

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

In the Matter of Alcatel-Lucent USA)
) Case No.: EXS-16-0009
Filing Date: February 22, 2016)
_____)

Issued: February 23, 2016

**Decision and Order on
Application for Stay**

On February 22, 2016, Alcatel-Lucent USA (Alcatel) filed an Application for Stay from enforcement of the energy conservation standards for external power supplies (EPS) set forth in DOE's February 2014 Energy Conservation Standards for External Power Supplies (EPS Standards).¹ *See* Final Rule, Energy Conservation Program: Energy Conservation Standards for External Power Supplies, 79 Fed. Reg. 7,846 (Feb. 10, 2014). Alcatel requests that it be granted a stay from complying with the Conservation Standards until the DOE's Office of Hearings and Appeals (OHA) can decide the merits of its Application for Exception from the Conservation Standards, OHA Case No. EXC-16-0009, which it filed concurrently with its Application for Stay. For the reasons discussed below, we will grant the Application for Stay.

I. Background

The Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. The current EPS Standards, codified in 10 C.F.R. Part 430, were issued effective April 11, 2014. Compliance with the EPS Standards was required starting February 10, 2016. 10 C.F.R. § 430.32(w)(2). An EPS is a device that converts ac power from a wall outlet into lower voltage

¹ Alcatel has also filed an Application for an Exception for relief from the Conservation Standards with respect to a delayed shipment of packaged wireless products that includes EPS units. Alcatel-Lucent USA, Application for Exception, OHA Case No. EXC-16-0009 (Feb. 22, 2016).

dc or ac power to be used directly by electronic circuits in various devices. *See* https://www.energystar.gov/index.cfm?c=archives.power_supplies.

Alcatel markets a variety of electronic products which are manufactured overseas by third-party contractors for sale and distribution in the United States. Alcatel Application for Stay at 1. Alcatel's present stay request and underlying Application for Exception relate to a shipment of XXXXXX EPS products that are packaged with a corresponding Alcatel 9961 Multi-Standard Home Cell unit (the Affected Shipment), a device that extends cell phone coverage in the home. *Id.* at 2. Alcatel states, however, that due to circumstances beyond its control (including a labeling error and a weather delay), the Affected Shipment from China did not reach port in the United States (Long Beach, California) until February 11, 2016, one day after the compliance date of the EPS Standards.² Attached to its Application for Stay, Alcatel has submitted documentation showing that upon arrival at the Port of Long Beach, the Affected Shipment was placed in a U.S. Customs bonded warehouse located at the port. *See* Alcatel Application for Stay at 2; Exhibit 3. Alcatel therefore requests a stay of the EPS Standards with regard to the Affected Shipment that will allow the Affected Shipment to remain in the Customs-bonded warehouse until OHA rules upon the firm's Application for Exception.

II. Analysis

The criteria to be considered and weighed by the OHA 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). We have concluded that Alcatel has sufficiently made the required showing.

² The EPCA defines "manufacturer" as "any person who manufactures a consumer product." 42 U.S.C. § 6291(12). Correspondingly, under the Act, the term "manufacture" means to "manufacture, produce, assemble, or import." *Id.* at 6291(10). This definition is codified in the DOE product efficiency regulations at 10 C.F.R. § 430.2. Thus, for purposes of the EPS Standards, the manufacture compliance date of the EPS products contained in Alcatel's shipment would be the date of import.

Regarding Criterion (1), irreparable injury, Alcatel submits that the Affected Shipment has a value of approximately XXXX and that the immediate cost to export the Affected Shipment back to China would be XXXXXX.³ Second, in reference to Criterion (2), we are satisfied that denial of a stay – particularly where the Affected Shipment arrived in the United States just one day after the EPS Standards took effect due to circumstances beyond Alcatel’s control – would result in a more immediate hardship and inequity to Alcatel than would a grant of a stay cause to other persons potentially affected by the proceeding. For similar reasons, and because the quantity of the Affected Shipment is negligible in comparison to the EPS market, we believe that public policy (Criterion (3)) supports the approval of the requested stay relief. We also find that the approval of the requested stay is supported by Criterion (4) with respect to the Affected Shipment as a consequence of the statutory and regulatory provisions specifying that the import date constitutes the manufacture date for purposes of the DOE product efficiency standards. *See* footnote 2, *supra*. Finally, with regard to Criterion (5), we are satisfied that Alcatel has made a showing of a strong likelihood of success on the merits, based upon our preliminary review of Alcatel’s underlying Application for Exception.

It Is Therefore Ordered That:

- (1) The Application for Stay filed by Alcatel-Lucent USA, on February 22, 2016, is hereby granted as set forth in paragraph (2) below.
- (2) The February 10, 2016, compliance date of the efficiency standards set forth in the Energy Conservation Program: Energy Conservation Standards for External Power Supplies (EPS), 79 Fed. Reg. 7,846 (Feb. 10, 2014), is hereby stayed with respect to the XXXXXX EPS units imported by Alcatel-Lucent USA and which arrived in Long Beach, California, on February 11, 2016, until the Office of Hearings and Appeals reaches a decision on the Application for Exception filed by Alcatel-Lucent USA on February 22, 2016, OHA Case No. EXC-16-0009.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: February 23, 2016

³ Alcatel further states in its Application for Exception that the firm would bear an additional cost of xxx to xxx to replace the EPS units and re-ship the products back to the United States. *See* Alcatel Application for Exception at 6.