

June 21, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: ECR International

Date of Filing: February 14, 2006

Case Number: TEE-0034

This Decision and Order considers an Application for Exception filed by ECR International (ECR) seeking exception relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards (Air Conditioner Standards). In its exception request, ECR asserts that the firm would suffer a serious hardship, inequity, and unfair distribution of burdens if required to comply with the 13 SEER energy efficiency standard effective January 23, 2006, 10 C.F.R. § 430.32(c).¹ If ECR's Application for Exception were granted, ECR would receive exception relief from the energy efficiency standard for one specific product it manufactures, a split-system air conditioner. As set forth in this Decision and Order, we have concluded that ECR's Application for Exception should be denied.

I. BACKGROUND

A. Air Conditioner Standards

The Air Conditioner Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on January 22, 2001, 66 Fed. Reg. 7170, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). The EPCA directed the DOE to review and revise energy conservation standards for major appliances, including central air conditioners and heat pumps. The conservation program prescribed by the EPCA consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The DOE measures the energy efficiency in the seasonal cooling performance of central air conditioners in terms of a Seasonal Energy Efficiency Ratio (SEER)

¹ ECR failed to file its Application for Exception until three weeks after the Air Conditioner Standards took effect.

while the seasonal heating performance of heat pumps is measured by the Heating Seasonal Performance Factor (HSPF).

The current Air Conditioner Standards, issued in final form in January 22, 2001, set a 13 SEER/7.7 HSPF for new central air conditioning heat pumps manufactured for sale in the United States as of January 23, 2006. For split-system air conditioners, the most common type of residential air conditioning equipment, the 13 SEER revised standard represented a 30 percent improvement in energy efficiency. However, DOE recognized that space-constrained products would have difficulty in meeting the 13 SEER level. Consequently, the DOE, consistent with earlier rulemakings, issued a Technical Amendment that established a 12 SEER standard for certain space-constrained products. The definition of a space-constrained product is as follows:

Space constrained product means a central air conditioner or heat pump:

- (1) That has rated cooling capacities no greater than 30,000 BTU/hr;
- (2) That has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:
 - (i) Is substantially smaller than those of other units that are:
 - (A) Currently usually installed in site-built single family homes;
 - and
 - (B) Of a similar cooling, and, if a heat pump, heating, capacity;
 - and
 - (ii) If increased, would certainly result in considerable increase in the usual cost of installation or would certainly result in significant loss in the utility of the product to the consumer; and
- (3) Of a product type that was available for purchase in the United States as of December 1, 2000.

10 C.F.R. § 430.2, 69 Fed. Reg. 50997 (August 17, 2004); *see* 10 C.F.R. § 430.32(c)(2). However, DOE noted that “of all potential space-constrained products, only those with through-the-wall condensers and small-duct, high-velocity [(SDHV)] systems need special consideration.” 67 Fed. Reg. 36368, 36402 (May 23, 2002).

B. Application for Exception

Persons subject to the various product efficiency standards of Part 430 may apply to the DOE Office of Hearings and Appeals (OHA) for exception relief. *See Amana Appliances*, 27 DOE ¶ 81,006 (1999); *Midtown Development, L.L.C.*, 27 DOE ¶ 81,013 (2000); *Diversified Refrigeration, Inc.*, 28 DOE ¶ 81,005 (2001). In this regard, section 504 of the Department of Energy Organization Act authorizes OHA to make adjustments to any rule or order issued under the ECPA, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or an unfair distribution of burdens. 42 U.S.C. § 7194(a). *See generally* 10 C.F.R. Part 1003, Subpart B (OHA Procedural Regulations).

ECR, based in Utica, New York, is a manufacturer of boiler products, warm air furnaces and HVAC controls. ECR is the parent company of EMI International (EMI), which manufactures

ductless air conditioners. EMI manufactures a “mini-split” system unit designed specifically for one consumer, the Park LaBrea residential complex, located in Los Angeles, California. The design of the mini-split system allows the condenser unit to sit on the window sill, replacing a small horizontal pane of glass in the bottom of the window, while its console section sits on the floor directly below the window.

In its Application for Exception, ECR contends that its mini-split system falls within the definition of a “space constrained product” because its condenser unit is designed to fit within a small window opening in the Park LaBrea complex. ECR Application at 1. In response to an inquiry from this office, ECR stated that it had not explored redesign or reconfiguration options for the unit which would conform to the 13 SEER standard because it did not have adequate resources to do so and because its customer, the Park LaBrea complex, was satisfied with the product it received and was not interested in exploring other options. Electronic Mail Message from Scott Toukatly, ECR, to Diane DeMoura, OHA (April 13, 2006) (hereinafter “April 13, 2006 E-mail”). ECR also stated that the mini-split system in question accounted for less than one percent of ECR’s annual sales.² *Id.*

ECR forwarded the Application for Exception to its competitors to give them the opportunity to file comments on the application with this office. OHA did not receive comments from any interested parties.

II. Analysis

We note initially that the DOE’s adoption of the 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 ECR’s submission, we find for the reasons stated below that ECR’s Application for Exception should be denied.

ECR’s primary argument is that the unit in question satisfies the definition of a “space constrained product” set forth in the Air Conditioner Standards because the unit is designed to fit within a small space in the windows of the Park LaBrea complex. This argument is unpersuasive. While it is true that the dimensions of the mini-split unit were designed to be

² ECR stated that the project “is an every year project for many years prior to 2006, and intended for some years into the future...We do 100-250 systems annually.” April 13, 2006 E-mail.

compatible with the windows of the Park LaBrea complex, the unit is not enclosed on all sides. It is possible for the unit to be redesigned in a manner that allows it fit in the window opening, but protrude further into the room in which it is located. It is also possible that the building complex itself could explore options to better accommodate a redesigned 13 SEER unit. ECR has failed to establish that the unit meets the regulatory definition of a space-constrained product. 10 C.F.R. § 430.2, 69 Fed. Reg. 50997 (August 17, 2004); *see* 10 C.F.R. § 430.32(c)(2). Furthermore, we have previously held that mini-split system units like the ECR unit are not excluded from complying with the 13 SEER standard. *See Refricenter International*, 29 DOE ¶ 81,012 at 82,541 (2005).

ECR does not argue that it is unable to produce a unit which complies with the 13 SEER standard. Rather, its arguments focus on the inconvenience and undesirability of redesigning the unit. These arguments – that the company does not have time to redesign the unit and that the customer does not want a redesigned unit – are insufficient justifications for an exception from the energy standards. Neither assertion outweighs 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* at 29 DOE ¶ 82,541; *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.*, 28 DOE ¶ 81,002 (2000). ECR, however, has made no such showing. Moreover, ECR had ample notice of the change in the Air Conditioner Standards yet took no measures to adjust to the changes prior to their taking effect.

Significantly, ECR is unable to argue that the application of the 13 SEER standard to the unit in question will result in hardship, gross inequity or an unfair distribution of burdens. ECR’s production of the mini-split system at issue in this case accounts for less than one percent of the firm’s annual revenues. *See* April 13, 2006 E-mail. Consequently, requiring ECR to comply with the 13 SEER standard in manufacturing this product will not create a hardship for ECR’s business as a whole. Furthermore, there is no evidence to suggest that the application of the 13 SEER standard to the unit in question will result in a gross inequity or unfair distribution of burdens for ECR. The standard affects all air conditioner manufacturers equally, not just ECR. ECR has not shown that it is more adversely impacted by the revised standard than any other manufacturer of similar systems. We see no reason to grant an exception to the 13 SEER standard for one specific product simply because the manufacturer and its customer are disinclined to incorporate into the product changes necessary for compliance with the standard.

ECR has also not addressed the “leakage” issue, i.e. the possibility that the units designed for the Park LaBrea complex will somehow make their way into other buildings. *See Nordyne, Inc.*, 29 DOE ¶ 81,004 (2005), *rev’d by York Int’l Corp., et al.*, 29 DOE 81,010 (2005). Although the units are designed specifically for the complex, it is possible that were we to grant ECR an exception in this case, the mini-split systems would make their way into the general market. This would be incompatible with the goal of energy conservation embodied in the Air Conditioner Standards.

We acknowledge that applying the 13 SEER standard may result in some inconvenience to both ECR and its customer, the Park LaBrea complex. The Air Conditioner Standards, however, were not enacted with the particular wants and convenience of individual customers in mind. 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. 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. ECR has failed to make that showing in this case.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by ECR International on February 14, 2006, Case No. TEE-0034, 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.

George B. Breznay
Director
Office of Hearings and Appeals

Date: June 21, 2006