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March 6, 2019

Via Federal Express and Electronic Mail

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, California
Drew.Bohan@energy.ca.gov

Re: Petition to Request A Hearing to Amend or Repeal the Commercial and Industrial Air Compressors Appliance Efficiency Standards Rulemaking, Code of Regulations, Title 20, Sections 1601-1609
Docket No. 18-AAER-05

Dear Mr. Bohan:

This letter is filed on behalf of our clients, Atlas Copco North America and Quincy Compressors, both of whom are interested parties, each of whom participated in the above-referenced rulemaking proceeding. That proceeding culminated in the approval by the Commission of the above Efficiency Standard Rules for rotary air compressors, which included testing and certification requirements for manufacturers of such machines, companies such as Atlas Copco and Quincy Compressors.

Atlas Copco North America and Quincy Compressors respectfully request that the Commission amend or repeal the regulations as adopted by a vote of the Commissioners on January 9, 2019 with respect to the testing and certification requirements of the rotary air compressor Efficiency Rules. We submit this request both to resolve these important issues and to preserve the right to seek judicial review of the Commission's action under California law. (See Gov. Code §11340.6; Cal. Code Regs., tit. 20, §1221.)

Atlas Copco and Quincy Compressors did not oppose the adoption of substantive provisions of the Efficiency Rules, provided that certain adjustments were made in the testing and certification requirements. Without such adjustments, the Efficiency Rules, when read literally threaten to require millions of dollars of duplicative testing just to offer products for

sale in California. These issues were raised repeatedly in written comments at the January 3, 2019 public hearing and at the January 9, 2019 Commission business meeting.

At the January 9, 2019 business meeting, staff comments and comments by Commissioners indicated that these concerns about duplicative testing either would not arise or that the Efficiency Rules would or should be interpreted to avoid such problems. The Commission then voted to adopt the Rules without any change from the form in which they were initially proposed on November 16, 2018. As of this date, nothing has yet been filed in connection with these regulations with the California Office of Administrative Law (OAL), which must review the Commission's compliance with procedural requirements in adopting the amendments before those amendments in fact become law.

To date, there is no indication from staff that an appropriate regulatory advisory will be issued to address these testing and certification concerns. On February 1, we filed a request for a regulatory advisory addressing these concerns on three narrow but important points, citing specific portions of the January 9 hearing where these assurances were provided. To date, no reported public action has been taken by the Commission or its staff in response to that filing.

In substance, the relief sought by our clients is stated in their February 1, 2019 Request for Regulatory Advisory (attached hereto as Exhibit 1). This relief can be provided under the Warren-Alquist Act ("Act"), whether by reopening the rulemaking proceeding to amend the regulation as Atlas Copco had requested in its December 21, 2018 comments, or by issuing the requested Regulatory Advisory.

Our clients' substantive objective is to obtain from the Commission formal written assurance that the interpretations of its testing and certification requirements presented in response to our concerns at the January 9, 2019 business meeting are in fact the interpretations which will govern these issues in the future. Those January 9 interpretations are very welcome, but are far from obvious from the text of the regulations, particularly as those Rules interact with the Federal Test Rule for rotary air compressors.

Our clients need clarity on these issues, as they prepare to comply with the substantive efficiency requirements of the new rules, address testing obligations imposed by this new rule, and determine what models of rotary air compressor will be offered for sale in the California market when these Rules become effective.

Without such written assurances, there are serious grounds to question the accuracy and adequacy of findings made by the Commission to comply with the Act and the California Administrative Procedure Act.

(a) Paragraph 21 of the Commission's decision requires that

[T]he proposed regulations have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act, that would be as effective and less burdensome to affected private persons in carrying out these purposes, or that would be more cost effective to affected persons and equally effective in implementing these purposes.

If the requested adjustments are not provided for testing and certification, the final Rules will be a) contrary to the evidence in hearing record and written comments; will not support and will be b) contrary to Paragraph 21's finding that there are no other equivalent alternatives that are less burdensome or more cost effective. The record is clear that there are less burdensome and more cost effective alternatives to the proposed Rules. As set forth in the record, the failure to address the requested adjustments could result in a large number of compliant models of rotary air compressors being withdrawn from sale in California, even though they comply with the energy efficiency requirements of the rule.

In summary, the record demonstrates that without the adjustments sought in the proposed regulatory advisory or the proposed regulatory changes presented by Atlas Copco, manufacturers will either incur millions of dollars of duplicative testing for machines that comply fully with the efficiency requirements, or will withdraw many compliant models from the California market. Without these adjustments, the finding in Paragraph 21, that there are "no alternatives that would be . . . as effective and less burdensome to private persons, or that would be more cost effective to affected persons and equally effective in implementing these purposes," is plainly incorrect.

- (b) Similarly, the findings in Paragraph 19, that the costs can be passed on to customers, is incorrect because the manufacturer would have to incur these large costs just to offer that model of the machine for sale, and many models have no units of that models sold at all in California in any given year. Those testing costs for many machines will not be recovered or passed on to customers.
- (c) Likewise, the findings that there will be no significant adverse effects on California businesses (Paragraph 17) fail to address the potential withdrawal of half or more of the available rotary air compressor models from the California market in the absence of the testing adjustments sought here. The relatively small market for rotary air compressors in California (around 3,000 annually), and the very large number of models offered (nearly 6,000) makes the costs of testing on models offered for sale in the State disproportionately high compared to the infrequent sales of a unit from any specific model. This testing cost dynamic means that manufacturers of many rotary air compressor models, which comply with efficiency standards, will nonetheless withdraw many models from the California market rather than incur these disproportionate costs, to the detriment of California businesses.

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For the foregoing reasons, our clients respectfully request that the Commission either issue the requested regulatory advisory or accept our petition to request the amendment or repeal of the rulemaking to correct the problems with the current regulatory language governing testing and certification.

Respectfully Submitted,



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Special Counsel for Atlas Copco North America



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Enc. February 1, 2019 Request for Regulatory Advisory

Exhibit 1

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Docket Number:	18-AAER-05
Project Title:	Commercial and Industrial Air Compressors
TN #:	226442
Document Title:	Atlas Copco Proposed Regulatory Advisory - Clarification of Compressor Test Requirements
Description:	N/A
Filer:	Michelle Chester
Organization:	Somach Simmons & Dunn
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February 1, 2019

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Re: Clarification of Compressor Testing Issues under Recent Amendments to Title
20, Appliance Efficiency Regulations

Dear Mr. Alejandro Galdamez:

This letter is accompanied by a draft Regulatory Advisory for your consideration in providing air compressor manufacturers and the general public clarification regarding the applicable test requirements governing rotary air compressors offered for sale in the State of California beginning on January 1, 2022.

As you know, the Commission adopted new regulations for air compressor efficiency at its January 9, 2019 business meeting. Several points about the testing requirements were made by the staff and/or by Commissioner McAllister at that hearing in response to concerns about such testing requirements raised by Atlas Copco North America, Quincy Compressor, Ingersoll Rand, and others at the business meeting and at the January 3, 2019 public hearing. The request for the Regulatory Advisory seeks to memorialize assurances given on several subjects to these parties and other Commissioners by the Commission staff and by Commissioner McAllister at that January 9th business meeting and in informal discussions:

1. Test results from properly conducted DOE Compressor Efficiency Tests may be relied upon by manufacturers to certify compliance with the new compressor efficiency standards in the Modern Appliance Efficiency Database System (MAEDBS), regardless of the date of the test. This point was raised by Quincy Compressor at the business meeting [Docket No. 19-BUSMTG-01, TN # 226347, pp. 24, 29], and had been raised at the public hearing and in written comments as well.
2. Manufacturers are entitled to rely upon the test results from a single machine in order to certify compliance with compressor efficiency standards. This assurance was provided by Commission staff to the Commissioners on the

Alejandro Galdamez, P.E

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record of the business meeting in response to comments by Atlas Copco North America, [Docket No. 19-BUSMTG-01, TN # 226347, p. 31] as well as comments by multiple parties at the public hearing.

3. Consistent with DOE's test rule adopted by the Commission, 82 Fed. Reg. 1052, (Jan. 4, 2017), manufacturers may rely upon past results of ISO1217-2009 testing to certify compliance with compressor efficiency standards if the manufacturer has an objective basis to believe that the results accurately predict the compressor's efficiency performance as measured by the DOE Test Method, a method based on ISO1217-2009. [Docket No. 19-BUSMTG-01, TN # 226347, p. 31].

As was done with the July 11, 2018 rulemaking regarding the procedural requirements governing rotary air compressors for the Appliance Efficiency Rules, we ask that the staff issue a Regulatory Advisory containing these three points of clarification. Attached, we have provided draft language for a Regulatory Advisory that reflects our conversations with Commission staff and the guidance provided at the Energy Commission business meeting regarding the effect of the amended Appliance Energy Efficiency Regulations.

We appreciate the staff's consideration through this process and hope that the draft Regulatory Advisory supports their efforts to provide clarification regarding the amended regulations for air compressor manufacturers.

Please let us know if you have questions about this request for a Regulatory Advisory.

Sincerely,



Andrew Hitchings
Michelle Chester
Somach Simmons & Dunn



Russell Randle
Marian Hwang
Miles & Stockbridge

Counsel for Atlas Copco North America
and Quincy Compressors

Enclosure: Draft regulatory advisory language

[Draft] Regulatory Advisory

February 1, 2019

Commercial and Industrial Air Compressors

Background

The California Appliance Efficiency Regulations (Cal. Code Regs., tit. 20, §§ 1601 to 1609) contain definitions and a test method for commercial and industrial rotary air compressors manufactured on or after January 1, 2022 and offered for sale in the state of California.

On January 9, 2019, the Commission voted to adopt state energy efficiency standards for rotary air compressors as there are currently no federal efficiency standards for such equipment. 20 CCR Section 1605.2. The standards incorporate portions of the federal test regulation in order for parties to determine the information needed to certify a rotary air compressor model as compliant with the newly adopted state efficiency standard. 20 CCR Section 1604(s)(3). In Section 1606(a)(3)(A), Exception 1, the regulation states that:

For state-regulated compressors, the manufacturer shall submit a statement that the appliance has been tested in accordance with all applicable requirements of sections 1603 and 1604 of this Article, or that the appliance has been rated according to an alternative efficiency determination method (AEDM) in accordance with all applicable requirements of section 1604(s) of this Article.

This Advisory clarifies three points concerning applicable test requirements for manufacturers to certify their rotary air compressors in the Modern Appliance Efficiency Database System (MAEDBS). These clarifications are issued in order to clarify MAEDBS requirements as they relate to the applicable federal test standard for rotary air compressor efficiency.

1. Test results from properly conducted Department of Energy (DOE) Compressor Efficiency Tests may be relied upon by manufacturers to certify compliance with the new compressor efficiency standards in the Modern Appliance Efficiency Database System (MAEDBS), regardless of the date of the test. Testing using the federal test method conducted by an approved laboratory, including a manufacturer's laboratory, may be relied upon to certify compliance even if the testing occurred prior to lab approval by the State of California. This includes testing conducted consistently with the federal test method prior to formal adoption of the federal test method by the federal DOE on January 4, 2017.
2. Manufacturers are entitled to rely upon the compressor efficiency test results from a single machine in order to certify compliance with compressor efficiency standards. This single machine certification basis is the long-standing practice for MAEDBS certification, a state requirement.

3. When the federal DOE adopted the federal test rule, it based its adoption in part on the assumption that historical ISO217 test data can be used to certify compliance with efficiency standards, because the federal test rule is based on the same test method with minor variations. *See* Energy Conservation Program Test Procedures for Compressors 82 Fed. Reg. 1052, 1090, 1094 (Jan 4, 2017). Indeed, DOE estimated that 85 to 90 percent of the compressor model covered by this standard had historical test data on which certifications could be made. *Id.* 1094 (90% of models in CAGI performance verification program); *Id.* 1095 (15% of models might lack historical test data). DOE made similar statements in the December 5, 2016 notice of its final efficiency rule: “[I]f historical test data is consistent with values that will be generated when testing with the test methods established in this final rule, then manufacturers may use this data for the purposes of representing any metrics subject to the representations requirement.” DOE Final Rule Notice, p. 236. These assumptions of low test burdens were critical to DOE’s economic analysis justifying adoption of the rule.

Accordingly, for the purpose of the MAEDBS compliance certification, testing with the ISO1217-2009 test method may be used to certify compliance with the state’s efficiency standards, provided that the ISO1217-2009 testing predicts that the compressor will meet or exceed the state’s energy efficiency standard and that the testing is certified to have complied with proper quality assurance procedures in force at the laboratory at the time of the test. The test laboratory shall retain copies of the quality assurance procedures with any test relied upon to certify compliance.