIFORNIA AND WILL SUPPORT THE CEC THROUGH ALL AUTHORIZED MEANS

As nationally recognized leaders in delivering energy efficiency to customers, the IOUs recognize the importance of setting minimum appliance efficiency standards to reduce the amount of wasteful, uneconomic, inefficient and unnecessary energy use. Over the past few years, the IOUs have worked collaboratively with the CEC, in partnership with the California Attorney General's Office, to increase the culture of compliance through non-enforcement activities. A summary of the major activities is provided below.

- The IOUs added the following language to their energy efficiency rebate websites:

“Under California law, models of certain types of appliances, for example, refrigerators, dishwashers and clothes washers etc., must be certified to the California Energy Commission before being sold or offered for sale in the state. The Energy Commission maintains a database of those appliances, found at the following link: www.appliances.energy.ca.gov. Before purchasing this type of appliance, please consult the Energy Commission's database to see if the particular model of the appliance you want to buy is in the database. Not all products listed in this database are eligible for utility rebates as they do not all meet the higher energy performance requirements of the utility programs. Please refer to <insert IOU name> rebate applications to find energy saving products eligible for rebate.”

- The IOUs have proactively conducted extensive outreach to educate retailers about Title 20 appliance efficiency standards and the importance of compliance with applicable laws, particularly their obligation to ensure that any products they sell are listed in the CEC Appliance Efficiency database. Communications to retailers have been both oral and

written and aimed at all types of retailers, from “big box” to “mom and pops” and remain ongoing.

- IOUs utilize retail channels to deliver certain energy efficiency offerings. To increase a culture of compliance in California, the IOUs instituted a new policy when leveraging retail channels, such that whenever IOUs provide retailer partners with any information about specific appliance models that are eligible for IOU rebates, the IOUs include only models that have been verified to be listed in the CEC’s Appliance Efficiency database.

Furthermore, the IOUs are actively working to contribute to an increased culture of compliance in California through our leadership in the Statewide Codes and Standards Compliance Enhancement Program, whose primary focus is to increase compliance with energy efficiency standards through training and education.

IV. THE IOUS HAVE IDENTIFIED INITIAL OPPORTUNITIES TO STREAMLINE THE CERTIFICATION PROCESS FOR APPLIANCES IN CALIFORNIA

The IOUs support the goal to ensure that appliances offered for sale in California meet the efficiency requirements of Title 20. The IOUs recognize that the CEC's certification process has been and continues to be restricted by limited resources. These limited resources affect the ability for the CEC’s Appliance Efficiency database to remain current. For example, there are appliances which have received certification by ENERGY STAR® that are not yet certified by the CEC and listed in the CEC’s Appliance Efficiency database. The IOUs believe that considerable value and efficiency could be added if the CEC were able to leverage the ENERGY STAR certification process, perhaps through the establishment of a joint certification process. The IOUs are willing to assist the CEC in advancing the concept of a dual ENERGY STAR/CEC certification process. Because of the high brand recognition and reliability of ENERGY STAR qualified products, the IOUs are committed to continue using the national ENERGY STAR brand as a basis for determining which energy efficient appliances to incentivize customers to purchase.

V. IOUS’ RESPONSES TO QUESTIONS IN THE NOTICE

The IOUs respectfully submit responses to the following questions below.

A. ESTABLISHING AN ADMINISTRATIVE PROCEDURE

1. What is a reasonable amount of time to allow a manufacturer/retailer to take corrective action regarding the certification of non-certified appliances (i.e. 30, 60, 90 days)?
2. Are there additional steps the Commission should include in the process?
3. Are there alternative enforcement models the Commission should consider?

4. How should the Energy Commission's enforcement process interact with, or make use of, the enforcement processes of other state and federal agencies (e.g., identification of violations, appliance testing data, etc.)?

Answers to Questions A. 1-4:

More guidance is needed on how corrective action is defined, what appliances apply and what delivery channels are affected. The IOUs need clarification on the various enforcement methods currently in use and the different scenarios of each use.

B. DEFINING WHAT CONSTITUTES A “VIOLATION”

1. Should there be categories of violations, e.g., appliance model does not meet an existing standard, failure to certify, failure to pay for purchase/testing of an appliance by our independent laboratory, failure to properly mark, etc.?
2. Should each day of a sale or offer sale of a non-certified or non-compliant model be considered a violation (i.e., should this be “per unit sold/offered-for-sale”, or per incident)?
3. How will the Commission determine “persistence of the violation”? In the absence of information to the contrary, should a rebuttable presumption of one year be used as a starting place to define “persistence”?
4. Should nonpayment of a fine be, in itself, a violation?

Answers to Questions B. 1-4:

The IOUs require clarification on how external agencies classify a violation before we can provide recommendations. The IOUs agree any violation imposed must not directly affect the consumer. The IOUs suggest that delays in CEC Appliance Efficiency database updates for specific appliances should be considered when assessing penalties. While the IOUs have no direct control for updating the CEC appliance database, as users of the database, we can contribute input into the design.

C. DETERMINING THE MONETARY PENALTY

1. How should the Commission determine the number of noncompliant models being “offered for sale?” Should the retailer/distributor be asked to self-report such data? Should we begin collecting sales data?
2. How should the seven factors be applied in determining the fines for manufacturers of noncertified appliances?
3. What is a reasonable amount of time to allow the penalty to be paid?
4. What should the penalty be for those who don’t pay the fine in the time specified?

Answers to Questions C. 1-4:

It would be helpful for the Commission to collect sales data to determine the extent that noncompliant models are being offered in the market. The IOUs require additional information on the seven factors and their applicability before making recommendations.

VI. CONCLUSION

The IOUs appreciate this opportunity to reaffirm our support for statewide compliance with California's Appliance Efficiency Regulations. The CEC is best positioned to enforce stakeholder compliance with these regulations. The IOUs look forward to a continued partnership with the CEC to increase a culture of compliance throughout California.

Sincerely,

/s/

Valerie J. Winn
Manager, State Agency Relations
Pacific Gas and Electric Company

On behalf of:
Pacific Gas and Electric Company
Southern California Edison Company
Southern California Gas Company
San Diego Gas and Electric Company

cc: T. Ealey by email (tealey@energy.ca.gov)