

Ocotober 18, 2002
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: Emerson Motor Technologies

Date of Filing: October 7, 2002

Case Number: TEE-0003

This Decision and Order considers an Application for Exception filed by Emerson Motor Technologies (Emerson), seeking relief from the provisions of 10 C.F.R. Part 431, Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling and Certification Requirements for Electric Motors. In its exception request, Emerson seeks retroactive relief that would allow it to sell a single non-conforming electric motor to Entergy Operations, Inc. on a one-time basis. As set forth in this Decision and Order, we have concluded that Emerson's Application for Exception should be granted.

I. Background

A. Regulatory Standards

The standards for electric motors set out at 10 C.F.R. Part 431, were published as a final rule by the Department of Energy (DOE) on October 5, 1999, 64 Fed. Reg. 54114, as mandated by Congress in the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6317 (EPCA). This portion of EPCA established energy efficiency standards and test procedures for commercial and industrial electric motors. Pursuant to this authority, the Part 431 final rule established regulations to implement these requirements and to establish efficiency labeling and compliance certification requirements for motors, as directed by EPCA.

Pertinent to the present case, certain electric motors manufactured after October 24, 1999, must meet the energy conservation standards set forth in 10 C.F.R. § 431.42.

Section 504 of the Department of Energy Organization Act authorizes the DOE Office of Hearings and Appeals (OHA) to make adjustments of any rule or order issued under the Energy Policy and Conservation Act, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a). Accordingly, persons subject to the various product standards of Part 431 may apply to the OHA for exception relief. 10 C.F.R. Part 1003 Subpart C.

B. Application for Exception

Emerson is located in St. Louis, Missouri, and is a manufacturer of motors. The firm indicates that in September 2002 it received an inquiry from Evans Enterprises, Inc., a motor distributor, seeking to purchase an A915 motor for Entergy Enterprises, Inc. (Entergy), a company that operates an Arkansas nuclear electric generating power plant. Emerson had in its warehouse an A915 motor, manufactured after 1999, but which did not comply with the requirements of Section 431.42. The motor was marked for export only. Nevertheless, in that same month, Emerson sold Evans the non-compliant A915 motor.

Emerson asks for a one-time retroactive exception for this unauthorized sale of the A915. Entergy has written in support of this application, stating that no conforming replacement motor was available to it at the time replacement became necessary. It maintains that waiting for an engineering evaluation of a new, conforming motor would have delayed replacement and thereby hindered the operation of the Arkansas nuclear plant.

II. Analysis

We have carefully considered Emerson's Application for Exception, and concluded that the firm's exception request should be approved. The record indicates that the motor is used for the chilled water pump in the nuclear plant's control room. Thus, it is plain that failure to provide Entergy with the needed motor on an expedited basis would have delayed replacement of the existing inoperative motor and would have hindered the operation of the nuclear power plant. This would have created an undue burden on the citizens of Arkansas. Further, the exception is a very limited one, involving one motor at one plant on a one-time basis. In this regard, Entergy indicates that it is in the process of securing an evaluation that would allow it to use a new motor which conforms to the requirements of Part 431. Under the unique circumstances of this case, we are persuaded that Entergy and its Arkansas

electricity customers would suffer an unfair distribution of burdens if Emerson were not granted the exception to permit it to sell the A915 motor. See *Viking Range Corp.*, 28 DOE ¶ 81,002 (2000).

Emerson shall therefore be granted retroactive exception relief from 10 C.F.R. Part 431, the Energy Efficiency Program involving electric motors, allowing the firm to sell the A915 motor to Evans, and in turn to Entergy, on a one-time basis.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Emerson Motor Technologies (Emerson), on October 7, 2002, is hereby granted as set forth in Paragraph (2) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 431, Emerson is hereby authorized to sell one A915 motor to Evans Enterprises, Inc., for purchase and use by Entergy Operations, Inc. located in Russellville, Arkansas.

(3) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 18, 2002