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

In the Matter of Philips Electronics)
North America Corporation)
Filing Date: July 14, 2016) Case No.: EXS-16-0014
_____)

Issued: August 3, 2016

**Decision and Order on
Application for Stay**

On July 14, 2016,¹ Philips Electronics North America Corporation (Philips) filed an Application for Stay of 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. Philips also filed, concurrently with its Application for Stay, an Application for Exception from the Final Rule, OHA Case No. EXC-16-0014. Philips requests a stay from compliance with the Final Rule, with respect to the replacement motors it imports, until the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) can decide the merits of its Application for Exception. For the reasons discussed below, we will grant the Application for Stay.

I. Background

Title III of the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA) initiated a variety of measures designed to improve the energy efficiency of certain

¹ Upon receiving Philips' Applications, 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 the firm was 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, OHA, to James Mark Mattern III, Philips. Philips corrected the procedural deficiency and provided the requested clarifying information in supplemental submissions dated July 19, 2016 and July 20, 2016.

products. The Energy Policy Act of 1992, Pub. L. No. 102-486, amended the 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. *See* Pub. L. No. 102-486, Sec. 122(d); 42 U.S.C. § 6313(b)(1).

In 2007, Congress enacted the Energy Independence and Security Act of 2007 (EISA), Pub. L. No. 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 already 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). Additionally, in 2012, Congress 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. No. 112-210; 42 U.S.C. § 6311(2)(B)(xii). 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. at 30935. Particularly relevant to the present proceeding, the Final Rule made subject to energy efficiency standards certain “definite purpose motors” and “special purpose motors” that had previously been unregulated.² 79 Fed. Reg. at 30945; *see also* 10 C.F.R. § 431.25. Compliance with the Electric Motor Efficiency Standards is required as of June 1, 2016.

As explained in its Application for Exception, Philips is a leading manufacturer and service provider for medical imaging and in-vitro diagnostic products, including XXXXX XXXXX XXXXX XXXX XXXX. In order to operate, these products in many instances utilize definite and special purpose motors that previously were not covered by DOE efficiency standards but have now been made subject to regulation under the Final Rule. Philips not only sells new medical imaging equipment to its customers, which are primarily healthcare institutions, but also services previously sold equipment. As part of its servicing activities, Philips often provides its customers with replacement electric motors. Phillips indicates that its new medical imaging devices contain motors that already conform to the Electric Motor Efficiency Standards, but that the replacement motors it provides are not in compliance. *See* Philips’ Application for Exception at 4-5. Pending adjudication of its Application for Exception, Philips requests relief from the Final Rule for the

² The EPCA defines “definite purpose motor” as “any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications,” and defines “special purpose motor” as “any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.” 42 U.S.C. §§ 6311(13)(C) and (D).

replacement electric motors that it installs when repairing existing medical devices. Philips contends that the firm, its customers and patients of its customers will suffer a serious hardship and gross inequity in the absence of exception and stay relief.

We acknowledged receipt of Philips' Applications in a letter dated July 18, 2016. In that letter, we explained that the OHA has authority to issue exception relief only to those entities being regulated, in this instance the manufacturers of electric motors produced for sale in U.S. commerce. The OHA may grant exception relief to the extent a manufacturer is able to show that it will suffer a gross inequity, serious hardship or unfair distribution of burdens as a result of meeting a revised DOE efficiency standard. *See* 10 C.F.R. Part 1003, Subpart B; Department of Energy Organization Act, 42 U.S.C. § 7194. The EPCA, pursuant to which the Electric Motor Efficiency Standards were promulgated, defines "manufacturer" as "any person who manufactures industrial equipment" and defines "manufacture" as to "manufacture, produce, assemble or *import*" (emphasis added). *See* 42 U.S.C. § 6311(5); 42 U.S.C. § 6291(10).

Philips states in its Application for Exception that its replacement motors "can come from overseas" and that that "each import triggers compliance with the DOE electric motor rule." Philips' Application for Exception at 2. Philips also attached to its Application for Exception a "Table of Affected Motors" showing the type and number of electric motors that it supplies as replacement motors to its U.S. customers during a typical year. *Id.* at Appendix A. In our letter to Philips, we sought to clarify the extent to which the affected motors are imported by Philips. We therefore requested that Philips indicate how many of the motors listed in Table A are imported, with Philips being the importer of record. *See* Letter from Gregory Krauss, Attorney-Advisor, OHA, to James Mark Mattern II, Philips (July 18, 2016).

On July 20, 2016, Philips submitted supplemental information stating: "[W]e would like to clarify that XXXXX of the motors originally listed in our . . . 'Table of Affected Motors,' are produced overseas, with Philips as the importer of record." Letter from David Fetterman, Philips, to Gregory Krauss, Attorney-Advisor, OHA (July 20, 2016) (Philips' Application Supplement). A revised "Table of Affected Motors" attached to Philips' letter shows that of the XXXXX affected motors listed in the Table, XXXXX motors are imported and that Philips is the importer of record for XXXXX of those motors. *Id.* at Appendix A. With respect to these motors, Philips therefore has standing to request exception and stay relief.

II. Application for Stay

In its Application for Stay, Philips requests a stay of enforcement of the Electric Motor Efficiency Standards found in the Final Rule while its Application for Exception is under review. 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, *seriatim*. As set forth below, we have determined that Philips' stay request should be granted.

(1) Irreparable Injury

Based upon our review, we are satisfied that Philips has made a plausible showing of irreparable injury. Philips states in its Application for Stay that not only the firm but its customers, healthcare providers and patients, will suffer irreparable injury in the absence of stay relief. *See* Application for Stay at 2. In this regard, Philips states that medical imaging devices are heavily regulated by the U.S. Food & Drug Administration (FDA) and that the FDA requires design verification and performance validation for all components, including electric motors, comprising these devices. *See* Philips' Application for Exception at 2-3. Philips asserts that "[t]o introduce into our already FDA approved medical devices, new electric motors that would meet energy conservation standards under the amended DOE rule for electric motors will require extensive new testing and evaluation to ensure [the] safety and efficacy of our equipment." Philips' Application for Stay at 2. Philips contends that the firm and its customers will face irreparable injury if Philips cannot fulfill its contractual obligations to promptly deliver replacement motors. *Id.* Specifically, Philips states that health care providers and patients will face "significant downtime and [a] consequential lack of healthcare delivery." *Id.*

(2) Immediate Hardship or Inequity

We are also persuaded that denial of the stay will result in a more immediate hardship to Philips than a grant of the stay would cause to other affected persons. In this regard, Philips cites the injury to the firm and its existing customers, described above. Philips states that "we can reasonably foresee that in the very near future . . . we will have to secure replacement electric motors, particularly in connection with the maintenance and repair of existing XXXXX . . . devices." *Id.*

(3) Public Policy

We have also determined that public policy weighs in favor of granting Philips request for a stay. Philips asserts that the approval of stay relief is supported by vital public policy interests of meeting

the public health requirements of healthcare providers and their patients, as well as FDA regulatory requirements that medical devices be safe and effective.

(4) Possibility of Compliance

We are further persuaded by Philips' assertion that it is currently unable to comply with the Final Rule. Philips argues that, in the absence of stay relief, it will be impossible for the firm replace all damaged or impaired electric motors in medical equipment in a timely way, because of the extensive testing, verification and validation that will be necessary to ensure that compliant replacement motors also comply with FDA regulations. Philips' Application for Stay at 2. Philips has estimated that it will take until XXXXX for all its replacement motors to comply with the Electric Motor Efficiency Standards. *See* Philips' Application Supplement at Appendix A.

(5) Likelihood of Success on the Merits

It is clear from our preliminary analysis of Philips' exception request that additional information and supporting evidence may be necessary in order to determine the scope of any exception relief to which Philips may be entitled. However, based upon the circumstances presented, we are satisfied that there is a sufficient likelihood of success on the merits of Philips' Application for Exception to warrant the approval of the requested stay.

It Is Therefore Ordered That:

- (1) The Application for Stay filed by Philips Electronics North America Corporation, on July 14, 2016, is hereby granted as set forth in paragraph (2) below.
- (2) 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, and codified at 10 C.F.R. Part 431, is hereby stayed with respect to the replacement electric motors that Philips supplies for its medical imaging equipment, for which Philips is the official importer of record, until the Office of Hearings and Appeals reaches a decision on the Application for Exception filed by Philips on July 14, 2016, OHA Case No. EXS-16-0014.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: August 3, 2016