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Response of GE Consumer & Industrial
To the California Energy Commission's
Petition for Exemption from Federal Preemption of
California's Water and Energy Conservation Standards
for Residential Clothes Washers

Docket EE-RM-PET-100
April 7, 2006

GE, a leading full-line manufacturer of major household appliances, including, as specifically relevant to this proceeding, clothes washers, submits this response to the petition filed by the California Energy Commission ("CEC") seeking exemption from federal pre-emption so that it may adopt a water-efficiency standard for residential washing machines. GE opposes the CEC's request for the reasons set forth below and urges the Department of Energy (the "Department") to deny the petition so that the national market for washers can be maintained and California consumers can have the variety of these products, including the full range of prices and features they have enjoyed and to which they are entitled as American consumers.

I. Introduction and Summary

The central issue in this rulemaking proceeding is whether California has made a compelling case to justify its plan to override the national standard for washers and impose on Californians and appliance manufacturers a California-specific water-efficiency standard. Since California's standard would impact the energy use of washers sold in that state it can go into effect only if the Department grants the petition for waiver of pre-emption.[1]

The DOE standard California seeks to bypass was issued under the National Appliance Energy Conservation Act ("NAECA") and pursuant to a DOE rulemaking. Many stakeholders participated in that rulemaking proceeding, including representatives of the CEC. The record of the proceeding is voluminous. It contains extensive analyses of the potential energy to be saved, the inventions required to achieve the targeted savings, the wishes and needs of consumers who would use the product and the likely cost to make the significant energy-saving changes that would be required to comply with the new standards.

The final rule that the Department issued was unique in several respects. First, the it was based on a joint recommendation of all the principal stakeholders, who had resolved among themselves several of the most contentious issues, including effective dates, stringency levels and, most critical

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[1] 42 USC § 6295, et seq.

to this proceeding, agreement that vertical-axis washers met certain important consumer utility requirements and should be preserved.

Second, it was the first time that a rulemaking had resulted in two standard levels to be implemented on different effective dates. The initial standard would become effective in 2004 and the second – and higher – standard would become effective in 2007. This was done in recognition of the fact that significant engineering would be required to develop high-efficiency top-load washers with the utilities that consumers had told the Department they wanted preserved.[2]

Third, although focused on energy, the Department evaluated the impact that the new standards would have on water consumption throughout the United States, including California. The record is clean that the more stringent, energy standard would result in water conservation as more horizontal-axis washers were sold and high-efficiency top-load models were introduced.

As pointed out in the comments filed by the Association of Home Appliance Manufacturers ("AHAM"), which GE, a member, fully supports and adopts, granting California's waiver request would eviscerate NAECA and make meaningless the washer energy standard issued there under. Its claim of special circumstances has not been sustained in that its water needs are no more acute than those of its near neighbors. Indeed, the only thing remarkable about California's water problem is its profligacy despite the claimed great need. If California has met the threshold for exemption based water conservation needs then federal pre-emption of energy standards for water-using products is gossamer-thin, not the substantial cover that Congress designed as part of NAECA.

But even if California could establish the need for this extraordinary conservation measure, NAECA prohibits the Secretary from granting a waiver if the Department finds that the regulation would (a) "significantly burden manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis", or (b) "result in the unavailability in the state of any covered products performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available in the state at the time of the Secretary's finding … .[3]"

For all the reasons articulated in AHAM's comments and the additional reasons set forth below, the Secretary has no choice but to find that California has failed to meet its burden and thus deny California's waiver petition.

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[2] See consumer research conducted for DOE by Quadrant Consultants, Inc., and made a part of the rulemaking record in Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products; Final Rule 10 CFR Part 430, Appendix A to Subpart C.

[3] 42 U.S.C. 6297(d)

II. The Proposed California Standard for Washers Would Significantly Burden the Manufacture, Marketing, Distribution and Sale of Washing Machines

Congress recognized that significant energy savings could be attained "without sacrificing the utility or convenience of appliances to consumers."[4] It therefore enacted the prohibition in Section 6295(o)(4) to ensure that manufacturers would not have to eliminate, and thus deprive consumers of, product choices, characteristics, features, sizes, etc., to meet energy standards.[5]

A parallel mandate is found in the provision governing pre-emption waivers.

If approved, in 2007, California's water-efficiency standard would eliminate all conventional top-load agitator models, including current ENERGY STAR©-qualified models. Only 4 basic models of GE clothes washers--the high-efficiency top-load Harmony© washer, a lesser-featured and soon-to-be introduced top-loader and two front-load platforms--could be sold in California: Depending on the success of the new top-load model and the just-launched front-load model, ***between 60% and 80% of GE's California washer sales could be banned.***

In 2010, when the 6WF standard would become effective, GE's market offerings would become even fewer: all top-loads, including the technologically most efficient top-load models would be banned. Absent a radical and unrealistic market transformation, California would then have effectively closed the door to GE's laundry products. Faith in miracles certainly has its place. But not in regulatory proceedings and not when one is gambling with other people's money.

No doubt California expects that GE and other manufacturers would rush to design new products for its market. For the niche players—mostly smaller companies--with existing front-load manufacturing capacity developed in markets where front-load washers are the norm, e.g., European manufacturers, and recent entrants with new factories, e.g., Asian competitors, such investments might be justified. Of course, the industry giant—the new Whirlpool-Maytag

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4 H.R. Rep. No. 850, 99th Cong., 2d Sess. 22 (1986)

5 H.R. Rep. No. 850, 99th Cong., 2d Sess. 22, 35 (1986). "Examples of performance characteristics . . . are: . . . ability to clean or dry without adverse effects; serviceability; and incidence and cost of repair." Id. at 22. According to DOE, Performance . . . is the objective measure of how well [a] product does its intended job. Measures of performance include capacity and quality. Quality is a measure of the consistency, uniformity or thoroughness with which [a] product does its job. Utility . . . is a subjective measure, based on the consumer's perception of the capability of the product to satisfy user needs. "45 Fed. Reg. 43976, 43983 (1980).

merged company with more than 70% of manufactured share—should be able to weather this shock.

But GE, which does not have a large enough market share over which to spread the huge costs of investing to develop a more complete line of laundry product offerings, would be forced to reduce its presence even further.

And, since washers and dryers are often sold in pairs—up to 40% of GE's value- and mid-priced and up to 90% of high-end washers are sold with dryers—the loss of washer sales will reverberate through the entire laundry business.[6] The resulting manufacturing efficiencies would affect GE's total appliances business.

Other aspects of GE's operations would be negatively impacted.

Sales would fall. With four basic models for sale it would be impossible to meet the competitive challenge posed by larger and specialty marketers.

Distribution costs would increase. Optimizing truck and container loading is a very important cost-management tool. Washer sales comprise more than 40% of all appliance sales. By eliminating up to 80% of GE washer sales, California would not only force reconfiguration of GE's distribution system, thereby also impacting product availability in nearby states[7] but also increasing shipping costs to all Western states. GE has calculated that the projected decrease in sales—the necessary result of such a large product ban—would add several hundred thousands of dollars to California distribution costs. It is worth pointing out that California did not consider this impact during its evaluation of the proposed rule.

Marketing costs will necessarily increase. Unique point-of-purchase materials will have to be prepared. Merchandising materials, which must be periodically updated, will need to be created. Catalogs at California retailers, design centers and builder showrooms will have to purged of offending models and recreated as California-only materials. Ads run by national and cross-border regional chains, many of which are subsidized by manufacturers like GE, will have to exclude California and separate California-only ads developed. Conservatively, compliance costs would approach $1 million annually. Again, none of these costs were considered by the CEC during its rulemaking.

These added costs are precisely what Congress intended to prohibit.

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[6] Conservatively, GE estimates that 40-50% of its California dryer sales would be lost.

[7] GE's Western distribution facilities are located in Los Angeles, Denver and Seattle. These facilities ship products to all the Pacific, Southwest and Mountain states.

III. The Proposed California Standard for Washers Would Deprive Consumers of Important Product Utilities and Force Them to Purchase More Expensive Products

The recent success by manufacturers in marketing horizontal-axis washers may have led CEC to conclude that utility distinctions have disappeared and that consumers see all washers as fungible.

We have not seen California's market and consumer preference studies that support this conclusion. But GE's studies, which are conducted to make fundamental decisions about what products to manufacture and how to market them, tell us that consumers, including California consumers, are far from neutral on the subject of washers. This is not surprising given the fact that laundry is generally regarded as the most unpleasant appliance-aided household chore.

Consumers remain convinced that vertical-axis, top-loading washers offer important performance-related features that are not available in horizontal-axis machines.[8]

Vertical-axis washers offer significantly shorter cycle times (on average 42% less in the longest cycle) than horizontal-axis machines.[9] Vertical-axis washers offer consumers a deep pre-soak that allows soils to be removed and brought into suspension; horizontal-axis washers do not.[10] The inherent design of top-load machines makes them much less susceptible to out-of-balance vibration problems. Horizontal-axis and other low-water use technologies can also result in degraded consumer utility because of the increased thermal inertia, which results in potential reduced rinse performance.

The above facts do not mean that horizontal-axis products are poor performing or unsuitable. But they do mean that consumers know their needs better than regulators and should be free, as Congress intended, to purchase appliances that meet their needs and their life situations. Thus, an affluent consumer who does not do heavy or manual labor would be able to set a horizontal-axis washer on the light soil settings and experience similar wash-cycle times to conventional vertical-axis machines. But a production engineer on an assembly worker would likely be put off by the longer cycle times. And all price-sensitive consumers and single-person households, who could never

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[8] This continues to be true of most production models and is true even of the Maytag Neptune that is slightly tilted (by 15º).

[9] Based on GE tests of 3 conventional top-load washers set on the heavy-soil cycle (a GE electromechanical unit, the Maytag Atlantis and the Whirlpool Ultima Care II), which averaged 48 minutes and 3 horizontal-axis units (GE's new front-load, LG's Tromm and Whirlpool's Duet), which averaged 68 minutes.

[10] Horizontal-axis washers cannot pre-soak because it is not possible to fully submerge the wash load in the water and detergent solution. Adapting horizontal-axis washers to fill the tub to pre-soak clothes would eliminate the energy efficiency advantage of such machines.

recover the higher price, would rebel against the high price that comes with the products that California's proposed rule would allow.

In October 2004, GE asked The Stevenson Company, a marketing research firm whose principals have been doing appliance consumer research for the past 25 years, to help research consumer preferences to help in the design and marketing of its new front-load washer. That research confirmed that a significant majority of consumers continue to prefer vertical-axis washers. This, no doubt explains why 75% of all washers sold in the United States are top-load vertical-access machines. It also showed that a significant number of consumers would not accept horizontal-axis washers. The Stevenson Company obtained information from 874 consumers around the U.S.

Of consumers who purchased a top-load washer and did *not* consider purchasing a front-load machine, approximately 55% responded that they preferred a top-load washer and/or did not like the features of a horizontal-axis machine. An additional 18% rejected front-loads because of the higher price. The horizontal-axis rejection rate increased to 21% among purchasers who are used to paying $350-550 for a washer. (See Exhibit A, attached.)

High-efficiency, non-agitator washers can solve many of the concerns expressed by consumers who reject horizontal–axis machines. But not an important one: price. These are niche-market products and technology, components and investment required to develop and market these new products spread over relatively low production numbers, mean that it will take some time for manufacturers to recover those costs, which will likely translate to high prices at retail beyond the effective dates of California's proposed standard.

The higher prices that will come from implementation of California's proposal would have an especially severe impact on low-income consumers. These consumers are especially sensitive to price, because of their inability to make high, up-front payments or to obtain consumer credit. They would also fall disproportionately higher on single-person households and other low-use consumers, many of whom are elderly. The CEC ignored these differences. It assumed that the energy and water savings that would result from higher efficiencies would outweigh any acquisition cost increase.

As AHAM points out in its response, the facts show otherwise. (See AHAM response, Section V (E).) Low-income and low-use consumers would incur higher energy and operating costs in the long term or be forced to use more expensive and less convenient commercial laundries. In either instance, the benefits of any energy savings resulting from the use of horizontal-axis or other high-efficiency technologies would accrue to higher-income households at the expense of lower-income ones.

The relative success of efforts to market horizontal-axis machines should not lull the CEC or the Secretary into believing that such machines can become mass-market products. Their material content makes them inherently more costly to produce. The percentage of consumers willing to pay $700 to $1100 for horizontal-axis or top-load non-agitator washers is limited.

Higher prices would lead to a marked decline in demand for washing machines, particularly in low-income and moderate-income households, as consumers cease buying washing machines or defer the purchase of replacements for older models. This reduction in demand in California would impact the industry nationally.

In summary, allowing California to ban conventional top-load washers and force consumers to transition to horizontal-axis or other low-water technologies would require GE and other manufacturers to eliminate many utility-enhancing, performance-related features and characteristics that are highly valued by consumers. This would be contrary to Congress's mandate in NAECA.

III. Conclusion

Because California has failed to meet the burden that Congress required for exemption from the national market for washing machine products, the Secretary must reject California's petition. California has failed to demonstrate need for the extraordinary relief sought. Its water-consumption problems are not unique. It has failed to take other more effective actions in sectors that use much more water than residential clothes washers, which account for a mere 1% of total water consumed. Rather than do the hard work of comprehensively and rationally addressing water use, California is attempting to put that responsibility on one industry.

Manufacturers made plans and developed products based on the rule promulgated in 2001. That rule established the field of play through 2012. GE invested more than $100 million in its Louisville Kentucky plant in reliance on the clear understanding that product could be produced at that plant over the next 10 or so years that would comply with the national standard. That investment has not been recovered. If California's petition is granted, recovery would be further delayed because more than 9% of the market for Louisville-manufactured products would disappear.

For all these reasons and the reasons urged by AHAM and other opponents, the petition should be denied.

Respectfully Submitted

Earl F. Jones, Jr.
Sr. Counsel, Government and Industry Relations
GE Consumer & Industrial
Appliance Park 2-225
Louisville, KY 40225
(502) 452-3164 (V)
(502) 452-0395 (F)
earl.f.jones@ge.com

Exhibit A

Preferences of Top-load Washing Machine Purchasers.

Reasons for Not Considering a Front-Front Washer	**Top-Load Owners Front-Load Not Considered (n=235) %**	**Top-Load >$550 Front-Load Not Considered (n=89) %**	**Top-load $350 - $550 Front-Load Not Considered (n=146) %**
Price/Cost	18.3	13.5	21.2
Familiar with top-load	11.5	9.0	13.0
Have to bend/Hard on back	11.1	12.4	10.3
Didn't want/Don't like	9.8	10.1	9.6
Like top-load better	8.9	12.4	6.8
Afraid of leaks	8.1	4.5	10.3
Wouldn't fit in space/No room	8.1	6.7	8.9
Easier to load/unload	6.0	4.5	6.8
No reason/don't know	6.0	4.5	6.8
Front-load wasn't available	4.3	5.6	3.4
Other	5.1	4.5	5.5