

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

In the Matter of Diversified Power International, LLC)

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Filing Date: October 24, 2018)

Case No.: EXS-18-0003

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Issued: November 1, 2018

**Decision and Order on
Application for Stay**

On October 24, 2018, Diversified Power International (DPI) filed an Application for Stay of the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Battery Chargers (Standards or Battery Charger Standards) published on June 13, 2016, at 81 Fed. Reg. 38265 and codified at 10 C.F.R. 430.32(z), pursuant to its August 9, 2018, Application for Exception from the same, OHA Case No. EXC-18-0003. DPI requests a stay from compliance with the Standards, with respect to its affected products, until the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE or the Department) can decide the merits of its Application for Exception. For the reasons discussed below, we will grant the Application for Stay.

I. Background

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. 6295(u)(1). The Energy Independence and Security Act of 2007 added definitions for standby and off modes for battery chargers and directed DOE to create test procedures for those modes. 42 U.S.C. 6295(gg)(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, 2010). 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. 38265 (June 13, 2016). Compliance with this regulation was required starting June 13, 2018.

DPI is a manufacturer of, among other products, battery chargers. Based in rural Tennessee, it employs just under 100 workers, nearly 10% of whom have mental or physical disabilities. DPI Response to Request for Information (Response) at 8, 11. DPI takes pride in its almost exclusive use of American sourced materials, a fact that is a significant part of the company's marketing and brand identity. *Id.* at 8. It appears to be the only manufacturer of the affected products that sources such a large portion its materials domestically. *Id.* at 6. DPI seeks a stay of the applicable provisions of the Battery Charger Standards for nine product lines, contending that immediate compliance would force the company to permanently close its doors. *Id.* at 10–11.

DPI manufactures auto, golf cart, and industrial battery chargers which became non-compliant with DOE's energy efficiency standards on June 13, 2018. Response at 7. These chargers fall into classes four, five, and six under the new standards. *Id.* at 3. DPI stopped manufacturing its affected products when the new standards went into effect. Memorandum of Telephone Conversation between Tony Trigiani, DPI, and Kristin L. Martin, Attorney, Office of Hearings and Appeals (Memorandum). While it continues to manufacture the few products it offers that are not DOE regulated, orders for these products are dependent on its ability to fill orders for its affected products. *Id.* Its stock of affected products manufactured before the Standards went into effect is dwindling. *Id.*

DPI began working on its compliant products as early as 2009. Memorandum. In 2011, DPI built a "clean room," which was required for the manufacture of highly energy efficient battery chargers. *Id.* DPI has continued to improve this facility over the years, including adding new equipment as recently as 2018. *Id.* In late 2015 or early 2016, DPI contracted to build a magnetics facility capable of manufacturing the parts required for fully compliant battery chargers. *Id.* However, by early 2017, it became clear that the contractor was unable to perform, and DPI cancelled the contract. *Id.* In late 2017, DPI's affected products underwent testing for the California Energy Commission's (CEC) efficiency standards at Underwriter's Laboratory, an independent safety and compliance entity. *Id.* DPI inquired at that time as to whether its products met DOE's efficiency standards. *Id.* According to DPI, UL asserted that the DPI products it was testing would be DOE compliant if they were CEC compliant. *Id.* DPI continued developing higher efficiency products, completing software for a DOE compliant version of its Model 12925-02 chargers in December 2017. *Id.* This product, for which DPI already has orders, is scheduled to begin manufacture in December 2018. *Id.*

Sales of DPI's affected products constitute nearly XXXX% of the company's annual revenues. Response: Income 2015-2016-2017 (Response: Income). DPI's profit margins are slim; its annual net income is roughly XXXX% of total income, totaling between \$XXXX and \$XXXX per year. *Id.* Information submitted by DPI indicates that sourcing parts from outside of the United States could XXXX the cost of those parts, as compared to DPI's cost to manufacture them. Response at 15. Domestic sourcing could increase the cost of those parts XXXX fold. *Id.* It is unclear what the reputational cost of foreign outsourcing would be, given DPI's long standing promotion of its "made in America" status.

II. Analysis

The criteria that we consider in determining whether a stay should be granted are:

- (1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;
- (2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than a grant of the stay would cause to other persons affected by the proceeding;
- (3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision by OHA on the merits;
- (4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and
- (5) Whether a showing has been made that there is a strong likelihood of success on the merits.

10 C.F.R. § 1003.45(b). These criteria are discussed below. As set forth below, we have determined that DPI's stay request should be granted.

A. Irreparable Injury

DPI asserts that it will suffer severe financial harm if DOE's Battery Charger Standards are not stayed pending a decision on the merits of DPI's Application for Exception. While the company is still able to produce some products, it cannot compliantly manufacture products which constitute the bulk of its revenue stream. After a review of DPI's financial records, it appears likely that a long wait to resume production of the company's primary products, not uncommon due to the complicated nature of applications for exceptions, could permanently close DPI. The percentage of revenue from affected products, along with low net income, makes DPI's financial situation precarious as long as it cannot make affected products.

B. Immediate Hardship and Inequity

Denial of the stay would likely result in more immediate hardship to DPI than a grant of the stay would to other affected persons. DPI is uniquely situated among its competitors in that it manufactures many of its own parts. Rather than simply purchasing DOE compliant parts, it must create its own, a task that is currently impossible for DPI. In contrast, if the stay is granted, there will likely be little effect on other affected persons. DPI is a relatively small player in a large, international market. Denying the stay would have the effect of spreading the sales of a few hundred units (annually) from DPI to other manufacturers. Granting the stay would maintain the industry's status quo. Because DPI's potential hardship is quite severe, this factor weighs in favor of granting the stay.

C. Public Policy

Public policy also suggests that we grant DPI's Application for Stay. Income from DPI supports a significant number of households in a rural area and its supply lines support even more households across the country. If the company were to close, the economic effects in its locality would be felt immediately. Its suppliers would suffer loss of income as well. Public policy weighs against risking disruption of these income streams before the merits of DPI's Application for Exception are fully evaluated.

D. Possibility of Compliance

DPI is unable to comply with DOE's Battery Charger Standards at this time. Despite its efforts, the company still lacks the facilities necessary to manufacture certain components required for compliant products. It provided information that sourcing compliant components domestically would be nearly XXXX times as expensive as it would be to manufacture them. Sourcing the components from foreign suppliers would still XXXX the cost of manufacture. Furthermore, because DPI's brand identity is so intertwined with its "made in America" values, it is difficult to gauge the consequences that would follow from foreign sourcing.

E. Likelihood of Success on the Merits

The bar is set lower for an Application for Stay than it is for an Application for Exception. In considering what, if any, exception relief to grant DPI, we will need more information, particularly about supply chains and cost of materials. However, based upon the information already submitted, there is sufficient likelihood of success on the merits of DPI's Application for Exception to warrant the approval of the requested stay pending OHA's decision in EXC-18-0003.

III. Conclusion

It Is Therefore Ordered That

- (1) The Application for Stay filed by Diversified Power International, LLC, on October 24, 2018, is hereby granted as set forth in paragraph (2) below.
- (2) The June 13, 2018, compliance date of the Energy Conservation Program: Energy Conservation Standards for Battery Chargers published on June 13, 2016, at 81 Fed. Reg. 38265 and codified at 10 C.F.R. 430.32(z), is hereby stayed with respect to the products with UL numbers listed in Appendix A until the Office of Hearings and Appeals reaches a decision on the Application for Exception filed by DPI on August 9, 2018, OHA Case No. EXC-18-0003.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

APPENDIX A

UL Model Number

12925-02
1-12008-01
1-24020-04
1-24020-04HF
1-36018-04
148017-04
1-48885-04
1-42017-04
1-64014-04
1-72012-04