

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
WASHINGTON, D.C. 20585**

In the Matters of:)	
)	
Rheem Manufacturing Co.)	Case Numbers: 2018-SE-43029
Respondent)	and 2018-SE-43031
)	

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and Rheem Manufacturing Co. (“Respondent”). The Compromise Agreement resolves the cases initiated to pursue a civil penalty for distributing in commerce in the United States commercial package air conditioners that failed to meet the applicable energy conservation standard.
2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves these matters. A copy of the Compromise Agreement is attached hereto and incorporated by reference.
3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement.
4. Based on the information in the case files and Respondent’s admission of facts establishing violations, I find that Respondent knowingly committed Prohibited Acts by distributing in commerce commercial package air conditioners that were not in conformity with the applicable energy conservation standard. *See* 42 U.S.C. § 6302; 10 C.F.R. §§ 429.102(a)(6), 431.97(b).
5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$439,620 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/

John T. Lucas
Acting General Counsel

2021.06.15

Date

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matters of:)	
)	
Rheem Manufacturing Co.)	Case Numbers: 2018-SE-43029
(commercial package air conditioners and)	and 2018-SE-43031
heat pumps))	
)	

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of the Assistant General Counsel for Enforcement, initiated these actions against Rheem Manufacturing Co. (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notices of Proposed Civil Penalty, alleging that Respondent had manufactured and distributed in commerce commercial package air conditioners and heat pumps that are not in compliance with an applicable energy conservation standard. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, enter into this Compromise Agreement for the purpose of settling these specific enforcement actions.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions apply:

- (a) “Act” means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) “Distribute in Commerce” or “Distribution in Commerce” means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.
- (c) “DOE” means the U.S. Department of Energy.
- (d) “Manufacture” means to manufacture, produce, assemble, or import.
- (e) “Notices” means the Notices of Proposed Civil Penalty issued by DOE to Respondent on July 16, 2020, and captioned as case numbers 2018-SE-43029 and 2018-SE-43031.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Rheem Manufacturing Co., and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions set forth in 42 U.S.C. §§ 6291 and 6311 and 10 C.F.R. Parts 429, 430, and 431.

II. RECITALS

WHEREAS, pursuant to the Act, DOE is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE's energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations; and

WHEREAS, commercial package air conditioners and heat pumps are "covered equipment" (10 C.F.R. § 431.2); and

WHEREAS, DOE has promulgated energy conservation standards for commercial package air conditioners and heat pumps at 10 C.F.R. § 431.97; and

WHEREAS, DOE, on April 28, 2020, issued a Notice of Noncompliance Determination finding commercial package air conditioner basic model RAWL-090D, manufactured and distributed in commerce by Respondent, does not comply with an applicable energy conservation standard; and

WHEREAS, DOE, on April 28, 2020, issued a Notice of Noncompliance Determination finding commercial package air conditioner basic model RAWL-120C (together with model RAWL-090D, the "subject models"), manufactured and distributed in commerce by Respondent, does not comply with an applicable energy conservation standard; and

WHEREAS, DOE, on July 16, 2020, initiated actions to assess a civil penalty for Respondent's distribution in commerce in the United States of the subject models; and

WHEREAS, Respondent admits:

1. Respondent manufactured the subject models;
2. Respondent has distributed in commerce in the United States at least 2,586 units of the subject models;
3. The subject models are small commercial package air conditioners with a cooling capacity of $\geq 65,000$ Btu/h and $< 135,000$ Btu/h, air cooled, with electric resistance heating or no heating, manufactured on or after January 1, 2010, and before January 1, 2018;
4. The subject models do not comply with the minimum permissible energy efficiency ratio set forth in 10 C.F.R. § 431.97(b); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6303 and 6316 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that knowingly distributes in commerce any new covered equipment that is not in conformity with an applicable energy conservation standard; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which the Parties acknowledge, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.**
 - a. If Respondent executes this Compromise Agreement and returns it to DOE by June 2, 2021, Respondent agrees to pay the sum of **\$439,620** (four hundred and thirty-nine thousand, six hundred and twenty dollars) as full satisfaction of the civil penalty proposed in the Notices, within thirty (30) calendar days of the issuance of an Adopting Order.
 - b. Respondent agrees not to distribute in commerce in the United States basic models RAWL-090D and RAWL-120C, and to abide by the terms of the Notices of Noncompliance Determination, issued on April 28, 2020, and captioned under case numbers 2018-SE-43029 and 2018-SE-43031.
3. **Obligations of DOE.**
 - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment pursuant to Paragraph III.2.a above in full satisfaction of the penalty authorized by the Act.
 - b. DOE agrees to issue promptly an Order adopting this Agreement ("Adopting Order").
 - c. DOE agrees to terminate the enforcement actions captioned under case numbers 2018-SE-43029 and 2018-SE-43031 with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph III.2.a., above. If Respondent fails to complete its Obligations in accordance with paragraph III.2, above, DOE may notify Respondent that the Agreement is null and void and may seek the maximum penalty in accordance with 10 C.F.R. § 429.120.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its regulations and to enter into its own agreements interpreting and applying those regulations. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
5. **Effective Date.** The Parties agree that this Compromise Agreement will become effective on the date on which the General Counsel issues the Adopting Order. As of that date, the Adopting Order and this Compromise Agreement have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement constitutes a separate violation of an Agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **Payment Instructions and Late Payments.** Respondent agrees to make all payments in a timely manner and in a method set forth in the attached "Payment Instructions." Respondent acknowledges and agrees to comply with the "Late Payment" provisions provided therein.

7. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
8. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notices associated with these cases, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial de novo. Respondent agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.
9. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notices.
10. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties with respect to these matters, whether oral or written.
11. **Modifications.** This Compromise Agreement cannot be modified without the written consent of both Parties.
12. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable; or if such modification is not possible, then the rest of this agreement remains enforceable to the maximum extent allowed by law.
13. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
14. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

/S/

Stephen C. Skubel
Acting Assistant General Counsel
for Enforcement
U.S. Department of Energy

May 27, 2021

Date

/S/

(Signature)
Typed Name: Mike Branson
Title: President - Air
Company Name: Rheem Manufacturing Company

May 26, 2021

Date