

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

In the Matter of Eaton Corporation)
)
Filing Date: February 2, 2016) Case No.: EXC-16-0004
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Issued: March 28, 2016

Decision and Order

I. Background

This Decision and Order considers an Application for Exception filed on February 2, 2016, by the Eaton Corporation (Eaton or the Applicant) seeking exception relief from the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Distribution Transformers (Distribution Transformer Standards). In its exception request, the Applicant asserts that it will face a serious hardship, gross inequity, or unfair distribution of burdens if required to comply with the Distribution Transformer Standards, set forth at 10 C.F.R. Part 431, pertaining to 28 “three-phase, pad-mounted distribution transformers” (distribution transformers). As set forth in this Decision and Order, we have concluded that Eaton’s Application for Exception should be denied.

A. Distribution Transformer Standards

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291 *et seq.*) (EPCA or the Act) established the Energy Conservation Program for Consumer Products Other Than Automobiles. Part C of Title III of EPCA established a similar program for “Certain Industrial Equipment,” including distribution transformers.¹ 42 U.S.C. § 6317. The Energy Policy Act of 1992 (EPACT 1992) amended EPCA and directed the Department of Energy (DOE) to prescribe energy conservation standards for those distribution transformers for which DOE determines such standards would be technologically feasible, economically justified, and would result in significant energy savings. 42 U.S.C. § 6317(a).

¹ For editorial reasons, upon codification in the U.S. Code, Parts B and C were redesignated as Parts A and A-1, respectively.

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy.

DOE must review energy conservation standards for commercial and industrial equipment and amend the standards as needed no later than six years from the issuance of a final rule establishing or amending a standard for a covered product. 42 U.S.C. § 6313(a)(6)(C)(i). In October 2007, DOE published a final rule that created energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers, which would take effect January 1, 2010. 72 Fed. Reg. 58190 (Oct. 12, 2007) (the 2010 Distribution Transformer Standards). After publication of those standards, certain parties filed court challenges, and in a subsequent settlement agreement, DOE agreed to expedite the timeline to determine whether to amend the standards. In April 2013, DOE promulgated a final rule, which sets forth the new Distribution Transformer Standards for medium-voltage dry-type, liquid-immersed, and low-voltage dry-type distribution transformers, with a compliance date of January 1, 2016. 78 Fed. Reg. 23336 (Apr. 18, 2013) (the 2016 Distribution Transformer Standards); 10 C.F.R. § 431.196.

The products for which Eaton seeks exception relief are liquid-immersed distribution transformers. The 2010 Distribution Transformer Standards set minimum energy efficiency for this type of distribution transformer ranging from 98.36% to 99.49% depending on the kilovolt-ampere (kVA) rating and equipment class of the distribution-transformer. On January 1, 2016, the new 2016 Distribution Transformer Standards increased the minimum energy efficiency for these liquid-immersed distribution transformers to range from 98.7% to 99.55%. *See* 78 Fed. Reg. at 23338-23339.

B. The Application for Exception

Eaton, headquartered in Dublin, Ireland, is engaged in the manufacturing of electric power systems, including distribution transformers. The company requests exception relief for 28 “three-phase, pad-mounted distribution transformers.”² *See* Application for Exception (Application). These distribution transformers are utilized by a variety of industries and must be custom built to meet a customer’s unique specifications.

In its Application for Exception, Eaton states that it experienced unavoidable malfunctions, which made it impossible to complete the final assembly of 24 transformers before the January 1, 2016, compliance deadline for the 2016 Distribution Transformer Standards. Application at 2. In December 2015, Eaton first experienced a cracked seal, which allowed air bubbles into the tank-line, coating process at Eaton’s plant, which resulted in 93.2 hours in downtime and XXXXXXXXXXXXXXXX. *Id.* at 3. Then, the laser, which cuts the cabinets for installation, went down for 34.5 hours, resulting in XXXXXXXXXXXXXXXX. *Id.* Because of these malfunctions, Eaton was unable to complete assembly in 2015 of 24 distribution transformers, which were in production at the time of the malfunctions and were intended to be built before the 2016 Distribution Transformer Standards became effective.

In its supplement to its Application for Exception, Eaton stated that it recently discovered that three of the original 24 distribution transformers were not certified with DOE under the 2010

² Eaton’s original Application for Exception referenced only 24 distribution transformers, however, on March 3, 2016, Eaton filed a supplement to its application, which included a request for relief for four additional distribution transformers because the distribution transformers meet the 2010 Distribution Transformer Standards but not the new efficiency standards.

Distribution Transformer Standards, even though they would have met those standards.³ Factual Supplement to Eaton Exception Application from February 2nd (Supplement) at 2. Eaton also stated that it discovered that four additional distribution transformers, not included in the original application, were assembled in December 2015, but initially failed electrical testing. Supplement at 4. Because these units required reworking, the distribution transformers were not in final manufactured form until January 2016, but do not meet the 2016 Distribution Transformer Standards. *Id.* Eaton is seeking exception relief for all 28 distribution transformers.

Eaton forwarded its Application for Exception to interested parties to provide them the opportunity to file comments on the application with this office. This office received no comments pertaining to Eaton's Application for Exception.

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 the DOE's Office of Hearings and Appeals (OHA), which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003, Subpart B. Under these provisions, persons subject to various product efficiency standards of Part 430 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); *Midtown Development, L.L.C.*, OHA Case No. VEE-0073 (2000); *Amana Appliances*, OHA Case No. VEE-0054 (1999). Prior OHA decisions clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Sauder Fuel, Inc.*, OHA Case No. TEE-0059 (2009); *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999).

We have carefully reviewed Eaton's Application for Exception. As explained below, we have determined that exception relief is not warranted in this case and, consequently, Eaton's Application should be denied.

We find that Eaton has failed to show that the company will suffer a special hardship if it fails to receive exception relief. While OHA does not utilize a rigid definition of "special hardship," a petition alleging "special hardship" must demonstrate that application of a DOE regulation to the petitioner would have such a negative impact upon it as to jeopardize its financial health or viability. *See Sauder Fuel, Inc.*, OHA Case No. TEE-0059 (2009); *cf. Stacey Oil.*, OHA Case No. VEE-0056 (1999) (extraordinary impact of reporting on a company operating at a considerable loss). Eaton's application states that it will be harmed due to a loss of XXXXXXXX sales for the 24 transformers referred to in the original application. Application at 2. In its application, XXX. *Id.* Based on this information, and the lack of any other financial information, we find it unlikely

³ As of December 31, 2015, Eaton could no longer submit the certification using DOE's online template for these three distribution transformers under the 2010 Distribution Transformer Standards.

that the denial of this application for exception would jeopardize the financial health or viability of Eaton.

Eaton also advances the argument that it will be harmed by strained relationships with its longstanding customers, that the customers who ordered these distribution transformers, their downstream users, and the public would suffer unfair and undue burdens with hindered power operations, and that granting an exception in this case would have no impact on the implementation of the 2016 Distribution Transformers Standard because of the small number of distribution transformers at issue. Application at 2, 4. In making these arguments, Eaton cites three past OHA cases where relief was granted: *Emerson Motor Technologies*, OHA Case No. TEE-0003 (2002); *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Sub-Zero Freezer Co.*, OHA Case No. VEA-0015 (2001) (appealing *Viking Range Corp.*, OHA Case No. VEE-0075 (2000)).

Eaton has misplaced its reliance on these three cases, which are distinguishable from Eaton's situation. Eaton claims, similarly to the customers in *Emerson*, that its customers would suffer unfair and undue burdens if Eaton is not allowed to deliver these noncompliant distribution transformers. Application at 4. In *Emerson*, a company, which operated a nuclear electric generating power plant, contacted the manufacturer, who subsequently sought retroactive exception relief, to purchase a nonconforming motor to replace a part that was vital to its operations. Before this request, the manufacturer had not intended to sell this nonconforming motor as it had been marked for export only, but did so only because no conforming motor was available at the time the replacement became necessary for the power plant. OHA granted a retroactive exception because delaying replacement of this motor would have hindered the operation of the power plant completely, creating an undue burden on the citizens who relied on it. Eaton has not demonstrated any facts that rise to the same level of undue burden shown in the *Emerson* case.

Eaton also cites *Diversified Refrigeration*, stating a similarity between the two cases based on the unexpected difficulties encountered and the de minimis impact the requested exception would have on national conservation goals. Application at 5. In *Diversified Refrigeration*, OHA found that the approaching effective date of the standard created a shortage of qualified engineers, which contributed to the company's noncompliance. Furthermore, because this was the only product produced at this plant, the denial of exception relief would have made it impossible for the company to operate resulting in serious consequences. It is because of these factors that OHA granted a six-month exception period, capping the amount of nonconforming products that could be manufactured during this period. Again, Eaton has demonstrated no such undue burden caused by the promulgation of the standard.

Similarly, Eaton points to the exception granted in *Viking Range Corp.*, after Viking had purchased manufacturing equipment from another company and faced delays because it moved that production equipment to a new plant. Application at 5. Viking's competitors appealed the granting of the exception, stating that Viking's inability to comply was the result of its own discretionary business decisions. In the appeal decision, OHA stated that the six-month exception would only allow Viking to get back on schedule towards compliance, rather than allow it to gain advantage over its competitors. Unlike Eaton's case, denying Viking's application for

exception would have created a significant burden due to the loss of profit, lay-off of employees, and disruption of relationship with suppliers, created by a six-month suspension of all sales. Eaton has not presented any evidence that it would be subject to similar burdens if not granted exception relief for this small number of distribution transformers.

We further find that to the extent any inequity exists, it results from Eaton's discretionary business decision to accept orders for distribution transformers compliant with the 2010 Distribution Transformer Standards knowing that the new 2016 Distribution Transformer Standards would soon be in effect. In its Application for Exception, Eaton states that the distribution transformers in question were ordered between June and September 2015, within 6 months of the new standards becoming effective. Eaton argues that, but for unexpected problems from upgrading newly purchased plants, they would have fully assembled these distribution transformers before the deadline. It is well-settled in prior decisions of this office that a firm may not receive exception relief to alleviate a burden attributable to a discretionary business decision rather than the impact of DOE regulations. *See, e.g., Big Muddy Oil Processors, Inc.*, 12 DOE ¶ 81,006 at 82,521 (1984); *341 Tract Unit of the Citronelle Field: Exxon CO., USA, et al.*, 10 DOE ¶ 81,027 at 82,649-50 (1983). In unique mitigating circumstances, a firm might be granted exception relief where the business decision was the most viable among more precarious options. *See, e.g., Viking Range Corp.*, OHA Case No. VEE-0075 (2000). Eaton, however, has made no such showing.

In the instant case, Eaton made a business decision to take orders less than six months before the effective date of the 2016 Distribution Transformer Standards, for distribution transformers that Eaton knew would not meet those standards. Although Eaton could have conceivably assembled and certified these distribution transformers before the effective date of the 2016 standards, this did not happen due to malfunctions and problems at Eaton's plants. Any hardship, inequity, or undue burden created by these malfunctions did not occur because of the implementation of the new rule, but rather from Eaton's own business decision to continue to assemble nonconforming products close to the effective date of the new efficiency standards.

III. Conclusion

As explained above, Eaton has failed to satisfy its burden of establishing that, if required to comply with the new 2016 Distribution Transformer Standards, which took effect January 1, 2016, the company will suffer special hardship, gross inequity, or an unfair distribution of burdens as the result of a DOE rule, regulation, or order. Therefore, we find that exception relief is not warranted in this case.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Eaton Corporation, on February 2, 2016, OHA Case No. EXC-16-0004, is hereby denied.

(2) 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: March 28, 2016