

November 14, 2014

**BY U.S. MAIL AND EMAIL**

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Re: Remand from *APGA v. DOE*, CADC No. 11-1485

Dear Dan:

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APGA was pleased that DOE was responsive to our request to have a meeting to answer questions about the spreadsheets posted by DOE regarding the remanded furnace rule; however, we were very disappointed that the public meeting held on November 7, 2014, to ostensibly answer the specific questions submitted by us in advance of the meeting (at your request) was converted by DOE to a four-hour tutorial on the spreadsheets and the Crystal Ball modeling tool that effectively answered none of our questions.<sup>1</sup>

If the four-hour tutorial made anything clear, it is just how opaque and complex the spreadsheets and the Crystal Ball model are, which we already knew and is precisely what prompted us to submit the detailed questions that we did. It is impossible to analyze the Crystal Ball-generated spreadsheets in a meaningful fashion without receiving complete answers to our questions. Therefore, DOE has effectively prevented the sort of analysis of the spreadsheets that is required to understand and critique them by declining to answer the questions we submitted. We frankly reject the notion expressed at the meeting that providing the answers to our questions means delving into the "deliberative" process, since we are not asking at this stage why DOE made certain choices but rather what specifically those choices are and how they drive the outcome.<sup>2</sup> DOE's refusal to answer our

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<sup>1</sup> Certainly, DOE understands that partial answers to multi-part questions is tantamount to no answer at all since the complete answer is required to permit further analysis.

<sup>2</sup> For example, answering the first question (#1.a.) as to why the different outcomes in the 2014 LCC spreadsheet versus the 2011 LCC spreadsheet means explaining in detail what inputs changed during the two time periods that drove the different results (versus *why* DOE elected to make the changes, which arguably is deliberative).

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questions means that further meaningful analysis of the spreadsheets at this time has been rendered impossible.

The bottom line is that if time were not of the essence, DOE's refusal to answer our questions now versus at a later date would not be as concerning, so long as we obtained the data eventually with adequate time to conduct analyses and submit comments. But time does matter. Because of DOE's refusal to address key questions, we will now lose weeks (potentially months) between now and the date the NOPR issues for conducting meaningful analysis of the spreadsheets.

We believe that the Court's remand in the above-referenced proceeding as well as DOE's full disclosure obligations require that DOE answer the sort of questions that we submitted. The Court approved the requirement in the settlement that "in the rulemaking on remand, DOE will make available to the public the data gathered and analyzed by the agency prior to publication of a proposed rule." We believe that this means more than providing three spreadsheets; we believe that the disclosure obligation requires DOE to provide adequate supporting information to allow meaningful analysis of the posted spreadsheets (such information to include, for example, an explanation of the fuel switching assumptions in the LCC spreadsheet). A four-hour tutorial telling us what we already knew, which is that the Crystal Ball-generated spreadsheets are close to impenetrable even to experts (and certainly completely inscrutable to the general public), does not suffice.

While we cannot make up for the time that will be lost by DOE's refusal to answer our questions, DOE can avoid compounding the problem by assuring us that we will have credible access to the responsible LBNL analysts (via public meetings) immediately upon issuance of the NOPR. Since we are being denied the data today that we need in order to proceed with a meaningful analysis of the spreadsheets at this time, we will need that data immediately upon issuance of the NOPR in order to be able to proceed. Thus, we request that DOE schedule meetings as soon after issuance of the NOPR as possible, with such meetings not to be time limited (i.e., questions will not be precluded by some arbitrary time limit). We anticipate that such meetings will be required throughout the process, but it is essential that they be initiated at the time the NOPR issues.

Your consideration of these comments is appreciated.

Very truly yours,



William T. Miller

cc: John Cymbalsky