

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

In the Matter of:)
)
Litetronics International, Inc.) Case No.: EXC-12-0008
)
Filing Date: May 9, 2012)
_____)

Issued: July 20, 2012

Decision and Order

This Decision and Order considers an Application for Exception filed by Litetronics International, Inc. (Litetronics or the Applicant), seeking temporary exception relief from the applicable provisions of 10 C.F.R. Part 430, Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps (Lighting Efficiency Standards). In its exception request, the Applicant asserts that it will face a serious hardship, gross inequity, and an unfair distribution of burdens if required to comply with the Lighting Efficiency Standards, set forth at 10 C.F.R. § 430.32(n)(3), pertaining to its 700 series T8 General Service Fluorescent Lamps (GSFLs). If its Application is granted, Litetronics would receive exception relief from the energy conservation standards applicable to its 700 series T8 GSFLs for a period of two years, from July 14, 2012, to July 14, 2014. As set forth in this Decision and Order, we have concluded that Litetronics's Application for Exception should be granted.

I. Background

A. Lighting Efficiency Standards

Title III 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. GSFLs were among the consumer and commercial products subject to the program. Amendments to Title III of the EPCA in the Energy Policy Act of 1992, P.L. 102-486, established energy conservation standards for certain types of GSFLs. 42 U.S.C. § 6295(i)(1); 10 C.F.R. § 430.32(n)(1); *see* 74 Fed. Reg. 34080, 34082-83 (July 14, 2009).

The amendments to Title III of the EPCA also direct the U.S. Department of Energy (DOE or the Agency) to conduct two cycles of rulemakings to determine whether to amend these standards.

42 U.S.C. § 6295(i)(3)-(4). Following the first review cycle, DOE concluded that the standards should be updated, and the Agency ultimately issued the Lighting Efficiency Standards, published in the *Federal Register* as a final rule by DOE on July 14, 2009.¹ 74 Fed. Reg. 34080, 34082; 10 C.F.R. § 430.32(n)(3).

During the rulemaking process leading to the adoption of the Lighting Efficiency Standards, the GSFL industry raised a concern that the higher GSFL efficiency standards proposed by DOE would necessitate substantially increased quantities of “rare earth” oxides used to produce phosphor coating for GSFLs, and that the industry potentially faced significant supply constraints imposed by China, the primary source of rare earth. *See* Notice of Proposed Rulemaking (NOPR), 74 Fed. Reg. 16920, 16973-74 (April 13, 2009). In a Technical Support Document (TSD) that the Agency issued in support of the NOPR, the DOE acknowledged that the proposed Lighting Efficiency Standards would result in increased demand for rare earth, but determined that there would be sufficient supply to meet the increased demand. *See* TSD, Appendix 3C (Rare Earth Phosphor Availability and Pricing), January 2009.²

The National Electrical Manufacturers Association (NEMA), an industry trade association, then expressed concerns that DOE had underestimated the increase in demand for rare earth oxides as well as the supply problems that the industry was likely to face. *See* 74 Fed. Reg. 34080, 34139 (July 14, 2009). In the 2009 Final Rule, DOE acknowledged the concerns regarding potential shortages of rare earths as a result of Chinese policy, noting that China currently supplies some 95 percent of the rare earth market and had taken steps to restrict the exportation of rare earth resources. *Id.* at 34140. Nonetheless, the Agency concluded at that time that the higher GSFL efficiency standards adopted by the 2009 Final Rule were technologically feasible and economically justified. *See id.* at 34141-42.

B. Application for Exception

Litetronics is based in Illinois and is a leading manufacturer of specialty and general illumination lighting solutions. Among the lighting products sold by Litetronics are 700 and 800 series T8 GSFLs, which are produced for Litetronics on a contract basis by manufacturers located in China, Germany, and South Korea. These T8 lamps are sold by Litetronics under the company’s private label. Litetronics is considered a “manufacturer” for purposes of this Application for Exception Relief.³

In its Application for Exception and its supporting materials, Litetronics asserts that volatility in the rare earth market, driven largely by Chinese production and export policies, has led to significant price increases and shortages of the rare earth oxides necessary to produce compliant GSFLs. Litetronics Application at 6-8. Litetronics states that only lamps using predominantly

¹ The EPCA provides that any new or amended energy conservation standard that DOE prescribes must be designed to “achieve the maximum improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified.” 42 U.S.C. § 6295(o)(2)(A).

² Available at:
http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/app_3c_lamps_standards_nopr_tsd.pdf

³ The EPCA defines “manufacturer” as “any person who manufactures a consumer product.” 42 U.S.C. § 6291(12). Under the Act, the term “manufacture” means to “manufacture, produce, assemble, or import.” *Id.* at 6291(10).

triphosphor coatings found in rare earth will be able to meet the new GSFL standards. Litetronics Application at 5. As a result, the 800 series T8 GSFLs, which use triphosphor coatings, comply with the new Lighting Efficiency Standards. However, the 2009 Final Rule effectively precluded the manufacture of T12 GSFLs, which generally use only less expensive, more abundant halophosphor coatings, and 700 series T8 lamps, whose coatings are comprised of a mixture of halophosphors and triphosphors. *Id.* Examining the economic impact of the regulations on manufacturers and consumers, product utility and competition, and the need for energy competition, Litetronics argues that implementation of the Lighting Efficiency Standards, requiring manufacturers to use significantly greater amounts of triphosphor-producing rare earth to produce compliant lamps, will likely lead to additional price increases and shortages that will cause Litetronics to suffer “special hardship, inequity, and unfair distribution of burdens.” Litetronics Application at 10-14; *see also* Report of the National Electrical Manufacturers Association to the U.S. Department of Energy: Recent Developments Affecting United States Manufacturers of General Service Fluorescent Lamps and the Impact of Energy Conservation Standards Effective July 14, 2012 (Dec. 5, 2011) (“NEMA Report”).

Litetronics further notes that OHA granted exception relief to Philips Lighting Company (Philips), GE Lighting (GE), and Osram Sylvania, Inc. (OSI), and states that it is entitled to the same relief granted to those firms.⁴ Litetronics maintains that since OHA granted exception relief to the other manufacturers, if it denied Litetronics’s Application, Litetronics would be left at a serious competitive disadvantage. Litetronics Application at 14-15. Litetronics also argues that not only will it face the loss of revenue from the 700 series T8 lamps, but it would also likely face the corresponding losses of sales of other products. *Id.* at 15-16. According to Litetronics, much of its general lighting business arises from its ability to offer a diversified product line. For example, many of Litetronics’s customers routinely place orders for multiple products because doing so is more cost-effective and efficient. Litetronics maintains that, if the company is unable to offer its customers the 700 series GSFLs while other manufacturers are able to do so, its customers are likely to turn to those other manufacturers for their entire order, resulting in Litetronics’s loss of revenue not only from the 700 series GSFLs, but also from any number of its other products. *Id.*

C. Comments

We received one interested party comment regarding Litetronics’s Application, submitted jointly by Earthjustice, the Appliance Standards Awareness Project (ASAP), the Natural Resources Defense Council (NRDC), the Northwest Energy Efficiency Alliance (NEEA), and the Northwest Power and Conservation Council (NPCC) (collectively, “the group” or “the interested parties”). The group first stated its general position that exception relief be granted only for lamps manufactured in countries that experience phosphor supply constraints due to China’s policies favoring the domestic production of GSFLs using tri-band phosphor coatings. Comment, filed May 15, 2012, at 1. With regard to Litetronics’s application, the group stated

⁴ Given the similarities in the Applications and arguments in the exception requests filed by Philips, GE, and OSI, we consolidated the three cases and, in an April 16, 2012, Decision and Order, granted exception relief. *See Philips Lighting Company, et al.*, OHA Case Nos. EXC-12-0001, EXC-12-0002, EXC-12-0003. Decisions issued by the DOE Office of Hearings and Appeals (OHA) are available on the OHA website at: <http://www.oha.doe.gov/eecases.asp>.

that Litetronics failed to demonstrate that its 700 series T8 GSFLs are produced in facilities that are subject to phosphor supply constraints because its application “says nothing about the country of origin of [its] T-8 GSFLs.” *Id.* at 2. (Litetronics later specified, in a public document, that its T-8 GSFLs are produced in China, Germany, and South Korea.) Then the group reiterated its position that Litetronics should be granted relief only if its production facilities “experience the supply issues common to T-8 GSFL production facilities outside of China.” *Id.* at 3.

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 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., Amana Appliances*, OHA Case No. VEE-0054 (1999); *Midtown Development, L.L.C.*, OHA Case No. VEE-0073 (2000); *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0073 (2001).

We have carefully reviewed Litetronics's Application for Exception and supporting materials and have determined that the firm's request for exception relief should be granted. In *Philips Lighting Company, et al.*, we acknowledged that the Agency's assumptions and projections in the 2009 Final Rule regarding the availability of sufficient quantities of rare earth elements to replace 700 series T8 GSFLs with 800 series T8 GSFLs had been rendered inaccurate by unforeseen circumstances outside the control of the manufacturers, namely the production and export limitations on rare earth triphosphors imposed by China. *Philips Lighting Company, et al.*, OHA Case Nos. EXC-12-0001, EXC-12-0002, EXC-12-0003 at 11. We also noted the volatility of the rare earth market and found that projections for future supply and prices remained uncertain. *Id.* at 11-12. Finally, we concluded that domestic manufacturers were precluded from competing “on a level playing field in relation to their Chinese counterparts” due to China's rare earth pricing policies. *Id.* at 12. Given these facts, we concluded that insufficient quantities of the rare earth triphosphors necessary to meet the new GSFL standards were reliably available and, therefore, exception relief was warranted. Consequently, finding that exception relief was consistent with the energy conservation goals of the EPCA, we granted the applicants' exception relief for a temporary period of two years. *Id.* at 12-14.

In subsequent decisions, *Ushio America, Inc.*, OHA Case No. EXC-12-0004 (2012) and *Halco Lighting Technologies*, OHA Case No. EXC-12-0005 (2012), we granted equivalent exception relief to domestic marketers of 700 series GSFLs, finding that the circumstances which compelled our approval of exception relief in *Philips Lighting Company, et al.*, had by consequence created a gross inequity. More specifically, we found that Philips, GE and OSI would have an unfair competitive advantage over firms such as Ushio America, Inc. and Halco Lighting Technologies, by continuing to market lower cost 700 series GSFLs for a period of two years while other domestic manufacturers were precluded from doing so. In approving exception relief in *Ushio America, Inc.* and *Halco Lighting Technologies*, we found that this competitive

advantage was an unintended consequence of both the 2009 Final Rule and the exception relief we determined to be necessary in *Philips Lighting Company, et al.* We noted further that if customers were unable to purchase 700 series GSFLs from Ushio America, Inc. and Halco Lighting Technologies, the firms would not only suffer the loss of these sales revenues but also residual losses across their product lines as a result of being unable to offer a full slate of lighting products. *See Ushio America, Inc.* at 5; *Halco Lighting Technologies* at 5.

The present case before us is similar to *Ushio America, Inc.* and *Halco Lighting Technologies*. If Litetronics is denied exception relief, the firm will be precluded from continuing to market 700 series T8 GSFLs, while its three largest competitors, Philips, GE, and OSI, may continue to do so for a period of two years. Therefore, in this case, we find that granting Litetronics exception relief is also warranted in order to prevent this inequity.

Moreover, also as in *Ushio America, Inc.* and *Halco Lighting Technologies*, we believe that other factors favor the granting of exception relief in this case. In prior decisions, we determined that the same factors considered by the agency in promulgating energy conservation standards are useful in evaluating claims for exception relief. *See, e.g., Viking Range Corp.*, OHA Case No. VEE-0075 (2000); *SpacePak/Unico Inc.*, OHA Case Nos. TEE-0010, TEE-0011 (2004). These factors, set forth in section 325 of the EPCA, 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). As noted above, given the current state of the rare earth market, we have concluded that failure to provide exception relief in this case is likely to have a significant adverse economic impact upon Litetronics. The company has demonstrated in its Application and supplemental materials that denial of relief will result in losses in revenues of not only the 700 series T8 GSFLs, but also residual losses across its product line. Moreover, it is also likely that allowing certain companies to market 700 series T8 GSFLs but not others will adversely impact consumers by disrupting current market supply and distribution chains. The companies previously granted an exception to continue marketing 700 series T8 lamps do not supply every domestic lighting wholesaler and retailer. Therefore, by allowing certain companies to continue manufacturing and marketing the 700 series T8 lamps but not others, domestic consumers would not only be deprived of the opportunity to choose among different brands for the lamps, potentially increasing their costs as well, but also, in some instances, may be unable to obtain these lamps from their traditional and most convenient sources.

In addition, Litetronics maintains in its Application that granting exception relief in this case would not result in an increase in energy consumption and does not contravene the EPCA's goal of energy conservation. Litetronics Application at 12. We agree. As we noted in *Philips Lighting Company, et al.*, *Ushio America, Inc.*, and *Halco Lighting Technologies*, the new Lighting Efficiency Standards effectively preclude the manufacturing of certain types of GSFLs, namely T12 GSFLs (lamps with a 1.5 inch diameter), and the majority of the rule's projected energy savings will be attained through the elimination of those lamps from the market. *See Philips Lighting Company, et al.*, OHA Case No. EXC-12-0001 at 13. Moreover, the difference between the 700 series and 800 series T8 GSFLs is the amount of light produced (lumens per watt), not the amount of energy consumed. Thus, while the 800 series T8 GSFLs are brighter, the lamps operate at the same wattage, consuming the same amount of energy. *Id.* at 8; Litetronics Application at 12.

In determining whether to grant exception relief in this case, we have given due consideration to the concern expressed by Earthjustice and the other interested parties in their joint comment regarding whether all of Litetronics's third-party manufacturing facilities face triphosphor supply constraints. We are satisfied with the information and supporting materials provided by Litetronics to address this issue, and are persuaded by their showing that all of their manufacturers have, in varying degrees, experienced significant disruptions and uncertainties in their supply of rare earth phosphors required to produce GSFLs.

However, while the volatility of the rare earth market remains an important factor, it is not the critical basis of our finding that exception relief is warranted in this case. As noted above, even if Litetronics's third-party manufacturers are able to secure sufficient quantities of rare earth triphosphors to meet Litetronics's supply orders for 800 series T8 GSFLs, Litetronics would remain at an unfair competitive disadvantage by being unable to manufacture and market 700 series T8 GSFLs while its competitors are allowed to do so. Consistent with our decision in *Ushio America, Inc.* and *Halco Lighting Technologies*, granting exception relief is appropriate to preclude any unintended competitive disadvantages among domestic manufacturers resulting from the regulations and our previous exception relief.

Based on the foregoing, we conclude that Litetronics has met its burden of establishing that it will face a gross inequity and an unfair distribution of burdens in the absence of exception relief.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Litetronics International, Inc., on May 9, 2012, is hereby granted as set forth in paragraph (2) below.
- (2) Notwithstanding the requirements of 10 C.F.R. §430.32(n)(3), which sets a compliance date of July 14, 2012, applicable to T8 general service fluorescent lamps (GSFLs), Litetronics International, Inc., is hereby authorized to continue to manufacture 700 series T8 GSFLs (4-foot medium bipin, 2-foot U-shaped, and 8-foot slimline and high output) subject to the currently applicable efficiency standards, contained in 10 C.F.R. § 430.32(n)(1), for a period of two years, until July 14, 2014. The present exception relief is limited to T8 GSFLs produced at manufacturing facilities facing critical shortages of rare earth elements required in the manufacture of higher efficiency T8 GSFLs, as described in the foregoing decision.
- (3) 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 20, 2012