

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

May 15, 2006

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

**California Energy Commission Petition for  
Exemption from Federal Preemption of  
California's Water Conservation Standards for Residential Clothes Washers**

**DOE Docket Number EE-RM-PET-100**

Dear Ms. Edwards-Jones,

I enclose the original and one copy of the Rebuttal Comments of the California Energy Commission. Per Bryan Berringer's e-mail to me of May 3, 2006 (4:17:39 a.m. PDT), on which you were cc'd, the comments are due today, May 15. I have also e-mailed a copy of this letter and the Rebuttal Comments to California.Petition@ee.doe.gov as well as to Messrs. Berringer, DePriest, and McCabe. Please return the copy, file-stamped, in the enclosed stamped, self-addressed envelope.

Thank you for your assistance.

Sincerely,

/s/

Jonathan Blee  
Assistant Chief Counsel

cc: California.Petition@ee.doe.gov  
Bryan.Berringer@ee.doe.gov  
Thomas.DePriest@hq.doe.gov  
Michael.McCabe@ee.doe.gov  
CEC Appliance Group (via e-mail)

## UNITED STATES DEPARTMENT OF ENERGY

California Energy Commission Petition for  
Exemption from Federal Preemption of  
California's Water Conservation Standards for Residential Clothes Washers

DOE Docket Number EE-RM-PET-100

**REBUTTAL COMMENTS OF  
THE CALIFORNIA ENERGY COMMISSION**

May 15, 2006

Maximizing energy efficiency and renewable energy IS the domestic epicenter in the War on Terror and it is imperative that we maximize the partnerships between the public and private sectors in new and creative ways with a sense of seriousness, national purpose and the urgency the situation merits.

.....

I am asking you today . . . to rise above the conventional and insist on making a real difference in the way things are done.

*Keynote Address by Hon. Alexander Karsner, Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, to the Power-Gen Renewable Energy and Fuels Conference, April 11, 2006.*<sup>1</sup>

Introduction and Summary

The comments opposing California's clothes washer petition<sup>2</sup> are a patchwork of factual mischaracterizations, legal mis-statements, and analytic errors. They provide no valid reason for DOE to deny the Petition.

---

<sup>1</sup> [www.eere.gov/news/news\\_-detail.cfm/news\\_id=9921](http://www.eere.gov/news/news_-detail.cfm/news_id=9921).

<sup>2</sup> California Energy Commission ("CEC"), Petition to Exempt from Preemption California's Water Efficiency Standards for Residential Clothes Washers (Sept. 2005) ("California Petition" or "Petition").

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

May 15, 2006

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

**California Energy Commission Petition for  
Exemption from Federal Preemption of  
California's Water Conservation Standards for Residential Clothes Washers**

**DOE Docket Number EE-RM-PET-100**

Dear Ms. Edwards-Jones,

I enclose the original and one copy of the Rebuttal Comments of the California Energy Commission. Per Bryan Berringer's e-mail to me of May 3, 2006 (4:17:39 a.m. PDT), on which you were cc'd, the comments are due today, May 15. I have also e-mailed a copy of this letter and the Rebuttal Comments to California.Petition@ee.doe.gov as well as to Messrs. Berringer, DePriest, and McCabe. Please return the copy, file-stamped, in the enclosed stamped, self-addressed envelope.

Thank you for your assistance.

Sincerely,

/s/

Jonathan Blee  
Assistant Chief Counsel

cc: California.Petition@ee.doe.gov  
Bryan.Berringer@ee.doe.gov  
Thomas.DePriest@hq.doe.gov  
Michael.McCabe@ee.doe.gov  
CEC Appliance Group (via e-mail)

The opposing comments fall into two basic categories. First, they suggest that California really doesn't need its residential clothes washer ("RCW") standards. We believe that in assessing California's needs, DOE should rely on the supporting comments made on behalf of hundreds of *California* water districts, *California* gas and electric utilities, and *California* businesses, and on the express directive from *California's* Legislature and Governor that the standards be enacted – rather than on assertions from manufacturers and trade associations located in places such as Wisconsin, the District of Columbia, and New Zealand.

Second, the manufacturers conjure up – in this obscure legal proceeding known primarily to a few lawyers and engineers – an ominous specter of businesses failing and consumers rebelling, all because of a potential shift to front-loading clothes washers. Yet on their websites, which are marketed to the millions of consumers about whose welfare the appliance industry appears so solicitous, these very same manufacturers are singing the economic, environmental, and performance praises of . . . . front-loading clothes washers.

Whirlpool, for example, touts the "capacity, *cleaning*, and energy *advantages* offered by" front-loaders.<sup>3</sup> Bosch notes that its front-loaders provide "more gentle fabric care, *superior cleaning results* and quieter operation"<sup>4</sup> and will "add[] up to *hundreds of dollars in savings per year*."<sup>5</sup> And major retailers selling clothes washers agree: thus a consumer reading Sears' "Washer and Dryer Guide" will learn that "most high efficiency washers clean better than their conventional counterparts" and that the higher first cost of front-load washers "can be recouped in about 8 to 10 years."<sup>6</sup>

---

<sup>3</sup> [www.whirlpool.com/catalog/buying\\_guide.jsp?sectionId=286](http://www.whirlpool.com/catalog/buying_guide.jsp?sectionId=286) (last visited May 10, 2006) (emphasis added).

<sup>4</sup> [www.boschappliances.com/category.cfm?cat\\_id=115&menulevel=0102](http://www.boschappliances.com/category.cfm?cat_id=115&menulevel=0102) (last visited May 9, 2006)(emphasis added).

<sup>5</sup> [www.boschappliances.com/category.cfm?cat\\_id=115&menulevel=0103](http://www.boschappliances.com/category.cfm?cat_id=115&menulevel=0103) (last visited May 9, 2006) (emphasis added).

<sup>6</sup> [www.sears.com/sr/javasr/dpp.do?vertical=Buying%20Guides&cat=-Laundry&BV\\_UseBVCookie=Yes&splash=true&nstate=http://www.live.bguides.-webcollage.net/\\_wc/laundry\\_2.html~~~G!079078702827!XRHzYAguDp1Sw-H5C~~~@http://guides.sears.com/server/sears/bguides-laundry-showcase#Top-Load%20vs.%20Front-Load](http://www.sears.com/sr/javasr/dpp.do?vertical=Buying%20Guides&cat=-Laundry&BV_UseBVCookie=Yes&splash=true&nstate=http://www.live.bguides.-webcollage.net/_wc/laundry_2.html~~~G!079078702827!XRHzYAguDp1Sw-H5C~~~@http://guides.sears.com/server/sears/bguides-laundry-showcase#Top-Load%20vs.%20Front-Load) (last visited May 9, 2006). Another major retailer,

We agree. The California clothes washers standards will benefit consumers, without imposing any significant burden on the industry. DOE should approve the Petition.

In this document, the CEC responds in detail to the opposing comments. The comments and responses are grouped under headings corresponding to the statutory criteria applicable to waiver petitions in 42 U.S.C. § 6297(d)(1)(B)-(C), (d)(3)-(4). Citations to the comments are in the form “#X, p. Y”; the number refers to the comment number assigned by DOE.<sup>7</sup> Because the most extensive opposing comments were filed by the Association of Home Appliance Manufacturers (“AHAM,” #52), and because the substance of most comments made by other opponents also appears in AHAM’s comments, in general we cite only to AHAM. Nevertheless, our responses thereto should be understood as applying to all similar comments. Where an opposing comment deals with an issue not raised by AHAM, we of course separately deal with and cite to it. (To the same end, where there is more than one comment supporting a particular aspect of the California Petition, we generally cite only to one of the comments.)

## I. Unusual and Compelling Water and Energy Interests.

### A. “Substantially Different in Nature and Magnitude than Those Prevailing in the United States Generally.”

#### 1. Regional v. National Comparison.

The Federal Register notice soliciting on the California Petition asks whether, in determining whether a State’s interests are “substantially different,” DOE should “include [a] comparison to regions as well as national averages?” 71 Fed. Reg. 6022, 6025 (Feb. 6, 2006). The answer is “no”; comments to the contrary, #52, pp. 17 – 20, are in error. The governing statute clearly states that “unusual and compelling State . . . energy or water interests” means those that are “substantially different in nature or magnitude than those prevailing *in the United States generally*,” 42 U.S.C. § 6297(d)(1)(C)(i) (emphasis added). Therefore, a regional comparison is

---

Lowe’s, is currently broadcasting a television commercial about laundry that features a front-loading washing machine.

<sup>7</sup> See [www.eere.energy.gov/buildings/appliance\\_standards/state\\_petitions.html](http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html) (last visited May 14, 2006).

inappropriate, and a comparison to a few isolated, individual states or cities is even less relevant. *See, e.g.*, # 17, p. 4. Moreover, although individual rates for water and energy may be comparable in selected areas across the country, the combined water and energy rates found across the entire state are unique in the U.S. Pointing out a few locations such as Seattle and Boston does not negate the unique water and energy costs experienced by the whole State of California. As confirmed by the hundreds of California water agencies and utilities supporting the Petition, the situation in California is both unique and critical. *E.g.*, # 61, pp. 2 – 4.

Moreover, even if a regional comparison were appropriate, a State’s interests need be substantially different only in “nature *or* magnitude.” 42 U.S.C. § 6297(d)(1)(C)(i) (emphasis added). Therefore (to continue the hypothetical), if California’s water interests were not substantially different in “nature” from those in other regions (actually, they are), the RCW standards would still meet the criterion in section 6297(d)(1)(C)(i), because the State’s interests are substantially different in magnitude than those of any other region. *See* Petition, pp. 5 – 7, 14 – 15.

## 2. Energy or Water Emergencies.

ARI asserts that a State can obtain a waiver for an energy or water standard only if its interest rise to the level of an “energy or water emergency situation.” #35, p. 3. That is absurd. Nothing in the statute or its legislative history, or in DOE’s regulations, remotely suggests such a requirement. Clearly, the statute requires only that the State’s interests be “substantially different in nature or magnitude than those prevailing in the United States generally” (and that the State’s standard is preferable to alternatives). 42 U.S.C. § 6295(d)(1)(B)-(C).

ARI has confused the statutory provision governing the *effective date* of a state preemption waiver with the provision governing the *substantive criteria* that DOE must assess. *See* #35, p. 3; *compare* 42 U.S.C. § 6297(d)(1)(C) (defining “unusual and compelling State . . . interests” and not mentioning emergencies) *with id.* § 6297(d)(5)(B) (governing effective date of state waivers and mentioning emergencies). Moreover, the latter provision, upon which ARI relies, was applicable to clothes washer waivers only until 1993. 42 U.S.C. §§ 6295(g)(2), (g(4)(A), 6297(d)(5)(B).<sup>8</sup>

---

<sup>8</sup> ARI also misquotes the statute – for example, including the word “energy” but omitting the word “water” – in several instances. *Compare* # 35, pp. 2 – 4, *with* 42 U.S.C. § 6297(d)(1)(C).

Indeed, ARI appears to concede that California has unusual and compelling water and energy interests. ARI states that “everyone can agree” that:

1. California is the largest state,
2. California’s population is increasing,
3. California will remain the largest state for the foreseeable future,
4. California has large water and energy needs because it has a large population, and
5. Portions of California have suffered a drought or excess water at differing times over the last decade.

#35, p. 3.<sup>9</sup> Self-evidently, California’s energy and water interests are “substantially different in . . . *magnitude*,” 42 U.S.C. § 6295(d)(1)(C)(i) (emphasis added), than those prevailing in the U.S. generally. That is all that is required. (And, of course, our Petition, and the supporting comments, discuss many more factors demonstrating that California’s interests are different in both nature and magnitude than those in the U.S. generally.)

We also note that several supporting commenters find that the California Petition is overly conservative in estimating the magnitude of the State’s water and energy interests. *E.g.*, #44, pp. 4 – 5; #61, p. 4.

### 3. Need for the Standards.

Opponents suggest that a State’s standards are not “needed” unless they are capable, standing alone, of completely meeting the State’s “unusual and compelling . . . energy or water interests.” #52, pp. 10 – 12; *see* 42 U.S.C. § 6297(d)(1)(B). This extreme interpretation would obviously make it impossible for any waiver petition ever to be granted. No one efficiency measure or supply source is capable of meeting a State’s needs. “Needed” should be reasonable interpreted as “[a] condition or situation in which something is required *or wanted*.”<sup>10</sup>

---

<sup>9</sup> One commenter asks California to explain why some water uses in the State increase during times of shortages. #31, p. 3. During drought, agricultural, landscaping, and similar water uses increase because higher temperatures and drier air mean that plants require more water; increased evaporation also requires increased consumption to replace the evaporated water.

<sup>10</sup> <http://dictionary.reference.com/search?q=needed> (last visited May 12, 2006) (emphasis added).

B. Alternatives to the Standards.

1. The State's Water and Energy Plans.

Opponents claim that the Petition is somehow invalid because the California Water Plan does not expressly discuss the State's RCW standards. #52, p. 6. But the statute does not require such a discussion. What is required –it is not clear whether this is required only of DOE, or of both the State and DOE – is that *alternatives* be evaluated “within the context” of the State's water (or energy, as the case may be) plan. 42 U.S.C. § 6297(d)(1)(C). The Petition does so – indeed, the Petition is the State's attempt to free the RCW standards from federal preemption, so that the standards can go into effect and their effects taken account of in the next Water Plan.

The criticism that the Petition did not refer to the final California Water Plan is equally unavailing. The Petition was submitted in September 2005, several months before the final Plan was adopted in December.<sup>11</sup>

2. The Availability of Alternatives.

Opponents suggest that DOE should deny the Petition because other efficiency measures, or supply sources such as desalination, might be capable of providing more water than the California standards. #52, pp. 10 – 12; #38, pp. 2 – 3. This is essentially the same assertion as the erroneous one discussed at p. 5 above: that a State's standard is not needed unless it can, by itself, completely meet the State's interests. If the existence of any alternative (no matter how costly or environmentally damaging), can prevent DOE from granting a waiver, then there no petition can ever be successful. Obviously, Congress did not intend such a result.

The opponents also fail to present any evidence that their suggested alternatives – tax credits, water markets, desalination – are preferable to the California Standards; there are no estimates of the costs or savings potential of such programs. *See, e.g.*, #52, pp. 10 – 12; #31, p. 6. The Petition, however, demonstrates that financial incentives are expensive and cannot cover the entire market, that water markets are difficult to implement because water savings are not necessarily fungible, and that desalination is expensive and energy-intensive. Petition, pp. 11 – 12, 27 – 34; *see also* #61, pp. 1 – 2; #29, pp. 5 – 7. In any event, the essential point here is that *all* reasonably-priced water supply sources, and

---

<sup>11</sup> The final Plan, which is hereby incorporated by reference, is available at [www.waterplan.water.ca.gov/cwpu2005/index.cfmdf](http://www.waterplan.water.ca.gov/cwpu2005/index.cfmdf) (last visited May 10, 2006).



efficiency measures, must be pursued if California is to have any hope of meeting its water needs:

There are many innovative measures to improve water efficiency, and California water agencies are already implementing those that are locally cost effective. Improving the efficiency of clothes washers is only part of the overall solution for reliable water supply, yet it is a vital part. Improving the efficiency of clothes washers will not supplant other cost effective water conservation efforts, such as rebate and voucher programs, improved leak detection, increased public education programs, local landscape and water use ordinances, water transfers, new local storage reservoirs and groundwater conjunctive use projects, increased reclamation of stormwater and treated wastewater, and salt and brackish water desalination. It is clear that there is no one “silver bullet” to secure California’s water future, but ACWA [the Association of California Water Agencies, representing the almost 450 water agencies that deliver over 90 percent of California’s water] supports the efforts of its water agencies to implement those that will make significant incremental contributions using water more efficiently.

ACWA, #40, pp. 1 – 2 *see also* # 61, pp. 1 – 2.

### 3. Reliance on the Market Alone.

The clothes washer industry appears schizophrenic here. On the one hand, some commenters assert that the market is working just fine, and that there is no need for the California standards. The Edison Electric Institute is perhaps the most optimistic, predicting that according to DOE and AHAM data, “*the typical clothes washer in 2007 . . . will have a water factor of 6.92 . . .*” # 31, pp. 4 – 5. On the other hand, manufacturers predict dire consequences if the 8.5 WF standard takes effect in 2007 and the 6.0 WF standard takes effect in 2010. *E.g.*, #50, p. 1; #56, p. 3.

They cannot have it both ways. If the market really is going to work as well as some commenters suggest, then the standards will not cause any significant burden to the industry to produce high-efficiency washers. On the other hand, if it will be a substantial burden to the industry to comply with the standards, then that must be because the market is not working and sales of high-efficiency washers are low.

California is taking a sensible dual approach. Utilities in the State have already spent hundreds of millions of dollars in an effort to spur sales of high-efficiency washers. (Thus the improvements in California RCW energy and water efficiency

are not “market-driven,” 42 U.S.C. § 6297(d)(1)(C)(ii); rather, they are the result of the non-market forces of costly rebates and other incentives. #44, pp. 3 – 4.) Obviously, we would be pleased if those efforts resulted in a 100 percent conversion of the market. But on the reasonable assumption that they will not be that successful, the State has adopted standards as well. California’s water suppliers want to be able to use both methods, and DOE should allow them to do so.

## II. Potential Effects on the Appliance Industry.

The industry makes dire predictions about the fate of clothes washer manufacturers if the preemption waiver is granted. #52, pp. 37 – 44. Everything that is said on this matter flows from a GRIM study that is based primarily on “interviews” with manufacturers, #52, p. 46), so that the analysis is hard to penetrate. Yet even the limited assessment that is possible demonstrates that the estimates of manufacturer costs – and therefore the predictions about all other industry burdens – are substantially exaggerated. (The errors also affect the industry’s predictions of consumer impacts.) Moreover, taking the industry’s estimates at face value actually indicates that the costs of the standards will be quite reasonable – indeed, on the order predicted by the Petition.

### A. Manufacturing and Distribution Costs, Including Redesign and Production Needs.

Manufacturers’ assertions of harm are based entirely on the premise that top-loading washers will be eliminated from the California market if the State’s RCW standards take effect. This is an unreasonable assumption, see p. 13 below, and it leads to the further unreasonable assumptions that total washer sales in California would decline dramatically.<sup>12</sup> From these untenable foundations the industry

---

<sup>12</sup> Indeed, it is unrealistic to believe that changes in the California market could affect the nationwide industry at all. California represents approximately 10 percent of the national market (taking into account the current California sales of standards-compliant RCW, the share of the national market affected by the standards would be closer to 7 percent), which is probably within the normal band of error for marketing and investment decisions. Another unrealistic assumption is that the industry’s effective tax rate is 43 percent. In 2005, the effective tax rate for Whirlpool, which now accounts for 70 percent of the domestic clothes washer market, was 28.6 percent (33.9 percent in 2004 and 35.0 percent in 2003). [http://media.corporate-ir.net/media\\_files/irol/97/97140/-WHR\\_-AR05/WHR05\\_FinSum.pdf](http://media.corporate-ir.net/media_files/irol/97/97140/-WHR_-AR05/WHR05_FinSum.pdf) (last visited May 14, 2006).

concludes that it would have to invest around \$150 million in new production capacity and incur around \$100 million in other expenses (“SG&A”), which would lead to a decline in the value of the entire industry of 16 percent. # 52, pp. 38, 41, 46 – 49. Not only are these numbers based on highly unreasonable assumptions, but they also differ substantially from other numbers presented in the industry comments.

The estimate of \$150 million in capital costs is based on the assumption that a production line with a capacity of 500,000 units costs \$50 million, and that there will be three companies making such investments. #52, p 46. But such an investment would provide new capacity of 1.5 million units, which is much more than would be needed for the industry’s estimate that around 800,000 new California units would be required (roughly 1 million total shipments per year, minus around 200,000 that are already standards-compliant). #52, p. 45. In addition, there appears to be no corresponding sale or write-down of the existing production lines that \$150 million in new capacity would replace. That must mean that the existing lines are already fully depreciated and therefore of limited value – in other words, ready for replacement whether or not California imposed standards.

Let us assume, however, that the \$150 million figure for capital costs, as well as the \$100 million in other costs, are correct, for a total of \$250 million in industry-wide costs caused by the California standards. (There might also be additional component costs, but no such costs are explicitly identified in the GRIM tables.) The industry estimates that total California sales will average roughly 1 million units per year in the 14-year period between 2007 and 2020 (extrapolating for the last two years), for a total of around 14 million units during that time. #52, p. 45. Spreading \$250 million in costs over 14 million units results in a per-unit increase due to the California standards of less than \$20. Even “rounding up” to \$20, then doubling that figure three times ( $20 > 40 > 80 > 160$ ) to account for manufacturer, distributor, and retail markup (the actual markups would be significantly lower) results in a *per-unit consumer cost increase of \$160 resulting from the California standards*. This number is much less than the industry’s other estimates of \$280 (8.5 WF) and \$380 (6.0 WF), #52, p. 29, and is in fact quite consistent with the Petition’s estimate of \$130 for the 6.0 WF standards, Petition p. 21. (The 6.0 WF standard would be cost-effective at an incremental cost of up to \$242. Petition, p. 21.)

The industry’s numbers also indicate that \$250 million in costs should be very easily recovered. The industry appears to assume a gross margin of approximately \$100 on each front-load unit. #52, pp. 35, 45, 48, which, when applied to sales of around a million units per year, *id.* p. 45, would produce an annual gross margin of around \$100 million. That kind of a cash flow should certainly be adequate to recover an investment of \$250 million.

Finally, the assertion that the California standards will result in a decline in industry value of \$100 million, “or about 16% of total industry value,” #52, pp. 38 – 39, is clearly way off base. If the entire industry – the clothes washing divisions of Whirlpool, GE, Bosch, et al. – is actually worth only \$600 million (\$100 million is about 16 percent of \$600 million), we’d be happy to buy it. (Whirlpool purchased Maytag for \$1.7 *billion*.)

## B. Employment Impacts.

Although employment impacts are not one of the statutory criteria DOE uses in assessing preemption waivers, *see* 42 U.S.C. § (d)(1)(B)-(C), (3)-(4), the two leading members of the clothes washer industry expressed concern about the potential impacts on their employees if the California standards take effect. Maytag stated:

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.

#53, p. 2. This apparently would aggravate the current situation, for, as Whirlpool notes, “the Midwest has already been particularly hard hit with job losses.” #17, p. 2.

We believe, however, that this concern, while understandable and laudable, is not likely to become manifest, because the industry’s views about sales losses appear so untenable. *See* p. 13 below; #44, p. 5 – 6, 8 – 9. We also suggest that DOE might want to view Maytag’s and Whirlpool’s concern with a slight bit of skepticism:<sup>13</sup>

### Whirlpool To Cut 4,500 Jobs

BENTON HARBOR, Mich., May 10, 2006 (CBS/AP) Whirlpool Corp. said Wednesday that it will cut 4,500 jobs and close three plants as it consolidates operations as part of its acquisition of rival appliance maker Maytag Corp.

The former Maytag plants being closed are in Iowa, Illinois and Arkansas, Whirlpool spokesman Dan Verakis said. Whirlpool said it will also close the former Maytag corporate headquarters in Newton, Iowa.

---

<sup>13</sup> [www.cbsnews.com/stories/2006/05/10/business/main1604988.shtml?CMP=ILC-SearchStories](http://www.cbsnews.com/stories/2006/05/10/business/main1604988.shtml?CMP=ILC-SearchStories) (last visited May 11, 2006).

....

As part of the consolidation, Whirlpool said it will create 1,500 positions at other unspecified locations, for a net loss of about 3,000 jobs.

"We are taking these actions to rapidly restore the competitiveness of the Maytag brands," Jeff M. Fettig, Whirlpool chairman and chief executive, said in a statement. "This is an important step in our integration process that will allow us to drive continuing performance improvements and will better align our brands, products and operations with the markets we serve domestically and globally."

....

"The loss of jobs in this community will not be easy to swallow, which is why we must begin acting right now to support this community and its workers during their difficult transition period," Iowa Gov. Tom Vilsack said in a statement.

Web Exclusive: Herrin, Illinois, mayor Vic Ritter tells CBS Radio News' Mara Rubin that the Whirlpool plant closing will hurt his city.

"There's a lot of good people out there. I just now got done talking to a lady who's been out there 10 years, and we kind of had a little cry together," Herrin, Illinois, mayor Vic Ritter told CBS News. "We're going to continue talking to them, trying to get them to reconsider. If we can't do any good there, we're going to pull ourselves up by the bootstraps and we're going to go on."

But Ritter said Whirlpool left a bad taste in his mouth.

"I haven't been contacted by any people that we were negotiating with, so my disappointment has turned a little bit to anger, that they would think so little of the people of Herrin to not even contact their mayor," he said, although he did get a call from a lower-level manager.

### C. Effects on Competition.

The Whirlpool-Maytag merger has created a single company that accounts for more than 70 percent of the U.S. clothes washer market. The Justice Department nevertheless found that "this transaction is not likely to harm consumer welfare."<sup>14</sup> In

---

<sup>14</sup> [www.cbsnews.com/stories/2006/05/10/business/main1604988.shtml?CMP=ILC-SearchStories](http://www.cbsnews.com/stories/2006/05/10/business/main1604988.shtml?CMP=ILC-SearchStories) (last visited May 11, 2006).

light of that finding, it is inconceivable that the California standards would have a substantial effect on competition.

It is also unlikely that the standards would affect small businesses more than large businesses. If smaller retailer sales actually declined as a result of increased repairs, *see* #53, p. 5, any lost sales revenue would be made up by gains in repair revenue. Moreover, any such circumstances would be short-lived.

The specter of consumers traveling out-of-state to buy noncompliant washers, *see* #53, p. 5, is completely unrealistic. Since 1976 California has adopted efficiency standards for dozens of appliances, and there is no evidence whatsoever that any of them have hurt California sales in favor of sales in other States.

D. Effect on Models and Sales Volumes in California and the United States.

Please see page 13 below and Comment #44, pp. 5 – 6, 8 – 9.

E. Potential Standards in Other States.

California's Petition is the very first one filed since the enactment of NAECA in 1987. Granting it is scarcely going to dismantle the national clothes washer market or upset the national standards scheme, even if other states were to follow in California's footsteps and adopt the State's RCW standards as their own. Indeed, manufacturers would be helped, not hurt, if other states did so: there would be more sales of energy-efficient washers over which to spread the (minimal) additional costs of producing them, and if the standards were regional, any increases in distribution costs would also be moderated. In the past few years, States other than California have begun adopting appliance efficiency standards, but the vast majority of those standards have been the same as California's standards for the respective appliances. Thus even if other States do adopt RCW standards, the situation Congress wanted to prevent – a "patchwork of *differing* State regulations," S. Rep. No. 100-6, at 4 (1987), *reprinted in* 1987 U.S.C.C.A.N. 52, 54-55 – is very unlikely to occur. And DOE, of course, is in the ideal position to prevent such a result, because any additional State standards would also have to seek a waiver from the Department.

III. Consumer Impacts: the Potential Absence of Top-Loading Machines.

Opponents predict The End of the Laundry World as We Know It if DOE grants a waiver to California's RCW standards. #52, pp. 7, 25 – 34. Their assertions are premised entirely on the dubious proposition that the California 6.0 WF

standard, which is not scheduled to take effect until 2010, will eliminate every single top-loading washing machine. That is extremely unlikely. As we explained in the Petition, many top-loading washers using a horizontal-axis (or other high-water-efficiency platforms such as paddles rather than an agitator) are already on the market, and the design is common overseas. Petition, p. 46. It is unrealistic to assume that such designs will not be able to achieve a 6.0 WF in the next three-and-a-half years.

Moreover, door location is not important to the vast majority of consumers. DOE's own consumer research – from six years ago, when front-loaders were much less well known than they are today – shows that consumers view price, energy and water efficiency, and capacity as the most important features; door location was listed as a “top five” attribute by only 13.5 percent of the survey participants. Petition, p. 46. Many European countries have essentially no top-loaders.

One manufacturer claims that top-loaders are necessary for the elderly and disabled. #50, p. 4. Yet the elderly and disabled are apparently not troubled by the absence of top-loading dryers from the entire national market. Indeed, it can be more difficult to reach down into a top-loader than into a front-loader, especially if the front-loader is on an inexpensive, universally-available stand, or is stacked with a dryer.

Other manufacturers assert that low-income consumers will be hurt if top-loaders were to become unavailable in California. #55, p. 6. Yet the largest supplier of multi-family services in the State believes that the California standards are “essential” to avoid “disproportionately impacting low-income households.” # 62, pp. 1 – 2.

Still others believe that consumers will not be able to add clothes after a wash cycle starts or to use fabric softeners. #52, pp. 23, 26. They apparently are unaware of recent design advances that have modified front-loaders to allow the addition of clothes after the cycle starts, and to add detergent, softener, and bleach at the correct times. See p. 16 below.

In the end, though, we cannot describe the “performance characteristics[,] features, sizes, capacities, and volumes,” 42 U.S.C. § 6297(d)(4), of front-loading residential washing machines – which “[o]ok] the nation by storm in 1998”<sup>15</sup> – any

---

<sup>15</sup> [www.aham.org/ht/a/GetDocumentAction/i/1407](http://www.aham.org/ht/a/GetDocumentAction/i/1407) (last visited May 9, 2006).

better than do retailers and manufacturers themselves. For example, Sears explains to consumers:<sup>16</sup>

Newer front-load washers have gained popularity in recent years with their innovative technologies . . . . Both [front-loaders and top-loaders] will do an effective job of cleaning your laundry . . . . [Front-loaders] clean 12 to 20 pounds of laundry per load . . . [and] [c]an clean fabrics that could potentially be damaged in a traditional top-loading washer, such as silk and wool . . . . H[igh] E[fficiency]detergents can be purchased at most places you already shop. . . . [M]ost high efficiency washers *clean better* than their conventional counterparts.

One manufacturer, which manufactures only front-loaders, is especially enthusiastic about the technology:<sup>17</sup>

Bosch has been advancing and improving this design over a *50-year history*, when we first introduced our front-loading models in Europe. Today, our machines are so advanced they use 60% less water and almost 68% less electricity than conventional models, with more gentle fabric care, *superior cleaning results* and quieter operation. This *powerful combination of efficiency, performance, value and engineering* is what makes Bosch washer and dryers *the best* you'll ever own.

Bosch also notes that the combined energy and water savings of one of its series of models (including reduced dryer time as a result of reduced moisture content) will provide consumers with “hundreds of dollars in savings per year.”<sup>18</sup>

---

<sup>16</sup> [www.sears.com/sr/javasr/dpp.do?vertical=Buying%20Guides&cat=Laundry&BV\\_UseBVCookie=Yes&splash=true&nstate=http://www.live.bguides.webcollage.net/\\_wc/laundry\\_2.html~~~G!079078702827!XRHzYAguDp1SwH5C~~~~@http://guides.sears.com/server/sears/bguides-laundry-showcase#Top-Load%20vs.%20Front-Load](http://www.sears.com/sr/javasr/dpp.do?vertical=Buying%20Guides&cat=Laundry&BV_UseBVCookie=Yes&splash=true&nstate=http://www.live.bguides.webcollage.net/_wc/laundry_2.html~~~G!079078702827!XRHzYAguDp1SwH5C~~~~@http://guides.sears.com/server/sears/bguides-laundry-showcase#Top-Load%20vs.%20Front-Load) (last visited May 10, 2006) (emphasis added).

<sup>17</sup> [www.boschappliances.com/category.cfm?cat\\_id=115&menulevel=0102](http://www.boschappliances.com/category.cfm?cat_id=115&menulevel=0102) (last visited May 9, 2006) (emphasis added).

<sup>18</sup> [www.boschappliances.com/category.cfm?cat\\_id=115&menulevel=0102](http://www.boschappliances.com/category.cfm?cat_id=115&menulevel=0102) > “Axxis™ Washers” (last visited May 9, 2006). We acknowledge that savings of hundreds of dollars *per year* are unlikely. But savings of “hundreds” of dollars over *the 14-year lifetime* of a clothes washer are more than sufficient to make the



GE has a similar attitude:<sup>19</sup>

## Why choose a GE frontload washer?

Use your ecomagination. ecomagination ( ěkōmăjenāshen) n. A goal, a methodology, a brand and a philosophy that expresses GE's commitment to imagine and build innovative solutions for the benefit of our customers and society at large.

## Water savings

If every U.S. household currently using a non-ENERGY STAR® washer replaced it with a GE frontload washer:

.....

- Consumers would save a combined annual total of more than \$3 billion in water bills.
- Nearly 9 trillion gallons of water would be saved over 12 years, enough water to sustain every person on the planet for three days.

.....

## Energy savings

.....

- *The washer's total energy and water savings can pay for the initial cost of the washer over its life.*†

.....

†Based on an average cost of water, energy and sewer over 12 years using 10 loads/week compared to typical topload washer, WWSE5240D.

Bosch and GE have relatively small shares of the clothes washer market, but their views are not unusual. Whirlpool's recent merger with Maytag created a company that produces more than 70 percent of the clothes washers and dryers in the U.S.; it too believes that front-loaders provide substantial benefits to consumers:<sup>20</sup>

---

California RCW standards very cost-effective for the consumer. See Petition, pp. 21 , 23.

<sup>19</sup> [www.geappliances.com/products/introductions/frontload/downloads/Frontload\\_Brochure.pdf](http://www.geappliances.com/products/introductions/frontload/downloads/Frontload_Brochure.pdf) (last visited May 9, 2006) (emphasis added).

<sup>20</sup> [www.whirlpool.com/catalog/buying\\_guide.jsp?sectionId=288](http://www.whirlpool.com/catalog/buying_guide.jsp?sectionId=288) (last visited May 10, 2006).

Front-loading washers deliver excellent performance overall. . . . . Because they clean by tumbling and not agitation, front-loaders are usually gentler on fabrics and cause less wear and tear on washables than conventional top-load washers. You may even find you can wash fabrics – like washable silk and wool – that could be damaged in a traditional top-loading washer.

. . . . [F]ront-loaders use less water and energy per load. And because they often have a faster spin speed, most front-loading washers remove more water from clothing, which reduces drying time.

Most front-loading washers can hold 12 to 20 pounds of laundry per load . . . . [Earlier on this webpage, Whirlpool notes “[s]tandard capacity for a top-loading washing machine is 12 to 16 pounds per load.”] They require a special, low-sudsing detergent [that is] available in most stores, including grocery stores and mass retailers, under many brand names . . . . Most front-loading washers have 3 to 4 detergent dispensers that allow you to add your detergent, fabric softener and bleach at the beginning of the cycle. The machine adds each product at the correct time during the wash cycle to ensure optimal results.

Whirlpool is especially interested in informing potential buyers about the savings in money and time that consumers will gain from the larger tub capacities available in high-efficiency washers:<sup>21</sup>

Capacity is a key consideration when shopping for a washer. The more you are able to wash in a single load, the less time and money you'll spend doing your laundry. For greater capacity, or to accommodate large and bulky items, consider a front-loading washer or a model with a wash plate instead of an agitator to free up space in the tub.

. . . .

---

<sup>21</sup> [www.whirlpool.com/catalog/buying\\_guide.jsp?sectionId=2890](http://www.whirlpool.com/catalog/buying_guide.jsp?sectionId=2890) (last visited May 10, 2006). Whirlpool's concern – in this proceeding – that consumers might be “confused” because some nationally-advertised brands would not be available in California is misplaced. #17, p. 3. No one – manufacturers, retailers, or consumers – has complained to the Energy Commission that any of its standards, whether for consumer products, commercial and industrial equipment, or non-federally regulated appliances, are causing such confusion.

Larger washer capacity not only allows you to wash more items in a single load, but also gives you the flexibility to wash a broader range of things like pillows, comforters and rugs. Being able to wash these bulky items at home will ultimately save you visits to the local Laundromat or the dry cleaners as well as the associated expense.

For high-volume laundry households, maximizing your washer capacity is key, but smaller households should also consider the flexibility of a larger washing machine. Most washers, starting at the mid-price range for top-loaders and the majority of the front-loaders, have either a manual or automatic feature that adjusts water levels according to the load size.

In sum, although we disagree strongly with what the opposing commenters have said *in this proceeding* about the consumer effects of front-loading washers, we agree just as strongly with what they are *actually telling consumers*.<sup>22</sup>

---

<sup>22</sup> AHAM lists seven clothes washer manufacturers on its website, [www.aham.org/consumer/index.php?display=Brands&products=Y&prodcid=610](http://www.aham.org/consumer/index.php?display=Brands&products=Y&prodcid=610) (last visited May 14, 2006). Statements about front-loaders from the websites of three of those manufacturers are set forth above. The websites of the other four manufacturers say little or nothing (and certainly nothing negative) about front-loaders, although they are featured prominently visually. Electrolux does not list clothes washers on its website. [www.electroluxusa.com/node138.asp?CategoryID=4168](http://www.electroluxusa.com/node138.asp?CategoryID=4168) (last visited May 9, 2006). Fisher and Paykel appears not to make front-loaders for the U.S. market. See <http://usa.fisherpaykel.com/laundry/washers/-models.cfm> (last visited May 9, 2006). The home page of the Haier Group features pictures of eight appliances, including one clothes washer – a front-loader. [www.haieramerica.com](http://www.haieramerica.com) (last visited May 10, 2006). The sole picture on Haier’s “Laundry Products” page is of a stacking washer-dryer set; again, the washer is a front-loader. [www.haieramerica.com/laundry.php](http://www.haieramerica.com/laundry.php) (last visited May 10, 2006). Similarly, the homepage of LG Electronics U.S. features two pictures each of four different appliance types (Mobile Phones; TV Audio Video; Home Appliances; and Computer Products); both Home Appliances pictures show a front-loading clothes washer. <http://us.lge.com/index.jhtml> (last visited May 10, 2006). On LG U.S.’s “Home Appliance” page, the picture in the “Laundry” category is a front-loader. <http://us.lge.com/products/category/list/home%20appliances.jhtml> (last visited May 10, 2006). The “Washers” page shows only front-loaders. [http://us.lge.com/products/category/list/home%20appliances\\_laundry\\_washers.jhtml](http://us.lge.com/products/category/list/home%20appliances_laundry_washers.jhtml) (last visited May 10, 2006).

## Conclusion

The California Petition, and the many comments submitted in support thereof by California water districts, utilities, and businesses, amply demonstrate that the State's RCW standards will serve "unusual and compelling" economic, environmental, and water and energy security interests. Moreover, they will serve those interests at a lower cost and with greater reliability than any available alternative that is not already being implemented. Finally, the standards will neither significantly burden the appliance industry nor result in the unavailability of any substantial clothes washer attributes or performance characteristics. DOE should grant to the RCW standards an exemption from preemption.

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

May 15, 2006

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

**California Energy Commission Petition for  
Exemption from Federal Preemption of  
California's Water Conservation Standards for Residential Clothes Washers**

**DOE Docket Number EE-RM-PET-100**

Dear Ms. Edwards-Jones,

I enclose the original and one copy of the Rebuttal Comments of the California Energy Commission. Per Bryan Berringer's e-mail to me of May 3, 2006 (4:17:39 a.m. PDT), on which you were cc'd, the comments are due today, May 15. I have also e-mailed a copy of this letter and the Rebuttal Comments to California.Petition@ee.doe.gov as well as to Messrs. Berringer, DePriest, and McCabe. Please return the copy, file-stamped, in the enclosed stamped, self-addressed envelope.

Thank you for your assistance.

Sincerely,

/s/

Jonathan Blee  
Assistant Chief Counsel

cc: California.Petition@ee.doe.gov  
Bryan.Berringer@ee.doe.gov  
Thomas.DePriest@hq.doe.gov  
Michael.McCabe@ee.doe.gov  
CEC Appliance Group (via e-mail)