

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Islandaire)
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Filing Date: November 17, 2023) Case No.: EXC-24-0002
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Issued: February 14, 2024

**Request for Reconsideration
Application for Exception**

On November 17, 2023, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) received from R.E. Hansen Industries, Inc. d/b/a Islandaire (Islandaire) a Motion for Reconsideration (Motion) of a Decision and Order (Decision), issued on October 31, 2023, denying Islandaire’s Application for Exception (Application) to the applicable provisions of the Energy Conservation Program: Test Procedure for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps (Final Rule) published on December 7, 2022, at 87 Fed. Reg. 75,144, and the energy conservation standards and test procedures applicable to central air conditioners (CACs) codified at 10 C.F.R. Part 430 (the CAC Standards). Islandaire requests that OHA reconsider the Decision and grant it an exception to the applicability of the Final Rule, with respect to eight “EZVP” models of compact vertical air conditioning and heating units (EZVP Units) and customized versions thereof, until December 2024. For the reasons discussed below, we deny the Motion.

I. BACKGROUND

As stated above, OHA issued a Decision, denying the Application filed by Islandaire. *Islandaire*, OHA Case No. EXC-23-0004. In its Application, Islandaire claimed “serious hardship, gross inequity and unfair distribution of burdens” as it would be unable to fulfill contracts to its customers and would be subject to significant expenditures if required to comply with the Final Rule by the compliance date of December 4, 2023. Application at 7. Among other items, Islandaire’s Application included a declaration from its Director of Engineering, Scott Strouse (Strouse Declaration). Application at 10–12. On September 18, 2023, and September 21, 2023, Lennox International, Inc. (Lennox) and National Comfort Products (NCP), respectively, submitted comments to OHA in opposition to the Application, and in response to those comments, on September 25, 2023, Islandaire submitted a brief, as well as a declaration from its President, Robert E. Hansen (Hansen Declaration). September 25, 2023, Response to Comments at 13–16. Mr. Hansen attested to the dollar amount of Islandaire’s annual sales as well as the percentage of Islandaire’s business that is attributable to the sales of EZVPs. *Id.* at 14. He asserted that should Islandaire be denied an exception, rendering it unable to sell the EZVP units, “the loss of . . . income

would have a disastrous effect on Islandaire.” *Id.* The Hansen Declaration, however, was silent as to the financial resources available to Islandaire. *See id.* at 13–16.

In its Decision, OHA found that Islandaire had not established a special hardship claim as it failed to “come forward with any evidence specified in the Part 1003 regulations to support” its assertions that “the EZVP Units are responsible for XXXX% of its sales and that it would be exposed to significant liability if it could not fulfil its contracts to its customers.”¹ *Islandaire* at 6. The Decision noted, in a footnote, that the Strouse Declaration provided “little, if any, support for Islandaire’s claims because it is not apparent from the Strouse Declaration that Islandaire’s Director of Engineering has personal knowledge of Islandaire’s sales data or potential exposure to liability from non-fulfillment of its contracts.” *Id.* It further found that, even if Islandaire had substantiated its claims regarding potential liability to customers, there would still be insufficient evidence to show a special hardship claim as the Application was devoid of any information as to the financial resources available to Islandaire. *Id.* OHA found that Islandaire failed to establish an unfair distribution of burdens, noting that Islandaire “acknowledges[] its challenges are the product of differing choices in engineering and product development as compared to Lennox and NCP rather than circumstances outside of its control[.]” *Id.* at 7. Similarly, OHA found that Islandaire could not establish gross inequity or other considerations that would warrant the grant of exception relief. *Id.* at 6–7. Thus, OHA denied the Application. *Id.* at 8.

On November 17, 2023, Islandaire filed the Motion for Reconsideration. In its Motion, Islandaire argues that if it is not granted the exception, it will suffer a special hardship, and OHA erred in solely citing the Strouse Declaration in the Decision and omitting any reference to the Hansen Declaration. Motion at 3. Islandaire further argues that a gross inequity will arise if it is not granted the exception as there are no replacement units on the market, which meet the CAC standards, available for its customers. *Id.* at 4. It also disagrees with OHA’s finding that Islandaire “acknowledge[d] its challenges are the product of differing choices in engineering and product development as compared to Lennox and NCP rather than circumstances outside of its control which might form the basis for relief under the unfair distribution standard.” *Id.* at 5.

On December 21, 2023, Lennox submitted comments in opposition to the Motion. On January 5, 2024, DOE responded to the Motion, opposing it as well. Islandaire filed a reply to Lennox’s comments on December 29, 2023, and to DOE’s response on January 16, 2024.

II. ANALYSIS

A participant in an exception proceeding may submit to the OHA a motion for reconsideration of a Decision and Order, which must include a statement of the grounds on which the movant believes reconsideration is warranted. 10 C.F.R. § 1003.19. Such grounds may include, but are not limited to, procedural, legal, or factual errors in the Decision and Order. *Id.* A motion for reconsideration may be granted if the OHA Director determines the Decision and Order contains an error that

¹ The Part 1003 regulations provide that a petition for exception relief must be supported by, as applicable, “[a] copy of all documents, including, but not limited to, contracts, financial records, communications, plans, analyses, and diagrams related to the petitioner’s eligibility for the relief requested in the petition.” 10 C.F.R. § 1003.11(c)(5).

materially impacted the outcome of the proceeding. *Id.* After carefully evaluating Islandaire’s Motion, DOE’s response, and the comments submitted by Lennox, we do not find such an error.

In its Motion, Islandaire appears to argue that OHA erred in solely citing the Strouse Declaration and omitting any reference to the Hansen Declaration.² Motion at 3. It further asserts that Mr. Hansen “has the requisite knowledge to project the extent of the potential exposure to liability from non-fulfillment of its contract for the EZVP units.” *Id.* At the outset, it should be noted that OHA is under no obligation to reference every document submitted and evaluated in its Decision. *See Goodman v. Calvin*, 233 F. Supp 3d 88 (D.D.C. 2017) (noting that there is no rigid requirement to specifically refer to every piece of evidence in a decision). Nonetheless, while it is likely true that Mr. Hansen has personal knowledge of Islandaire’s sales data, the Hansen Declaration is devoid of pertinent information detailing the specific financial impact to Islandaire should it not be granted the exception. The Hansen Declaration asserts that Islandaire has annual sales of \$XXXX per annum and the EZVP units comprise XXXX% of Islandaire’s annual business. September 25, 2023, Response to Comments at 14. However, not only is there no evidence in the record to support these asserted sales, but the Hansen Declaration contains no information detailing the overall financial resources available to Islandaire.

Furthermore, the Hansen Declaration fails to address the specific financial impact to Islandaire should it not be granted an exception. Although the Hansen Declaration asserts that Islandaire’s inability to sell its EZVP line would have “a devastating effect” and that Islandaire’s inability to fulfill its existing obligations to its customers would “lead to a substantial loss of business, breach of contract lawsuits and a large stain on Islandaire’s reputation[,]” this assertion is not supported by any evidence, such as the contracts or communications with these customers as required by 10 C.F.R. § 1003.11(c)(5). September 25, 2023, Response to Comments at 14. Without evidence showing the financial resources available to Islandaire or information addressing the specific losses Islandaire would incur should it not be able to fulfill its obligations, we are unable to discern the specific financial impact to Islandaire should it not be granted the exception. Thus, as stated in the Decision, given the lack of financial information and evidence presented to OHA, Islandaire did not establish that the Final Rule subjected it to a special hardship. Even if the Decision had explicitly cited the Hansen Declaration, it would not have altered the outcome of the Decision. As such, OHA did not err in finding that Islandaire failed to establish a special hardship claim.

We turn next to Islandaire’s disagreement with OHA’s finding that Islandaire “acknowledge[d] its challenges are the product of differing choices in engineering and product development as compared to Lennox and NCP rather than circumstances outside of its control which might form the basis for relief under the unfair distribution standard.”³ Motion at 5. In its September 25, 2023,

² As stated above, Islandaire did not submit the Hansen Declaration as part of its original Application. The Declaration was included as part of its “Reply to Comments.” Given our finding, *infra*, that the Hansen Declaration does not change the outcome of the Decision, we need not reach a decision as to whether it constitutes part of the Application submitted for evaluation.

³ In making the statement with which Islandaire now takes issue, the Decision was referencing *Viking Range Corp.*, OHA Case No. VEE-0075 (2000) at 3, which found that an applicant faced a grossly disproportionate impact compared to similarly situated firms where the applicant lost access to products previously sold to it by another industry participant and the applicant was forced to either manufacture its own appliances or exit the industry.

Response to Comments from Lennox and NCP, Islandaire noted that Lennox chose to operate in a different market than Islandaire, the “residential multi-family, multi-room applications[,]” as opposed to the single package vertical unit (SPVU) arena, and it specifically acknowledged that Lennox took action to be compliant with the CAC standards. September 25, 2023, Response to Comments at 2, 10.

In its Motion, Islandaire argues that Lennox and NCP are not competitors as none of their “products are a direct replacement for the EZVP product line.” Motion at 5. However, Islandaire goes on to assert that the denial of an exception will allow for Lennox and NCP “to potentially put Islandaire out of business by shutting down the EZVP product line.” *Id.* In its September 18, 2023, Comment, Lennox expressed concern that granting Islandaire an exception would “provide an undue market advantage to Islandaire,” and in its December 21, 2023, Comment, Lennox asserted that it has five basic models of an alternative product that could serve as a replacement for the EZVP product line.⁴ September 18, 2023, Comment at 2; December 21, 2023, Comment at 3–4. Thus, as found in the Decision, it appears that Lennox and Islandaire are similarly situated, as both companies express concern regarding the prosperity of their respective companies should the other’s position be accepted. As recognized by Islandaire, Lennox has complied with the Final Rule. September 25, 2023, Response to Comments at 10. Islandaire has acknowledged that Lennox’s compliance is the product of differing engineering and product development decisions and has not identified any external barriers to developing its own compliant product as required to establish “a grossly disproportionate impact in comparison to similarly situated firms in the industry.” *Vestfrost Zrt*, OHA Case No. EXC-18-0001 at 10; *see* September 25, 2023, Response to Comments at 10. Thus, Islandaire has not adequately established that it will face a grossly disproportionate impact. As such, OHA did not err in finding that Islandaire did not demonstrate that the Final Rule would subject it to an unfair distribution of burdens.

III. ORDER

It Is Therefore Ordered That:

- (1) The Motion for Reconsideration filed by Islandaire, on November 17, 2023, is denied; and
- (2) Pursuant to 42 U.S.C. § 7194(b), any person aggrieved or adversely affected by the denial of a request for exception relief may appeal to the Federal Energy Regulatory Commission in accordance with the Commission’s regulations.

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⁴ Lennox further asserted that First Co., Friedrich, and G.E., companies which Islandaire asserted were similarly situated and which were denied exception relief by OHA, “are already offering compliant replacement products.” December 21, 2023, Comment at 4; *see G.E.*, OHA Case No. EXC-23-0001; *First Co.*, OHA Case No. EXC-23-0002; *Friedrich*, OHA Case No. EXC-23-003. In its December 29, 2023, Response to Lennox, Islandaire stated its belief that none of the compliant models offered by the companies were in production. December 29, 2023, Response to Comment at 2.

Director
Office of Hearings and Appeals