Submitted via www.regulations.gov

May 27, 2026

Ms. Julia Hegarty
U.S. Department of Energy
Office of Critical Minerals and Energy Innovation
Building Technologies Office, CM-5B
100 Independence Avenue SW
Washington, DC 20585-0121

Re: **Comments in Support of Amended Compliance Dates for Commercial Water Heating Equipment and Consumer Furnaces Rules and Further Revision to the Rules, *Energy Conservation Program: Notification of Petition for Rulemaking*, EERE–2026–BT–STD–0001, 91 Fed. Reg. 22477 (April 27, 2026)**

Dear Ms. Hegarty:

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to engage with the Department of Energy ("Department" or "DOE") regarding the Notice of Petition for Rulemaking ("NOPR") seeking public comment on whether the Department should undertake a rulemaking to consider extending the compliance dates for energy efficiency standards for residential natural gas and propane furnaces and commercial water heaters.[1] GPA Midstream supports energy efficiency and energy conservation and encourages extending the compliance deadline for the aforementioned rules until January 1, 2030. Additionally, GPA Midstream urges DOE to amend or revoke the rules and establish separate product classes, as the current rules harm consumers economically and leave them with fewer appliance options that best meet their household or business needs.

GPA Midstream has served the U.S. energy industry since 1921 and represents more than 50 domestic corporate members that directly employ 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of natural gas, natural gas liquids (NGLs), crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 470,000 jobs across the U.S. economy. In 2024, GPA Midstream members had an economic impact of $191 billion through operating 502,900 miles of gas gathering pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 342 natural gas processing facilities that delivered pipeline

[1] *Notification of Petition for Rulemaking; Request for Comment*, 91 Fed. Reg. 22477 (April 27, 2026).

quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems. The association is an advocate for a sustainable midstream industry that ensures consumers have access to the fuels, such as natural gas and propane, that they want for their home or business. GPA Midstream therefore has a direct interest in the outcome of DOE's determination in this matter.

The final efficiency standards are pending before the Supreme Court. In that matter, GPA Midstream filed the amicus curiae brief that is included with this letter. We believe important for this regulatory matter to also be aware of the points the association made to the Court.

The Department – in addition to extending the compliance deadline – should issue new rulemakings that preserve consumer choice and do not raise costs for homeowners and businesses that are already dealing with high energy bills in some parts of the country. One way to accomplish this goal is for DOE to establish separate product classes with different efficiency standards so that both condensing and non-condensing appliances remain available for consumers.

Thank you for consideration of this input.

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No. 25-879

IN THE

Supreme Court of the United States

AMERICAN GAS ASSOCIATION, *et al.*,

Petitioners,

v.

DEPARTMENT OF ENERGY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR *AMICUS CURIAE* GPA MIDSTREAM ASSOCIATION IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

GPA Midstream Association ("GPA Midstream") is a non-profit trade organization established in 1921 that represents approximately 50 corporate members who directly employ over 57,000 people. GPA Midstream members gather, process, transport, treat, store and market hydrocarbons including natural gas, natural gas liquids, crude oil and refined products. In 2024, GPA Midstream members operated more than 500,000 miles of pipelines, gathered nearly 91 billion cubic feet per day of natural gas, and operated more than 340 natural gas processing facilities. The hydrocarbons that GPA Midstream members supply to market include the fuel needed to power the furnaces and commercial hot water heaters impacted by the three Department of Energy ("DOE") final rules that Petitioners seek review of in the pending Petition for Writ of Certiorari.[2]

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1. Under this Court's Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amici or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, GPA Midstream confirms that counsel of record for all parties received timely notice of the intent to file this brief.

2. In the pending Petition for Writ of Certiorari, Petitioners seek review of the following DOE final rules: (1) *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule*, 86 Fed. Reg. 73,947 (Dec. 29, 2021) (codified at 10 C.F.R. 430–31) ("December 2021 Interpretive Rule"); (2) *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment*, 88 Fed. Reg. 69,686 (Oct. 6, 2023) (codified at 10 C.F.R. 431) ("Commercial Water

GPA Midstream's members are the midstream operators whose facilities and operations provide the critical link between oil and gas producers and consumers for heating, electricity production, transportation, steelmaking, fertilizer production, plastics, high-tech devices, cosmetics, pharmaceuticals, and much more. Enabled by the boom in US-based gas production in recent years, GPA Midstream members are able to supply this fuel at low cost creating a bright spot for American consumers in an otherwise inflationary environment for goods, services, and other utilities, such as electricity.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari challenges DOE rulemakings that would eliminate noncondensing natural gas furnaces and water heaters from the consumer market and push consumers to purchase electric appliances amid rising electricity costs. The demand for electricity in the United States has increased recently due industrial and transportation electrification and electric space heating as well as the rapid construction and operation of data centers to support the needs of artificial intelligence, cloud computing and cryptocurrency. Predictably, this increase in demand has come with a corresponding increase in electricity costs for consumers which disproportionately burdens low-income individuals and households. Forcing natural gas consumers onto the electric grid for their necessary heating needs under the circumstances is

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Heater Rule"); and (3) *Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, 88 Fed. Reg. 87,502 (Dec. 18, 2023) (codified at 10 C.F.R. 430) ("Consumer Furnace Rule") (collectively, the "Challenged Rulemakings").

inconsistent with the Energy Policy and Conservation Act ("EPCA") which requires that any changes to efficiency standards be economically justified. However, DOE failed to meet its burden to demonstrate the Challenged Rulemakings are economically justified because (1) the economic methodology applied by DOE was fundamentally flawed in its assumptions and framework; and (2) even utilizing DOE's flawed economic modeling reflects minimal savings to consumers. The Petitioner's Petition for Writ of Certiorari should be granted.

ARGUMENT

I. The Challenged Rulemakings Will Increase Fuel Costs for Consumers, Particularly Affecting Those Most Sensitive to Price Pressures

It is undisputed that the Challenged Rulemakings adopt standards for furnaces and water heaters that only condensing versions of such appliances (*i.e.*, those using horizontal venting and a powered heat exchanger to remove exhaust gas)[3] can meet. *See* App. 44a. The practical consequence of the adoption of the Challenged Rulemakings is to largely eliminate noncondensing natural gas furnaces and noncondensing natural gas commercial water heaters (*i.e.*, those removing exhaust gas via an unpowered heat exchanger like a vertical chimney)[4] from the consumer market. *Id.* ("[n]o one doubts that the challenged regulations make non-condensing appliances unavailable") (J. Rao, dissenting). This is because millions of American homes, buildings and commercial properties

3. *See* 88 Fed. Reg. 87,502, 87,563 n.111.

4. *See id.*

are not physically capable of accommodating condensing furnaces and water heaters without significant and costly structural renovations. *Id.*, App. 47a, App. 50a; *see also* 88 Fed. Reg. 87,502, 87,564 (DOE estimates that 39% of condensing appliance installations in residential homes "could be labeled as 'difficult'" with such installations costing three and a half times more than the installation of non-condensing units). In some cases, it will be either physically impossible (because their homes/buildings cannot structurally accommodate horizontal venting) or cost prohibitive for consumers to conduct the required renovation to accommodate the different condensing venting and condensate removal equipment, effectively forcing consumers to switch to electric furnaces or water heaters at a time when the cost of electricity is rising for consumers. Indeed, DOE has admitted that "fuel switching occurs frequently and most certainly in the context of new energy conservation standards." *Id.*, 87,590; *see also* Spire Inc., Comment on Proposed Consumer Furnace Rule 3–6, EERE-2011-BT-STD-0011 (Oct. 6, 2022), https://bit.ly/4tXHsmm (noting that the then-proposed Rule would result in fuel switching). Furthermore, DOE's own economic analysis of the Challenged Rulemakings assumes 9% of consumers would switch to electric appliances under the new standards set forth in the Challenged Rulemakings. Declarations Addendum to Petitioners' Joint Opening Brief, Decl. of Richard Meyer ¶ 9, *Am. Gas Ass'n. v. DOE*, No. 22-1030 (D.C. Cir. Oct. 30, 2024), ECF No. 2082719.

The demand for electricity in the United States has rapidly increased in recent years and this trend is expected to continue into the future. Data from the U.S. Energy Information Administration ("EIA") indicates

that electricity consumption is growing at an average rate of 1.7% per year from 2020 through the end of 2026.[5] Notably, 2024 saw a record 3% increase in demand, with consumption reaching approximately 4,097 billion kilowatt-hours ("kWh").[6] Current forecasts predict continued growth with consumption expected to reach 4,268 billion kWh in 2026 and 4,372 billion kWh in 2027.[7] Energy from all sources is required to meet the increase in electricity demand, and GPA Midstream members provide the natural gas that serves a significant and vital portion of the power generation mix.

The increase in demand for electricity is driven by a variety of factors including the rapid construction and operation of data centers to support the needs of artificial intelligence, cloud computing and cryptocurrency, which consumed an estimated 4.4% of U.S. electricity in 2023, a figure that is projected to continue to rise.[8] Industrial

5. *After More Than a Decade of Little Change, U.S. Electricity Consumption is Rising Again*, U.S. Energy Info. Admin (May 13, 2025), https://bit.ly/3ZBTrYI.

6. *Id.*

7. U.S. Energy Info. Admin, *Short-Term Energy Outlook* Table 7a (Feb. 2026), https://bit.ly/40eiwJm (hereinafter "February 2026 EIA Short-Term Energy Outlook").

8. Arman Shehabi et al., *2024 United States Data Center Energy Usage Report* 4–5, Lawrence Berkeley Nat'l Lab'y (2024), https://bit.ly/4rTRkM8 (forecasting this energy use will represent 6.7% to 12.0% of total U.S. electricity consumption for 2028); N. Am. Electricity Reliability Corp., *2025 Long-Term Reliability Assessment* 27 (Jan. 2026), https://bit.ly/4rhmOvt ("NERC 2025 Long-Term Reliability Assessment") (indicating new data centers account for a majority of the projected increase in North American electricity demand over the next 10 years).

growth and electrification, transportation electrification and electric space heating also are contributing to this increase in demand for electricity.[9] While the demand and cost of electricity continue to increase, legacy electric generating units are being retired without replacement at the pace necessary to meet increasing demand.[10] Furthermore, while there are new electric generation projects planned for the future, grid constraints, permitting delays and supply chain limitations mean that adding generation to the electric grid often takes considerable time.[11]

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9. *See* U.S. Energy Info. Admin, *Annual Energy Outlook 2023* 5, 15 (Mar. 16, 2023), https://bit.ly/46Ac3fy ("Annual Energy Outlook 2023") (recognizing increased industrial electrification, electric heating and cooling, and electric vehicle adoption as sources of increased demand for electricity); *Electricity Use is Becoming More Common for Residential Heating*, U.S. Energy Info. Admin (Oct. 10, 2025), https://bit.ly/4axS4zl (recognizing that the percentage of U.S. households who used electricity as their main heating fuel is increasing, rising from 35% in 2010 to 42% in 2024).

10. *See* NERC 2025 Long-Term Reliability Assessment at 23, https://bit.ly/4rhmOvt (reporting over 105 GW in confirmed or announced-potential fossil and nuclear retirements over the next 10 years); U.S. Dep't. of Energy, *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid* at 1 (July 2025), https://bit.ly/3Zxbtvj (noting capacity is not being replaced on a one-to-one basis and projecting increased risk of outages in 2030 by a factor of 34, even assuming no retirements).

11. *See* NERC 2025 Long-Term Reliability Assessment 38, https://bit.ly/4rhmOvt (noting that, of nearly 900 projects that were under construction or in planning for the next ten years, at least 390 have been delayed from their originally expected in-service dates); U.S. Dep't. of Energy, *National Transmission Needs Study* 48 (Oct. 2023), https://bit.ly/4rPZLHZ (noting the typical duration from

Unsurprisingly, this increase in demand has come with a corresponding increase in electricity costs for consumers.[12] Residential electricity prices have increased around 5–7% year-over-year in many periods outpacing inflation with average household electric bills rising 6–13% in 2025.[13] In early 2026 the national average residential rate reached around 18 cents per kWh up approximately 37% from 2020.[14] By contrast, inflation adjusted natural gas and propane prices have remained remarkably consistent, even declining on occasion.[15] Indeed, DOE has recognized that natural gas is the most affordable energy source for households, with electricity costs being 3.5 times higher than those of natural gas. *See* Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy, 89 Fed. Reg. 83,672 (Oct. 17, 2024), 83,673. According to

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an interconnection request to commercial operation was 5 years in 2022, compared with 3 years in 2015 and less than 2 years in 2008).

12. *See U.S. Electricity Prices Continue Steady Increase*, U.S. Energy Info. Admin (May 14, 2025), https://bit.ly/4qx7WYL (noting retail electricity prices have increased faster than the rate of inflation since 2022); February 2026 EIA Short-Term Energy Outlook, Table 2, https://bit.ly/40eiwJm (projecting average residential electricity prices will increase from 17.29 cents per kWh in 2025 to 18.44 cents per kWh in 2027).

13. *See U.S. Electricity Prices Continue Steady Increase*, U.S. Energy Info. Admin (May 14, 2025), https://bit.ly/4qx7WYL.

14. *See Short-Term Energy Outlook Data Browser*, *Table 7c. U.S. Regional Electricity Prices to Ultimate Customers*, U.S. Energy Info. Admin (Feb. 2026), https://bit.ly/4tGnNqY.

15. *See Spot Henry Hub Natural Gas Prices Hit a Historic Low in 2024*, U.S. Energy Info. Admin (Jan. 8, 2025), https://bit.ly/3OFFMxo.

DOE's 2024 Representative Average Unit Costs of Five Residential Energy Sources, natural gas costs $13.38 per one million British thermal units ("MMBtu"), while electricity costs $47.36 per MMBtu. *Id.*

As electricity prices rise, the number of American consumers struggling to pay their electric bills is also increasing. In 2020, 27% of all U.S. households reported difficulty paying energy bills or reported that they had kept their home at an unsafe temperature because of energy cost concerns.[16] Household utility debt has grown from $17.5 billion at the end of 2023 to $23 billion by mid-2025, *i.e.,* a 31% increase.[17] Reports indicate that around 21.5 million households are behind on their utility bills.[18]

Predictably, lower income individuals and households face disproportionate burdens. For example, the lowest income families spent around 8% of their household income in 2023 on electric expenditures versus around 2% for the average consumer.[19] Worse, households identifying as energy insecure were billed $0.20 more per square foot for energy usage across all energy sources in 2020 than the national average, and $0.26 more than non-energy insecure

16. *See In 2020, 27% of U.S. Households Had Difficulty Meeting Their Energy Needs*, U.S. Energy Info. Admin (Apr. 11, 2022), https://bit.ly/4rPmsMu.

17. Nat'l Energy Assistance Dirs. Ass'n, *The Cost of Power: How Soaring Electric Rates are Deepening Poverty in America* 7 (Aug. 2025), https://bit.ly/4kEMLTp.

18. *Id.*

19. *Id.* at 14.

households.[20] These customers currently struggling to pay their electric bills are likely to be the same customers who will not be able to afford to renovate their homes to accommodate condensing appliances when their gas fired appliances need to be replaced. *See* Atmos Energy Corp., Comment on Proposed Consumer Furnace Rule 2–4, EERE-2014-BT-STD-0031 (Oct. 6, 2022), https://bit.ly/4qHkxc4 (highlighting the "significant adverse impacts" the then-proposed rule would have "on low-income households"). In other words, the practical effect of the Challenged Rulemaking is to saddle consumers already under significant financial stress with larger and long-term increases in utility costs.

II. The Economic Harm to Consumers from Increased Fuel Costs was not Adequately or Meaningfully Considered by DOE in Adopting the Challenged Rulemakings

Shifting natural gas consumers onto the electric grid for their necessary heating needs, at a time when the electric grid is growing more constrained and expensive is unwise and inconsistent with the EPCA which requires the economic impact on consumers to be considered in any DOE rulemaking. *See* 42 U.S.C. §§ 6295(o)(2)(A), 6295(o)(2)(B)(i), 6313(a)(6)(A)(ii)(II), 6313(a)(6)(B)(ii)(I).

The EPCA governs DOE's efficiency standards for appliances, and it requires that any changes to efficiency standards be "economically justified." *See* 42 U.S.C.

20. *U.S. Energy Insecure Households were Billed more for Energy Than Other Households*, U.S. Energy Info. Admin. (May 30, 2023), https://bit.ly/3OerXpI.

§§ 6295(o)(2)(A) (relating to standards for consumer products and residential appliances), 6313(a)(6)(A)(ii)(II) (relating to standards for commercial and industrial equipment). A standard is economically justified only if "the benefits of the standard exceed the burden of the proposed standard." 42 U.S.C. § 6313(a)(6)(B)(ii), 6295(o)(2)(B)(i).[21] The first two factors DOE is required to consider in determining whether there is economic justification for an amended standard include (1) the impact on consumers and (2) the savings in operating costs through the average life of the product compared to any increase in price, initial charges, or maintenance expenses. 42 U.S.C. § 6313(a)(6)(B)(ii)(I)–(II); 6295(o)(2)(B)(i)(I)–(II). The inclusion of consumer impact and operating cost savings to consumers as mandatory consideration factors in DOE energy efficiency determinations operates to protect consumers from overly burdensome efficiency standards that do not result in sufficient benefit to justify the increased cost and burden to consumers. *See* 42 U.S.C. § 6295(o)(2)(B)(i) (an energy efficiency standard is economically justified only where its "benefits . . . ***exceed*** its burdens") (emphasis added); 42 U.S.C. § 6313(a)(6)(B)(ii) (same); *see also Nat. Res. Def. Council, Inc. v. Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985) ("[A] finding that a proposed standard results in significant conservation . . . simply triggers a much more thorough review in which the amount of energy a standard would save is assessed in light of any other benefits and countervailing burdens of the standard"). To determine whether there is economic justification under

21. DOE bears the burden of proving that the Consumer Furnace Rule is economically justified with "substantial evidence." 42 U.S.C. § 6306(b)(2). DOE must show that Commercial Water Heater rule is economically justified with "clear and convincing evidence." 42 U.S.C. § 6313(a)(6)(A)(ii)(II).

EPCA for a new standard, DOE is required to compare the upfront costs and energy savings over the predicted life of the appliance under the new standards as opposed to without the new standards (a life-cycle cost analysis or "LCC"). 42 U.S.C. §§ 6295(o)(2)(B)(ii), 6313(a)(6)(B)(ii); *see also Am. Pub. Gas Ass'n v. DOE*, 22 F.4th 1018, 1022 (D.C. Cir. 2022).

The economic methodology applied by DOE in support of the Challenged Rulemakings and adopted by the United States Court of Appeals for the District of Columbia Circuit was fundamentally flawed in its assumptions and framework. Predictably, this methodology led to incorrect conclusions regarding the cost to customers of the Challenged Rulemakings. By failing to meaningfully analyze the effects of the Challenged Rulemakings on increased electricity costs to American consumers, DOE failed to meet its burden to demonstrate they are economically justified.

The economic analysis performed by DOE in support of the Challenged Rulemakings was flawed in numerous ways that inflated the alleged savings to consumers. For example, as briefed extensively before the United States Court of Appeals for the District of Columbia Circuit, the base case furnace assignment algorithm used by DOE to estimate the fuel efficiency of a furnace that a consumer would choose without the Consumer Furnace Rule relied on random assignment. This approach irrationally assumes that consumers have no preference for less expensive appliances (or for avoiding investments that impose large costs). Utilizing a random assignment methodology "misallocates a random fraction of consumers that use economic criteria for their decisions and results in higher

LCC savings compared to rational economic decision making." American Public Gas Association, Comment on Proposed Consumer Furnace Rule, Attachment 2, *Technical Analysis of DOE Supplemental Notice of Proposed Rulemaking on Residential Furnace Minimum Efficiencies* 23, EERE-2014-BT-STD-0031 (Jan. 4, 2017), https://bit.ly/4avVhiN.

DOE compounded this error by attributing significant cost savings to the Consumer Furnace Rule on the assumption that the Challenged Rulemakings would make gas-fired appliances so expensive or impracticable to install that consumers would rationally switch to electric appliances ("Fuel-Switching"). Indeed, over half of DOE's modeled savings for the Consumer Furnace Rule came from DOE's certainty of consumer Fuel-Switching (rather than on savings from efficiency improvements to gas appliances). [22] This analysis—which assumes that a rational consumer will choose to switch from a natural gas to an electric furnace when doing so is economically justified—is entirely inconsistent with the base case furnace random assignment algorithm—which assumes that consumers are wholly indifferent to cost.

By improperly relying on random assignment in the base case furnace assignment algorithm, the model utilized by DOE underestimates the number of consumers who would choose to purchase a more efficient furnace in the absence of the Consumer Furnace Rule, thereby

22. This is yet another example of DOE's flawed economic methodology applied to the Challenged Rulemakings as ECPA does not allow DOE to use Fuel-Switching to justify an efficiency standard. 42 U.S.C. §6295(q)(1) (DOE should subdivide covered products if they consume a different kind of energy).

overstating the regulation's cost-saving effect. DOE does not acknowledge this inconsistency or explain why it chose not to model how many consumers would be expected to fuel switch in the absence of the Consumer Furnace Rule.[23]

However, even assuming DOE's economic modeling was accurate and meaningful—which it was not—the purported inflated savings to consumers it reflects are minimal and do not reflect economic justification for the Challenged Rulemakings. DOE estimates that the Consumer Furnace Rule will save the average consumer only $16 a year and the mobile home consumer $29 a year. 88 Fed. Reg. 87,502, 87,503–04. For the Commercial Water Heater Rule, DOE estimates savings of $62 for instantaneous water heaters and hot water supply boilers, $37 a year for commercial storage water heaters, and $5 a year for instantaneous tankless water heaters. 88 Fed. Reg. 69,686, 69,688. Because it would take years for consumers to recoup the costs to purchase new appliances, these meager savings cannot support a finding that the

23. It is a basic procedural requirement of administrative rulemaking than an agency must "give adequate reasons for its decisions." *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). The Administrative Procedure Act ("APA") directs that agency actions be set aside if they are arbitrary, capricious, or in excess of statutory authority. *See* 5 U.S.C. § 706(2)(A). In practice, this standard requires the agency to make reasonable assumptions about consumer behavior and accurate fuel price projections in life-cycle cost calculations. The agency's reasoning in support of its action "cannot be internally inconsistent." *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1024 (D.C. Cir. 2018); *Engine Mfrs. Ass'n v. EPA*, 20 F.3d 1177, 1182 (D.C. Cir. 1994) (concluding that "unexplained inconsistency" in final rule was "not reasonable").

Challenged Rulemakings are economically justified. The EPCA creates a "rebuttable presumption" that a new standard is cost-justified if the consumer will breakeven within the first three years of installation. *See* 42 U.S.C. § 6295(o)(2)(B)(iii). Yet, as to the Consumer Furnace Rule, DOE calculated the average lifecycle cost savings of non-weatherized gas furnaces would be $350 over 21.5 years and that it would take consumers 7.6 years to break even. 88 Fed. Reg. 87,502, 87,503. Likewise, for the Commercial Water Heater Rule, DOE estimates an average lifecycle cost savings between $120 and $1,570 over 25 years and estimates that it would take consumers between 5.8 and 9.4 years to break even. 88 Fed. Reg. 69,686, 69,688. The meager economic benefits identified in DOE's flawed analysis do not support a finding that the Challenged Rulemakings are economically justified.[24]

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24. Furthermore, the energy pricing used by DOE in its economic analysis, is now outdated. *See Annual Energy Outlook 2023* at 1. https://bit.ly/46Ac3fy. As with any forward-looking model, the EIA's *Annual Energy Outlook* relies on various input assumptions, including assumptions regarding the applicable legal and regulatory landscape. *Id.* at 1. Due to this uncertainty, the EIA's administrator has emphasized that the AEO aims to identify "ranges and trends, not predictions and point estimates." *Id.* Because these projections are based on current laws and regulations, they become outdated when policy goals shift. *See id.*

Indeed, when the 2025 *Annual Energy Outlook* was published DOE issued a statement noting that many of the model's underlying policy assumptions had already been reversed by the Trump Administration, indicating that its projections were outdated at the time of release. *See DOE Statement on EIA Annual Energy Outlook*, Dep't of Energy (Apr. 15, 2025), https://bit.ly/4tAxAyN.

Moreover, the *Annual Energy Outlook* consistently overestimates future natural gas costs. During the Consumer Furnace Rule notice and comment period, the AGA submitted

DOE utilized a flawed economic methodology in its analysis of the economic justification for the Challenged Rulemakings and the alleged savings to consumers even under this flawed methodology are inadequate to constitute economic justification. If DOE's reliance on random assignment of existing furnaces is reversed in its modeling, the Consumer Furnace Rule will cost owners of existing buildings within the model $2,538,205. Declarations Addendum to Petitioners' Joint Opening Brief, Decl. of Richard Meyer ¶ 8, *Am. Gas Ass'n. v. DOE*, No. 22-1030 (D.C. Cir. Oct. 30, 2024), ECF No. 2082719. Additionally, if the alleged savings from Fuel-Switching is removed from DOE's modeling, the LCC for the Consumer Furnace Rule would drop from $1,922,352 to $899,306. *Id.*, ¶ 9.

Since the majority of the cost savings identified in DOE's flawed economic modeling was driven by assumed Fuel-Switching by customers from gas to electric appliances, it appears that the Challenged Rulemakings are really about forcing customers to abandon gas

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a review comparing forecasted prices with actual prices using historical AEOs from 2010 to 2021. *See* American Gas Association, Comment on Proposed Consumer Furnace Rule 90, EERE-2014-BT-STD-0031 (Oct. 6, 2022), https://bit.ly/4alycR7. The AGA's analysis shows that AEO projected higher-than-actual residential natural gas prices 70% of the time during the analyzed period, and higher-than-actual commercial natural gas prices 86% of the time nationally. *Id.* The only year where actual prices exceeded forecasts was 2021, primarily due to the temporary impacts of the COVID-19 pandemic and widespread supply chain disruptions. *Id.* Due to this volatility and inaccuracy, the AGA recommended that DOE use a distribution of prices in its model simulations, rather than relying on a forecasted mean. *See id.*

appliances in favor of electric appliances rather than making classes of existing products more efficient as intended by the EPCA. Even though the text of EPCA itself does not explicitly include a fuel neutrality clause, the legislative history of the EPCA indicates that it is meant to be fuel neutral. *See* 88 Fed. Reg. 87,502, 87,591 (noting Congress designed EPCA to "encourage conservation without unduly altering the economics of fuel choices.") (quoting remarks of Senator Bennett Johnston, 132 Cong. Rec. 31328 (Oct. 15, 1986)).

CONCLUSION

Through the Challenged Rulemakings DOE is placing a thumb on the scale of consumer preferences for energy consumption in a way not intended by Congress and to the detriment of Americans' preferences and wallets, specifically harming lower income individuals and households. Furthermore, the Challenged Rulemakings harm consumers by subjecting them to higher utility costs based on a flawed DOE economic analysis. For those reasons, the Petitioner's Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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