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

In the Matter of Philips Electronics)
North America Corporation)
) Case No.: EXC-16-0014
Filing Date: July 11, 2016)
_____)

Issued: March 8, 2017

Decision and Order

This Decision and Order considers an Application for Exception filed on July 11, 2016, by Philips Electronics North America (Philips) seeking relief from the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Commercial and Industrial Electric Motors (Electric Motor Efficiency Standards or Final Rule), published on May 29, 2014, 79 Fed. Reg. 30934, and codified at 10 C.F.R. Part 431.¹ Compliance with the new Electric Motor Efficiency Standards was required as of June 1, 2016. Philips asserts that it will face a serious hardship and gross inequity if required to comply with the Final Rule when providing replacement motors to customers of the medical imaging devices that it manufactures. It also asserts that healthcare institutions and their customers will face a special hardship and gross inequity. As set forth in this Decision and Order, we have concluded that Philips' Application for Exception² should be granted.

¹ Upon receiving Philips' Application, we advised Philips that, before we could proceed with our evaluation of its requests, the firm must: (1) correct a procedural deficiency relating to service upon potentially aggrieved parties, 10 C.F.R. § 1003.23(a), and (2) clarify whether it is eligible to receive exception relief as an importer (and thus "a manufacturer", *see* 42 U.S.C. § 6291(10)) of electric motors. Letter from Gregory Krauss, Attorney-Advisor, Office of Hearings and Appeals (OHA), to James Mark Mattern II, Senior Vice President, Philips (July 18, 2016). Philips corrected the procedural deficiency and clarified that it is the official importer of record for the motors for which it seeks exception relief. Letter from Lydia Turnier, Mintz Levin, to Fred Brown, Deputy Director, OHA (July 19, 2016); Letter from David Fetterman, Philips, to Gregory Krauss, OHA (July 20, 2016). Accordingly, as an importer of electric motors, Philips is subject to the Electric Motor Efficiency Standards.

² Philips filed an Application for Stay concurrently with its Application for Exception. On August 3, 2016, we issued a decision granting Philips' request and stayed the June 1, 2016, compliance date of the Electric Motor Efficiency

I. Background

A. Electric Motor Efficiency Standards

Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA) initiated a variety of measures designed to improve energy efficiency of certain products. The Energy Policy Act of 1992, Pub. L. 102-486, amended EPCA to establish energy efficiency standards for some types of commercial and industrial equipment, including certain electric motors. The energy efficiency standards for electric motors, written directly into the Act, came into effect five years later, on October 24, 1997. Pub. L. 102-486, Sec. 122(d).

In 2007, Congress enacted the Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-140, which amended the EPCA by updating the energy conservation standards for those electric motors already covered by the EPCA and by establishing energy conservation standards for a larger scope of electric motors not covered by standards. *See* 42 U.S.C. § 6313(b)(2) (codifying specific standards prescribed by Section 313(b) of EISA for general purpose electric motors (subtypes I and II), fire pump motors, and NEMA Design B general purpose electric motors). Congress additionally amended the EPCA by providing DOE with the explicit authority to establish regulatory coverage over “other motors” that fall outside of one of these prescribed motor types. *See* American Energy Manufacturing Technical Corrections Act, Pub. L. 112-210, Section 10(c) (December 18, 2012). Consistent with these legislative provisions, the DOE issued the Electric Motor Efficiency Standards in which it raised the efficiency standards for some electric motors, but more significantly, applied “the standards currently in place to a wider scope of motors that DOE does not currently regulate.” 79 Fed. Reg. 30934, 30935 (May 29, 2014).

B. Application for Exception and Supplemental Filings

Philips is a leading manufacturer of medical imaging and in-vitro diagnostics products, as well as a service provider for such products. In order to operate, in many instances these products use motors that were previously not covered by DOE efficiency standards but have now been made subject to regulation under the Final Rule. Philips, Application for Exception (July 8, 2016) (Philips’ Application for Exception) at 3. XXXX XXXX XXXX XXXXX XXXX. However, Philips sells new medical equipment containing covered motors to its customers, which are primarily healthcare institutions. Philips also services previously sold equipment XXXX XXXX that it is obligated to repair under XXXXX XXXXX service contracts. Letter from Amy Gilchrist, Legal Counsel, Philips, to Gregory Krauss, Attorney-Advisor, OHA (September 23, 2016) (Gilchrist Letter) at 6. In servicing that equipment, Philips often needs to provide a replacement motor. To support its sales and servicing activities, Philips imports medical equipment and parts from overseas. Philips explains:

Standards until OHA reached a decision on the present Application for Exception. *Philips Electronics North America Corporation*, OHA Case No. EXS-16-0014 (2016).

Exception at 2. XXXXX XXXXX XXXXX XXXXXX XXXXX XXXXX XXXXX XXXXXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. Gilchrist Letter at 6. However, Philips
must XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. *Id.* at 6-7.
Philips asserts that, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. *Id.* at 6. Philips
requests exception relief until June 30, 2017, by which point it projects it will be able to supply its
customers with replacement motors that are compliant with the new Electric Motor Efficiency
Standards. Philips' Application for Exception at 5.

Philips contends that, without the ability to import XXXX XXXX XXXXX XXXX XXXX
XXXX, it will be impossible for it to replace all damaged or impaired electric motors XXXX
XXXXX XXXXX XXXXX in a timely way. *Id.* Philips indicates that the firm itself will face a
special hardship and gross inequity if it is not able to fulfill its service obligations, required by
contract. *See id.* at 4-5. Philips' main argument, however, is that an absence of exception relief
could place a burden on health care providers and patients. Philips explains that when an electric
motor XXXX XXXXX is damaged or impaired, XXXXX XXXXX becomes inoperable. Gilchrist
Letter at 8. It further observes that "[w]hen a medical imaging system is down, patients lose access
to care." Philips' Application for Exception at 5. Philips points out XXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.
Gilchrist Letter at 9. The firm contends that an inability to supply replacement motors could cause
treatment delays, creating serious health risks for patients. *Id.*

In the year prior to its Application for Exception, Philips replaced XXXXX XXXXX XXXXXXX
XXXX. Philips' Application for Exception at 5; Gilchrist Letter at 7. Philips estimates that the
total number of non-compliant motors it would need to import during the period of exception relief
is about the same. Philips' Application for Exception at 5. Philips characterizes the number of
covered electric motors for which it requests exception relief as "not large." *Id.* at 3. Philips
nevertheless contends that large numbers of patients rely on its XXXXX XXXXX. According to
Philips, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.
XXXXX
XXXXX XXXXX XXXXX XXXXX. Gilchrist Letter at 8.

C. Comments

The National Electrical Manufacturers Association (NEMA), a trade association whose members
include manufacturers of electric motors, filed comments with OHA in response to Philips'
Application for Exception. Letter from NEMA to Fred Brown, OHA (July 26, 2016) (NEMA
Comments). In its comments, NEMA supports Philips' exception request. NEMA describes
Philips' need for exception relief as due to FDA regulatory issues and not due to a discretionary
business decision by Philips. *Id.* at 2. NEMA further states that it contacted Philips and received
information indicating that the number of motors involved is "relatively small." *Id.* It describes
Philips' application as "tailored to coming into compliance with both EPCA and FDA regulations
as soon as they can for the limited number of replacement motors impacted." *Id.*

NEMA incorporates by reference its comments on another application for exception filed by Siemens Medical Solutions USA Inc. and Siemens Healthcare Diagnostics Inc. (Siemens). *See Siemens*, OHA Case No. EXC-16-0012 (2016). In that application, Siemens similarly sought exception relief to allow it to import electric motors for use in medical imaging devices. In its comments on Siemens' application, which we granted, NEMA emphasized the possible negative impact on healthcare institutions and patients that could result if medical diagnostic equipment is not repaired on a timely basis. Letter from NEMA to Fred Brown, OHA (June 16, 2016) (NEMA Siemens Comments) at 2.

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 the DOE's Office of Hearings and Appeals, which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003, Subpart B. 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., Eaton Corp.*, OHA Case No. EXC-16-0004 (2016); *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999).

We have carefully evaluated Philips' Application for Exception, as well as the comments received from NEMA. In performing this evaluation, we are mindful that the DOE's adoption of the Electric Motor Efficiency Standards is fully consistent with the policy objectives of the EPCA. The revised standard will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole.⁵ In view of the nation's increasing energy needs, the benefits of energy conservation cannot be overstated. Apart from these energy savings that DOE is required to consider as part of its comprehensive analysis in assessing whether a standard is technologically feasible and economically justified, the higher efficiency standard will also have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions and air pollution. Consequently, an exception to the revised efficiency standards is warranted only in those limited circumstances where relief is necessary to prevent a serious hardship, gross inequity or unfair distribution of burdens. 10 C.F.R. § 1003.20(a). On the basis of the information provided by Philips in its Application for Exception and supplemental filings, we have determined that such circumstances exist in the present case and that Philips should therefore be granted exception relief.

⁵ DOE estimates that the Electric Motor Efficiency Standards will save approximately 7.0 quads of energy over 30 years (2016 through 2045). A quad is a unit of energy equal to 10¹⁵ (a short-scale quadrillion) BTU. The annualized energy savings (0.23 quad) is equivalent to one percent of total U.S. industrial primary energy consumption in 2013. *See* 79 Fed. Reg. at 30938.

have not always required that applicants for exception demonstrate an economic hardship. The burden on other parties, such as customers, can in some circumstances be sufficient. *See, e.g., Emerson Motor Technologies*, OHA Case No. TEE-0003 (2002) (allowing an electric motor manufacturer to sell a single replacement motor to a nuclear power plant to prevent an unfair distribution of burdens on electricity customers). Moreover, a factor is present in this matter that was not present in *Siemens*. Having already granted exception relief to Siemens, we could be providing Siemens a competitive advantage by not offering similar exception relief to Philips. *See, e.g., Feit Electric Co., Inc.*, OHA Case No. EXC-13-0001 (2013) (granting an application for exception partly because competitors previously had received exception relief). An inability to adequately service XXXX XXXXX XXXXX could harm Philips' reputation as a service provider while leaving Siemens' reputation intact. We therefore find that exception relief is warranted to reduce any impact on competition.

As a final matter, we believe that granting exception relief to Philips in this case will not impede the energy conservation goals of the EPCA. The incremental energy usage attributable to the small number of electric motors covered by the exception relief that we approve in this decision is negligible in relation to the overall energy consumption savings portended by the new Electric Motor Efficiency Standards. *See* note 5, *supra*.

For the foregoing reasons, we have determined that Philips should be granted exception relief with respect to the replacement motors that it imports for use in servicing XXXXX XXXX XXXXX. Such exception relief shall last only until June 30, 2017, when Philips projects that it will be able to comply with the Final Rule.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Philips Electronics North America Corporation (Philips) on July 11, 2016, OHA Case No. EXC-16-0014, is hereby granted as set forth in paragraph (2) below.
- (2) Notwithstanding the June 1, 2016, compliance date of the Energy Conservation Program: Energy Conservation Standards for Commercial and Industrial Electric Motors, published on May 29, 2014, 79 Fed. Reg. 30934 (Final Rule), and codified at 10 C.F.R. § 431.25(g) through § 431(l), the compliance date of the Final Rule is hereby established as June 30, 2017, for electric motors that:
 - (a) Philips imports into the customs territory of the United States, with Philips being the official importer of record; and that
 - (b) Philips provides to customers when servicing XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX; and that

not clarified what percentage of its annual revenues it receives from these sources. *See* Memorandum of Telephone Conversation between Lydia Turnier, Mintz Levin, and Gregory Krauss, OHA (January 31, 2017).

(c) are found in the following models of XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXXX XXXXX XXXXX XXXXX XXXXXX.

- (3) Any person aggrieved by the approval of exception relief in this Decision and Order 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: March 8, 2017