



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

In the Matter of: )  
 )  
**ELCO Lighting,** ) Case Number: 2014-SE-54005  
Respondent )  
 )

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against ELCO Lighting, Inc. (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent had failed to submit a valid certification report for various basic models of illuminated exit signs and metal halide lamp fixtures, and failed to provide test data in response to DOE’s request. 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 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) “Distribute in commerce” or “distribution in commerce” means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce;
- (d) “DOE” means the U.S. Department of Energy.
- (e) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Parts 429, 430, and 431 of the Code of Federal Regulations.
- (f) “Manufacture” means to manufacture, produce, assemble, or import.
- (g) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on June 30, 2015, and captioned as case number 2014-SE-54005.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means ELCO Lighting, Inc., and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. §§ 6291 and 6311 and 10 C.F.R. Parts 429, 430, and 431.

## 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 illuminated exit signs at 10 C.F.R. § 431.206, and for metal halide lamp fixtures at 10 C.F.R. § 431.326, and requires manufacturers to submit information and reports to ensure compliance with those standards pursuant to 10 C.F.R. §§ 429.12, 429.48, and 429.54; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties for actions prohibited by the Act, including knowingly failing to make reports or provide other required information; and

WHEREAS, DOE, on June 30, 2015, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for basic models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R; and

WHEREAS, Respondent admits:

1. Respondent has manufactured and distributed in commerce, and continues to distribute in commerce, illuminated exit signs, including units of basic models EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R;
2. Respondent has manufactured and distributed in commerce, and continues to distribute in commerce, metal halide lamp fixtures, including units of models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, and EMH400;
3. These models have been in distribution in commerce in the United States for at least 365 days;
4. Models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R are “covered products”; and
5. DOE issued a Warning Notice on May 21, 2014, noting that ELCO’s submission at CCMS #44348 failed to specify individual model numbers in the column labeled “Individual Model Number Covered by Basic Model” for the basic models identified as “E8RM series,” “E10M series,” “E8S series,” “E8M series,” as required by 10 C.F.R. § 429.12. ELCO took no action in response to the Warning Notice; and
6. As of June 29, 2015, Respondent took no action in response to that Warning Notice and had not submitted the required certification reports for the basic models corresponding to models EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R; and

7. DOE issued a Request for Data on May 21, 2014, for basic models “E8RM series” and “E10M series;” and
8. As of June 29, 2015, ELCO failed to provide test data in response to that request; and

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.**
  - a. If Respondent executes this Compromise Agreement and returns it to DOE within thirty (30) days after the date of the Notice, Respondent agrees to pay the sum of \$14,000, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of the Adopting Order. If this Compromise Agreement is executed between thirty-one (31) and sixty (60) days after the date of the Notice, Respondent agrees to pay the sum of \$28,000 as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of the Adopting Order.
  - b. Within ten (10) calendar days following the issuance of the Adopting Order, Respondent will, submit to DOE all test data, including complete test reports, underlying ELCO’s certification in CCMS # 44348 of metal halide lamp fixture basic models “E8RM series” and “E10M series;” as DOE requested originally in an Request for Data issued on May 21, 2014, in accordance with 10 C.F.R. § 429.106.
  - c. Within sixty (60) calendar days following the issuance of the Adopting Order, Respondent will, in accordance with 10 C.F.R. Part 429, properly certify all basic models of all covered products and equipment that Respondent manufactures and distributes in commerce.
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 accept Respondent’s payment pursuant to section III.2 in full satisfaction of the penalty authorized by the Act.
  - b. DOE agrees to issue promptly an Adopting Order adopting this Agreement.
  - c. DOE agrees to terminate this enforcement action with prejudice upon Respondent’s completion of its Obligations in accordance with section III.2, above. If Respondent

fails to complete its Obligations in accordance with section III.2, above, DOE may notify Respondent that the Agreement is null and void and may seek the maximum penalty in accordance with 10 C.F.R. § 429.120.

4. **Jurisdiction.** This Compromise Agreement is entered into 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. **Payment Instructions and Late Payments.** Respondent agrees to make all payments in a timely manner and in a method set forth in the attached "Payment Instructions." Respondent acknowledges and agrees to comply with the "Late Payment" provisions provided therein.
7. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
8. **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. 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.
9. **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.
10. **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.
11. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
12. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.
13. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.

14. **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.

\_\_\_\_\_/S/\_\_\_\_\_  
Laura Barhydt  
Assistant General Counsel for  
Enforcement  
U.S. Department of Energy

\_\_\_\_ July 31, 2015\_\_\_\_\_  
Date

\_\_\_\_\_/S/\_\_\_\_\_  
(Signature)  
Typed Name: Steve Cohen\_\_\_\_\_  
Title: \_\_PRES.\_\_\_\_\_  
Company Name: ELCO LIGHTING

\_\_\_\_\_7 / 29 / 2015\_\_\_\_\_  
Date