

## DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

[Case No. RF-008]

**Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF-008)**

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

**ACTION:** Decision and Order.

**SUMMARY:** DOE gives notice of the Decision and Order (Case No. RF-008) that grants to the Whirlpool Corporation (Whirlpool) a Waiver from the DOE electric refrigerator and refrigerator-freezer test procedure, for its product line containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's Decision and Order, Whirlpool shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters according to an alternate test procedure that takes this technology into account when measuring energy consumption.

**DATES:** This Decision and Order is effective May 5, 2009, and will remain in effect until the effective date of a DOE final rule prescribing an amended test procedure appropriate for the model series of Whirlpool refrigerator-freezers covered by this waiver.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611, E-mail: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov). Francine Pinto, or Michael Kido, U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507; E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov) or [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Whirlpool a Waiver from the applicable residential refrigerator and refrigerator-freezer test procedures, at 10 CFR Part 430 subpart B, appendix A1, for its product line of refrigerator-freezers with relative humidity sensors and adaptive

control anti-sweat heaters, provided that Whirlpool tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Whirlpool from making representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representation fairly discloses the results of such testing.<sup>1</sup> (42 U.S.C. 6293(c))

Issued in Washington, DC, on April 21, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

**Decision and Order**

*In the Matter of:* Whirlpool Corporation. (Case No. RF-008).

**Background**

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A<sup>2</sup> of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291-6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential products under Part A. Relevant to the current Petition for Waiver, the test procedure for residential electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, Appendix A1.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or when they may evaluate

the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). In general, a waiver will remain in effect until final test procedure amendments that resolve the problem that is the subject of the waiver become effective. 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g).

On January 8, 2008, Whirlpool filed a Petition for Waiver from the test procedures which are applicable to its product line of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters. The applicable test procedures are contained in 10 CFR Part 430, subpart B, appendix A1—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers. Because the existing test procedure under 10 CFR Part 430 takes neither ambient humidity nor adaptive technology into account, it does not accurately measure the energy consumption of Whirlpool's new refrigerator-freezers that feature humidity sensors and adaptive control anti-sweat heaters. Consequently, Whirlpool has submitted an alternate test to DOE for approval to ensure that it is correctly calculating the energy consumption of this new product line.

On July 10, 2008, DOE published Whirlpool's Petition for Waiver. 73 FR 39684. DOE did not receive any comments on the Whirlpool petition.

<sup>1</sup> Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c)).

<sup>2</sup> This part was originally titled Part B but it was redesignated Part A in the United States Code for editorial reasons.

## Assertions and Determinations

### Whirlpool's Petition for Waiver

On January 8, 2008, Whirlpool filed a Petition for Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, Subpart B, Appendix A1, and subsequently modified its petition in April 2008.<sup>3</sup> Whirlpool filed its petition because it is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Whirlpool's technology is similar to that used by General Electric Company (GE) for its refrigerator-freezers, which were the subject of a Decision and Order published February 27, 2008. 73 FR 10425. Whirlpool seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 because it takes neither ambient humidity nor adaptive technology into account. Whirlpool stated that the DOE test procedure does not accurately measure the energy consumption of Whirlpool's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Whirlpool has submitted for DOE approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line.

Whirlpool requested that it be permitted to use an alternate test procedure that is the same as that DOE prescribed for GE refrigerators and refrigerator-freezers that are equipped with a similar technology. The alternate test procedure applicable to the Whirlpool and GE products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the GE Decision and Order referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

### Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Whirlpool Petition for waiver. The FTC

staff did not have any objections to granting a waiver to Whirlpool.

### Conclusion

After careful consideration of all the material that was submitted by Whirlpool and consultation with the FTC staff, it is ordered that:

(1) The "Petition for Waiver" submitted by Whirlpool Corporation (Case No. RF-008) is hereby granted as set forth in the paragraphs below.

(2) Whirlpool shall not be required to test or rate the following Whirlpool models<sup>4</sup> on the basis of the current test procedures contained in 10 CFR Part 430, Subpart B, Appendix A1, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

MF12569VE\*  
JFI2089A\*\*  
JFI2589A\*\*  
MFI2266AE\*  
MFI2067AE\*  
MFI2568AE\*  
596.7753\*  
AFI2538AE\*  
JF42REF\*\*B0\*  
JF42PPF\*\*B0\*  
JF42SEF\*\*B0\*  
JF42CXF\*\*B0\*  
KBFC42FS\*0\*  
KBFO42FS\*0\*  
KBFC42FT\*0\*  
KBFO42FT\*0\*  
MBF1956KE\*  
KBFS20ET\*  
KBFA20ER\*  
MBF2256KE\*  
MBF1956KE\*

(3) Whirlpool shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, Appendix A1, except that, for the Whirlpool products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 "Variable anti-sweat heater control" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer

<sup>4</sup> Whirlpool stated in its petition: "The following bottom mounted freezer models with French doors are representative of similar models that will utilize this technology. These particular models do not use this technology at this time but as they are upgraded to add new features, or reach new energy levels this technology will be included."

shall be installed and its operating conditions maintained in accordance with HRF-1-1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the "on" test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position ( $E_{on}$ ), expressed in kilowatt-hours per day, shall be calculated equivalent to:

$$E_{ON} = E + (\text{Heater Contribution})$$

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

$$\text{Heater Contribution} = (\text{Anti-sweat Heater Power} \times \text{System-loss Factor}) \times (24 \text{ hrs}/1 \text{ day}) \times (1 \text{ kW}/1000 \text{ W})$$

Where:

$$\text{Anti-sweat Heater Power} = A1 * (\text{Heater Watts at 5\%RH})$$

$$\begin{aligned} &+ A2 * (\text{Heater Watts at 15\%RH}) \\ &+ A3 * (\text{Heater Watts at 25\%RH}) \\ &+ A4 * (\text{Heater Watts at 35\%RH}) \\ &+ A5 * (\text{Heater Watts at 45\%RH}) \\ &+ A6 * (\text{Heater Watts at 55\%RH}) \\ &+ A7 * (\text{Heater Watts at 65\%RH}) \\ &+ A8 * (\text{Heater Watts at 75\%RH}) \\ &+ A9 * (\text{Heater Watts at 85\%RH}) \\ &+ A10 * (\text{Heater Watts at 95\%RH}) \end{aligned}$$

Where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3

(4) Representations. Whirlpool may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products, for compliance, marketing, or other purposes, only to the extent that such products have been tested in accordance with the provisions outlined above, and

<sup>3</sup> Whirlpool submitted a modified petition on April 30, 2008, which was amended solely to set forth the specific models for which the company is seeking a waiver. DOE is publishing Whirlpool's Petition for Waiver, as amended, for public comment.

such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect from the date this Decision and Order is issued until DOE prescribes final test procedures appropriate to the above model series manufactured by Whirlpool.

(6) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on April 21, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E9-10321 Filed 5-4-09; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12589-001-CO]

#### Public Service Company of Colorado; Notice of Availability of Draft Environmental Assessment

April 28, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Tacoma Hydroelectric Project (FERC No. 12589), located on Cascade, Little Cascade and Elbert Creeks in San Juan and La Plata Counties, Colorado. The project currently occupies, in part, 233.4 acres of Federal land in the San Juan National Forest administered by the U.S. Forest Service.

Staff prepared a draft environmental assessment (EA) that analyzes the probable environmental effects of relicensing the project and concludes that relicensing the project, with appropriate staff-recommended environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public

inspection. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please affix "Tacoma Hydroelectric Project No. 12589-001" to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact David Turner at (202) 502-6091.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-10252 Filed 5-4-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER09-1028-000]

#### Coventa Hempstead Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 28, 2009.

This is a supplemental notice in the above-referenced proceeding of Coventa Hempstead Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 18, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-10251 Filed 5-4-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Post-2010 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Final Procedures.

**SUMMARY:** Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of