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

In the Matter of:)
)
Visual Sound LLC)
dba Truetone) Case No.: EXC-16-0010
)
Filing Date: April 5, 2016)
_____)

Issued: July 5, 2016

Decision and Order

This Decision and Order considers an Application for Exception from DOE Energy Conservation Standards for External Power Supplies filed by Visual Sound LLC dba Truetone. (Truetone), seeking exception relief from the applicable provisions of 10 C.F.R. Part 430, Energy Conservation Program: Energy Conservation Standards for External Power Supplies (EPS) (EPS Final Rule). In its request, Truetone asserts that it will suffer serious hardship, gross inequity, and an unfair distribution of burdens if it is required to comply with the EPS Final Rule, set forth at 10 C.F.R. § 430.32(w). As stated in this Decision and Order, we have concluded that Truetone's Application for Exception should be granted.

I. Background

A. Efficiency Standards for External Power Supplies

Title III, Part B¹ of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291 *et seq.*) (EPCA or the Act) established the Energy Conservation Program for Consumer Products Other Than Automobiles, designed to improve energy efficiency of covered major household appliances.

DOE must review energy conservation standards for commercial and industrial equipment and amend the standards as needed no later than six years from the issuance of a final rule establishing or amending a standard for a covered product. 42 U.S.C. § 6295(m). New and amended standards must achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A). In December 2006, the DOE published a final rule prescribing test procedures for EPSs. *See* 71 Fed. Reg. 71340 (Dec. 8, 2006). On July 1, 2008, section 301 of the Energy Independence and Security Act (EISA) of 2007 established the minimum energy conservation standards for Class A EPSs and supplemented the EPS definition.

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

In June 2009, DOE initiated a rulemaking effort for EPSs by issuing the Energy Conservation Standards Rulemaking Framework Document for Battery Chargers and External Power Supplies. After receiving comments from the public and additional information, on September 2010, DOE announced a public meeting that took place in October 2010, and made available on its website a preliminary technical support document. In March 2012, DOE published a notice of proposed rulemaking (NOPR) that proposed potential standards for battery chargers and external power supplies and, in May 2012, DOE held a public meeting to solicit relevant comments and information concerning the proposed rule. Many parties submitted comments regarding the duration of the period to come into compliance with respect to their EPS products that ranged from 18 months to at least five years. As EISA directed the DOE to publish a final rule in July 2011, two years before the standards would apply to products in July 2013, the DOE developed a two-year interval from the time of publishing the rule to the time of compliance.

On February 10, 2014, the DOE promulgated a final rule, which set forth the new Energy Conservation Standards for External Power Supplies to take effect on April 11, 2014, with compliance required for EPSs manufactured on or after February 10, 2016 (the February 10, 2016, Standards). 79 Fed. Reg. 7846 (Feb. 10, 2014); 10 C.F.R. § 430.32(w)(1)(ii).

B. Application for Exception

Truetone is an American company headquartered in Spring Hill, Tennessee. Truetone manufactures and distributes electronic musical equipment, including effects pedals,² and power supplies for musical equipment (mainly effects pedals). Musicians use these effects pedals to modify the sounds produced by their electric instruments. Effects pedals allow musicians to both expand their creative possibilities, or to mimic other musicians' sound or "tone." Musicians typically exhibit a passionate and intense interest in the tone produced by their instruments and are often willing to spend a significant amount of time and money to obtain the tone they seek, whether it is their own unique sound, or that of other musicians. Many musicians use arrays of several effects pedals, which are linked together in carefully arranged sequences, and hooked together by cables³ or connectors through which the electrical musical signal travels. Traditionally, each effects pedal has been powered by a battery, typically a 9-volt battery. Most effects pedals can also be powered by an EPS. Some modern pedals can only be operated using an EPS.

In many cases, musicians would rather leave their effects pedals connected to each other without having to reconnect and disconnect each cable or connector, after each use. However, leaving the cables or connectors connected quickly drains the batteries. Accordingly, musicians have used EPSs to power their effects pedals, but that solution presents problems: musicians often face a shortage of available outlets, and using a standard multi-outlet power-strip for the EPSs can often introduce noise which significantly impacts the quality of their sound. As a remedy, Truetone introduced two EPS products, the "1 SPOT" and the "1 SPOT Pro," which allow musicians to power multiple devices using one EPS, without the introduction of unwanted noise caused by high frequency harmonics in the signal path. By substituting electrical power for battery power and by

² Musicians sometimes colloquially refer to effects pedals as "stomp boxes."

³ Often referred to as "patch cables."

utilizing the efficiencies resulting from using one power switching EPS, rather than a single EPS for each effects pedal, the 1 SPOT products also conserve energy.

Truetone's Application claims that requiring its 1 SPOT and 1 SPOT pro lines of EPSs to meet the efficiency standards set forth in the EPS Final Rule will cause it serious hardship, gross inequity, and an unfair distribution of burdens. Revised Application at 1. Specifically, Truetone contends that making the 1 SPOT products comply with the EPS Final Rule is not technically feasible, since the measures required to meet the efficiency standards would introduce unwanted noise into the musical signal, therefore defeating the purpose of using the products, and rendering them useless. Revised Application at 1. If the 1 SPOT products introduced unwanted noise into the musical signal path, musicians would stop buying 1 SPOT products. Truetone further states that its 1 SPOT products account for XXXX of its revenue and XXXX of its net income. June 15, 2016, Email message from to Robert P. Weil, President, Visual Sound LLC dba Truetone.

II. Analysis

A. Exception Relief

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 DOE's Office of Hearings and Appeals (OHA), which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003, Subpart B. Under these provisions, persons subject to the various product efficiency standards of Part 430 promulgated under DOE's rulemaking authority may apply to OHA for exception relief. *See, e.g., Diversified Refrigeration, Inc.*, OHA Case No. VEE-0073 (2001); *Midtown Dev., L.L.C.*, OHA Case No. VEE-0073 (2000); *Amana Appliances*, OHA Case No. VEE-0054 (1999). An exception to the revised efficiency standards is warranted only in those limited circumstances where relief is necessary to prevent a special hardship, inequity, or unfair distribution of burdens. 10 C.F.R. § 1003.20; *Reuland Electric Co.*, OHA Case No. EXC-15-0001 (2016).

We note initially that DOE's adoption of the EPS Final Rule is fully consistent with the policy objectives of the EPCA. The revised standard provides consumers with the benefits of improved, more efficient technology. In doing so, the revised standard will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole. DOE estimates that the "lifetime savings for EPSs purchased in the 30-year period that begins in the year of compliance with new and amended standards (2015-2044) amount to 0.94 quads. The annual energy savings in 2030 amount to 0.15 percent of total residential energy use in 2012." 79 Fed. Reg. at 7850. In view of the nation's increasing energy needs, the benefits of energy conservation cannot be overstated. In addition, the higher energy efficiency standard will have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions. *Id.* DOE expected that under the new standards, EPS manufacturers may lose up to 18.7% of their industry net present value, but did not expect any plant closings or significant loss of employment from the impact on manufacturers. 79 Fed. Reg. at 7849.

As stated in our prior decisions, the same factors considered by the agency in promulgating energy conservation standards are useful in evaluating claims for exception relief. *See, e.g., Ushio America, Inc.*, OHA Case No. EXC-12-0004 (2012) (citing *Viking Range Corp.*, OHA Case No. VEE-0075 (2000)); *SpacePak/Unico Inc.*, OHA Case Nos. TEE-0010, TEE-0011 (2004). These factors include the economic impact on the manufacturers and consumers, net consumer savings, energy savings, impact on product utility, impact on competition, need for energy conservation, and other relevant factors. EPCA § 325(o)(2)(B)(i), 42 U.S.C. § 6295(o)(2)(B)(i). With this in mind, we have carefully reviewed Truetone’s Application for Exception and have determined that the firm’s request for exception should be granted as it has demonstrated that it would suffer “special hardship, inequity, or unfair distribution of burdens.” *See* 42 U.S.C. § 7194(a).

In prior proceedings, we have held that a manufacturer of a covered product will suffer a gross inequity if its compliance with the applicable DOE efficiency standard will result in a substantial detrimental impact not intended by the regulation or authorizing legislation. *See, e.g., Electrolux Home Products*, OHA Case No. TEE-0012 (2004); *Maytag Corp.*, OHA Case No. TEE-0022 (2005). We find that Truetone has made that showing in this case. The major consideration cited by Truetone in its Application, is that making the 1 SPOT products comply with the EPS Final Rule is not technically feasible, since the measures required to meet the efficiency standards would introduce unwanted noise into the musical signal,⁴ therefore defeating the purpose of using the products, and rendering them useless. This demonstrates that Truetone would suffer a disproportionate impact from the EPS Final Rule over other EPS manufacturers without the requested exception relief. While many EPS manufactures will bear some costs from the EPS Final Rule, few manufactures will have their most important products rendered unmarketable by the EPS Final Rule, as would Truetone.

In previous decisions, we have granted exception relief when compliance could not be met for reasons beyond the control of the manufacturer which rendered compliance technologically and economically infeasible. *See Philips Lighting Co., et al.*, OHA Case Nos. EXC-12-0001, EXC-12-0002, EXC-12-0003. Here, the situation is similar, the very technology which DOE expected EPS manufacturers to use in order to comply with the EPS Final Rule, switching power, can introduce high frequency harmonics into the signal path, which would contaminate the sound produced by the musical devices powered by the EPSs. This consequence results in a gross inequity and unfair distribution of burdens with regard to the EPS products produced by Truetone.

⁴ Mr. Jeremy Dommu, an Operations Research Analyst with the Building Technologies Office of DOE’s Office of Energy Efficiency, opined that:

The main way to achieve these efficiency levels is using switched power supplies. However, these switched power supplies can introduce high frequency harmonics as noise. This could be noticeable for such applications where sensitivity to noise is more noticeable, such as these guitar pedals. When the output of the guitar pedal is amplified to speakers, the noise is also amplified. While in most use-cases, the noise can be reduced with proper designs (e.g. filters), these designs may not sufficiently reduce the noise for this application. This noise problem could be exacerbated with higher efficiency requirements.

Email from Mr. Dommu to Steven Fine, OHA Staff Attorney.

Finally, Truetone has demonstrated that denial of relief will result in the significant losses of revenues and income resulting from compliance with the EPS Final Rule that would place a special hardship upon the firm. Truetone has submitted evidence showing that its 1-SPOT products accounted for XX percent of its revenues in 2015, and therefore a significant sales decrease for the 1-SPOT products would cause the firm to cease operation or dramatically curtail its operations. June 15, 2016, Email message from to Robert P. Weil, President, Visual Sound LLC dba Truetone. Based upon the XXXX XXXXXX percentage of Truetone's revenues and income attributable to the 1-Spot products, Truetone will likely suffer an unfair economic burden or significant loss of revenue from a denial of this Application. *Compare W.W. Grainger, Inc.*, OHA Case No. EXC-13-0003 (2013). Accordingly, we find that Truetone has met its burden of showing that it will suffer a special hardship, inequity, or unfair distribution of burdens in the absence of relief, for the reasons set forth above. Therefore, its Application for Exception will be granted.

It Is Therefore Ordered That:

(1) The Application for Exception from DOE Energy Conservation Standards for direct operation External Power Supplies at 10 C.F.R. § 430.32(w)(1)(ii) filed by Visual Sound LLC dba Truetone on April 5, 2016, is hereby granted, with respect to Truetone Brand external power supply basic⁵ models "1 SPOT," "1 SPOT Pro CS 7," and "1 SPOT Pro CS 12."

(2) Any person aggrieved by this grant of exception relief may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 5, 2016

⁵ In the context of DOE Energy Conservation Standards, "Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. . . ." 10 C.F.R. § 430.2.