

Memorandum

To: Chair and Commissioners
California Energy Commission

Date: April 5, 2019

Telephone: (916) 654-4996

From: **Drew Bohan, Executive Director**
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Efficiency Division
California Energy Commission
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Subject: **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

I. Summary

On March 6, 2019, Atlas Copco North America and Quincy Compressors (Petitioners) filed a petition requesting that the California Energy Commission initiate a rulemaking hearing to amend or repeal the Energy Commission's recently adopted efficiency standards for commercial and industrial air compressors. This petition will be heard at the Energy Commission's April 10, 2019, regular business meeting. Staff recommends denying the petition because Petitioners' proposed changes to the adopted regulatory language are not necessary – the adopted regulations are clear as written regarding the use of existing test results that comply with the applicable test procedure.

II. Background

On December 5, 2016, the U.S. Department of Energy (DOE) issued a pre-publication notice of final rule pertaining to energy efficiency standards for commercial and industrial air compressors (air compressors).¹ The final rule was never published in the Federal Register. There is ongoing litigation – Natural Resources Defense Council, Inc., et al. v. Rick Perry, et al. – in which the California Energy Commission (Energy Commission) and the State of California are plaintiffs.

On January 4, 2017, DOE published in the Federal Register a final rule establishing a new test procedure for air compressors. On July 3, 2017, any manufacturer representations with respect to energy use or efficiency of an air compressor must be made in accordance with results from testing pursuant to the test procedure.²

¹ Pre-publication notice, Energy Conservation Standards for Air Compressors, Final Rule, https://www.energy.gov/sites/prod/files/2016/12/f34/Compressors_Standards_Final_Rule.pdf.

² Test Procedure for Compressors; Final rule; further delay of effective date, 82 Fed. Reg. 14426 (Mar. 21, 2017).

On July 11, 2017, DOE issued a request for information on the test procedure and stated they would not enforce the test procedure rule until December 31, 2017.³

On December 6, 2017, DOE issued an enforcement statement extending the policy of not enforcing the air compressor test procedure rule until compliance with either federal energy conservation standards or federal freestanding labeling was required.⁴

On July 11, 2018, the Energy Commission adopted amendments to the state's appliance efficiency regulations, including the DOE test procedure for compressors.⁵ The test procedure regulations took effect as state law on October 1, 2018.⁶

On January 9, 2019, at a public hearing, the Energy Commission adopted efficiency standards and reporting requirements for air compressors.⁷

On February 1, 2019, after the public comment period had closed and the Commission had adopted the regulations, legal counsel for Petitioners submitted a proposed regulatory advisory to the air compressors docket.⁸

On March 6, 2019, Petitioners filed a petition requesting that the Commission initiate a rulemaking hearing under California Code of Regulations (CCR), title 20, section 1221, and Government Code section 11340.6, for the purpose of amending or repealing the efficiency standards for commercial and industrial air compressors.⁹

On March 13, 2019, the Energy Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR, title 20, section 1221.¹⁰

On April 5, 2019, Energy Commission staff filed this response to the petition, recommending that the Commission deny the petition.

On April 10, 2019, the Energy Commission will hold a hearing to consider the petition.

³ Test Procedure for Compressors, Request for information, 82 Fed. Reg. 31890 (Jul. 11, 2017).

⁴ Enforcement Statement: Air Compressor Test Procedures, <https://www.energy.gov/sites/prod/files/2018/06/f52/Enforcement%20Stmt%20Air%20Compressor%20Test%20Procedures.pdf>.

⁵ Resolution Adopting Regulations (Jul. 11, 2018), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=224149&DocumentContentId=54394>.

⁶ Notice of Approval of Regulatory Action from the Office of Administrative Law (Oct. 1, 2018), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=224838&DocumentContentId=55422>.

⁷ Resolution Adopting Negative Declaration and Updates Appliance, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=226298&DocumentContentId=57062>.

⁸ Atlas Copco Proposed Regulatory Advisory – Clarification of Compressor Test Requirements, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=226442&DocumentContentId=57219>.

⁹ Atlas Copco Revised Petition to Request a Hearing to Amend or Appeal the Rulemaking, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=227285&DocumentContentId=58137>.

¹⁰ Response to Petition to Request a Hearing to Amend or Repeal, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=227340&DocumentContentId=58441>.

III. Petitioners' Requests and Assertions

Petitioners request that the Energy Commission amend or repeal its efficiency standards for air compressors to correct problems with the current regulatory language governing testing and certification. As explained for each assertion below, the requests should be denied.

- a. Petitioners' state, "The record is clear that there are less burdensome and more cost effective alternatives to the proposed Rules."¹¹ Petitioners request the use of test results based upon the ISO1217- 2009 test method to certify compliance with California's efficiency standards. (Exhibit 1 to the petition.)

DOE stated, in the test procedure final rule, "the test methods established in this final rule are intended to produce results equivalent to those produced historically under ISO 1217:2009(E). Consequently, if historical test data meets the requirements of the test methods established in this final rule, then manufacturers may use this data for the purposes of representing any metrics subject to representations requirements."¹² Staff stated, at the January 9, 2019, business meeting, that it has no objection to a manufacturer, under penalty of perjury, certifying that their historical ISO 1217:2009 test data is in accordance with the test procedure in CCR, title 20, section 1604 (i.e., the DOE test procedure).¹³ Federal law preempts the Energy Commission from accepting test results from a test procedure that are inconsistent with the DOE test procedure.¹⁴ Thus, initiating a rulemaking would not address petitioners' request to use test results based on ISO1217-2009. There are no alternatives to the DOE test procedure that are less burdensome and more cost-effective and that are also lawful. The Energy Commission has aligned completely with DOE's approach on this matter.

- b. Petitioners' request to rely on test results from a single machine to certify compliance with California's commercial and industrial air compressor efficiency standards. (Exhibit 1 to the petition.)

California's regulations are silent on the sampling requirements for testing as a general rule for appliances, but does contain sampling requirements where relevant for specific appliances. The Energy Commission has consistently interpreted its regulations as requiring no more than a single unit to be tested for certification purposes. However, that enforcement testing may require two units to be tested if the first unit fails to meet the efficiency standards or the efficiency levels reported in the Energy Commission's database, with a determination based on the mean value of the two tests.¹⁵

¹¹ Atlas Copco Revised Petition to Request a Hearing to Amend or Appeal the Rulemaking, p.3.

¹² Energy Conservation Program: Test Procedures for Compressors, 82 Fed. Reg. 1052 (Jan. 4, 2017), at 1076.

¹³ Transcript of Energy Commission January 9, 2019, Business Meeting, p. 31.

¹⁴ United States Code, title 42, section 6297(a).

¹⁵ See, e.g., Transcript of Energy Commission January 9, 2019, Business Meeting, p. 31 ("for our regulations we only require testing of a single unit in order to certify that test data to the database, for that model").

This is different from the DOE's general requirements, which specify the need for testing two units unless otherwise specified for a specific appliance.¹⁶ For compressors, DOE specifies that manufacturers must randomly select and test "a sample of sufficient size" to ensure that a unit meets the reported efficiency values.¹⁷ However, the Energy Commission did not adopt the DOE's sampling requirements into the regulations with respect to direct testing of compressor models, and therefore the DOE requirement for testing two units does not apply to direct testing.

When using an alternative efficiency determination method (AEDM), it is correct that testing of two units is required, as the DOE sampling requirement for AEDMs is incorporated into the Energy Commission's adopted text.¹⁸

Therefore, it is unnecessary to amend the regulations because they already allow what petitioners request.

- c. Petitioners' request to rely on previously conducted test results to certify compliance with California's efficiency standards: (1) regardless of the date of the test, (2) even if the testing occurred prior to lab approval by the Commission, and (3) even if the testing was conducted before the federal test procedure was published in the Federal Register on January 4, 2017. (Exhibit 1 to the petition.)

Staff stated, at the January 9, 2019, business meeting, "Any test results that are done according to the test procedure, whether they occur before the test lab is approved or after the test lab is approved, is fine for certification to our database. And our regulations are pretty clear on this and this is across all appliances, not specific to compressors."¹⁹ Similar to the question regarding use of historical ISO 1217:2009 test data, a manufacturer, under penalty of perjury, may certify that data from testing conducted before January 4, 2017, is in accordance with the test procedure in CCR, title 20, section 1604 (i.e., the DOE test procedure).

- d. Petitioners' request that the Commission publish a regulatory advisory for air compressors.

A regulatory advisory is not appropriate because no ambiguities exist in the regulations adopted by the Commission on January 9, 2019. Further, the regulations are not yet published into the CCR, so it is impossible to publish a regulatory advisory. Staff is finalizing documentation, including the response to public comments, that must be submitted to the California Office of Administrative Law (OAL) for administrative review of the adopted

¹⁶ 10 C.F.R. § 429.11(b).

¹⁷ 10 C.F.R. § 492.63(a).

¹⁸ CCR, title 20, section 1604(s)(3) of the adopted regulations require additional testing in Code of Federal Register, title 10, section 429.63 and 429.70 when applying an AEDM.

¹⁹ Transcript of Energy Commission January 9, 2019, Business Meeting, p. 29.

regulations. The regulations will be published into the CCR after OAL approval has been obtained. The Energy Commission has until November 18, 2019, to submit its rulemaking file to OAL for approval.

IV. Recommendation

Staff recommends denying the petition because changes to the adopted regulatory language are not necessary. No ambiguities exist regarding the use of results from testing compliant with the test procedure in CCR, title 20, section 1604(s)(3) (i.e., the DOE test procedure) to certify models into the Energy Commission's Modernized Appliance Efficiency Database System (MAEDbS), the use of test results generated prior to laboratory approval, or the number of machines that need to be tested. A proposed order denying the petition is attached as Appendix A.

Appendix A

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**ATLAS COPCO NORTH AMERICA
AND QUINCY COMPRESSORS**

**PETITION FOR RULEMAKING
HEARING**

Docket No. 18-AAER-05

**PROPOSED ORDER DENYING THE
PETITION FOR RULEMAKING
HEARING**

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 9, 2019, at a public hearing, the California Energy Commission (Commission) adopted efficiency standards and reporting requirements for commercial and industrial air compressors (air compressors).

On February 1, 2019, after the public comment period closed and the Commission had adopted the regulations, legal counsel for Atlas Copco North America and Quincy Compressors submitted a proposed regulatory advisory to the air compressors docket.

On March 6, 2019, Atlas Copco North America and Quincy Compressors filed a petition requesting that the Commission initiate a rulemaking hearing under California Code of Regulations, title 20, section 1221 and Government Code section 11340.6, for the purpose of amending or repealing the efficiency standards and reporting requirements for air compressors. Specifically, the petition requested that the Commission change the adopted regulatory language to allow Petitioners to:

1) Rely on previously conducted test results to certify compliance with California's efficiency standards: (1) regardless of the date of the test, (2) even if the testing occurred prior to lab approval by the Commission, and (3) even if the testing was conducted before the federal test method was approved by the Department of Energy (DOE). (Exhibit 1 to the petition.)

2) Rely on test results from a single machine to certify compliance with California's commercial and industrial air compressor efficiency standards. (Exhibit 1 to the petition.)

3) Use test results based upon the ISO1217- 2009 test method to certify compliance with California's efficiency standards. (Exhibit 1 to the petition.)

On March 13, 2019, the Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR title 20, section 1221.

On April 5, 2019, Commission Staff filed a response to the petition recommending denial of the petition because changes to the adopted regulatory language are not necessary. According to the staff recommendation, no ambiguities exist regarding the use of results from DOE compliant tests to certify models into the Commission's database, the use of test results generated prior to laboratory approval, or the number of machines that need to be tested.

On April 10, 2019, the Commission held a hearing to consider the petition.

II. FINDINGS

Based on the record, the Commission finds that:

1) Public Resources Code section 25218 empowers the Commission to adopt any rule or regulation, or take any action it deems reasonable and necessary to carry out its statutory duty. Public Resources Code section 25402 authorizes the Commission to adopt technologically feasible and cost effective regulations that will reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy for appliances that require a significant amount of energy. Thus, the Commission has the authority to initiate a rulemaking amending or repealing previously adopted regulatory language, as requested in the petition.

2) On January 9, 2019, the Commission adopted efficiency standards and reporting requirements for commercial and industrial air compressors.

3) The Commission adopts, amends, or repeals regulations, which implement, interpret or make specific any provision of Division 15 of the Public Resources Code or any other statute enforced or administered by the Commission. (Cal. Code Regs., tit. 20, section 1220.) In this case, the Commission implemented and made specific its appliance efficiency mandate under Public Resources Code section 25402.

4) The Commission determined whether the adopted regulatory language contains ambiguities, whether there has been a change in law, or whether the regulatory language has become obsolete, to warrant the amendment or repeal of the regulatory language related to air compressors. We do not find such conditions and agree with Staff that initiating a rulemaking to amend or repeal the regulatory language related to testing and certification of air compressors is not necessary. (Staff Memo, p.5.)

5) The Commission's adopted language does not prohibit manufacturers from using test results to certify an appliance to the Commission's database, whether those tests were performed prior to or after the test lab was approved, or whether the test was performed prior to the DOE's approval of the test method, as long as the tests were performed according to the test procedure. (Staff Memo, p.4.)

6) The Commission's adopted language does not require more than a single unit to be tested for certification purposes. Moreover, the Commission's adopted language did not include the DOE's sampling requirements for air compressors. (Staff Memo. pp. 3-4.)

7) The Commission's adopted language does not prohibit manufacturers from certifying that their historical ISO 1217:2009 test data is in accordance with the test procedure in CCR, title 20, section 1604 (i.e., the DOE test procedure).¹ Federal law preempts the Commission from accepting test results from a test procedure inconsistent with the DOE test procedure.² (Staff Memo, p. 3.)

III. CONCLUSION AND ORDER

For the reasons stated above, the Petition is hereby DENIED.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on April 10, 2019.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat

¹ Transcript of Energy Commission January 9, 2019, Business Meeting, p. 31.

² United States Code, title 42, section 6297(a).