

Case No. 14-60535

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

LENNOX INTERNATIONAL, INC.; and AIR-CONDITIONING,
HEATING AND REFRIGERATION INSTITUTE,

Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY; and
ERNEST MONIZ, in his capacity as Secretary, United States
Department of Energy,

Respondents.

On Petition for Review of an Order of the Department of Energy

Agency Nos. EERE-2008-BR-STD-0015 &
EERE-2014-BT-PET-0041 (Consolidated)

**BRIEF OF INTERVENORS RHEEM MANUFACTURING
COMPANY AND HEAT TRANSFER PRODUCTS
GROUP, LLC IN SUPPORT OF PETITIONERS**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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ARGUMENT IN SUPPORT OF PETITIONERS

Intervenors Rheem Manufacturing Company (“Rheem”) and Heat Transfer Products Group, LLC (“HTPG”), join in full the Petitioners’ principal brief challenging the final rule published by the Department of Energy (“DOE”) in *Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers*, Docket No. EERE-2008-BT-STD-0015 (the “WICF Rule”), 79 Fed. Reg. 32,050 (June 3, 2014), and the DOE’s subsequent denial of the petition for reconsideration filed by the Air-Conditioning, Heating and Refrigeration Institute (“AHRI”), Docket No. EERE-2014-BT-PET-0041, 79 Fed. Reg. 59,090 (Oct. 1, 2014). The DOE’s determination pursuant to 42 U.S.C. § 6313(f)(4)(A) that the standards set forth in the WICF Rule are technologically feasible, economically justified, and would result in significant energy conservation are fundamentally flawed. Further, the DOE erred both procedurally and substantively in denying AHRI’s reconsideration petition.

As set forth in Rheem and HTPG’s motion to intervene, Doc. 00512753394, the WICF Rule has a direct impact on intervenors. HTPG is a leading participant in the refrigeration equipment industry under the Russell, Witt, Kramer, and ColdZone brands. Rheem is an industry leader for total refrigeration, heating, cooling, and water heating solutions.¹

¹ Rheem and HTPG are members of Petitioner AHRI.

Among other errors noted by Petitioners, the DOE failed to comport with its statutory obligations when it established minimum AWEF (annual walk-in energy factor) standards in the WICF Rule that effectively eliminated the ability of manufacturers to offer unit coolers with electric defrost technology or unit coolers matched with fixed capacity condensing units. By including hot gas defrost as a design option for dedicated condenser units in the final WICF Rule—after initially excluding it in the proposed rule “because DOE did not believe it was effective at saving energy,” 79 Fed. Reg. at 32,082—the DOE failed to weigh both the benefits and costs as required by 42 U.S.C. § 6313(f)(4)(A). Not only does the WICF Rule fail adequately to categorize the benefits of hot gas defrost as a design option, it wholly fails to consider the costs. Further, the DOE did an end-run around the requirements of 42 U.S.C. § 6295(o)(2)(B)(i)(V) when it did not seek a determination as to the competitive impacts of the rule subsequent to its decision effectively eliminating electric defrost as an option.² HTPG’s confirmation during a public meeting on the proposed rule that it manufactures certain dedicated systems with hot gas defrost, *see* 79 Fed. Reg. at 32,059, is not a substitute for the statutory requirement of

² Section 6295(o)(2)(B)(i) sets out six mandatory factors for the Secretary to consider in determining whether the benefits of a new or amended energy conservation standard exceed its burdens, including “the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard.”

an ex-ante determination of competitive impacts by the Attorney General. The WICF Rule's effective elimination of categories of condensing units not only has an adverse impact on Rheem and HTPG, the elimination of significant equipment utility and availability from the market without undertaking the mandated examination is arbitrary and contrary to express statutory requirements.

For this and the additional reasons set forth in the Petitioners' principal brief, intervenors Rheem and HTPG respectfully request that the Court vacate the WICF Rule and, to the extent necessary, remand the case for consideration of the merits of AHRI's reconsideration petition by the DOE.

Dated: April 9, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 565 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 and in 14 point Century Schoolbook font.

Dated: April 9, 2015

s/ Robert P. Edwards
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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all parties through their registered attorneys of record.

s/ Robert P. Edwards
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