

IN THE MATTER OF
NATIONAL ENERGY ASSOCIATES, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3179. Complaint, Feb. 5, 1986—Decision, Feb. 5, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "Cyclematic", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *J. Patrick O'Brien, Boyce, Thompson & O'Brien,* Norcross, Ga.

COMPLAINT

The Federal Trade Commission, having reason to believe that National Energy Associates, Inc., a corporation, and James B. Brooks, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) National Energy Associates, Inc. is a Georgia corporation with its principal office or place of business at 6435 Warren Drive, Norcross, Georgia.

(b) James B. Brooks is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. In advertisements, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "Cyclematic." Typical and illustrative of these statements, but not all-inclusive thereof, are the following, some of which appear in the advertisements attached hereto as Exhibits A and B:

15% to 20% Guaranteed savings . . .

Cyclematic has been proven to save up to 30% on annual heating and/or cooling costs.

Typically, a Cyclematic will pay for itself in one to two years or less with the money saved.

Qualifies for 15% Federal Energy Tax Credit.

PAR. 5. Through the use of the above statements, and other statements in advertisements not specifically set forth herein, respondents have made the following material representations, directly or by implication:

(1) Use of the Cyclematic energy control device will save consumers at least 15% and possibly, as much as 30% on their annual small commercial or home heating and cooling bills.

(2) It will take two years or less for consumers to save enough money on their small commercial or home heating and cooling bills by using the Cyclematic energy control device to recoup the retail cost of the Cyclematic energy control device.

(3) Competent and reliable tests or studies prove that consumers will save at least 15% and possibly, as much as 30% on their annual small commercial or home heating and cooling bills by using the Cyclematic energy control device.

(4) Cyclematic is a qualified energy conservation product according to the U.S. Tax Code, thereby permitting purchasers of the product to obtain a tax credit and reduce their federal income tax liability.

PAR. 6. In truth and in fact:

(1) Consumers will not save 15%, or close to 15%, on their annual small commercial or home heating and cooling bills as a result of using the Cyclematic energy control device.

(2) Few, if any, consumers will save enough money on their small commercial or home heating and cooling bills by using the Cyclematic energy control device to recoup the retail cost of the Cyclematic device within two years, or close to two years.

(3) Energy savings of 15% to 30% on consumers' annual small

commercial or home heating and cooling bills due to the use of the Cyclematic energy control device have not been proven by competent and reliable tests or studies.

(4) Cyclematic is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of Cyclematic cannot obtain a tax credit or reduce their federal income tax liability by purchasing the product.

Therefore, the representations set forth in Paragraph Five were, and are, false and misleading.

PAR. 7. Through the use of the statements set forth in Paragraph Four, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in Paragraph Five, they possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making those representations because, *inter alia*, respondents' test protocols and calculations were not designed or conducted in a manner to produce competent, reliable and statistically meaningful results. Therefore, respondents' representations, as set forth in Paragraph Seven, were, and are, false and misleading.

PAR. 9. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Section 5 of the Federal Trade Commission Act.

Complaint

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EXHIBIT A

WITH NEA'S CYCLEMATIC™ YOU HAVE:

- Ease of operation and reliability (can last up to 25 years!)
- No comfort loss (improves air circulation)
- A 15% Federal Tax Credit (plus applicable state energy credit)
- Few adjustments needed — exclusive environmental sensor which monitors system for you!
- A 15% to 20% Guaranteed savings or your money back!
- Insured savings based on consumption. (Monthly savings rapidly pays for it.)
- Computer-like "intelligence" which adjusts system to maintain comfort level.
- A hand in helping America conserve her energy resources.

TOO HIGH UTILITY BILLS!

The Energy Crisis in America Today

America has developed a life style that requires enormous amounts of energy. Now, as America enters an era of scarce and costly energy supplies, we must adjust our lifestyles to reduce energy consumption.

Doing Your Part in Saving America's Energy Will Save You Money!

Today Americans face the most serious domestic challenge they are likely to face in their lifetimes—the energy challenge. This challenge is that the domestic demand for energy keeps rising faster than the domestic supply. * This challenge should become your personal crusade to help Americans reduce energy demand at home and work.

Much of America's energy is used inefficiently. By saving energy we can protect jobs, the environment and the basic American standard of living, not only for ourselves, but also for our children and grandchildren. All of us will pay a heavy price if we do not save energy!

You're the one who decides how much energy you'll save, by how much you conserve. DOES depend on how serious you are.

OUR ENERGY SOLUTION

The NEA Way to Save Your Dollar's and America's Energy

As an important part of the energy solution for America, National Energy Associates, Inc. is proud to present the Cyclematic™. The Cyclematic™ is a micro-electronic thermostat/energy monitor for central heating and air conditioning systems.

The engineering staff at TimeMark Corp. has many years of experience in the application and manufacture of energy control systems for commercial buildings. NEA and TimeMark Corp. have developed a most cost effective thermostat/energy monitor. This system is especially designed for homes and small businesses. It applies the same degree of high technology which provides large commercial businesses millions of dollars in energy cost savings annually.

This is The System That Saves You Money

The Cyclematic™'s principal of operation is duty cycling. This improves the efficiency of your heating and cooling system, plus increases the efficiency of your thermostat. The Cyclematic™ reduces your costs by reducing the operating time of your air conditioning compressor and heating system. Even though the run times are reduced, uniform comfort is maintained throughout your home or business.

IT'S YOUR MONEY

It Pays for Itself in Savings!

With a Cyclematic™ Energy Control System, you can start saving on your energy costs today! Sooner or later you'll spend the money for a Cyclematic™, either in increased energy costs or on a Cyclematic™. The initial investment you're willing to make, means more money you'll save in the long run.

* "As for Energy Savings," U.S. Department of Energy
page 1, DOE/GPA 0007 9/78

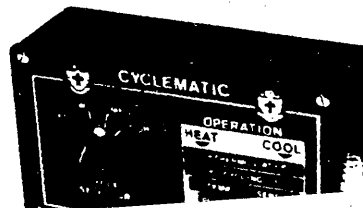


EXHIBIT B

THE SYSTEM YOU CAN'T BEAT.

NO PROGRAMMING NEEDED

The Cyclematic™ requires no programming. Once installed on your system the factory programs automatically start saving energy. The cycle selector switch is the only adjustment that is ever needed. The three settings High-Med-Low insure that the Cyclematic™ is the right energy management system for both residential and commercial applications. Once set to the equipment, Cyclematic™ through its temperature sensing capabilities adjust the heating and cooling system to maintain a comfort level while continuing to reduce energy consumption.

ENVIRONMENTAL TEMPERATURE SENSOR

Cyclematic™ incorporates an environmental temperature sensor to maintain the best comfort level at the same time insuring the system is operating at peak efficiency. The thermistor sensor monitors the air space temperature and will automatically adjust the system operation for maximum comfort and savings.

OPERATIONAL PERFORMANCE INDICATORS

Cyclematic™ incorporates 6 O.P.I. LEDs that allows the owner to visually monitor the system's operational performance, and indicates when a change in the cycle selector switch may be required. An illuminated comfort sensor that never shuts off indicates that the cycle selector switch needs to be adjusted to the next lower setting, to achieve the greatest savings while insuring comfort. The other indicators indicate the operation of the system and the Cyclematic™.

PROVEN MONEY SAVINGS

Cyclematic™ has been proven to save up to 30% on annual heating and/or cooling costs. With such savings Cyclematic™ can yield an immediate return on investment. What's more, it qualifies for a 15% Federal Energy Tax credit!

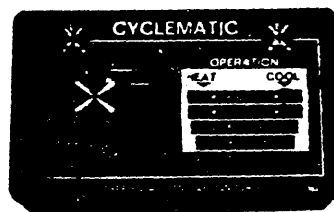
UNBEATABLE FEATURES

- Micro-electronic control
- Ease of installation
- Ease of operation
- Solid state reliability
- Automatic Heat/Cool changeover
- Eliminates stratification through increased air circulation
- Proven money savings
- Low voltage operation
- Commercial and Residential applications
- Increased comfort

BENEFITS

- Insured energy savings by Triple A Insurance Company
- Qualifies for 15% Federal Energy Tax Credit
- A 5 year limited warranty
- Monthly savings rapidly returns investment

The choice that faces you now - continue paying the power company or save with the Cyclematic™ today.



Cyclematic™

**national
ENERGY.**

3150 Gateway Drive
Norcross, G.A. 30071

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent National Energy Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 6435 Warren Drive, Norcross, Georgia.

Respondent James B. Brooks is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this order, the following definitions shall apply:

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, efficiency or conservation, "payback," or "payback" potential.

A *competent and reliable test* means any scientific, engineering, laboratory, or other analytical report, study or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

Small commercial heating and cooling systems are similar to residential, central forced air type systems.

Energy control device (sometimes referred to as *duty-cycler* or *cyclic controller*) means any electronic device which is not a setback thermostat, but which:

(a) functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) may be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

PART I

It is ordered, That respondents National Energy Associates, Inc., a corporation, its successors and assigns, and its officers, and James B. Brooks, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) Consumers will save 15%, or close to 15%, on their annual small commercial or home heating and cooling bills as a result of using Cyclematic, or any other such energy control device, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using Cyclematic to recoup the approximately \$500 retail cost of Cyclematic within two years, or close to two years.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using

any energy control device, as defined herein, costing approximately \$500 to recoup such cost within two years, or close to two years.

(4) Competent and reliable tests or studies prove that energy savings of 15%, or close to 15% savings, on consumers' annual small commercial or home heating and cooling bills are achievable due to the use of Cyclematic, or any other such energy control device, as defined herein.

(5) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing Cyclematic or any other such energy control device, as defined herein, unless such is the case.

B. Making any energy-related claim for any energy control device, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

C. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, or survey upon which respondents rely as substantiation for any energy-related claim, or making any representation which is inconsistent with the results or conclusions of any such test, study or survey.

PART II

It is further ordered, That respondents National Energy Associates, Inc., a corporation, its successors and assigns, and its officers, and James B. Brooks, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. All materials relied upon to substantiate any energy-related claim; and
2. all test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

PART III

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the preparation or

placement of advertisements or other sales materials, and to each of their distributors or dealers engaged in the wholesale or retail sale of any energy control device manufactured, offered for sale, sold, or distributed by or for respondents.

PART IV

It is further ordered, that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

PART V

It is further ordered, That each individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of three years from the date of service of this order, each individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

PART VI

It is further ordered, that respondents shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order.

IN THE MATTER OF
MIDCON CORP., ET AL

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9198. Complaint, Sept. 19, 1985—Decision, Feb. 6, 1986.

This consent order requires, among other things, a Lombard, Ill. natural gas pipeline owner and operator to divest its interest in the Louisiana portion of the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas. The Acadian system is currently owned jointly by MidCon Corp. and Texas Oil and Gas Co. MidCon is also required to obtain Commission approval before acquiring certain gas pipeline operations in the New Orleans/Baton Rouge market. This consent order resolves part of a two-count administrative complaint issued by the FTC that challenges MidCon Corp.'s proposed merger with United Energy Resources, Inc.

Appearances

For the Commission: *Marc G. Schildkraut* and *David C. Dickey*.

For the respondents: *Paul E. Goldstein*, in-house counsel, Lombard, Ill. for respondent MidCon Corp. and *Theodore F. Weiss, Jr., Baker & Botts*, Houston, Tex. and *Kenneth L. Wiseman* and *Jay L. Gallia*, Houston, Tex., for respondent United Energy Resources, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent MidCon Corp., a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent United Energy Resources, Inc., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

a. *MidCon* means MidCon Corp., subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees,