

September 7, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception
Appeals

Names of Cases: York International Corp.
Carrier Corporation
Lennox International, Inc.

Dates of Filing: April 26, 2005
May 16, 2005
June 20, 2005

Case Nos.: TEE-0021
TEA-0004
TEA-0006
TEA-0007

On April 14, 2005, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) granted exception relief to Nordyne, Inc. See *Nordyne, Inc.*, 29 DOE ¶ 81,004 (2005) (*Nordyne*). The exception concerned split system central air conditioners and heat pumps having three to five ton cooling capacities and sold for use in manufactured housing. Under the terms of relief, Nordyne would have a four-year extension of time to comply with the 2006 energy efficiency standards, subject to its compliance with a lower standard during the interim period. In response to *Nordyne*, York International Corp. (York) requested that it be granted similar exception relief or, in the alternative, that *Nordyne* be reversed. In addition, Carrier Corporation (Carrier) and Lennox International, Inc. (Lennox) requested that *Nordyne* be reversed. As explained below, we have determined that *Nordyne* should be reversed.

I. Background

A. The Energy Efficiency Standards

The DOE administers an energy conservation program for specified consumer products, including central air conditioners and heat pumps. 42 U.S.C. §§ 6291-6309. The conservation program

consists of three parts: testing, labeling, and energy conservation standards. This case concerns the 2006 standards for air conditioners and heat pumps (the 2006 standards).

The 2006 standards are set forth at 10 C.F.R. Part 430. The DOE uses a Seasonal Energy Efficiency Ratio (SEER) to measure the efficiency of air conditioners and a Heating Seasonal Performance Ratio (HSPF) to measure the seasonal heating performance of heat pumps. The standards that have been in effect since 1992 set a minimum of 10 SEER/6.8 HSPF for split system air conditioners and heat pumps. 10 C.F.R. § 430.32(c). Effective January 23, 2006, that standard increases to a minimum of 13 SEER/7.7 HSPF. *Id.* Split system air conditioners and heat pumps that fall within the definition of "space constrained," see 10 C.F.R. § 430.2, will be subject to a lower standard of 12 SEER/7.4 HSPF, see 10 C.F.R. § 430.32(c).

The DOE Organization Act (DOEOA) authorizes the DOE to grant exceptions. DOEOA § 504(a), 42 U.S.C. 7194(a). The DOEOA permits adjustments "as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens." The DOE's procedural regulations set forth the procedures applicable to exception applications. See 10 C.F.R. Part 1003, Subparts B and C.

B. Procedural History

These proceedings began when Nordyne filed an Application for Exception (Case No. TEE-0013), in which it requested exception relief from the 2006 standards for certain products. In response, Nordyne granted exception relief with respect to some of those products, i.e., split system air conditioners and heat pumps with three to five ton cooling capacities (36,000 to 60,000 BTUs/hour) for use in manufactured housing. Nordyne was granted a four-year extension of time to comply with the 2006 standards, subject to the firm's compliance with a 12 SEER/7.4 HSPF standard in the interim. The relief was based on Nordyne's argument that meeting the 2006 standards would necessitate a \$700 price increase to consumers and that the increase would pose an undue burden on the manufactured housing industry and its customers.

In response to Nordyne, York filed an Application for Exception (Case No. TEE-0021), requesting the same relief granted Nordyne. In the alternative, York filed an Appeal (Case No. TEA-0004), asking that OHA reverse Nordyne if the York exception request was denied. Two other competitors -- Carrier and Lennox -- filed Appeals (Case Nos. TEA-0006 and TEA-0007, respectively),

requesting that *Nordyne* be reversed. The Manufactured Housing Institute (MHI) and the American Council for an Energy Efficient Economy (ACEEE) filed comments. The MHI supported exception relief; the ACEEE opposed relief.

We consolidated the cases, scheduled a hearing for July 19, 2005, and asked all the parties to be prepared to comment on the Lennox appeal submission. The transcript of the hearing will be cited at "Tr." *Nordyne*, *York*, *Carrier*, and *Lennox* all presented arguments in support of their positions. In addition, MHI spoke in support of exception relief; *Rheem Air Conditioning* (*Rheem*) and the ACEEE spoke in opposition to the relief. *Mortex Products*, a maker of evaporative coils also made a presentation in which it expressed a neutral position, but argued that in the event *Nordyne* was upheld, for competitive reasons *Mortex*, too, was entitled to exception relief.

Following the hearing, *Nordyne*, *Carrier*, and *Lennox* submitted additional information and argument. *Nordyne* cited recent test results indicating that its equipment with a three ton cooling capacity might be able to meet the 2006 standards without resort to expensive technologies, and *Nordyne* reduced the claimed price increase associated with meeting the 2006 standards from \$700 to \$600. *Nordyne* also argued that the *Lennox* submission should be dismissed as untimely.

C. The Dispute

Nordyne and *York* are two principal manufacturers of furnaces for manufactured homes. Manufactured homes have a closet or alcove that houses a furnace. The size of the closet or alcove is standardized and part of a home's plan.

Nordyne, *York*, and other air conditioning companies sell split system air conditioning and heat pump equipment that is installed in manufactured homes. The interior components of this equipment fit in the space that houses the furnace. The indoor coil for the air conditioning fits into a space at the bottom of the furnace. One way to increase the efficiency of an air conditioning unit is to expand the surface of the indoor coil. Because space in the furnace alcove of a manufactured home is not unlimited, increased efficiency standards may require redesign and expansion of the furnace alcove/closet.

It is undisputed that *Nordyne* and *York* can meet the 2006 standards. Each firm argues, however, that meeting those standards entails an increased price to consumers that poses an unfair burden on the manufactured housing industry and its

customers. Nordyne argues that meeting the standard for units with cooling capacities of three and one-half tons or more would require the use of expensive motors and compressors that would result in a \$600 increase in the retail price.

It is also undisputed that, with few exceptions, units with three and one-half to five ton cooling capacities are not used in single-width manufactured homes. Instead, they are used, or Nordyne anticipates using them, in multiple-width manufactured homes. Currently, Nordyne sells units with three and one-half to four and one-half ton cooling capacities for use in such homes. Nordyne does not currently sell units with five ton cooling capacities for manufactured homes, but states that there is a potential market for such units.

The parties that oppose the relief - Carrier, Lennox, Rheem, and the ACEEE - argue that the 2006 standards can be met with low cost methods, such as increased coil size. Mortex states that a Mortex coil, used with a Rheem "strong condenser unit" will meet the 2006 standards with "no problem." Tr. at 80. Carrier states that it will be able to meet the 2006 standards, using increased coil size. The ACEEE also argues that inexpensive measures, such as ENERGY STAR windows, reduce the need for the cooling capacity. Finally, the ACEEE argues that Nordyne and York have not established that the multiple-width manufactured homes bear a significantly greater burden than site-built homes of comparable size. Accordingly, the ACEEE reasons, a grant of an exception for units used in manufactured housing is unwarranted.

In addition, the opponents of exception relief argue that the lower efficiency, lower cost units made under the relief granted in Nordyne will be sold to the site-built home market. This, the parties argue, would give Nordyne and York an unfair competitive advantage and defeat the goal of energy conservation.

II. Analysis

A. The Status of the Lennox Appeal

Nordyne contends that the Lennox appeal should be dismissed as untimely. Under the regulations, a party has 30 days to file an appeal of a grant of exception relief. See 10 C.F.R. 1003.27(a). Lennox filed its appeal on June 20, 2005, well after the 30-day deadline, and has not demonstrated good cause for the delay. Therefore the appeal should be dismissed as untimely. We note, however, that we asked the parties to

address Lennox's appeal. For this reason, we will consider the appeal and related submissions as comments that are part of the record of this proceeding.

B. Whether Nordyne and York are Entitled to Exception Relief

The OHA has authority to grant exception relief where a regulatory requirement causes a "special hardship, inequity, or unfair distribution of the burdens." 42 U.S.C. § 7194(a). See also 10 C.F.R. § 1003.25(b)(2). As explained below, Nordyne and York have not demonstrated that they are entitled to exception relief.

As an initial matter, we emphasize that the rationale of the exception request - that the 2006 standards require expensive technologies that impose an unfair burden on the manufactured housing industry and its customers - is not firm-specific. Instead, the rationale applies to any firm that manufactures units for use in manufactured housing. Accordingly, if the rationale is accepted, all manufacturers would be entitled to the requested relief. To limit exception relief to Nordyne and, possibly, York would give them an unfair competitive advantage over firms that now or in the future manufacture units for use in manufactured housing.

Because the rationale of the exception request is not firm-specific, we have considered the request in the context of the regulatory proceedings leading to the 2006 standards, as well as the position of competing firms and interested parties in this exception proceeding. Based on those considerations, we have concluded that Nordyne and York have not demonstrated that, in the absence of exception relief, manufactured housing and its customers will suffer an unfair distribution of burdens.

In the rulemaking proceedings leading to the 2006 standards, the DOE specifically considered and rejected arguments that units used in manufactured housing should be subject to a lower standard. See 66 Fed. Reg. 7180, 7196-7197 (January 22, 2001). Moreover, in formulating its regulations, DOE made a limited exception for "space constrained" products which it defined as units with lower cooling capacities than those involved here (two and one-half tons or less). See 10 C.F.R. § 430.2.

The reasonableness of DOE's conclusion that the 2006 standards are appropriate for equipment used in manufactured housing is supported by the parties' positions in this proceeding. With the exception of York, Nordyne's competitors are not requesting

exception relief. Instead, they maintain that expensive technologies are not needed to meet the 2006 standards. See, e.g., Tr. at 41 (Carrier). Moreover, York did not file for exception relief until after we granted Nordyne relief. In its exception application, York did not argue that expensive technologies were needed to meet the 2006 standards. Instead, York merely argued that it was unfair to grant an exception to Nordyne and not to York. It was not until after York filed its exception application that it cited technical limitations.

Although Nordyne has suggested that manufactured housing has constraints that its competitors do not understand, the record does not support a conclusion to that effect. The fact that Nordyne and York are two principal suppliers of furnaces for manufactured housing does not compel the conclusion that their competitors lack experience in supplying air conditioning equipment for use in manufactured housing. Carrier states that it currently sells air conditioning equipment for use in manufactured homes and, therefore, is familiar with how equipment functions in those homes. See, e.g., Carrier July 26, 2005 Submission at 4, Tr. at 36-37.

Exception relief is not appropriate for units with cooling capacities between three and four tons. The record indicates that such units do not need expensive technologies to meet the 2006 standards. Although Nordyne claims that it cannot meet the 2006 standards using an "N" coil, Nordyne has not submitted test results to substantiate that claim. Lennox states that Nordyne rates its S3BD series condenser unit, when used with coils identical to manufactured home coils, as meeting the 2006 standards for up to three and one-half ton units. Lennox August 16, 2005 Submission at 2. Finally, Carrier states that it will be able to meet the 2006 standards without resort to expensive technologies and provides supporting information. See, e.g., Tr. at 30, 38-39.

Exception relief is also not appropriate for larger units - units with cooling capacities over four tons. The market for such units is small¹ and would be manufactured homes that are comparable in size to site-built homes. The exception applicants' arguments that manufactured homes are space-constrained and marketed to low income purchasers have no validity when manufactured homes are the size of site-built homes. Nor have the applicants addressed the ACEEE arguments that upgrades of other building components, e.g., windows, to

¹ See Tr. at 13 (York). As stated above, Nordyne does not currently sell five ton units for use in manufactured homes.

ENERGY STAR levels can reduce the needed cooling capacity. See, e.g., Tr. at 92-93. Accordingly, the record does not support exception relief for the larger units.

III. Summary and Conclusion

We now realize that the rationale of the Nordyne and York exception applications, if accepted, would warrant a class exception for all firms that manufacture three ton and larger split system air conditioners and heat pumps for use in manufactured housing. The record in this case does not support such a drastic result. The DOE decision to raise the minimum standard for air conditioners and heat pumps involved a lengthy four to five year process of extensive research. To the extent space constraints required special treatment, the regulations were adjusted accordingly. See 10 C.F.R. § 430.2 (definition of "space constrained product"). Additionally, all arguments made by corporations regarding additional provisions for space-constrained units were carefully examined by experienced professionals in the context of the need for conservation in energy consuming appliances -- and rejected.

Based on the foregoing, we have concluded that (i) the York Application should be denied, and (ii) the York and Carrier Appeals, requesting that Nordyne be reversed, should be granted. Finally, as explained in the Decision, we have concluded that the Lennox appeal should be dismissed as untimely but the Lennox submissions included in the record of this proceeding.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by York International, Inc. Case No. TEE-0021, be, and hereby is, denied.
- (2) The Appeals filed by York International, Inc., Case No. TEE-0004, and Carrier Corporation, Case No. TEE-0006, are hereby granted as set forth in Paragraph (3) below.
- (3) The April 14, 2005 Decision and Order issued to Nordyne, Inc., Case No. TEE-0013, be, and hereby is, reversed.
- (4) The Appeal filed by Lennox International, Case No. TEA-0007, be, and hereby is, dismissed.

- (5) Any person aggrieved by the denial of exception relief may file an appeal to the Federal Energy Regulatory Commission, in accordance with the procedural regulations of that agency.

George B. Breznay
Director
Office of Hearings and Appeals

Date: September 7, 2005