

Law Offices of Barton Day, PLLC

10645 N. Tatum Blvd, Suite 200-508, Phoenix, AZ 85028

www.bartondaylaw.com

Memorandum

From: Barton Day
To: expartecommunications@hq.doe.gov
Re: *Ex Parte* Meeting
Date: December 17, 2018

On behalf of my client Spire Inc., I had a meeting with DOE officials on December 10, 2018 to discuss a Petition for Rulemaking that was jointly submitted by Spire Inc. and other parties on October 18, 2018 and published for public comment at 83 Fed. Reg. 54883 (November 1, 2018). The following persons attended the meeting:

Sofie Miller (DOE)
Daniel Cohen (DOE)
Eric Stas (DOE)
Barton Day (Representing Spire Inc.)

The Petition for Rulemaking urges DOE to withdraw its proposed rules concerning energy conservation standards for commercial water heaters and residential furnaces on the grounds that the standards proposed would have the unlawful effect of making products with important, currently-available product characteristics unavailable in the United States.

During the meeting I emphasized that there is an objectively strong factual and legal basis to conclude that DOE's proposed standards are indeed unlawful, and that a substantial overhaul of DOE's regulatory analysis will be required before any lawful final rule can be adopted. I emphasized that withdrawal of the pending proposals is warranted to resolve the key issue raised by the Petition – an issue that has already contributed to years of delay in the residential furnace rulemaking – thereby clarifying the remaining issues and facilitating more orderly and efficient rule development process going forward. I indicated that an overhaul of DOE's regulatory analyses in the residential furnace and commercial water heater rulemaking proceedings will be necessary in any event because DOE's existing analysis does not actually address the economic impact new standards would have (in short, DOE's modeling addresses the economic impact of randomly-selected investments in higher efficiency products rather than the impacts of efficiency investments that could be expected to occur only if new standards are adopted). I suggested that it would be particularly efficient if DOE acknowledged this problem in notices withdrawing its pending proposed rules and solicited comment as to how it could correct this defect in its analysis going forward.

Barton Day
Law Offices of Barton Day PLLC
bd@bartondaylaw.com