

November 10, 2010

DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Application For Exception

Name of Case: National Comfort Products

Dates of Filing: November 3, 2009

Case Number: TEE-0065

This Decision and Order considers an Application for Exception filed by National Comfort Products (NCP). In its Application, NCP seeks exception relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps.¹ In its Application, NCP asserts that the firm would suffer serious hardship, inequity, or unfair distribution of burdens if required to comply with the mandatory energy efficiency standard that applies to space constrained heat pumps manufactured after January 23, 2010.² 10 C.F.R. § 430.32(c)(2). If NCP's Application for Exception was granted, the firm would receive exception relief from the energy efficiency standard for one type of product that it manufactures: through-the-wall (TTW) split system heat pumps.³ As set forth in this Decision and Order, we have concluded that NCP's Application should be denied.

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/ A "space constrained" heat pump is one that (i) has a rated cooling capacity of no greater than 30,000 BTU/hr, (ii) has an outdoor or indoor unit with at least two exterior dimensions or an overall displacement that is substantially smaller than those of other units of similar capacity that are currently usually installed in site-built single family homes, (iii) if increased in size, would certainly result in a considerable increase in the usual cost of installation or would result in a significant loss in the utility of the product to the consumer, and (iv) is of a type that was available for purchase in the United States as of December 1, 2000. 10 C.F.R. § 430.2.

3/ The typical TTW split system heat pump consists of a condensing unit that is mounted through a wall and an air handler that is located in a utility closet.

I. BACKGROUND

A. Applicable Standards

The Energy and Water Conservation Standards, set forth at 10 C.F.R. Part 430, Subpart C, were published as a final rule by the Department of Energy (DOE) on February 7, 1989, pursuant to Part B of Title III of the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. 6201, *et seq.* The EPCA directed the DOE to review and revise energy conservation standards for major consumer and commercial appliances, including air conditioners and heat pumps. Energy efficiency levels in the cooling performance of central air conditioning heat pumps are measured in terms of a Seasonal Energy Efficiency Ratio (SEER).⁴ Of specific relevance to the present case, under the current standards, space constrained TTW split system heat pumps manufactured after January 23, 2010, must achieve a 12 SEER. 10 C.F.R. § 430.32(c)(2).

B. NCP's Application for Exception

NCP, based in Bensalem, Pennsylvania, is a manufacturer of heating and air conditioning products for multi-family dwellings. In its Application for Exception, NCP seeks an exception from the applicable 12 SEER energy efficiency standard for its TTW split system heat pumps. In support of its Application, NCP states that since a large part of its market for this equipment is for replacements, its cabinets have to maintain the same dimensions so that the equipment will fit into existing openings in the walls. According to the company, building owners and managers have told them that they cannot enlarge the openings due to local ordinances, asbestos insulation considerations, and other factors. The alternative, NCP claims, is to repair these systems, most of which are operating at a 4 or 5 SEER. The company concludes that this would not be energy efficient. NCP argues that the need to keep the present cabinet dimensions is a design constraint that affects its ability to manufacture TTW split system equipment that would meet the 12 SEER requirement. According to the company, meeting this standard would require the use of larger or deeper coils, larger compressors, or larger fans, which would result in an increase in size of the TTW condensers of 45 percent. It claims that other conventional types of split systems do not have this constraint.

Interestingly, NCP does not specify in its Application the SEER that it can achieve with the units. However, the firm does suggest that we impose certain limitations on any relief granted in order to prevent the circumvention of the 12 SEER standard in applications that can be handled by conventional equipment or that can accommodate the larger TTW condenser that would be needed.

⁴ 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.

Specifically, NCP proposes limiting the granting of relief to replacement TTW heat pump systems where the opening in the wall cannot be enlarged without hardship to the building owners. The firm also proposes limiting the relief to equipment that (i) has a total cooling capacity not to exceed 30,000 BTU/hr at 95 degrees Fahrenheit; (ii) is designed for interior mounting through the exterior wall of a residential structure where the majority of the unit is inside the structure; (iii) is arranged for direct intake and discharge of condenser air on the same exterior surface of the outside wall; (iv) has a measurement of the same-surface air intake and discharge opening that does not exceed 800 square inches; (v) is designed for normal field service and component replacement to be accomplished totally from inside the building without removing the unit from the wall; (vi) can only be operated on 208/230 volts, single-phase power, and (vii) meets certain specified cabinet size requirements.

C. Comments

The DOE regulations permit any potentially aggrieved party to file comments regarding an Application for Exception. *See* 10 C.F.R. § 1003.23. We received comments from two such parties, First Company (First), a manufacturer of residential and commercial heating and air conditioning products located in Dallas, Texas, and Aerosys, a manufacturer of similar equipment located in Hagerstown, Maryland.

First opposes NCP's Application, stating that there is no way that the DOE can guarantee that the smaller, less efficient heat pumps would only be used for replacements. Because of their smaller size and lower cost components, the company continues, the lower-efficiency units would be considerably less expensive than 12 SEER-compliant units. This price advantage would encourage contractors to use the less efficient products in new construction. First also contends that granting NCP's Application would encourage other manufacturers to seek similar waivers for other heating and cooling equipment that is designed specifically for niche markets, and that the DOE should continue to enforce the minimum efficiency requirements by controlling the manufacture of these products. Finally, First contends that there are other replacement options for current owners of TTW split system heat pumps. The firm argues that such owners could replace their older, low SEER heat pumps with new 12 SEER condensing units that would fit in existing openings. Aerosys commented that meeting the 12 SEER standard for these space-constrained units would be expensive, but achievable.

II. ANALYSIS

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).

We note initially that the DOE's adoption of a 12 SEER standard is fully consistent with the policy objectives of the EPCA. The 12 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 standards 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 23108-09. For the reasons set forth below, we conclude that exception relief is not warranted in this case.

As an initial matter, we do not believe that NCP has shown that it will be subjected to a special hardship or inequity in the absence of the requested relief. The major consideration cited by NCP in its Application, *i.e.*, that it cannot meet the 12 SEER standard without building larger units, and that it cannot build larger units because they will not fit into the allotted spaces, is one that is shared by all manufacturers of space constrained heating and cooling equipment. Although NCP has sought to carefully limit the applicability of its exception request, the primary reason for that request is the same one that could be cited in future Applications for Exception relief by other manufacturers of space constrained equipment. The 12 SEER standard for space constrained heat pumps and air conditioners was adopted after a full notice-and-comment rule making during which the effects of the standard on manufacturers, consumers, and the nation as a whole were carefully considered. 67 Fed. Reg. 36368, 36386-90 (May 23, 2002). Granting NCP's Application would, in effect, undo a substantial portion of that work. This we decline to do.

Furthermore, the relief requested by NCP is not limited in duration. Therefore, owners of lower-efficiency equipment could continually replace that equipment with new less-than-12-SEER equipment into the foreseeable future, thereby never achieving the energy savings that would result from the use of 12 SEER heat pumps. This would be inconsistent with the policy objectives of the EPCA.

In addition, even if we were to accept NCP's claim that it cannot build 12 SEER units and maintain its current cabinet dimensions, we are not convinced that the consumers' burden of enlarging the holes in building walls would be so great as to warrant exception relief. In adapting the 12 SEER standard, the DOE clearly contemplated the possibility of increased manufacturing and installation costs, yet it concluded that additional costs were justified in achieving the desired energy savings. We also note First's comment that it makes 12 SEER condensing units that would fit the openings

described in NCP's Application. Therefore, if building owners are truly unable to enlarge the openings in question, alternatives are available.

Finally, we agree with First that, if we were to grant the relief requested by NCP, there would be no way to enforce the limitations that NCP suggests, and no way to ensure that the cheaper, lower efficiency heat pumps would not be used in new construction. This would further undermine the energy efficiency goals of the EPCA.

We acknowledge that the 12 SEER standard may result in some additional costs to NCP's customers. However, every firm affected by the revised standards has customers who are potentially unsatisfied or unhappy about changes to their product. An exceptions applicant has the burden of showing that it will suffer a special hardship, inequity, or unfair distribution of burdens in the absence of relief. NCP has failed to do this. Therefore, its Application for Exception will be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by National Comfort Products, Case No. TEE-0065, 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: November 10, 2010