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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD-002]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to LG Electronics From the Department of Energy Residential Clothes Dryer Test Procedures [Case No. CD-002]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CD-002, which grants to LG Electronics Inc. (LG) a waiver from the existing Department of Energy (DOE) residential clothes dryer test procedure for its product line of DLEC733W ventless clothes dryers, because the existing test procedure only applies to clothes dryers that are vented.

DATES: This Decision and Order is effective November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: Michael.Raymond@ee.doe.gov.

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SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. In the Decision and Order, DOE grants to LG a waiver from the existing residential clothes dryer test procedure under 10 CFR part 430, subpart B, Appendix D, for its ventless clothes dryer (model DLEC733W), which does not have an outside exhaust.

Issued in Washington, DC, on October 27, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics Inc. (LG). (Case No. CD-002)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles."¹ (42 U.S.C. 6291-6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Relevant to the current Petition for Waiver, the test procedure for residential clothes dryers is set forth in 10 CFR part 430, subpart B, Appendix D, "Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers."

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered products when the petitioner's basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedure, or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers generally terminate on the effective date of a final rule which prescribes amended test procedures appropriate to the model

series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m).

The waiver process contained in DOE's regulations also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h).

On November 14, 2005, LG filed an Application for Interim Waiver and Petition for Waiver from the test procedures for energy consumption which are applicable to its product line of ventless² clothes dryers, under basic model number DLEC733W. As noted above, the relevant test procedures are contained in 10 CFR part 430, subpart B, Appendix D. LG seeks a waiver from the test procedures for this product line because, LG asserts, the current clothes dryer test procedures only apply to vented clothes dryers and require the use of an exhaust restrictor to simulate the backpressure effects of a vent tube in an installed condition. According to LG, its line of condenser (ventless) clothes dryers does not have exhaust vents and does not vent exhaust air to the outside as do conventional (vented) dryers, and because the test procedures do not provide a definition or mention of a ventless clothes dryer, its products cannot be tested according to 10 CFR part 430, subpart B, Appendix D.

On August 23, 2006, DOE published LG's Petition for Waiver and denied the Application for Interim Waiver. 71 FR 49437. In that notice, DOE proposed and requested comment on an alternate test procedure for testing ventless clothes dryer products, as discussed below. In denying LG's request for an Interim Waiver, DOE questioned whether it

¹ This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Public Law 109-58.

² In LG's Petition for Waiver, the terms "condenser" or "condensing" were used instead of "ventless" to describe this product. No change in meaning is intended by this substitution, which was made to be consistent with other DOE documents.

would ultimately grant a waiver to LG, given the proposed alternate test procedures which may permit testing of ventless dryers and new technologies which could potentially improve the energy efficiency of such products. DOE received comments on the LG Petition from Whirlpool Corporation (Whirlpool), the Association of Home Appliance Manufacturers (AHAM), and Miele, Inc. (Miele).

Assertions and Determinations

LG's Petition for Waiver

On November 14, 2005, LG submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures at 10 CFR part 430, subpart B, Appendix D, which are applicable to residential electric clothes dryers. LG did not include an alternate test procedure with its petition, stating that it knew of no other test procedure to rate its ventless dryer products. Accordingly, as part of the August 23, 2006 **Federal Register** notice, DOE proposed a modified test procedure to accompany the LG Petition for Waiver, which was based on the existing test procedures for clothes dryers under 10 CFR part 430, subpart B, Appendix D, but without a requirement to use an exhaust restrictor. No other changes were made to the test procedure.

After reviewing the public comments received on this matter, DOE notes that Whirlpool agreed with DOE's modified test procedure, but recommended clarifications to DOE's proposed revisions of the definitions pertaining to clothes dryers (*i.e.*, sections 1.14 and 1.15 of the DOE clothes dryer test procedure). The commenting stakeholders (AHAM, Miele, and Whirlpool) all stated that ventless clothes dryers cannot meet the DOE efficiency standard, so accordingly, they recommended a separate product class and efficiency standard for ventless clothes dryers.

In response to the assertions of the industry commenters, DOE has not been able to find data as to whether ventless clothes dryers can or cannot meet the existing DOE clothes dryer energy conservation standard. Nevertheless, DOE acknowledges the commenters' experience in working with this type of product. However, if this type of clothes dryer is indeed unable to meet the standard, DOE cannot, in a waiver, establish a separate product class³ and associated efficiency level. Instead, such actions must be taken in the context of a standards rulemaking. Such a

standards rulemaking was initiated with a Framework Document public meeting held on October 24, 2007. A Final Rule prescribing new efficiency standards for residential clothes dryers is expected in 2011.

It is further noted that on February 17, 1995, DOE published in the **Federal Register** a Decision and Order granting a waiver to Miele for a very similar ventless clothes dryer. 60 FR 9330. Miele's waiver did not require Miele to test its ventless clothes dryers, and in that document, DOE stated that the energy conservation standards for clothes dryers did not apply to Miele's ventless clothes dryers. Despite the passage of time, LG's situation is analogous to that of Miele with regard to ventless clothes dryers. DOE has determined that although it would be feasible to provide LG with an alternate test procedure, as proposed, it is likely, as all the commenters agreed, that the problem is more fundamental than one limited to a needed test procedure change; instead, in spite of technological developments, it is expected that ventless clothes dryers would not meet the DOE energy conservation standard, and that a separate clothes dryer class (with a separate efficiency standard) would have to be established for ventless clothes dryers. Otherwise, a type of product with unique consumer utility could be driven from the market. However, the establishment of product classes cannot be done in a waiver, but only in a standards rulemaking.

Therefore, inasmuch as ventless clothes dryers are likely unable to meet the DOE clothes dryer efficiency standard, and there is a long-standing waiver granted to Miele, DOE has decided to grant a similar waiver to LG from testing of its ventless clothes dryers. Therefore, DOE is not making any modifications to its existing clothes dryer test procedure at this time, and it will not require LG to test its specified ventless clothes dryer models under that procedure.

Consultations With Other Agencies

DOE consulted with Federal Trade Commission (FTC) staff concerning the LG petition. The FTC staff did not have any objections to granting a waiver to LG. DOE also consulted with the National Institute of Standards and Technology (NIST) concerning the LG petition, and NIST likewise did not have any objections to granting a waiver to LG.

Conclusion

After careful consideration of all the material that was submitted by LG, the comments received, the review by NIST,

and consultation with FTC staff, it is ordered that:

(1) The Petition for Waiver submitted by LG Electronics (LG) (Case No. CD-002) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its DLEC733W ventless clothes dryer products on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D. The existing 1994 minimum energy conservation standard for clothes dryers at 10 CFR 430.32(h) is not applicable to this LG ventless clothes dryer.

(3) This waiver shall remain in effect from the date this Decision and Order is issued until the effective date of the final rule(s) in which DOE prescribes test procedures and minimum energy conservation standards appropriate to the above model series manufactured by LG.

(4) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect.

Issued in Washington, DC, on October 27, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12557-001-RI]

SBER Royal Mills, LLC; Notice of Availability of Environmental Assessment

November 3, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for exemption from licensing for the Royal Mills Hydroelectric Project, to be located on the South Branch Pawtuxet River, in the Town of West Warwick, Kent County, Rhode Island, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of the project and conclude that issuing an exemption for the project, with

³Product classes are established to recognize distinct categories of a covered product that may necessitate different efficiency standard levels.