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Ms. Brenda Edwards-Jones
U.S. Department of Energy
Building Technologies Program
Mailstop EE-2J
Room 1J-018
1000 Independence Avenue, SW
Washington, DC 20585-0121

**Subject: California Energy Commission Petition for Exemption from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers
Docket No. EE-RM-PET-100**

Dear Ms. Edwards-Jones:

The Maytag Corporation, now a subsidiary of the Whirlpool Corporation, appreciates the opportunity to comment on the California Energy Commission's (CEC) Petition from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers (Docket No. EE-RM-PET-100). Maytag manufactures and markets a full line of home appliance products, but takes great pride in our distinguished heritage as a laundry manufacturer producing dependable residential clothes washers for almost 100 years. These comments are filed as a supplement to what has been filed by Whirlpool. We strongly oppose the CEC's petition for reasons expressed below and recommend that the Department of Energy (DOE) reject this petition.

To sum up our position in the simplest of terms, we oppose the CEC's petition, because we believe it will harm three key groups:

- 1. Department of Energy** – If this petition is granted, the national market for residential clothes washers will evaporate and other states will pursue similar petitions. In addition, DOE will essentially abdicate its Congressionally-appointed role in setting national energy efficiency standards for residential laundry.
- 2. Manufacturers** – Residential clothes washer producers will have to retool their product lineup, which essentially will wipe out returns for U.S.-based capital investments.
- 3. Customers/Consumers** – California retailers and average consumers will suffer from a lack of choice and increased prices.

The National and California Markets

While there are several compelling reasons to turn down the CEC's petition, the most pressing reason is that to do otherwise would effectively destroy the federal preemption coverage of residential clothes washers that Congress, the DOE and the appliance industry have worked so hard to create and protect since the passage of the National Appliance Energy Conservation Act in 1988. This system, which has led to setting some of the most aggressive energy efficiency standards since NAECA's inception, provides manufacturers with the assurance that their investments in new high efficiency residential clothes washer technologies will find the widest possible market encompassing the entire nation. Due to the capital-intensive nature of the clothes washer business, manufacturers must be able to spread their costs over the largest potential sales volume to justify their investment risk. Whether an independent company or as a subsidiary, the Maytag brands still produce a large majority of their residential clothes washers here in the U.S., which happens to be one of the highest cost areas to manufacture units.

California represents just over 10% of the clothes washer sales volume in the U.S., representing the largest sales territory in the country. In addition, the state has offered a tremendous number of consumer incentives through state, regional and utility-funded means to purchase high efficiency laundry products since the Energy Star Program included clothes washers in 1997. In fact, according to DOE Energy Star data, California lags only the New England region in market share for Energy Star clothes washers. Even though Energy Star criteria have increased twice since the beginning of the decade, California's market share has continued to increase from 11.5% in 2000 to 45.3% in 2005. This compares to the national Energy Star market shares of 9.3% in 2000 and 33.1% in 2005. In terms of units, the state has seen Energy Star clothes washer sales increase from 84,000 in 2000 to over 450,000 in 2005. More Energy Star clothes washers are sold in California than any other state in the U.S.

The CEC's petition argues that "it is unrealistic to expect that continuation of ...rebate and education efforts could achieve a market share of high-water-efficiency [residential clothes washers] substantially higher than the 39 percent level (Q3 2003 data) achieved for energy efficient washers." (CEC Petition; p. 28) Since Energy Star clothes washers have already exceeded that level, as of the end of 2005, and California's Energy Star clothes washer market share has never declined year-over-year, we have full confidence that this trend will continue in a market with a high consumer consciousness for energy and water efficiency performance. Consumers should be allowed to make the choice and have a wide variety of models from which to select. Without rigid standards, California consumers are already exceeding efforts to alleviate the water problem that the CEC argues needs unnecessarily dire remedies.

Manufacturers' Impact

The market leadership that California currently has and will continue to maintain leads manufacturers to make crucial investment decisions that can fundamentally alter and potentially detrimentally impact the company's fortunes, not to mention the fortunes of U.S.-based employees. We recognize that California has little regard for where manufacturers produce clothes washers. As long as the units meet the CEC's excessively oppressive water standards, California regulators don't care that many Midwestern-based employees (in our case, Herrin, Illinois and Newton, Iowa) would likely lose their well-paid jobs. If the DOE grants the CEC's

petition, it will almost certainly lead to other states seeking the same exception relief, which calls into question how unique California's water needs truly are. The piecemeal regulatory burden would be unreasonably high for U.S. manufacturing and would lead to uncertainty and difficulty profitably managing the complex business model. U.S. manufacturers would likely have to replace current high-cost U.S. manufacturing with more competitive manufacturing options that can effectively compete with foreign-made, lower-cost and lower-priced products. This is already happening to a certain extent, but approval of this petition will likely expedite the potential flight of U.S. appliance manufacturing investments.

Most troubling of all is that the proposed California standards would eliminate an entire class of clothes washer models from the marketplace. Traditional top-load clothes washers, which currently comprise approximately 80% of national clothes washer sales and at least 60% of California clothes washer sales, could not meet the proposed 8.5 Water Factor (WF) standard, let alone the proposed 6.0 WF. In addition, California wants to implement the standards beginning in less than a year, obliterating a consumer-preferred product from the retail floors with no reasonable transition period for the manufacturers, retailers or consumers. Given Maytag's preponderance of capital investment tied up in U.S.-based, high-cost, top-load laundry manufacturing, the loss of sales to California consumers would certainly further exacerbate our current financial difficulties. Maytag, even as a subsidiary of Whirlpool, faces intense competitive pressures from domestic and international rivals larger than us by at least a factor of two and increasingly more. They have far more leverage to absorb added costs than we do.

High efficiency top-load clothes washer options are extremely limited. Several manufacturers have attempted to produce low water using top-load models with very limited success. Maytag produced a high efficiency top-load model called the Neptune TL, but ended production at the end of 2005 following very disappointing sales despite excellent performance reviews by Consumer Reports (including two years at the #1 rating). Retailers refused to place the model on showroom floors, because consumers did not purchase enough units. As discovered too late, they did not recognize the energy and water savings value compared to traditional top-load models nor the difference from similarly valued front-load high efficiency models. Having designed, tooled and then produced this model for only two years, we lost considerable money on our investment for a high efficiency alternative to traditional top-load models. Now that Energy Star has raised its qualifications for clothes washers to include an 8.0 Water Factor, beginning in January 2007, top loaders will no longer carry the Energy Star label. Given this fact, manufacturers will focus on producing higher efficiency clothes washer models that will undoubtedly be higher-cost front-loading varieties.

The DOE is certainly aware of the manufacturers' appliance tax credit incentives that were included in the Energy Policy Act (EPACT) of 2005. The incentives for clothes washers are directly tied to the new Energy Star criteria and will push manufacturers to design and build new high efficiency clothes washers without eliminating their ability to sell clothes washer models preferred by consumers. We would argue that, contrary to its assertion that "in a 'market-induced improvements' scenario there would be no other factors aggressively driving WF downward" (CEC Petition; p. 36) California, like other states, will continue to see its high efficiency market share rise despite the new, more rigorous Energy Star criteria, which means California's high efficiency residential clothes washer category will increase above 50% in the

next few years anyway. If consumers, retailers and manufacturers recognize and appreciate the benefits of the new designs, CEC's actions to ban less efficient models will become unnecessary because consumers will buy them anyway. Indeed, California's energy and water savings claimed will be greatly reduced because high efficiency qualifications will be that much greater (from 1.42 MEF and no water limitation to 1.72 MEF and 8.0 WF). The Consortium for Energy Efficiency (CEE) has proposed even more stringent qualifications at multiple tiers, which serve as the basis for many rebate programs in California markets, leading to even more energy and water savings than the CEC currently estimates.

The CEC's petition proposes to dismantle the U.S. nationalized clothes washer market, which we cannot support and will do all we can to preserve. We adamantly object to the arbitrary levels proposed by the CEC. The 6.0 WF, especially, would be very difficult to sustain as a minimum standard without potentially serious cleaning quality compromises. Many of the models that perform at this level raise grave concerns about how well they rinse clothes and thereby leave detergents and dirt in what consumers believe are clean clothes. This can pose serious health concerns. We would argue that health should not be sacrificed for water efficiency. Lab testing also demonstrates that front load models present problems with whiteness retention, which goes directly to consumer preferences for the product's basic utility functions.

To reach the highest efficiency levels, new, expensive technology will have to be added to clothes washers. In the best of worlds, manufacturers would be able to pass along the increased costs for the technology to consumers. However, today's competitive market does not permit us to rest on that comfort. A washer produced today, as an example, actually retails at \$20 LESS than a similar washer produced in 1974 that had only a one-speed motor (compared to today's two-speed motor), less capacity (2.9 cu. ft. vs. 3.2 cu. ft.), less than a quarter of the wash cycles (5 vs. 22) and half the warranty (5 years vs. 10 years). The CEC may argue that this suggests that prices will be more affordable for high efficiency washers, but those prices are spread over a 30-year period in which we, like other manufacturers, have been able to absorb some of the price degradation for our capital investments. California's schedule for implementing the rigid water factors permits no spread of risk, which would be more assured through the deliberative NAECA rulemaking process and implementation timeline.

California Retailers and Consumers

We find it curious that the CEC claims that rebate and education programs would be "prohibitively expensive when compared to standards" (CEC Petition; p. 29), yet there is no consideration for the high cost of new design and production for a single state. Since California's rebate and education programs have achieved a market penetration rate of 45% at the end of 2005, we find these programs have exceeded most market performance metrics given high efficiency laundry products have only been in the market less than 10 years. Manufacturers, retailers, utilities and public interest groups have worked in partnership to help transform the marketplace over that time period with remarkable success. No one should be fooled that consumers will not do whatever is in their power to avoid the "Low-water Toilet Syndrome" in which they are forced to replace well-functioning products for "efficient" products that cannot perform the basic utilities of the product without repeated "flushes" or cycles. Most predictably, consumers would most likely delay the purchase of new high-cost, perhaps undesirable units, deciding instead to repair older, less efficient, yet generally dependable clothes

washers. Standards could produce a prohibitive outcry by consumers that their new products do not function up to their expected performance levels.

Retailers could also realize a significant impact to sales of a full line of clothes washers. While large retailers based in California may be able to weather the loss of sales over time, as they wait for consumers to adjust their buying habits to the new compliant units, small California retailers would take a disproportionate hit. Stores, such as the independently owned and operated Maytag Stores and Maytag Home Appliance Centers, could lose customers that require a competitively priced product. These are small business owners that operate in the state of California and compete directly with the big box retailers. Given the short time periods the CEC proposed to implement its standards, the shock to the small retailers' business model could force many of them out of business, especially if California takes away rebates and other incentives that have become part of their marketing strategy. Indeed, we would argue that the Energy Star brand would become irrelevant in the California market as it pertains to residential clothes washers.

Retailers and consumers will face higher prices for compliant clothes washer models. We recognize that the CEC's petition attempts to minimize the price differential between top-load models versus front-load models, but we wonder whose interests they are protecting. Low-income consumers would be the most disadvantaged by having to pay the higher prices. We would urge the DOE to consider that, since consumers purchase a dryer about 80% of the time when buying a clothes washer, the price differential is far greater than what the CEC presumes. Currently, an average washer/dryer pair would cost California consumers about \$599, whereas a high efficiency pair would run about \$1,500-2,000. We think that is a prohibitive barrier for many consumers, especially at the low income levels. In addition, we wonder if the CEC's actions might promote cross-border shopping of less efficient clothes washers, which are then "imported" into California, thus diminishing the intended effects of the mandate. When people are looking at the higher costs of compliance, traveling a little distance may not be a bad idea.

Conclusion

Maytag, once again, asks the DOE to reject the CEC's petition. Opening up the NAECA standards for state-by-state interference is without merit and will minimize DOE's position in establishing energy and possibly water efficiency standards in the future. Manufacturers, retailers and, most of all, consumers all stand to lose if the petition is granted. Thank you again for the opportunity to share with you our thoughts about this critically important issue that could have seismic consequences in the home appliance market.

Sincerely,



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