Description: Commonwealth Edison Company submits tariff filing per 35.12: PSRT Baseline Filing to be effective 4/29/2010.

Filed Date: 04/29/2010.

Accession Number: 20100429–5134.

Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–37–000.

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Application of Old Dominion Electric Cooperative for Authorization to Issue Long-Term Debt and Request for Exemption from Competitive Bidding Requirements.

Filed Date: 04/29/2010.

Accession Number: 20100429–5024.

Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Docket Numbers: ES10–38–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Application KCP&L Greater Missouri Operations Company for Authorization of Issuance of Long-Term Debt Securities Under Section 204 of the Federal Power Act.

Filed Date: 04/29/2010.

Accession Number: 20100429–5136.

Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St.,NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10804 Filed 5–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–025]

Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Daikin AC (Americas), Inc. (Daikin) From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) decision and order in Case No. CAC–025, which grants a waiver to Daikin from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the Daikin variable speed and variable refrigerant volume VRV–III–C (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, Daikin must use the alternate test procedure set forth in this notice to test and rate its VRV–III–C multi-split products.

DATES: This Decision and Order is effective May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 431.401(f)(4), DOE gives notice that it issues the decision and order set forth below. In this decision and order, DOE grants Daikin a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its VRV–III–C multi-split products. This waiver requires Daikin use the alternate test procedure provided in this notice to test and rate the specified models from its VRV–III–C multi-split product line. The current test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, "Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment" (incorporated by reference at 10 CFR 431.95(b)(2)).

Today's decision prohibits Daikin from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. (42 U.S.C. 6314(d)). Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c)).

Issued in Washington, DC, on April 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas), Inc. (Daikin) (Case No. CAC–025).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A–1 of Title III

provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes large and small commercial air-conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317) EPCA specifically includes definitions, test procedures, labeling provisions, and energy conservation standards for covered equipment. It also provides DOE the authority to require information and reports from manufacturers. (42 U.S.C. 6311–6317) With respect to test procedures, the statute generally authorizes DOE to prescribe test procedures that are reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Today's notice involves commercial package air-conditioning and heating equipment under Part A–1. EPCA provides that for such equipment, "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary of Energy (the Secretary) must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–2003 for small commercial package air-cooled air-conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h), and ARI Standard 340/360–2004 for large and very large commercial package air-cooled air-conditioning and heating equipment with capacities ≥ 65,000 Btu/h and <760,000 Btu/h, respectively. *Id.* at 71371. Pursuant to the final rule, DOE's regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference these two ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air-conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. The cooling capacities of Daikin's VRV–III–C commercial multi-split products, which have capacities between 72,000 Btu/hr and 192,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE's regulations for covered equipment permit a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment if (1) that basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioner must include in its waiver petition any alternate test procedures known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An interim waiver may be granted if the Assistant Secretary determines that the applicant will experience economic hardship if the application for interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On September 9, 2009, Daikin filed a petition for waiver and an application for interim waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, specified in Tables 1 and 2 of 10 CFR 431.96. Daikin asserted that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); Daikin (74 FR 16373, April 10, 2009); and LG (74 FR 66330, December 15, 2009).

On December 15, 2009, DOE published Daikin's petition for waiver in the **Federal Register,** seeking public comment pursuant to 431.3401(b)(1)(iv), and granted the application for an interim waiver. 74 FR 66324. DOE received one comment on the Daikin petition; discussion of and DOE's response to this comment are set forth below.

In a similar case, DOE published a petition for waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS), for products very similar to Daikin's multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006 **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent decision and order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS decision and order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments were favorable. Though one commenter indicated that a waiver was unnecessary, the commenter did not present a satisfactory way to test the products. *Id.* at 17529. Generally, commenters agreed that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS decision and order included the

alternate test procedure adopted by DOE. *Id.*

Assertions and Determinations

Daikin's Petition for Waiver

Daikin seeks a waiver from the DOE test procedures for this product class on the grounds that its VRV–III–C multi-split heat pump and heat recovery systems contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, Daikin asserts that there are two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer: Testing laboratories cannot test products with so many indoor units; there are too many possible combinations of indoor and outdoor units to test.

The VRV–III–C systems have operational characteristics similar to other commercial multi-split products manufactured by Mitsubishi, Samsung, Sanyo, Fujitsu and LG, all of which have been granted waivers. The Daikin VRV–III–C system can be connected to the complete range of Daikin ceiling mounted, concealed, ducted, corner, cassette, wall-mounted and floor-mounted, and other indoor fan coil units. Each of these units has nine different standard indoor static pressure ratings. Additional pressure ratings are available. There are over 1,000,000 possible combinations of the VRV–III–C products. Consequently, Daikin requests that DOE grant a waiver from the applicable test procedures for its VRV–III–C product designs until a suitable test method can be prescribed. DOE believes that the Daikin VRV–III–C equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE therefore grants Daikin a VRV–III–C multi-split product waiver similar to the multi-split product waivers already issued to other manufacturers.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the Daikin products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent decision and order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).

71 FR 14861 (March 24, 2006).

In granting the petitions for waiver from MEUS, DOE specified an alternate test procedure that MEUS could use to test, and make valid energy efficiency representations for, its R410A CITY MULTI products and its R22 multi-split products. This alternate test procedure was published in the **Federal Register** on April 9, 2007 and on December 15, 2009. 72 FR 17528; 74 FR 66311. While Daikin did not include an alternate test procedure in its petition for waiver, DOE believes that the same alternate test procedure specified in the MEUS decision could be used to test the Daikin products at issue here.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time. It also understands it is impractical to test some variable refrigerant flow zoned systems because of the number of possible combinations of indoor and outdoor units. DOE further notes that after the waiver granted MEUS's R22 multi-split products, AHRI formed a committee to develop a testing protocol for variable refrigerant flow systems. The committee developed AHRI Standard 1230–2009: "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." AHRI has adopted the standard.

Carrier Corporation (Carrier) commented that DOE should deny Daikin's petition for waiver and repeal all the other commercial multi-split waivers because of the availability of AHRI 1230–2009. However, AHRI 1230–2009, which is substantially the same as DOE's alternate test procedure with respect to the testing of these Daikin products, is not a part of DOE's test procedure. In addition, AHRI 1230–2009 has not yet been adopted by ASHRAE 90.1.

DOE issues today's decision and order granting Daikin a test procedure waiver for its commercial VRV–III–C multi-split heat pumps. As a condition of this waiver, Daikin must use the alternate test procedure described below. This alternate test procedure is the same in all relevant particulars as the procedure specified in DOE's decision and orders granting the MEUS waivers.

Alternate Test Procedure

The alternate test procedure permits Daikin to designate a tested combination for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have between two to eight indoor units so it can be tested in available test facilities. The tested combination was originally defined in the MEUS waivers to consist of one outdoor unit matched with between two and five indoor units. The maximum number of indoor units in a tested combination is increased in this Daikin waiver from five to eight because these larger-capacity products can accommodate more indoor units. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below.

The alternate DOE test procedure also allows Daikin to represent the product's energy efficiency. These representations must fairly disclose the test results. The DOE test procedure, as modified by the alternate test procedure set forth in this decision and order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the MEUS waivers, DOE believes that allowing Daikin to make energy efficiency representations for non-tested combinations by adopting the alternative test procedure is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively because it does not account for their multi-zoning feature. The multi-zoning feature enables these products to cool only those portions of the building that require cooling. Products with a multi-zoning feature would be expected to use less energy than units controlled by a single thermostat, which cool the entire home or commercial building regardless of whether only portions need cooling. The multi-zoning feature would not be properly evaluated by the current test procedure, which requires full-load testing. Full load testing requires the entire building to be cooled. Products using a multi-zoning feature and subjected to full load testing would be at a disadvantage because they are optimized for highest efficiency when operating with less than full loads. The alternate test procedure will provide an appropriate basis for assessing the energy efficiency of such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing

test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all the indoor units must be subjected to the same minimum external static pressure. This requirement enables the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured, which would be so time-consuming as to be impractical.

For the reasons discussed above, DOE believes Daikin's VRV–III–C multi-split products cannot be tested using the procedure prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to prescribe the alternate test procedure first developed for the MEUS waiver for Daikin's commercial multi-split products. The alternate test procedure for the Daikin products must include the modifications described above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Daikin petition for waiver. The FTC staff did not have any objections to issuing a waiver to Daikin.

Conclusion

After careful consideration of all the materials submitted by Daikin, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by Daikin Electronics, Inc., (Daikin) (Case No. CAC–025) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV–III–C multi-split air conditioner and heat pump models listed below on the basis of the test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Type	Size	Model number	Combination	
			8–Ton	16–Ton
Condensing Unit	6–Ton	RTSQ72PTJU	.....	1
	8–Ton	RTSQ96PTJU	1	.....
	10–Ton	RTSQ120PTJU	.....	1
2nd Stage Function Unit	Up to 16–Ton	BTSQ192PTJU	1	1
Outdoor Piping Kit	.....	BHFP30A56	.....	1

(3) *Alternate test procedure.*

(A) Daikin is required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2)), except that Daikin shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV–III–C products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and eight indoor units. For multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see b);

(b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) Be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its VRV–III–C multi-split products for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For VRV–III–C multi-split combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(ii) For VRV–III–C multi-split combinations that are not tested, Daikin may make representations based on the testing results for the tested combination and that are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an alternative rating method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date this order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may be revoke or modify the waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are

unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on April 30, 2010.

Cathy Zoi,
Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–10813 Filed 5–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number: EERE–BT–2006–WAV–0140]

Energy Conservation Program for Consumer Products: Decision and Order Denying a Waiver to PB Heat, LLC From the Department of Energy Residential Furnace and Boiler Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Decision and Order.

SUMMARY: This notice publishes DOE's Decision and Order in Case No. WAV–0140, which denies a waiver to PB Heat, LLC (PB) from the existing DOE residential furnace and boiler test procedure. This Decision and Order pertains to PB's PO–50, PO–60, PO–63, and PO–73 models of oil-fired boilers. DOE previously published the PB Petition for Waiver and solicited comments, data, and information regarding the petition, which requested permission to publish a Low Water Temperature Seasonal Efficiency (LWTSE) value, conducted under an alternative industry test procedure, in addition to the mandatory Annual Fuel Utilization Efficiency (AFUE) value required under DOE's energy conservation standards. PB's petition suggested that testing and reporting of the AFUE value alone is not representative of its basic models' true energy consumption characteristics. DOE denies PB's Petition for Waiver for the reasons set forth below. Because a waiver is not appropriate, DOE cannot prescribe an alternative test procedure. However, the Decision and Order clarifies that it is permissible for a manufacturer to conduct LWTSE testing and to present such results in product literature. It is noted that the Energy Guide label used for certification and consumer information purposes can only present information generated under the DOE test procedure, as required under applicable Federal Trade Commission (FTC) regulations. When making such supplemental statements in the product literature, manufacturers must continue to conduct, report, and fairly disclose the AFUE test results generated under the DOE test procedures, and to use those AFUE results when making representations as to the basic model's energy efficiency. Supplemental statements regarding LWTSE must fairly disclose the results of such testing and may not mislead the consumer about the relevance of the required AFUE value. For example, DOE suggests any manufacturer that wishes to show the LWTSE values in addition to the AFUE value should make clear the differences between the two tests, including the different operating characteristics and conditions, for consumers.

DATES: This Decision and Order is effective May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

For access to the docket to read this notice, the Petition for Waiver, background documents, or comments received, please call Ms. Brenda Edwards at (202) 586–2945 for information regarding visiting the Resource Room of the Building Technologies Program. The Resource Room is accessible at the U.S. Department of Energy, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE denies PB's request for a waiver from the existing DOE residential furnace and boiler test procedure for its PO–50, PO–60, PO–63, and PO–73 models of oil-fired boilers. DOE denies the waiver because: (1) The PB units can and do operate at the higher water temperatures specified in the DOE test procedure; (2) there is no indication that the existing test procedure generates inaccurate results at the specified temperatures; and (3) the PB units meet the AFUE level required under the energy conservation standard. Accordingly, DOE has determined that the applicable test procedure is representative of the energy consumption characteristics of the PB basic models at the specified conditions (*i.e.,* water temperatures) and that the DOE test procedures for these residential products will allow PB to test and rate its above-referenced line of oil-fired boilers.

DOE clarifies that it is permissible for a manufacturer to conduct LWTSE testing and present the results in product literature (other than supplementation of the certification label, which can only present information generated under the DOE test procedure, as required under applicable FTC regulations). When making such supplemental statements in product literature, manufacturers must continue to conduct, report, and fairly disclose the AFUE test results generated under the DOE test procedures (10 CFR 430.62(a)(4)(viii)), and to use AFUE results when making representations as to the basic model's energy efficiency (42 U.S.C. 6293(c)(1)). Supplemental statements regarding LWTSE must fairly disclose the results of such testing and may not mislead the consumer about the relevance of the required AFUE value. For example, DOE suggests any manufacturer that wishes to show the LWTSE values in addition to the AFUE value should make clear the differences between the two tests, including the different operating characteristics and conditions, for consumers.

Issued in Washington, DC, April 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: PB Heat, LLC (PB) (Case No. WAV–0140).

Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended, sets forth a variety of provisions concerning energy efficiency, including Part A [1] of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Similarly, Part A–1 [2] of Title III of EPCA, 42 U.S.C. 6311–6317, provides for an energy efficiency program titled,

[1] This part was originally titled Part B. It was redesignated Part A in the United States Code for editorial reasons.

[2] This part was originally titled Part C. It was redesignated Part A–1 in the United States Code for editorial reasons.