April 2, 2010

DECISION AND ORDER

OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: United CoolAir Corp.

Date of Filing: September 23, 2009

Case Number: TEE-0062

This Decision and Order considers an Application for Exception filed by United CoolAir Corporation (United CoolAir) seeking exception relief from the provisions of 10 C.F.R. Part 431, Subpart F, Energy Conservation Program for Certain Commercial and Industrial Equipment: Commercial Air Conditioners and Heat Pumps Energy Conservation Standards (Commercial Air Conditioner Standards).[1] In its Application, United CoolAir asserts that the firm would suffer serious hardship, inequity, or unfair distribution of burdens if required to comply with the 13 SEER energy efficiency standard effective January 1, 2010, 10 C.F.R. § 431.97(b). If United CoolAir's Application for Exception were granted, the firm would receive exception relief from the energy efficiency standard for one type of products it manufactures: indoor horizontal ceiling-grid mounted units, in either self-contained or split-systems.[2] As set forth in this Decision and Order, we have concluded that United CoolAir's Application for Exception should be dismissed in part and denied in part.

I. BACKGROUND

A. Applicable Standards

The Commercial Air Conditioner Standards, set forth at 10 C.F.R. Part 431, were published as a final rule by the Department of Energy (DOE) on October 21, 2004, pursuant to Part C of Title III of the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. 6311-6317. 69 Fed. Reg. 61969, as amended at 70 Fed. Reg. 60415 (Oct. 18, 2005). The EPCA directed the DOE to review and revise energy conservation standards for major consumer and commercial appliances, including air conditioners and heat pumps. The Energy Policy Act of 1992 (EPACT) amended the EPCA with respect to certain commercial equipment, setting forth, *inter alia*, test procedures, labeling provisions, and energy conservation standards. 69 Fed. Reg. 61963, Oct. 21, 2004. For ease of reference by manufacturers and the general public, the DOE included in

[1] Decisions issued by the Office of Hearings and Appeals (OHA) in Energy Efficiency cases after February 19, 1999, are available on the OHA website located at http://www.oha.doe.gov. The text of a cited decision may be accessed by entering the case number in the search engine located at http://www.oha.doe.gov/search.htm.

[2] United CoolAir markets these products as its "C Series" or "Coolspot" products. *See* Application for Exception at 1.

Part 431 the energy conservation standards Congress has prescribed pertaining to various commercial and industrial equipment, including commercial air-conditioning and heating equipment. 70 Fed. Reg. 60407, Oct. 18, 2005.

Energy efficiency levels in the cooling performance of commercial air conditioners are measured either in terms of a Seasonal Energy Efficiency Ratio (SEER) or an Energy Efficiency Ratio (EER).[3] Of specific relevance to the present case, the current Commercial Air Conditioner Standards set the following efficiency levels for commercial package air conditioning equipment manufactured on or after January 1, 2010 (except for air-cooled, three-phase small commercial package air-conditioning equipment with a cooling capacity of less than 65,000 Btu/h, for which the effective date is June 16, 2008):

PRODUCT	COOLING CAPACITY (Btu/h)	EFFICIENCY LEVEL
Small commercial package air conditioning and heating equipment (air-cooled, three-phase)	< 65,000	SEER = 13.0
Small commercial package air-conditioning and heating equipment (air-cooled)	≥ 65,000 and < 135,000	EER = 11.2
Large commercial package air-conditioning and heating equipment	≥ 135,000 and <240,000	EER = 11.0

10 C.F.R. § 431.97(b); *see also* 69 Fed. Reg. 61969, Oct.21, 2004, as amended at 74 Fed. Reg. 12073, Mar. 23, 2009. The Commercial Air Conditioner Standards do not address air-cooled single-package commercial air-conditioning and heating equipment with cooling capacities of less than 65,000 Btu/h. *Id*.

B. United CoolAir's Application for Exception

United CoolAir, based in York, Pennsylvania, is a manufacturer of commercial air conditioning systems. In its Application for Exception, filed on September 23, 2009, United CoolAir seeks an exception from the applicable 13 SEER energy efficiency standard for its indoor horizontal ceiling-grid mounted units, in either self-contained or split-systems. These products fall into three categories: (1) units with cooling capacities of less than 65,000 Btu/h, in both single-package and three-phase; (2) units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, in three-phase only; and (3) units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, in three-phase only.

[3] SEER is "the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu's, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period." 10 C.F.R. § 431.92. EER is "the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour." *Id*.

In its Application for Exception, United CoolAir states that the units in question are "typically installed above dropped ceilings … with very limited free height available to accommodate installation." Application for Exception at 1. Therefore, the company maintains that, given the limited space, the units cannot be redesigned to achieve the prescribed energy efficiency levels. United CoolAir maintains that "in order to meet the published standard, both the unit foot print and height would have to grow beyond the available space. The 13 SEER equivalents of [the current units] would more than double in physical displacement." *Id*. The company requests that these products be required to meet the same energy efficiency levels as air-cooled single-package vertical air conditioners and heat pumps.[4]

United CoolAir's September 23, 2009, filing did not comply with the notice requirement set forth at 10 C.F.R. § 1003.23, which allows any potentially aggrieved parties ten days to file comments. We notified United CoolAir of the defect in its filing and requested that they comply with the notice requirement as soon as possible. Letter from Diane DeMoura, OHA, to Jeffrey Koser, United CoolAir, September 25, 2009. On October 22, 2009, United CoolAir notified OHA that the company notified its principal competitors of the Application for Exception, correcting the defect in its September 23, 2009, filing and provided OHA a copy of its service list. Letter from Jeffrey Koser, United CoolAir, to Diane DeMoura, OHA, dated October 15, 2009. OHA subsequently received a request for an extension of time in which to file comments from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), a national trade association of manufacturers of air-conditioning and heating equipment, on behalf of its member organizations. *See* Letter from Joseph Mattingly, AHRI, to OHA, October 22, 2009. OHA granted AHRI's request and extended the period for filing comments until November 13, 2009. E-mail from Diane DeMoura, OHA, to Joseph Mattingly, AHRI, October 29, 2009.

OHA received one comment from Carrier Corporation (Carrier), a member of AHRI, regarding United CoolAir's Application. Carrier opposed United CoolAir's Application for Exception on the grounds that other manufacturers faced similar difficulty in attaining the 13 SEER energy efficiency level and "made significant investments to upgrade all product categories to comply with the [DOE's] requirements." *See* Letter from Stephen Bullock, Carrier, to OHA, November 3, 2009. In addition, Carrier noted that United CoolAir has not demonstrated that it cannot comply with the 13 SEER standard through the use of alternate technology. *Id*. Carrier further notes that granting United CoolAir an exception from the 13 SEER standard raises the risk that less efficient products will "bleed into other non-United CoolAir applications and thereby undermine the spirit and intent of the 13 SEER standard." *Id*.

II. Analysis

[4] In the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110-140), enacted on December 19, 2007, Congress amended sections 340 and 342(a) of the Energy Policy and Conservation Act (EPCA) to add definitions of new classes of commercial package equipment and to establish energy conservation standards for commercial package air-conditioning and heating equipment. In addition, Section 314 of the EISA sets forth the minimum energy efficiency standards for "single package vertical air conditioners and single package vertical heat pumps manufactured on or after January 2, 2010." *See* 74 Fed. Reg. at 12061.

Persons subject to various product efficiency standards may apply to the DOE Office of Hearings and Appeals (OHA) for exception relief. *See generally* 10 C.F.R. Part 1003, Subpart B (OHA Procedural Regulations); *see also Amana Appliances*, Case No. VEE-0054 (1999); *Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001). In this regard, the OHA Procedural Regulations set forth "procedures for applying for an exception or exemption, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4),…." 10 C.F.R. § 1003.20(a).

The energy efficiency standards set in the EPCA, EPACT, and EISA are not rules or regulations of the DOE, but rather are congressionally mandated standards. The insertion of those standards into Part 431 was not "a DOE action having the effect of a rule as defined by 5 U.S.C. 551(4)," which, in pertinent part, defined "rule" as an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy …." In fact, in its October 2005 technical amendment of Part 431, the DOE specifically stated that it was placing the statutory standards into Part 431 "for the benefit of the public," and that it was not "exercising any of the discretionary authority that Congress has provided in EPACT 2005 for the Secretary of Energy to revise, by rule, several of the product or equipment definitions and energy conservation standards." 70 Fed. Reg. at 60407.

Based on the foregoing, OHA does not have jurisdiction to consider the portions of United CoolAir's Application for Exception pertaining to the following products: units with cooling capacities of less than 65,000 Btu/h, three-phase; units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, three-phase; and, units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, three-phase. Therefore, we will dismiss the portions of United CoolAir's Application pertaining to those products. The energy efficiency standard for the remaining products in question - units with cooling capacities of less than 65,000 Btu/h, single-package – is not set forth by statute and, therefore, OHA has jurisdiction to consider an Application for Exception for those products.

Part 431 is silent regarding the energy efficiency standard for single-package small commercial air-conditioning and heating equipment with cooling capacities of less than 65,000 Btu/hr. The only discussion of small single-package products is located in 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products. Part 430 sets a 13 SEER energy efficiency level for both split-system and single-package central air-conditioning equipment. Although United CoolAir's product is a commercial product, given the size of the product, and its lack of recognition under Part 431, it is properly considered under Part 430.

We note initially that the DOE's adoption of a 13 SEER standard is fully consistent with the policy objectives of the EPCA. The 13 SEER revised standard provides consumers with the benefits of improved, more efficient technology. In doing so, the revised standard will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole. "DOE estimates that the standards will save approximately 4.2 quads of energy over 25 years (2006 through 2030). This is equivalent to all the energy consumed by nearly 26 million American households in a single year." 66 Fed. Reg. at 7171. In view of the nation's increasing energy needs, the benefits of energy conservation cannot be overstated. In addition, the higher

efficiency standard will have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions and air pollution. *Id*.

Consequently, an exception to the revised efficiency standard is warranted only in those limited circumstances where relief is necessary to prevent a special hardship, inequity, or unfair distribution of burdens. 10 C.F.R. § 1003.20; 42 U.S.C. § 7194(a); *see also* 62 Fed. Reg. at 23108-23109. Upon careful consideration of United CoolAir's submission, we find for the reasons stated below that the Application for Exception, with regard to single-package units with cooling capacities of less than 65,000 Btu/h, should be denied.

United CoolAir's primary argument is that the units in question are "space constrained" products because they are ceiling-mounted and have restricted space in which to accommodate larger, more efficient technology. United CoolAir maintains that it is not possible to produce an indoor, ceiling-mounted horizontal that complies with the 13 SEER standard. However, United CoolAir has demonstrated its ability to do exactly that with the company's "High Efficiency C Series" units. According to the company's website, the "High Efficiency C Series" units are indoor horizontal units which meet the 13 SEER standard and are "designed for ceiling or slab mounting," just as the standard "C Series" products. Therefore, we reject United CoolAir's arguments that it is not possible to produce a compliant unit. It is more likely that United CoolAir seeks to continue producing products with a less than 13 SEER rating because the less efficient products are less expensive and, therefore, more desirable to United CoolAir's customers. This consideration does not outweigh the importance of energy conservation, particularly in light of the nation's growing energy needs.

It is well-settled in prior OHA decisions that a firm may not receive exception relief to alleviate a burden attributable to a discretionary business decision rather than the impact of the DOE regulations. *See, e.g., Refricenter International*, Case No. TEE-0024 (2005); *Big Muddy Oil Processors, Inc.*, 12 DOE ¶ 81,006 at 82,521 (1984). In cases involving unique mitigating circumstances, a firm may be granted exception relief where the business decision was the most viable among more precarious options. *See, e.g., Viking Range Corp.*, Case No. VEE-0075 (2000). United CoolAir, however, has made no such showing.

Significantly, United CoolAir has not demonstrated that the application of the 13 SEER standard to the units in question will result in hardship, gross inequity or an unfair distribution of burdens. The standard affects all air conditioner manufacturers equally, not just United CoolAir. Beyond its allegations that it is not possible to attain a 13 SEER efficiency rating for the type of product at issue here, despite the fact that the company already produces and markets such a product, United CoolAir has not demonstrated that it is more adversely impacted by the 13 SEER standard than any other manufacturer of similar systems.

United CoolAir has also not addressed the "leakage" issue, i.e. the possibility that, were we to grant an exception in this case, less efficient products covered by the requested exception could make their way into other non-United CoolAir applications. *See Nordyne, Inc*., Case No. TEE-0013, *rev'd by York Int'l Corp*., *et. al*., Case No. TEE-0021, et. al. (2005). This result would be incompatible with the goal of energy conservation behind the 13 SEER standard.

We acknowledge that applying the 13 SEER standard may result in some inconvenience or additional costs to both United CoolAir and its customers. However, every firm affected by the revised standards has customers who are potentially unsatisfied or unhappy about changes to their product. Furthermore, the fact that a firm may be disinclined to comply with the revised standards for whatever reason is not sufficient to warrant an exception. *See ECR International*, Case No. TEE-0034 (2006); *Refricenter International*, Case No. TEE-0024 (2005). A firm has the burden of showing that the application of the 13 SEER standard to its product will result in a special hardship, inequity, or unfair distribution of burdens. United CoolAir has failed to make that showing in this case.

It Is Therefore Ordered That:

(1) The Application for Exception filed by United CoolAir Corp. on September 23, 2009, Case No. TEE-0062, is hereby dismissed in part and denied in part, as set forth in paragraphs (2) and (3) below.

(2) The portions of United CoolAir's Application for Exception pertaining to units with cooling capacities of less than 65,000 Btu/h, three-phase; units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, three-phase; and, units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, three-phase, are hereby dismissed.

(3) The portion of United CoolAir's Application for Exception pertaining to units with cooling capacities of less than 65,000 Btu/h, single-package, is hereby denied.

(4) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 2, 2010l