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November 9, 2005

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: LG Electronics, Inc.

Date of Filing: September 27, 2005

Case Number: TEE-0025

This Decision and Order considers an Application for Exception filed by LG Electronics, Inc. (LG) seeking exception relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, LG asserts that the firm would suffer a gross inequity if required to adhere to the Refrigerator Efficiency Standards, codified at 10 C.F.R. § 430.32. If LG's Application for Exception were granted, LG would receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer, with bottom mounted freezer and through-the-door ice service. LG proposes to manufacture and market this appliance. As set forth in this Decision and Order, we have concluded that LG's Application for Exception should be granted.

I. BACKGROUND

A. Refrigerator Efficiency Standards

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). The EPCA directed DOE to review and revise energy conservation standards for major appliances, including refrigerator-freezer products, promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA, § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B). Appliance manufacturers may not introduce into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302(a)(5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby

reduce consumer costs as well as emissions of air pollutants associated with electricity production.[1] The Refrigerator Efficiency Standards became effective July 1, 2001.

B. Application for Exception

LG, headquartered in Englewood Cliffs, New Jersey, is a manufacturer of digital appliances, as well as mobile communications, digital displays, and digital media products. Its appliances include refrigerator-freezers, air-conditioners, air cleaners, ovens, microwave ovens, washing machines, dishwashers, and vacuum cleaners and are sold worldwide, including in the United States. The firm's principal brands include LG®, and OEM brands including GE® and Kenmore®. LG's appliances are produced in Korea and Mexico. LG began producing refrigerator-freezers with bottom-mounted freezers in 2001 and produces approximately 33% of such products sold in the United States. LG developed a refrigerator-freezer with bottom-mounted freezer with through-the-door ice service in XXXX. In this refrigerator-freezer, ice is produced in an insulated compartment in the fresh food compartment and dispensed from the fresh food door. The ice storage temperature is maintained by air supplied from the freezer. LG intends to produce and market this product. XXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX XXXXXXXXXX. LG Application at 1-2.

In its Application for Exception, LG asserts that requiring the firm to comply with existing efficiency standards "would be grossly inequitable in that this would require the product to comply with rules that do not properly apply to it and would compare it to products that are not comparable." LG Application at 4. LG also asserts that excluding its new product from the DOE standards program "would cripple LG's effort to market the product." *Id*. LG states that the DOE regulations recognize the importance of through-the-door ice service by establishing separate classes of automatic defrost refrigerator-freezers with and without this service.[2] However, since through-the-door ice service was not offered on models with bottom-mounted freezers when the Refrigerator Efficiency Standards were promulgated, no specific class was established for this type of product. LG's product will be unable to meet the Class 5 energy standard (see fn. 2) due to the energy loss inherent in adding through-the-door ice service. LG Application at 3. Consequently, LG argues,

> Without the requested relief, LG stands to lose a substantial portion of its return on this investment plus the loss of anticipated sales revenue of XXXXXX. These figures do not take into account significant losses in goodwill and brand acceptance … Furthermore, granting exception to LG in this case will promote the goals of the EPCA and other public policy goals since the relief would provide for establishing appropriate classification and standards, and avoid degradation of

[1] For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards established energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, "Refrigerator-Freezers – automatic defrost with side-mounted freezer without through-the-door ice service," is a maximum of "4.91AV+507.5," where AV is the "total adjusted volume" of the particular unit expressed in cubic feet.

[2] For example, the regulations set forth the following classes: Class 3 (with top-mounted freezer without through-the-door ice service); Class 4 (with side-mounted freezer without through-the-door ice service); Class 5 (with bottom-mounted freezer without through-the-door ice service); Class 6 (with top-mounted freezer with through-the-door ice service); and Class 7 (with side-mounted freezer with through-the-door ice service). 10 C.F.R. § 430.32(a).

> product utility. Grant of relief would also help enhance economic development and employment, including not only LG Electronics USA's operations in New Jersey, Illinois, and Alabama, but also at major national retailers and regional dealers that carry LG products.

LG Application at 5.

In further support of its claim, LG cites our recent decision in a similar case. *Maytag Corporation*, 29 DOE ¶ 81,009 (2005) (*Maytag*). In *Maytag*, the corporation also filed for exception relief from the Refrigerator Efficiency Standards for a refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. LG requests that we grant it the same exception relief as we granted to Maytag for its comparable product. LG Application at 5.

We have received only one interested party comment on LG's Application for Exception. On October 11, 2005, the Association of Home Appliance Manufacturers (AHAM), a nonprofit trade association representing the manufacturers of household appliances whose membership accounts for 95% of the refrigerators sold in the United States, submitted a comment expressing its full support for LG's exception request.

C. Standard for Exception Relief

In promulgating the final rule of the Part 430 regulations, DOE stated as follows with regard to Applications for Exception relief:

> Section 504 of the Department of Energy Organization Act authorizes DOE to make adjustments of any rule or order issued under the [EPCA], consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a).
> …
> In exercising its authority under section 504, DOE may grant an exception from an efficiency standard for a limited time, and may place other conditions on the grant of an exception.
>
> DOE will require an application for exception to provide specific facts and information relevant to the claim that compliance would cause special hardship, inequity or an unfair distribution of burdens.

62 Fed. Reg. At 23108-09. Prior decisions of this office as well as federal courts clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Diversified Refrigeration, Inc.*, 28 DOE ¶ 81,005 (2001); *Amana Appliances*, 27 DOE ¶ 81,006 (1999); *Whirlpool Corp.*, 14 DOE ¶ 81,023 (1986); *White Consolidated, Inc.*, 13 DOE ¶ 81,045 (1985); *Exxon Corp. v. Department of Energy*, 802 F.2d 1400, 1407-08 (Temp. Emer. Ct. App. 1986) ("great deference" accorded to agency in applying standards for exception relief); *City of Long Beach v. Department of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985).

II. ANALYSIS

We carefully reviewed LG's Application for Exception and determined that exception relief should be approved. As with the product in *Maytag*, we find that LG's model – a "refrigerator-freezer with bottom-mounted freezer with through-the-door ice service" – will be unable to meet the Class 5 energy efficiency standard established for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service" due to the energy loss inherent in adding the through-the-door ice service feature. Consequently, if exception relief were denied, LG would be effectively precluded from marketing its product under the generally applicable energy efficiency standard, an unintended consequence of the existing regulations. In establishing the Refrigerator Efficiency Standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Also, as LG stated in its application, the firm would lose a significant portion of its return on its investment in designing this product and would face possible losses in brand acceptance and consumer confidence. Furthermore, if exception relief were denied, consumers would unfairly be deprived of the opportunity to choose among different brands for the desired model.

The present case is indistinguishable from the *Maytag* decision. In that case, we determined that the DOE would have established a separate product class for automatic defrost refrigerator-freezers, with bottom-mounted freezers and through-the-door ice service, had those products existed in the marketplace at the time of the promulgation of the Refrigerator Efficiency Standards. "The through-the-door ice service feature is clearly distinguished by the agency in establishing separate classes of product in other models, e.g. the 'top-mounted freezer' and 'side-mounted freezer' variations of automatic defrost refrigerator-freezers." *Maytag* at 82,529 (internal citation omitted). The facts surrounding LG's Application for Exception are virtually identical to those in *Maytag*. Therefore, we have determined that LG is entitled to the same exception relief we granted in *Maytag*.

Accordingly, LG will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for LG's automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, of 5.0AV+539.0.[3] LG must label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b). The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service," or modifies

[3] The Refrigerator Efficiency Standards establish a maximum energy consumption of 9.80AV+276.0 for automatic defrost refrigerator-freezers "with top-mounted freezer without through-the-door ice service" (Class 3) and a maximum energy consumption of 10.20AV+356.0 for automatic defrost refrigerator-freezers "with top-mounted freezer with through-the-door ice service" (Class 6). Thus, the additional energy consumption allowed to account for through-the-door ice service is 0.40AV+80.0 (10.20AV+356.0 minus 9.80AV+276.0). On this basis, we have determined that an appropriate standard for maximum energy use for automatic defrost refrigerator freezers with bottom-mounted freezers with through-the-door ice service can be established by adding this increment (0.40AV+80.0) to the energy efficiency equation, 4.60AV+459.0, established for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5). The combination of these values yields an energy consumption standard of 5.0AV+539.0.

the existing standard for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

It Is Therefore Ordered That:

(1) The Application for Exception filed by LG Electronics, Inc. on September 27, 2005, is hereby granted as set forth in paragraphs (2) and (3) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430.32(a), the energy standard equation for maximum energy use (kWh/yr) is established as 5.0AV+539.0 for the "automatic defrost refrigerator freezer, with bottom-mounted freezer with through-the-door ice service," produced and marketed by LG Electronics, Inc., as described in this decision. The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service," or modifies the existing standard for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

(3) In marketing the refrigerator-freezer described in this decision, LG Electronics, Inc. shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b).

(4) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 9, 2005