

25 January 2019

MEMORANDUM OF EX PARTE COMMUNICATION

Docket: *In the Matter of Energy Conservation Program: Test Procedure for Consumer Warm Air Furnaces, Notice of Petition for Rulemaking, EERE-2018-PET-0017*

Meeting Date: 24 January 2019

Attendees: Scott Blake Harris and Sam Walsh (Harris, Wiltshire & Grannis LLP), and John Gibbons (Carrier Corporation) on behalf of Carrier Corporation; and George Fibbe (Deputy General Counsel), Laura Barhydt (Assistant General Counsel), Daniel Cohen (Assistant General Counsel), and Eric Stas (Attorney-Advisor) on behalf of the Department of Energy.

Meeting Summary: During this meeting, Carrier made the following points:

Carrier supports the pending petition and hopes the Department will pursue further development of an appropriate test procedure. But Carrier does not support the proposed Enforcement Policy Statement that would defer enforcement of the FER standard.

Carrier believes deferring enforcement of the FER standard would unfairly tilt the market in favor of entities -- including Chinese manufacturers that manufacture low-quality equipment -- that have not made the investment necessary to comply with the FER standard.

Over the nearly five years since the FER Rule was published, Carrier has invested more than \$10 million getting its products ready to comply with the new standard. Other major U.S. manufacturers have done likewise.

To decline to enforce the FER Rule now would undercut responsible manufacturers and provide a competitive advantage to those who did not make such investments. More generally, we think enforcement policy is an important tool for the Department.

Carrier also believes that the Department has significant discretion in exercising its enforcement authority, and that it has used this discretion many times to good effect over the years.

But DOE has never before used this discretion enforcement effectively to nullify a rule for all products for all manufacturers until a different rule is adopted. Carrier does not believe DOE's enforcement discretion extends that far.

Submitted By:



Scott Blake Harris
Counsel for Carrier Corporation