

May 25, 2006

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

**RE: Response of the Association of Home Appliance Manufacturers to Rebuttal  
Comments of the California Energy Commission Regarding the Petition for  
Exemption from Federal Preemption – DOE Docket No. EE-RN-PET-100**

Dear Ms. Edwards-Jones:

Attached please find AHAM's comments in response to the CEC rebuttal comments on the above referenced matter. Please feel free to contact me with any questions that you may have.

I thank you for your attention to this matter.

Sincerely,



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**Response of the Association of Home Appliance Manufacturers to Rebuttal Comments of  
the California Energy Commission  
Regarding  
Petition for Exemption from Federal Preemption  
DOE Docket No. EE-RN-PET-100**

AHAM files these comments in response to the CEC rebuttal comments.

DOE should keep its eye on the ball. The essentials are that the CEC has failed to show that a residential clothes washer water standard will significantly alleviate California's water or energy problems. California has failed to show that its problems are so special that any argument that it makes for water standards cannot similarly be made by a number of other states. There are many alternative actions that California could take, but has not taken for political reasons, that would have much more significant impact than would a residential clotheswasher water standard.

AHAM's April 7<sup>th</sup> comments<sup>1</sup> showed that there is a preference by a significant number of consumers for the attributes and the price of conventional vertical axis units. If the CEC petition is approved, there is no dispute that those units will cease to exist in California, depriving California consumers of their desired product. Finally, there is good reason to believe that the imposition of this standard in California and possibly other states will only exacerbate the obviously tenuous domestic manufacturing base of U.S. manufacturers.

CEC is not much interested in these facts and analysis. Fortunately, that is why we have a national regulatory system for energy standards, explicitly chartered to take a broad, national perspective, balancing the effects and leading to a high hurdle for an exemption for preemption.

In response to these arguments, the CEC shows the same disdain for the views of out-of-staters that exemplifies its rulemaking activities. We are told that the state has sufficiently demonstrated its interest to justify this residential clotheswasher standard because the state government, utilities, and advocacy groups support it. But, costless expressions of interest are insufficient under the law. Proof of need is required. Interestingly, nowhere on the list of supporters is the average California consumer who would have to pay for this new regulatory mandate.

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<sup>1</sup> Response of the Association of Home Appliance Manufacturers 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 ("AHAM's April 7<sup>th</sup> Comments")

The genius and value of national preemption is proven by the rhetoric of CEC comments about the minimal value of the views of out-of-staters in Ohio, Michigan and New Zealand. This self-centered xenophobia is exactly why preemption must be maintained. The history of California energy regulations, and now potential water regulations, is the iron triangle of utilities, the state government and advocacy groups imposing burdens on those outside California without regard to their interest and ignoring the preferences of the average California consumer.

The CEC twists words beyond recognition. The statute requires that there be proof that the state regulation is necessary but the CEC finds an on-line dictionary that defines necessary to include what is “wanted.” Most people are able to move past the concept that one’s wants equal one’s needs. But to the CEC it is self-evident that if it wants something then it must be needed and all must comply with these wishes because it is California, one of the largest economies in the world. This is argument by *ipse dixit*, if we say so, it is. Fortunately, we have a national government and we have the strong preemption provisions of NAECA which cannot be waived just because CEC really wants its own standard.

CEC also creates out of a whole cloth an industry position that the state is required to show that the regulation in and of itself will entirely solve the water or energy problem. AHAM has never maintained that claim. Instead, the correct interpretation of the law is that the regulation must make a substantial dent in the problem; there is no proof of such reduction in this case. We have shown that a relatively small amount of water use is due to residential clothes washers and expected savings will be modest.

Part of the proof which is recognized in the statutory text is that it is necessary to find in an energy or water plan a substantial discussion of the option under consideration, indicating that planners have integrated it into state policy as an important component. But the California state water and energy plans fail to address this subject. So, CEC, after the fact, pretends that its proposed standard makes sense in the context of the state water and energy plans as if it were a part of the plan -- but it’s not. Even though the water plan was not finalized until after CEC filed this petition, the water and energy plans have been drafted and evolved for many years and in many versions. Yet, it was not important enough to mention clothes washer water standards. This is inconsistent with what is now characterized as a key component of the state’s water and energy program.

The value of the DOE petition review process is the opportunity it provides to analyze hard data and not just opinion. The AHAM April 7 comments address in some detail the water situation in California, given CEC’s position that the crisis is so severe that any and “all” actions are necessary to avert dire consequences. To quote CEC’s rebuttal comments (pp 6 and 7): “...In any event, the essential point here is that *all* reasonably-priced water supply sources, and efficiency measures, must be pursued if California is to have any hope of meeting its water needs...”

AHAM analyzed the situation and investigated many sources of information. What AHAM found is that many knowledgeable researchers believe the California water shortage situation is solvable, using far more reasonable and equitable steps that can be implemented across the board to save the state’s water, rather than turning consumers and the washing

industry upside down with an ill-devised regulation. AHAM evaluated and reported data from many organizations, including some that support the Petition because the data taken in its entirety shows significant errors and inconsistencies in CEC's analysis. Interestingly, CEC's makes no attempt to address these concerns with actual data in the Rebuttal Comments; it only includes a statement that because of supporting comments (which contain little data themselves) the CEC position should be accepted by DOE. The facts remain that there are many ways to save much more water than by regulating washers, including relatively minor changes in agricultural and landscape irrigation that can save huge amounts of water, metering of the hundreds of thousands of urban and rural users that still do not pay for the quantity of water they consume, and free market trading of water to shift supplies to areas of need. CEC also does not dispute the water and energy conservation gains achieved by Energy Star and incentive programs.

CEC seriously underestimates the true impact of eliminating low price, top load washers from the market. It is clear from both the Petition and the Rebuttal Comments that CEC is quite content with forcing all California consumers into front load washers whether they want them, like them or can afford them. The issue goes well beyond whether the loading door is on the top or side. The data shows that a large majority of consumers prefer washing machines that cost under \$400, which are durable, reliable, wash and rinse well, and are of a design that continues to meet their needs, just as these products have done for over fifty years.

Front load machines cannot meet all these criteria for many consumers. DOE has addressed many times before situations like this where a technology can provide energy savings but fundamentally changes consumer utility. DOE has concluded that forced migration to such new products is unfair and not allowed by law, regardless of other potential benefits. To put it very simply, DOE would be ill advised to find itself in the position of supporting the demise of the conventional top load washer; thus depriving consumers of future access to products with the features they now have and continue to want; certainly not to save well less than one-half of one percent of the annual projected water use in California, especially when there are many better ways to save far more.

Yes, manufacturers aggressively market front loaders. This product category represents a new segment; one in which manufacturers can exhibit their innovation. They would like to sell as many as they can. There is no industry resistance to expanding the water/energy efficient market, there is only resistance to mandating one expensive design! We are not neglecting this product line; we are aggressively marketing but it has its limits. The extent of manufacturers' efforts aimed at increasing sales of front load units, as documented by CEC, evidences that many Californian consumers will not easily abandon the lower price, top-load units.

CEC raises a number of criticisms of the AHAM GRIM analysis, which was performed using the analytical model and most of the basic assumptions in the Technical Support Documents from the latest clothes washer rulemaking. The CEC comments are neither germane to the analysis nor have any relevance to actual commercial reality. The core concept in the GRIM analysis, and one fundamentally accepted by DOE as a basis for measuring impact on manufacturers, is to assess the incremental manufacturer cash flows (as adjusted by the time value of money). As a methodological consequence, the incremental operating cash flow from

post-regulation must be sufficient to support any incremental investment. The CEC comments are either not relevant to this analysis, are trivial in consequence or are incorrect.

In performing the GRIM analysis, AHAM used the basic assumptions from the Technical Support Document for the latest clothes washer rulemaking precisely to reduce bickering on minor issues. A good example of this is a discussion over tax rates. Changing the tax rate has only a limited effect on the analysis because it only affects the degree of tax shield provided by depreciation. Lowering the tax rate has the effect of *increasing* the negative impact to manufacturers in absolute dollars and decreasing the percentage loss in industry value from 17% to 15% of total value. Under either assumption, the effect on manufacturers remains negative and significant.

CEC's comments on capital costs are similarly misdirected or display a lack of understanding of the fundamentals of a cash flow analysis. First, the required investment in plant and equipment is based on the assumption that three companies actually make an investment to produce clothes washers compliant with the standard. Since there are currently four companies (Whirlpool, GE, Electrolux and Alliance) manufacturing in the U.S. with non-compliant products, this analysis already assumes that one of those companies will not maintain U.S. production. In order for the CEC's comments on the total investment requirement to be relevant, they are admitting that manufacturers will exit the market, with consequent loss of jobs and effects on competition.

With regard to the comment on the lack of credit for existing plant and equipment, such a credit would come either as cash recovery from scrapped manufacturing equipment (in practice a value nearly always minimal) or it would come from an acceleration of depreciation tax advantages. The actual magnitude of this effect will depend on the differences between tax and financial accounting practices at the manufacturer level and has not been included in prior GRIM analyses because of its minimal effect and uncertainty in analysis. In practice, this effect is likely to be nearly zero.

CEC's attempted explanation of why manufacturers have ample resources to meet harmlessly the proposed California standard displays a misunderstanding of the financial differences between accounting and cash flow analysis and disregards all other uses for funds in a company. CEC acts as if the entire gross margin of a company could be used to support the CEC standard. This is the effective equivalent of assuming that an individual's take home pay could be used for energy or water conservation without regard to other needs, such as food, clothing, shelter, etc. In order not to experience financial harm, the only financial resources available to support required investments are the incremental increases in operating cash flow, after all other existing uses. This is always a very small number and one measured directly in the GRIM analysis. The CEC comments only reinforce why DOE decided to rely on a straightforward, well documented process, such as the GRIM analysis, to focus on critical policy questions in a consistent manner rather than considering ill-thought or irrelevant claims.

The remainder of CEC's financial comments are a good example of using computations to obscure clear and evident realities. The CEC uses a variety of gymnastics to try and justify their claim that the increased price to consumers of a clothes washer will result in a "*per-unit*

*consumer cost increase of \$160* (italics in original). Leaving aside how blithely they pass on costs to consumers, this mathematical manipulation totally ignores the actual documented experience in the marketplace. The \$160 price increase posited does not include material and component cost increases; adding these brings the price to the level we estimated. In comparison, the lowest price clothes washer, one sold in large volumes, is \$220 and the shipment weighted average is \$325. AHAM, in its original comments assumed that alternative clothes washers that met the proposed California standards eventually could be available for \$500 (8.5 MEF) and \$600 (6.0 MEF). There, however, are no compliant washers available at those prices today. Furthermore, there are no examples anywhere in the world of washers of products that meet the performance and reliability levels demanded by US consumers that can be manufactured and sold profitably at the prices estimated by AHAM. Therefore, the CEC statements are based on sheer conjecture and AHAM estimates of the incremental costs to consumers are aggressively low. In fact, the current average price in the U.S. for clothes washers with water factors of 6 is approximately \$1,000.