

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

In the Matter of:

Lumiram Electric Corporation,
Respondent

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Case Number: 2010-CE-1014

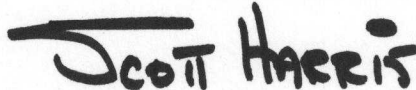
ORDER

Issued: November 23, 2010

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and Lumiram Electric Corporation (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements at 10 C.F.R. § 430.62.
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.
3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement which completes the adjudication of the case.
4. Based on the information in the case file and Respondent’s admission of violation in the Compromise Agreement, I find that Respondent committed a Prohibited Act¹ by failing to comply with 10 C.F.R. § 430.62 and 42 U.S.C. § 6296(d).
5. Accordingly, **IT IS ORDERED** that, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,² the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Scott Blake Harris
General Counsel

¹ 42 U.S.C. § 6302 lays out the specific acts prohibited by the Energy Policy and Conservation Act, of 1975, as amended, 42 U.S.C. § 6291, *et seq.*

² 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Lumiram Electric Corporation (“Respondent”) pursuant to 10 C.F.R. § 430.74 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit a certification report and compliance statement for incandescent reflector lamps. 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 civil penalty 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) “DOE” means the U.S. Department of Energy.
- (d) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 8, 2010, and captioned as case number 2010-CE-1014.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Lumiram Electric Corporation.

II. RECITALS

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

WHEREAS, DOE has promulgated energy conservation standards for incandescent reflector lamps at 10 C.F.R. § 430.32 and requires manufacturers and private labelers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. § 430.61, is authorized to assess civil monetary penalties for actions prohibited by the Act, including failing to make reports or provide other required information; and

WHEREAS, DOE, on September 8, 2010, initiated an action to assess a civil penalty for failure to certify; and

WHEREAS, Respondent admits:

1. Respondent privately labels and distributes incandescent reflector lamps, including basic models R30FL-75; R30FL-100; R30SP-100; R40SP-150; R40FL-150.
2. These products have been in distribution in the United States at least since September 8, 2009.
3. Respondent has not submitted the required certification report and compliance statement for these basic models of incandescent reflector lamps; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, including, in particular, an analysis of Respondent's financial condition, 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. Respondent agrees not to sell or offer for sale in the United States the incandescent reflector lamps consisting of basic model(s) R30FL-75; R30FL-100; R30SP-100; R40SP-150 and R40FL-150.
- b. Respondent agrees not to sell or offer for sale in the United States any covered product that does not meet the applicable energy conservation standard.
- c. Respondent agrees not to sell or offer for sale in the United States any covered product that has not been properly certified.
- d. Before selling or offering for sale in the United States any covered product, Respondent will certify each basic model of such covered product in accordance with 10 C.F.R. § 430.62, or Respondent will provide documentation to DOE sufficient to show that each basic model of such covered product has been certified in accordance with 10 C.F.R. § 430.62 by another party.
- e. Respondent agrees to pay a civil penalty of \$150 per day for each day Respondent sells or offers for sale a covered product in violation of paragraphs III.2.a-d.

3. **Obligations of DOE.**

- a. Due to Respondent's financial hardship, DOE agrees to waive the civil penalty proposed in the Notice and 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 commitments pursuant to paragraphs III.2.a. through e. in full satisfaction of the penalty authorized by the Act.
- b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.

4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and exclusive 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. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **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.

7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **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.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile), 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.

John 23 November 2010

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

11/17/2010
Date

Corinne Ram
Corinne Ram Blanchard
CEO & President
Lumiram Electronic Corporation

Date