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January 26, 2024

VIA FEDERAL EXPRESS & EMAIL: MO.MADANI@MYFLORIDALICENSE.COM

Mo Madani,
Technical Director
Building Codes & Standards Office
2601 Blair Stone Road
Tallahassee, FL 32399

Re: **Response to Complaint Regarding Florida Product Approval No. 22267 (ES-SGD2020) and Florida Product Approval Number 17897.5 (ES-8000T)**

Dear Mr. Madani,

We are in receipt of PGT Innovations, Inc.'s ("PGT") untimely January 24, 2024, sureply ("Sureply") to E.S. Windows, LLC's ("ES Windows") January 22, 2024, suresponse in connection with the above-referenced Complaint. The Sureply drones on, but provides nothing new. This response will be brief.

PGT begins in the second paragraph of the Sureply by making more grandiose proclamations and protests that have zero support. First PGT suggests ES Windows' submissions are "riddled with inaccuracies," yet do not identify one such inaccuracy other than, remarkably, a reference to an old and now-irrelevant version of the product approval they are attacking. This is discussed in more detail, below. PGT then chastises ES Windows for highlighting the painfully apparent conflict of interest facing Mr. Hershberger and asks this Committee to blame ES Windows for that fact. How is stating the truth inappropriate? PGT next takes issue with ES Windows' suggestions that the motivation of PGT and Mr. Hershberger is clear given ES Windows has proof of anticompetitive communications invoking this very Committee and predicting how this Committee will act on February 5th.

Interesting....

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PGT then divides the balance of its Sureply into two sections; “Section (i)” about the need for an investigation, and “Section (ii)” about revocation.

ES Windows’ Response to Section (i):

PGT once again accuses ES Windows of making misrepresentations to the Florida Building Commission (“FBC”); this time with respect to the applicability of FPA 22267 to the composition and size of the glass PGT tested. Specifically, in its January 22 sureply, ES Windows advised this Committee that PGT tested a glass specimen size (142” x 120”) to which FPA 22267 is inapplicable. FPA 22267, *as originally issued*, was applicable to the 142” x 120” glass size. This applicability was based on a calculation error that ES Windows discovered and voluntarily brought to the FBC’s attention in 2023 so that FPA 22267 could be revised. The *revised* FPA 22267, was approved by the FBC and issued on September 8, 2023. Thus, the FPA that PGT now attacks is the *wrong* FPA and no longer valid. Given that oversight by PGT, the entire premise of their Complaint is invalid, thus rendering their entire Complaint *invalid*.

Next, PGT attempts to minimize the overwhelming conflict of interest inherent to Rodney Hershberger’s involvement in the FBC and, more specifically, this Committee. Mr. Hershberger is the chair of the Committee considering *his own* company’s request to revoke its competitor’s FPAs. The existence of a conflict of interest here is self-explanatory. Importantly, PGT does not dispute the conflict of interest. Instead, PGT accuses ES Windows of disparaging Mr. Hershberger for bringing the conflict of interest to this Committee’s attention. It is unimaginable that holding a government official accountable for conflicts of interest could be considered “disparaging.” ES Windows also holds evidence not particularly relevant to the issues before this Committee of the improper use of the Complaint in the marketplace by PGT to unlawfully compete with ES Windows. That is not inflammatory, it is true.

Then, PGT doubles down on its misapplication of the test results of one product to the test results of another, completely different product. This is a nonsensical argument that is not based on science or test reports (signed and sealed or not). Instead, the “representations” that PGT alleges seem to be from the recommendations of the manufacturer of the relevant interlayer. Again, on this point, ES Windows rests on its prior correspondence to this Committee.

Finally, PGT makes several conclusory claims with absolutely no supporting evidence. For example, PGT claims that its Complaint is based on rational, scientific principles. This claim is false. PGT’s Complaint is based on a fundamentally flawed test, the results of which it improperly applied to *two different products*. The fundamental flaws of PGT’s test and application thereof are detailed in ES Windows’ prior correspondence to this Committee. As another example, PGT claims that the products at issue pose “an incredibly real life-safety threat to the consumers of the State of Florida.” This claim is also false. As PGT itself implicitly acknowledges, there is absolutely no record of failure or problems with the subject products currently in use throughout the state, which products have been thoroughly tested by multiple hurricanes.

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ES Windows' Response to Section (ii):

PGT cites Rule 61G20-3.014(1)(a), suggesting that the Committee has no discretion and must revoke a Florida Product Approval if it is presented with a written complaint containing substantial material evidence supporting the allegations therein. For once, PGT and ES Windows agree. But, PGT's evidence (a flawed and unverified test report supported by the affidavit of a biased PGT employee) is neither substantial nor material. PGT remarkably suggests that the fact that its test reports are not signed and sealed by the testing laboratory is of no consequence. Setting aside that PGT tested the wrong window (as explained above), PGT's suggestion defies logic and hardly warrants further response. On this point, ES Windows rests on its prior correspondence to this Committee, which explain in detail why PGT's evidence is wholly deficient.

Next, PGT suggests that ES Windows is trying to "enflame" this Committee. PGT is the one who has invoked this Committee's jurisdiction. Not ES Windows. Moreover, it is PGT, and its chairman emeritus (not apparently coincidentally, also the chair of this Committee) that has filed this baseless Complaint based on the *wrong* FPA. PGT and Mr. Hershberger cannot point to a shred of material evidence that would be accepted by any court of law, much less support a decision by this Committee to initiate an investigation or impose the draconian remedy of revocation. ES Windows is not attacking, or "enflaming," anyone. ES Windows is defending itself from unfair competition and baseless allegations.

The balance of the Sureply is an amalgamation of nonsensical arguments, opinions, and the musings of their counsel, which have zero legitimate support and, thus, cannot be used to prop up PGT's meritless Complaint.

As always, we appreciate the Committee's time and attention to this matter. We trust this will conclude PGT's seemingly endless and inappropriate cycle of "litigation by correspondence." We remain available to address any questions or concerns you may have. Otherwise, we look forward to the February 5, 2024, hearing.

Very truly yours,

/s/ Phillip M. Hudson

Phillip M. Hudson III, P.A.

PMH