

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Cooper Power Systems, LLC
(distribution transformers)

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Case Number: 2012-SE-4701

ORDER

Issued: June 12, 2012

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and Cooper Power Systems, LLC, a wholly-owned subsidiary of Cooper Industries, (“Respondent”). The Compromise Agreement resolves the case initiated pursuant to 10 C.F.R. § 429.106 based upon the voluntary reporting of distribution in commerce in the U.S. of basic models of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.196.

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement, which completes the adjudication of the case.

4. Based on the information in the case file and Respondent’s voluntary admission of violation in the Compromise Agreement, I find that Respondent committed Prohibited Acts as described at 10 C.F.R. § 429.102(a)(6) and 42 U.S.C. § 6302(a)(5) by distribution in commerce in the U.S. of basic models of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.196.

5. Accordingly, pursuant to Section 333 of the Energy Policy and Conservation Act of 1975, as amended,¹ **I ORDER** that the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY


Gregory H. Woods
General Counsel

¹ 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel initiated this action against Cooper Power Systems, LLC, a wholly-owned subsidiary of Cooper Industries, ("Respondent") pursuant to 10 C.F.R. § 429.106 after Respondent voluntarily notified DOE of Respondent's distribution in commerce of several models of distribution transformers that did not conform to the applicable energy conservation standards. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this specific enforcement action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) "General Counsel" means the person currently serving in the capacity of the General Counsel of DOE.
- (d) "DOE" means the U.S. Department of Energy.
- (e) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (f) "Parties" means DOE and Respondent.
- (g) "Person" includes (1) any individual, (2) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (3) the government and any agency of the United States or any State or political subdivision thereof.
- (h) "Respondent" means Cooper Power Systems, LLC.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6311.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for distribution transformers at 10 C.F.R. § 431.196; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, 6303, 6311, 6312 and 6316 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties for actions prohibited by the Act, including distribution in U.S. commerce of any covered product not in compliance with an applicable energy conservation standard; and

WHEREAS, Respondent admits it inadvertently distributed three models (total of five units) of distribution transformers in commerce in the U.S. that did not meet the applicable energy conservation standards;

WHEREAS, Respondent immediately and voluntarily notified DOE that Respondent had distributed in commerce in the U.S. these specific models of distribution transformers that did not conform to the applicable energy conservation standards and ceased distribution in commerce of these specific basic models;

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.** Respondent agrees to abide by the terms of a Notice of Noncompliance Determination to be issued pursuant to 10 C.F.R. § 429.114.
3. **Obligations of DOE.**
 - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to waive the civil penalty authorized by the Act.
 - b. DOE agrees to promptly issue a Notice of Noncompliance Determination and an Adopting Order.
 - c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 2 above.
4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has

jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an Agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only issues addressed in the Compromise Agreement.
8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

12 June 2012

Date



(Signature)
Typed Name: L Brooks Mallard
Title: VP Finance
Company Name: Cooper Power Systems,
LLC.
Date June 11, 2012