

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: GE Appliances)		
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Filing Date: June 15, 2023)	Case No.:	EXC-23-0001
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Issued: October 31, 2023

**Decision and Order
Application for Exception**

On June 15, 2023, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE or the Department) received from GE Appliances (GE) an Application for Exception to the applicable provisions of the Energy Conservation Program: Test Procedure for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps (Final Rule) published on December 7, 2022, at 87 Fed. Reg. 75,144 and codified at 10 C.F.R. § 430.32(c), with respect to its single-speed heat pump Vertical Zoneline products (VZHP), for two years while it updates the products for compliance. For the reasons discussed below, we deny the Application for Exception.

I. BACKGROUND

A. Statutory and Regulatory History

The Energy Policy and Conservation Act of 1975, Pub L. No. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA), initiated measures to increase the energy efficiency of certain products. The EPCA defined the terms “consumer product,” “central air conditioner” (CAC), and “heat pump” (HP) and directed DOE to set energy conservation standards for CACs and HPs or classes of CACs and HPs. 42 U.S.C. §§ 6291(21), (24), and 6292(a)(3). Under the EPCA:

- (1) The term “consumer product” means any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type—
 - (A) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and
 - (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article

of such type is in fact distributed in commerce for personal use or consumption by an individual

Id. § 6291(1). A CAC is defined as follows:

- (21) The term “central air conditioner” means a product, other than a packaged terminal air conditioner, which—
- (A) is powered by single phase electric current;
 - (B) is air-cooled;
 - (C) is rated below 65,000 Btu per hour;
 - (D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and
 - (E) is a heat pump or a cooling only unit.

Id. § 6291(21). The EPCA defines an HP as follows:

- (24) The terms “heat pump” or “reverse cycle” mean a product, other than a packaged terminal heat pump, which—
- (A) consists of one or more assemblies;
 - (B) is powered by single phase electric current;
 - (C) is rated below 65,000 Btu per hour;
 - (D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and
 - (E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

Id. § 6291(24). The EPCA defines both CACs and HPs as covered consumer products. *Id.* §§ 6291(1)–(2), 6292(a).

The Energy Independence and Security Act of 2007 added definitions for “standby” and “off” modes and directed DOE to create test procedures for CACs and HPs to address those modes (CAC/HP Standards). *Id.* § 6295(gg)(2)(A). The Department published new final rules to this effect in 2016 and 2017. 81 Fed. Reg. 36,991 (June 8, 2016); 82 Fed. Reg. 1426¹ (Jan. 5, 2017). Compliance with the test procedures promulgated in 2016 was required between July 8, 2016, and December 31, 2022; compliance with the test procedures promulgated in 2017 was required starting January 1, 2023.

On January 30, 2014, GE issued a press release stating that “GE’s Zoneline can easily heat and cool areas of residential homes such as sunrooms, outbuildings and finished, walk-out basements.”

¹ Amended at 86 Fed. Reg. 68,394 (Dec. 2, 2021); 87 Fed. Reg. 64,588 (Oct. 25, 2022); and 87 Fed. Reg. 66,935 (Nov. 7, 2022).

GE Press Release, *available at* <https://www.ge.com/news/press-releases/easy-installation-makes-ge%C2%AEs-zoneline%C2%AE-practical-and-affordable-choice-heat-home>. The press release also stated that the Zoneline air conditioners and heat pumps are an “affordable way to help homeowners enjoy a new space or area where the temperature is tough to regulate.” *Id.*

In an April 2014 Notice of Data Availability (NODA), DOE considered creating a specific class for space-constrained Single Package Vertical Units (SPVU) air conditioners and heat pumps but decided against the new class because SPVUs for lodging, multi-family homes, nursing homes, and residences were already covered by the CAC/HP Standards. Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment, 79 Fed. Reg. 20,114, 20,121–23 (April 11, 2014). Specifically, DOE stated,

Because the space-constrained central air conditioner product class has already been established to account for products whose outer dimensions are severely limited by their application and, given the similarities and overlap between models used in commercial lodging applications and models used in residential multi-family applications, DOE believes that any single-package vertical units that are “space-constrained” are appropriately categorized and regulated as central air conditioners.

As a result, DOE has determined that, based on the available product literature, as well as the governing definitions in EPCA, certain units currently listed by manufacturers as SPVUs are being misclassified and are appropriately classified as central air conditioners (and in most cases as space-constrained central air conditioners).

Id. at 20,123.

In December 2022, DOE published the Final Rule adding new definitions to the SPVU category of commercial and industrial products. 87 Fed. Reg. 75,144. The Final Rule stated,

To clarify the distinction between SPVUs as industrial equipment and CACs as covered consumer products, DOE proposed in the January 2022 NOPR to add specific definitions for “single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h” and “single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h” to explicitly identify those design characteristics specific to models that are not of a type distributed in commerce for personal use or consumption by individuals, and therefore are not consumer products or CACs. . . . Specifically, DOE preliminarily determined that weatherization, or in the case of non-weatherized units, the presence of optional air ventilation provisions, represent key design characteristics that indicate use in commercial applications. DOE did not identify any products intended for consumer applications with these design characteristics.

Id. at 75,148.

B. Procedural History

Until recently, GE maintained that its VZHPs were commercial products, not consumer products. GE Application for Exception (Application) at 1. On June 15, 2023, GE filed with OHA an Application for Exception, stating that a recent DOE regulatory update of commercial air conditioner and heat pump standards—the Final Rule—had reclassified its VZHPs from SPVUs to consumer products and requesting an exception from CAC/HP Standards until December 2025 while it brought the VZHPs into compliance.² Application at 1–2. GE asserts that DOE did not go through the regular rulemaking process to perform the alleged recategorization and that the regular rulemaking process would have allowed three to five years for compliance instead of the one year allowed by the Final Rule. *Id.* at 1 (citing 42 U.S.C. § 6295(m)(4)). GE asserts that if the Application is denied, GE will suffer serious hardship, gross inequity, and an unfair distribution of burdens, including “a loss of customers in this specialized market that may prove to be permanent.” *Id.* at 2. GE asserts that without exception relief, it would suffer serious hardship by having to remove the VZHP line from the market, which could harm GE’s market share for this type of product and affect profits. *Id.* at 5–6. GE also asserts that it will suffer gross inequity and an unfair distribution of burdens because the way in which DOE promulgated the new regulation deprived them of the three to five years for compliance that a proper rulemaking would have given. *Id.* at 8.

1. Comments

OHA’s procedural regulations allow public comment on applications for exception. 10 C.F.R. § 1003.12. With regard to GE’s Application, comments could be submitted to the Application’s electronic docket at <https://www.regulations.gov/document/DOE-OHA-2023-0044-0002>. OHA received three comments regarding GE’s Application, submitted by competitors. One comment by Friedrich Air Conditioning Co. expresses support for GE’s Application and states that Friedrich has filed its own application for exception. Friedrich Comment at 1, *available at* <https://www.regulations.gov/comment/DOE-OHA-2023-0044-0003> (July 27, 2023).

Two competitors, Lennox International and National Comfort Products, submitted comments opposing GE’s Application. Lennox comments that it had brought its products of the same type of VZHPs into compliance with the CAC/HP Standards long ago, and that GE should have done the same, in light of statements made by DOE in 2014 and 2015 that indicated such products were not properly classified by manufacturers as SPVUs. Lennox Comment on First Co. Application for Exception (incorporated by reference into its Comment on GE Application for Exception) at 2, *available at* <https://www.regulations.gov/comment/DOE-OHA-2023-0044-0004> (July 21, 2023).

² This decision does not reach the question of whether the VZHP products were reclassified by the rulemaking. Though we ordered briefing on the question, the answer is not required to reach a decision on the Application. Therefore, we make no decision as to whether VZHPs were reclassified in December 2022. Moreover, any suggestion by GE of irregularity in the rulemaking process is a question that is outside of OHA’s jurisdiction in this proceeding to determine. *Compare* 42 U.S.C. § 7194(a) *with* 42 U.S.C. § 6306(b)(1).

See also Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, 79 Fed. Reg. 78,613, 78,625 (December 30, 2014); Energy Conservation Program: Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, 80 Fed. Reg. 57,437, 57,448 (September 23, 2015). Lennox comments that by continuing to register its VZHPs as commercial products, GE enjoyed an advantage in the market. *Id.* Lennox further comments that providing GE more time to comply with the CAC/HP Standards would continue to give GE an unfair advantage in the market, which would harm companies like Lennox that had complied with DOE's rules for years. *Id.*

National Comfort Products comments that DOE did not recategorize SPVUs in the December 2022 final rule and that the rule clarified DOE's long-standing interpretation of the EPCA. National Comfort Products Comment at 2, *available at* <https://www.regulations.gov/comment/DOE-OHA-2023-0044-0005> (August 21, 2023). National Comfort Products asserts that GE's public comment on a 2014 NOPR³ shows that GE was aware of DOE's interpretation at that time and that "[m]anufacturers of [products similar to VZHPs] had ample opportunity to work with DOE and act accordingly over the past 8 years, but some companies like GEA [GE Appliances] chose not to take appropriate action." *Id.* National Comfort Products also asserts that granting the Application would give GE an unfair advantage in the market, which would harm competitors like National Comfort Products. *Id.* at 1–2.

II. ANALYSIS

Section 504 of the Department of Energy Organization Act, 42 U.S.C. § 7194(a), authorizes the Secretary of Energy to make "such adjustments to any rule, regulation or order" issued under the EPCA, consistent with the other purposes of the Act, as "may be necessary to prevent special hardship, inequity, or unfair distribution of burdens." The Secretary has delegated this authority to OHA, which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003. Under these provisions, persons subject to DOE's energy efficiency standards, promulgated under DOE's rulemaking authority, may apply to OHA for exception relief. *See, e.g., Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999). The relevant regulations provide OHA the authority to grant exception relief "based on an assertion of serious hardship, gross inequity or unfair distribution of burdens." 10 C.F.R. § 1003.20(a). The applicant has the burden of establishing the basis for exception relief. *See, e.g., Liebherr Canada Ltd.*, OHA Case No. EXC-13-0004 (2013); *National Comfort Products*, OHA Case No. TEE-0065 (2010).

After reviewing the evidence before us, we find that the GE has not raised a claim of serious hardship, gross inequity, or unfair distribution of burdens. We further find that the hardships GE

³ On March 2, 2015, GE submitted a comment on the 2014 NOPR, 80 Fed. Reg. 57,437, stating that "DOE's effective reclassification of certain SPVUs used in lodging applications from industrial or commercial to consumer products is contrary to EPCA's statutory purpose and definitions." GE Comments NOPR SPVU, EERE-2012-BT-STD-0041-0021, tracking number 1jz-8hii-kgab, *available at* <https://www.regulations.gov/comment/EERE-2012-BT-STD-0041-0021>.

seeks to avoid arise from its discretionary business decision not to update the VZHPs to the CAC/HP Standards in the years since it became aware of DOE's interpretation of the EPCA.

OHA may grant an application for exception only if "it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens." 10 C.F.R. § 1003.17(a). The OHA "does not utilize a rigid definition of 'special hardship.'" *Eaton Corporation*, OHA Case No. EXC-16-0004 at 3 (2016). Rather, GE must demonstrate that being required to comply with the CAC/HP Standards by December 4, 2023 "would have such a negative impact upon it as to jeopardize its financial health or viability." *Id.* at 24–25. OHA defines gross inequity as "a substantial detrimental impact not intended by the regulatory scheme or the authorizing legislation." *Vestfrost Zrt*, OHA Case No. EXC-18-0001 at 8 (2018). OHA has found an unfair distribution of burdens where "a manufacturer will suffer a grossly disproportionate impact in comparison to similarly situated firms in the industry." *Reuland Electric Co.*, OHA Case No. EXC-15-0001 at 9 (2016). GE has failed to demonstrate that it would suffer any of these conditions absent exception relief.

GE has failed to demonstrate that complying with the CAC/HP Standards would cause a serious hardship to its business. It claims that it will need to shut down its production line and pull the VZHPs off the market for approximately 18 months as it finalizes new, compliant versions of the products. However, GE does not allege that doing so will jeopardize its financial health or viability. Such an allegation would run counter to GE's reputation as a massive corporation with hundreds of different product lines and would, in any case, require significant evidentiary documentation to support it; GE has submitted none. Accordingly, we cannot find that GE has demonstrated that granting its Application would alleviate a serious hardship.

GE has also failed to demonstrate that complying with the CAC/HP Standards would cause gross inequity for GE. The term gross inequity requires that the detriment to GE be substantial and also not intended by the Final Rule. *See Vestfrost*, OHA Case No. EXC-18-0001 at 8. In its Application, GE offers only industry-wide impacts as the rationale for its claims of gross inequity and unfair distribution of burdens. GE does not allege that the impacts would affect it in a unique, substantial way unanticipated by the Final Rule. The rule itself states that DOE has expected VZHP-type products to comply with the CAC/HP Standards for years, indicating that DOE expected non-compliant products to be pulled from the market and redesigned at the manufacturer's expense. Final Rule, 87 Fed. Reg. at 75,150–52.

GE has also failed to demonstrate that it would suffer an unfair distribution of burdens if its Application is denied. The term unfair distribution of burdens requires a comparison to other similarly situated entities: an unfair distribution of burdens signifies that the industry-wide impact must fall more heavily on GE for reasons outside its control. GE does not allege that it is impacted more than its competitors who are currently out of compliance with the CAC/HP Standards. GE also does not allege that it would be impacted more heavily than competitors who are already in compliance with the standards, who, at some point, undertook the same redesign process GE faces now.

Moreover, any difference in the impact of the CAC/HP Standards on GE and on its competitors is the result of GE's discretionary business decisions, not the standards themselves. It is long-established that OHA may not grant exception relief to alleviate the impact of a discretionary business decision, rather than the impact of DOE regulations. *Viking Range Corporation*, OHA Case No. VEE-0075 at 3 (2000); *Eaton Corp.*, OHA Case No. EXC-16-0004 at 4–5 (2016). GE has been on notice of DOE's interpretation of the ECPA at least since it submitted its comment on the 2014 NOPR, but it chose to delay bringing the VZHPs into compliance with the CAC/HP Standards. Meanwhile, a number of its competitors brought their products into compliance during that period. Accordingly, we find that it was GE's choice to delay, rather than any external conditions, that has caused the company's alleged hardships and burdens.

For the foregoing reasons, we find that GE has not demonstrated serious hardship, gross inequity, or unfair distribution of burdens entitling it to exception relief.

III. CONCLUSION

It Is Therefore Ordered That:

- (1) The Application for exception filed by GE Appliances, on June 15, 2023, is denied.
- (2) Pursuant to 42 U.S.C. § 7194(b), any person aggrieved or adversely affected by the denial of a request for exception relief may appeal to the Federal Energy Regulatory Commission in accordance with the Commission's regulations.
- (3) Pursuant to 10 C.F.R. § 1003.19, any participant in this proceeding may file a Motion for Reconsideration with the Office of Hearings and Appeals by the 20th day after this decision is made available to the public. This decision will be posted to the OHA website when issued.

Poli A. Marmolejos
Director
Office of Hearings and Appeals