

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

In the Matter of:)
)
Philips Lighting Electronics N. A.,) Case Number: 2012-SE-2605
Respondent)
)
)

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Philips Lighting Electronics N. A. (“Respondent”) pursuant to 10 C.F.R. § 429.106 after Respondent notified DOE that Respondent may have distributed in commerce fluorescent lamp ballasts that did not conform to the applicable energy conservation standard. 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 shall 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 and 430 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 November 29, 2012, and captioned as case number 2012-SE-2605.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Philips Lighting Electronics N. A., 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.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for fluorescent lamp ballasts at 10 C.F.R. § 430.32(m)(3); and

WHEREAS, DOE, on August 31, 2012, issued a Notice of Noncompliance Determination finding that fluorescent lamp ballast basic model VEL-1S40-SC manufactured by Respondent was not in conformity with the applicable energy conservation standard; and

WHEREAS, basic model VEL-1S40-SC is a "covered product" as defined in 42 U.S.C. § 6292(a)(13), and 10 C.F.R. § 430.2; and

WHEREAS, the energy conservation standards set forth in 10 C.F.R. § 430.32(m)(3) apply to all units sold by Respondent on or after July 1, 2005; and

WHEREAS, DOE, on November 29, 2012, initiated an action to assess a civil penalty for distributing non-compliant basic model VEL-1S40-SC in commerce in the United States; and

WHEREAS, Respondent admits:

1. Respondent manufactured basic model VEL-1S40-SC of fluorescent lamp ballast;
2. Basic model VEL-1S40-SC is subject to the energy conservation standards set forth in 10 C.F.R. § 430.32(m)(3);
3. Since January 1, 2010, Respondent sold in the United States 7,498 units of basic model VEL-1S40-SC of fluorescent lamp ballast that did not meet the applicable energy conservation standard; and

WHEREAS, Respondent has cooperated fully with DOE in connection with this investigation; 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 against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that 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 this Compromise Agreement is executed within thirty (30) days after the date of the Notice, Respondent agrees to pay the sum of \$82,478, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
 - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on August 31, 2012, captioned under case number 2012-SE-2605.
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 paragraph III.2.a in full satisfaction of the civil 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 Paragraph 2 above.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy conservation 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. As of that date, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel.
6. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
7. **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, including any right to judicial review that may be available to the Respondent. 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.

8. **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.
9. **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.
10. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
11. **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.
12. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
13. **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.

Laura L. Barhydt
Laura L. Barhydt
Assistant General Counsel for
Enforcement
U.S. Department of Energy
January 7, 2013
Date

K. Orsini
(Signature)
Typed Name: Reg. Orsini
Title: Sr. Director of Finance
Company Name: Phillips Lighting
1/4/13
Date