

**United States Department of Energy**  
**Office of Hearings and Appeals**

In the Matter of: OPTI-UPS Corporation )  
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Filing Date: December 9, 2021 )  
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Case No.: EXC-22-0001

Issued: January 4, 2022

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**Decision and Order**  
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On December 9, 2021, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE or the Department) received from OPTI-UPS Corporation an Application for Exception to and Stay of the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies (Standards or UPS Standards) published on January 10, 2020, at 85 Fed. Reg. 1447 and codified at 10 C.F.R. 430.32(z). OPTI-UPS requests an exception to the applicability of the Standards, with respect to its Model GS1100B uninterruptible power supply (UPS), for one year. For the reasons discussed below, we deny the Application for Exception and Stay.

**I. BACKGROUND**

**A. Uninterruptible Power Supply Standards**

The Energy Policy and Conservation Act of 1975, Pub L. No. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA), initiated measures to increase the energy efficiency of certain products. The Energy Policy Act of 2005, Pub. L. No. 109-58, amended the EPCA by defining the term “battery charger” and directing the Department of Energy to set energy conservation standards for battery chargers or classes of battery chargers. 42 U.S.C. §§ 6291(32) and 6295(u)(1). The Energy Independence and Security Act of 2007 added definitions for “standby” and “off” modes, and directed DOE to create test procedures for battery chargers to address those modes. 42 U.S.C. § 6295(gg)(1)(A)(ii)-(iii) and (2)(B)(i). The Department published final rules to this effect in 2009 and 2011. 74 Fed. Reg. 13318 (March 27, 2009); 76 Fed. Reg. 31750 (June 1, 2011). In 2010, DOE initiated rulemaking procedures to create efficiency standards for battery charger energy consumption. 74 Fed. Reg. 26816 (June 4, 2009). This rulemaking was completed in 2016 and codified at 10 C.F.R. 430.32(z), Energy Conservation Program: Energy Conservation Standards for Battery Chargers, *see also* 81 Fed. Reg. 38266 (June 13, 2016). In 2020, DOE published a final rule which created standards for battery chargers not covered by the 2016 rule, including uninterruptible power supplies. This rule was codified at 10 C.F.R. 430.32(z), Energy Conservation Program: Energy Conservation

Standards for Uninterruptible Power Supplies, *see also* 85 Fed. Reg. 1447 (Jan. 10, 2020). Compliance with this regulation is required starting January 10, 2022.

## **B. The Application for Exception**

In December 2021, OPTI-UPS filed an Application for Exception, which included an Application for Stay, requesting a one-year exception to compliance with the UPS standards which go into effect in January 2022. Application at 1. The Application was filed by the US branch of OPTI-UPS, a corporation with “branch offices worldwide, which cover USA, Germany, UK, Czech Republic, Australia, Taiwan and Dubai, as well as logistic facilities in Holland, Czech Republic, Dubai and USA.” About Us, OPTI-UPS, <https://www.opti-ups.com/index.asp?SCID=SC10040281a> (last visited Dec. 28, 2021). OPTI-UPS imports for sale in the United States a UPS product which does not comply with the upcoming requirements. Application Attachment 1 at 1. In 2021, the US branch of OPTI-UPS sold roughly \$3.3 million worth of product, about \$370,000 of which was from its non-compliant UPS product. Application Attachment 2 at 1. Information regarding global sales was not provided.

In its request for relief, OPTI-UPS stated that it is unable to comply with the standards by January 10, 2022, because it did not learn about the standards until November 26, 2021. Response to Second Request for Information (Second Response) at 1. OPTI-UPS further stated that without the requested relief, it would experience a tremendous burden and would have decreased ability to compete in the UPS market.<sup>1</sup> Application Attachment 1 at 1; Response to First Request for Information (First Response) at 1.

## **II. ANALYSIS**

Section 504 of the Department of Energy Organization Act, 42 U.S.C. § 7194(a), authorizes the Secretary of Energy to make “such adjustments to any rule, regulation or order” issued under the EPCA, consistent with the other purposes of the Act, as “may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.” The Secretary has delegated this authority to OHA, which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003. Under these provisions, persons subject to DOE’s energy efficiency standards, promulgated under DOE’s rulemaking authority, may apply to OHA for exception relief. *See, e.g., Diversified Power International, LLC*, OHA Case No. EXC-18-0003 (2018); *Philips Electronics North America Corporation*, OHA Case No. EXC-16-0014. *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999). The relevant regulations provide OHA the authority to grant exception relief “if it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.” 10 C.F.R. § 1003.17. The applicant has the burden of establishing the basis for exception relief. *See, e.g.,*

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<sup>1</sup> Due to the quickly approaching compliance deadline and the lack of evidence to support a grant of the Application, OHA has processed this case before service could be completed. Because the OHA is denying the Application, service will no longer provide a benefit to parties with the potential to be aggrieved by a grant. This decision will be made available to the general public, serving to notify any interested party of OPTI-UPS’s Application. In this specific instance where the timeline is short, denial is clearly warranted, and typical service provides no benefit, we allow this decision to function as service and waive further service, pursuant to 10 C.F.R. 1003.6(d).

*Liebherr Canada Ltd.*, OHA Case No. EXC13-0004 (2013); *National Comfort Products*, OHA Case No. TEE-0065 (2010).

It is long-established that OHA may not grant exception relief to alleviate the impact of a discretionary business decision, rather than the impact of DOE regulations. *Viking Range Corporation*, OHA Case No. VEE-0075 at 12 (2000); *Eaton Corp.*, OHA Case No. EXC-16-0004 at 13 (2016). In acknowledging that all business decisions are, at some level, discretionary, OHA has specified that relief is inappropriate where a firm's choice does not account for its regulatory obligations and is the primary cause of the firm's hardship. *Sub-Zero Freezer Co., et al.*, OHA Case Nos. VEA-0015, VEA-0016, VEA-0017 at 11 (2001). OHA has recognized that relief may be warranted when a business decision was "reasonable and prudent in light of the regulatory obligations known at the time the decision was made." *Diversified Power International*, EXC-18-0003 at 11. Congress has specified that publication in the Federal Register provides notice of a document to persons affected by it. 44 U.S.C. § 1507 ("Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title [44 USCS § 1505], except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it." (brackets in original)).

In 2016, Eaton Corporation filed an Application for Exception after taking orders for products in the six months before they became non-compliant with DOE regulations. *Eaton*, EXC-16-0004 at 11–12. Due to difficulties at its manufacturing facilities, Eaton was unable to complete the orders before the DOE regulations took effect. *Id.* at 4–5. OHA found that the primary cause of Eaton's hardship was its decision to accept orders so close to the new regulations' effective date, not the regulations' requirements. *Id.* at 12–13 ("Any hardship, inequity, or undue burden created by these malfunctions did not occur because of the implementation of the new rule, but rather from Eaton's own business decision to continue to assemble nonconforming products close to the effective date of the new efficiency standards.").

OPTI-UPS states that it is unable to comply with the new UPS regulations because it did not know about them until November 2021, less than two months before the regulations take effect. While OPTI-UPS can claim that their decision to import products that do not conform to the regulations was based on its actual knowledge at the time of decision, we find that the firm was notified of the regulations in January 2020 when the regulations were published in the Federal Register. The hardship outlined in the Application for Exception is not the result of DOE regulation, but rather OPTI-UPS's decision to import non-compliant products in the final weeks before a regulation became effective. For the foregoing reasons, we find that OPTI-UPS has not demonstrated that it is at risk of experiencing special hardship, inequity, or unfair distribution of burdens as a result of compliance with the new UPS regulations. Accordingly, we further find that OPTI-UPS has not met its burden to obtain exception relief.

### **III. ORDER**

It Is Therefore Ordered That:

- (1) The Application for exception filed by OPTI-UPS Corporation, on December 9, 2021, is denied; and

- (2) Pursuant to 10 C.F.R. 1003.19, any participant in this proceeding may file a Motion for Reconsideration with the Office of Hearings and Appeals by the 20th day after this decision is made available to the public. The decision will be posted to the OHA website when issued.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals