

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

**GD Midea Air-Conditioning
Equipment Co. Ltd.**
(room air conditioners)

Case Number: 2013-SE-1505

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and GD Midea Air-Conditioning Equipment Co. Ltd. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 430.32(b).

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement, which completes the adjudication of the case.

4. Based on the information in the case file and Respondent’s admission of violation in the Compromise Agreement, I find that Respondent committed Prohibited Acts as described at 10 C.F.R. § 429.102(a)(6). *See* 42 U.S.C. § 6302.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of \$416,800 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/

8/12/14

Steven P. Croley
General Counsel

Date

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GD Midea Air-Conditioning) Case Number: 2013-SE-1505
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COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel initiated this action against GD Midea Air-Conditioning Equipment Co. Ltd. (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States certain room air conditioners that are not in compliance with an applicable energy conservation standard. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this enforcement action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) “Act” means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) “Adopting Order” means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) “Distribute in Commerce” or “Distribution in Commerce” means to sell in commerce, to import, to introduce or deliver for introduction into commerce in the United States, or to hold for sale or distribution after introduction into commerce in the United States.
- (d) “DOE” means the U.S. Department of Energy.
- (e) “DOE Rules” means DOE's energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations.
- (f) “Import” means to import into the customs territory of the United States.
- (g) “Manufacture” means to manufacture, produce, assemble, or import.
- (h) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on March 11, 2014, and captioned as case number 2013-SE-1505.

- (i) “Parties” means DOE and Respondent.
- (j) “Respondent” means GD Midea Air-Conditioning Equipment Co. Ltd.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

II. RECITALS

WHEREAS, DOE, pursuant to the Act, is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for room air conditioners at 10 C.F.R. § 430.32(b); and

WHEREAS, DOE, on September 5, 2013, issued a Notice of Noncompliance Determination with respect to room air conditioner basic model MWJ1-08ERN1-BI8 (“the subject model”); and

WHEREAS, DOE’s determination of noncompliance in the September 5, 2013 Notice of Noncompliance Determination was based on DOE’s testing of four (4) units of the subject model, which indicated that that the energy efficiency ratio of the tested units was, on average, four percent (4%) lower than required by the applicable energy conservation standard; and

WHEREAS, installation instructions contained in the subject model’s owners manual contributed to the noncompliance alleged by DOE; and

WHEREAS, room air conditioners are a “covered product” as defined in 10 C.F.R. § 430.2; and

WHEREAS, DOE, on March 11, 2014, initiated an action to assess a civil penalty for Respondent’s alleged distribution in commerce in the United States of the subject model; and

WHEREAS, units of the subject model were imported into the United States, and distributed in commerce in the United States, by customers of Respondent, most of which are not affiliates of Respondent; and

WHEREAS, Respondent seeks to resolve this matter in lieu of DOE seeking civil penalties or other sanctions related to the subject model against these customers; and

WHEREAS, Respondent retrieved 2,194 units of the subject model from commerce in the United States before they were sold to consumers and will export those units from the United States; and

WHEREAS, solely for the purposes of this Compromise Agreement, Respondent admits:

1. Respondent manufactured and distributed in commerce at least 14,968 units of the subject model by selling and transferring such units to customers in the business of distributing products in the United States;
2. Those customers imported and distributed in commerce in the United States at least 14,968 units of the subject model;

3. The subject model is a room air conditioner subject to the conservation standard set forth at 10 C.F.R. § 430.32(b); and
4. DOE testing of four (4) units of the subject model indicated that the energy efficiency ratio of the tested units was, on average, four percent (4%) lower than required by the applicable energy conservation standard, and that the subject model does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 430.32(b); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that knowingly distributes in commerce any new covered product that is not in conformity with an applicable energy or water conservation standard; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.**
 - a. Respondent agrees to pay the sum of \$416,800 (four hundred and sixteen thousand, eight hundred dollars), as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
 - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on September 5, 2013, captioned under case number 2013-SE-1505.
3. **Obligations of DOE.**
 - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment and performance pursuant to Paragraph III.2.a above in full satisfaction of the penalty authorized by the Act and in lieu of taking other enforcement action against Respondent, any parent, subsidiary, division, or other related entity of Respondent, or Respondent's customers or any other distributor, related to the subject model.
 - b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.

- c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph III.2.a, above.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

13. **No Admission.** Except for the specific purpose of settling this enforcement action, Respondent does not admit, by entering into this Compromise Agreement, any issue of fact or law alleged by DOE, or any liability under EPCA, or any act of wrongdoing or any liability of any kind. Except in an action to enforce the terms of this Compromise Agreement, this Compromise Agreement shall not be admissible in any administrative or judicial proceeding. Nothing in this Compromise Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Compromise Agreement.

_____/S/
Laura L. Barhydt
Assistant General Counsel for
Enforcement
U.S. Department of Energy

August 12, 2014
Date

_____/S/
Liu Min
President
GD Midea Air-Conditioning Equipment Co. Ltd

Aug. 07, 2014
Date