



[6450-01-P]

DEPARTMENT OF ENERGY

[Case Number IES-001]

Notice of Decision and Order Granting a Waiver to Acuity Brands Lighting, Inc. from the Department of Energy Illuminated Exit Signs Test Procedure

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

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (“DOE”) announces a Decision and Order granting Acuity Brands Lighting, Inc. (Acuity) a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified combination illuminated exit signs basic models. Acuity is required to test and rate the specified basic models of its combination illuminated exit signs in accordance with the alternate test procedure described in the Decision and Order.

DATES: The Decision and Order is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1604. E-mail: AS_Waiver_Requests@ee.doe.gov.

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-6111. Email: *Jennifer.Tiedeman@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

On April 17, 2013, Acuity filed a petition for waiver from the applicable illuminated exit sign test procedure set forth in 10 CFR 431.204. Acuity submitted an updated petition for waiver in a letter dated March 22, 2016 and further supplemented its filing in an email submitted May 1, 2017. On June 7, 2017, DOE published a notice announcing its receipt of the petition for waiver. 82 FR 26469. In that notice, DOE also solicited comments from interested parties on all aspects of the petition and specified an alternate test procedure that must be followed for testing and certifying the specific basic models for which Acuity requested a waiver. *Id.* On **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, DOE publishes this notice announcing a Decision and Order granting a waiver to Acuity. The notice includes a copy of the Decision and Order DOE issued to Acuity.

Issued in Washington, DC, on March 9, 2018.

Kathleen B. Hogan,

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

Case #IES-001
Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (“EPCA” or “the Act”),¹ Public Law 94-163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes illuminated exit signs, which are the subject of this Order. (42 U.S.C. 6295(w)) Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered product EPCA requires that

¹ All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115-115 (January 12, 2018).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))) The test procedure for illuminated exit signs is contained in 10 CFR part 431, subpart L.³

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

II. Petition for Waiver: Assertions and Determinations

By letter dated March 22, 2016, Acuity submitted an updated petition for waiver (the initial petition was submitted on April 17, 2013) for certain basic models of illuminated exit signs that are required to be tested according to test procedures detailed in 10 CFR 431.204.

³ Although illuminated exit signs are covered products pursuant to EPCA, as a matter of administrative convenience and to minimize confusion among interested parties, DOE adopted illuminated exit sign provisions into subpart L of 10 CFR part 431 (the portion of DOE's regulations dealing with commercial and industrial equipment) because typically businesses, rather than individuals, purchase them. 70 FR 60407, 60409 (Oct. 18, 2005).

Acuity supplemented its filing with an email submitted to DOE on May 1, 2017, that further clarified the specific basic models for which the waiver was being requested.

In its petition Acuity requested a waiver for basic models that provide the dual function of exit signage and lighting for emergency egress (combination illuminated exit signs), stating that the battery used in combination illuminated exit signs requires a substantially larger capacity to provide a minimum of 90 minutes of egress lighting, as required by safety codes. Acuity further stated that it is not feasible to separate the power measurement associated with the exit signage and the egress lighting because a single battery and charging circuit supplies power for both functions. As an alternative to the test procedure currently in place at 10 CFR part 431, subpart L, Acuity recommended that, for combination illuminated exit signs, the power should be determined by applying a battery proration factor to the total battery power of the combination illuminated exit sign. The battery proration factor would be a ratio of the rated wattage of the exit sign face light sources over the combined rated wattages of the egress and exit sign face light sources. The total battery power would be the measured input power minus the rated wattages of the exit sign face light sources.

On June 7, 2017, DOE published a notice announcing receipt of Acuity's petition for waiver (hereafter "notice of petition for waiver"). 82 FR 26469. In the notice of petition for waiver, DOE proposed an alternate test procedure that provides methods to test and rate the basic models at issue. 82 FR 26469, 26470. In that notice, DOE also solicited comments from interested parties on all aspects of the petition and required Acuity to follow an alternate test

procedure for testing and certifying the specific basic models for which Acuity requested a waiver. *Id.*

DOE received comments from Philips Lighting (Philips) in support of granting the petition for waiver submitted by Acuity. Philips also supported the alternative test method proposed by DOE to determine the energy consumption of combination illuminated exit signs. (Philips; No. 7 at p. 1)⁴ An anonymous commenter stated that if DOE has determined that Acuity did not provide adequate documentation, DOE should not allow Acuity to test its own products, nor grant the company a waiver from DOE's test procedure. (Anonymous; No. 8)

Based on the information provided by Acuity, DOE has determined that the test procedure at 10 CFR part 431, subpart L produces results in a manner so unrepresentative of the true energy consumption as to provide materially inaccurate comparative data for the combination illuminated exit signs listed in Acuity's petition for waiver and therefore is granting a waiver for the specified basic models (see footnote).⁵ As stated in the notice of petition for waiver, the alternate test procedure submitted by Acuity requires "rated wattage of light

⁴ A notation in this form provides a reference for information that is in the docket of DOE's review of the notice of petition for waiver for Acuity from DOE's illuminated exit sign test procedure (Docket No. EERE-2017-BT-WAV-0033-0008). This notation indicates that the statement preceding the reference was made by Philips, is included in document number 7 in the docket, and appears at page 1 of that document.

⁵ The following are the basic models for which DOE grants a waiver: ECG 1F, ECG 1F HO, ECG 2F, ECG 2F HO, ECR 1F, ECR 1F HO, ECR 2F, ECR 2F HO, ECG LED 1F HO, ECG LED 2F HO, ECR LED 1F HO, ECR LED 2F HO, ECG LED 1F, ECG LED 2F, ECR LED 1F, ECR LED 2F, ECBG LED 1F, ECBG LED 2F, ECBR LED 1F, ECBR LED 2F, LHD2D18G, LHD2D18R, LHD2D36G, LHD2D36R, LHD2D72G, LHD2D72R, LHD2S18G, LHD2S18R, LHD2S36G, LHD2S36R, LHD2S72G, LHD2S72R, LHQM LED 1F HO GREEN, LHQM LED 1F HO RED, LHQM LED 2F HO GREEN, LHQM LED 2F HO RED, LHQM LED 1F GREEN, LHQM LED 1F RED, LHQM LED 2F GREEN, LHQM LED 2F RED, LHXNY W 1 R, LHXC W 1 RW, LHXC W 2 RW, LHZ618 GREEN, LHZ618 RED, LHZ636 GREEN, LHZ636 RED, LHZ672 GREEN, LHZ672 RED, QM LED 1F GREEN, QM LED 1F HO GREEN, QM LED 1F RED, QM LED 1F HO RED, QM LED 2F GREEN, QM LED 2F HO GREEN, QM LED 2F RED, QM LED 2F HO RED, NXPCCL 1F, and NXPCCL 2F.

source(s)” associated with the face and egress light source(s) to calculate the input power demand of the combination exit signs. DOE found that these rated wattages are not always well documented in Acuity’s product literature for the basic models under consideration. Therefore, DOE proposed an alternate test procedure that provides methods to test and rate the basic models at issue without the rated wattage of the light source(s). 82 FR 26469, 26470. DOE is requiring Acuity to use this alternate test procedure to test and rate the combination illuminated exit signs for which it has requested a waiver. In response to the anonymous commenter, Acuity has made available sufficient documentation with respect to its product lines to allow the company to test its basic models according to this alternate test procedure.

In addition to requesting a test procedure waiver for specified basic models in its petition, Acuity also requested that any new products introduced by the company into commerce that provide the dual function of exit signage and emergency egress lighting be covered by the waiver. DOE regulations at 10 CFR 431.401(f)(2) provide that DOE may grant a waiver, including adherence to alternate test procedures, only for “the basic model(s) for which the waiver was requested.” The Decision and Order is applicable only to the basic models listed within it and does not extend to any other basic models. Acuity may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those basic models listed in this waiver using the expedited process established at 10 CFR 431.401(g). Alternatively, Acuity may submit another petition for waiver from the test procedure for additional basic models. 10 CFR 431.401(a)(1).

In its petition, Acuity sought a test procedure waiver for certain basic models. The Decision and Order is applicable only to the basic models listed within it and does not extend to any other basic models.

Consistent with 10 CFR 431.401(j), not later than 60 days after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver.

Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

This Decision and Order will terminate in conjunction with any future updates to the test procedure for illuminated exit signs located in 10 CFR part 431, subpart L, that address the issue presented in the waiver. At such time, testing to demonstrate compliance with standards, and any other representations of energy use, will require manufacturers to use the relevant test procedure for this equipment.

III. Consultations with Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission (FTC) staff concerning the Acuity petition for waiver. The FTC staff did not have any objections to granting a waiver to Acuity.

IV. Order

After careful consideration of all the material that was submitted by Acuity in this matter, DOE grants a waiver regarding the basic models specified in paragraphs (2) and (3). Therefore, in accordance with 10 CFR 431.401, it is ORDERED that:

(1) The petition for waiver submitted by Acuity (Case No. IES-001) is hereby granted as set forth in this Order.

(2) For the following basic models:

Lithonia Lighting brand basic models:

ECG LED 1F, ECG LED 2F, ECR LED 1F, ECR LED 2F, LHQM LED 1F HO GREEN, LHQM LED 1F HO RED, LHQM LED 2F HO GREEN, LHQM LED 2F HO RED, LHZ618 GREEN, LHZ618 RED, LHZ636 GREEN, LHZ636 RED, LHZ672 GREEN, and LHZ672 RED

Holophane brand basic models:

QM LED 1F GREEN, QM LED 1F HO GREEN, QM LED 1F RED, QM LED 1F HO RED, QM LED 2F GREEN, QM LED 2F HO GREEN, QM LED 2F RED, and QM LED 2F HO RED

Navilite brand basic models:

NXPCL 1F and NXPCL 2F

Acuity must:

- (a) Identify a non-combination illuminated exit sign equivalent to the combination illuminated exit sign basic model under test. A unit is an equivalent non-combination substitute only if it consists entirely of components identical to all of those of the unit whose input power demand is being determined, but does not include any auxiliary features, and contains an electrically connected battery. The equivalent unit must also have the same manufacturer and number of faces as the unit whose input power demand is being determined.
- (b) Assign the input power demand of the equivalent non-combination illuminated exit sign as the input power demand of the combination illuminated exit sign basic model.

(3) For the following basic models:

Lithonia Lighting brand basic models: ECG 1F, ECG 1F HO, ECG 2F, ECG 2F HO, ECR 1F, ECR 1F HO, ECR 2F, ECR 2F HO, ECG LED 1F HO, ECG LED 2F HO, ECR LED 1F HO, ECR LED 2F HO, ECBG LED 1F, ECBG LED 2F, ECBR LED 1F, ECBR LED 2F, LHQM LED 1F GREEN, LHQM LED 1F RED, LHQM LED 2F GREEN, LHQM LED 2F RED, LHXNY W 1 R, LHXC W 1 RW, and LHXC W 2 RW

Holophane brand basic models:

LHD2D18G, LHD2D18R, LHD2D36G, LHD2D36R, LHD2D72G, LHD2D72R, LHD2S18G, LHD2S18R, LHD2S36G, LHD2S36R, LHD2S72G, and LHD2S72R

Acuity must:

- (a) For a combination illuminated exit sign basic model under test that uses only LEDs to illuminate all face(s) of the unit and does not have an equivalent unit as described in (2)(a), assign an input power demand according to the following formula:

$$\text{input power demand} = 5 \text{ watts} \times \text{number of faces}$$

This method requires determination of the number of faces for each basic model. Face count is the number of faces (no fewer than one) with which an illuminated exit sign basic model can be configured by an end user when all electric light sources are connected and energized.

- (4) Representations. Acuity may make representations about the energy use of the specified basic models of its combination illuminated exit sign for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions above and such representations fairly disclose the results of such testing.

- (5) This waiver shall remain in effect consistent with the provisions of 10 CFR 431.401.

- (6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results

from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Acuity may request that DOE rescind or modify the waiver if Acuity discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2). As set forth above, the test procedure specified in this Decision and Order is not the identical to the test procedure offered by Acuity. If Acuity believes that its preferred test method provides representative results and is less burdensome than the test method required by this Decision and Order, Acuity may submit a request for modification under 10 CFR 431.401(k)(2) that explains why DOE should adopt the test procedure submitted by Acuity and addresses the reasons for DOE's modifications provided in this Decision and Order. Acuity also may submit another less burdensome alternative test procedure not expressly considered in this notice under the same provision.

(7) Granting of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on March 9, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency,

Energy Efficiency and Renewable Energy.

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