

procedure prescribed at 10 CFR 430.23(n) and contained in 10 CFR part 430, subpart B, appendix N require AFUE testing of boilers with an inlet water temperature of 140 °F and an outlet water temperature of 120 °F. DOE could, however, consider modifications to the test conditions in the AFUE test as part of a separate rulemaking proceeding if DOE had data showing different test conditions were more appropriate.

Even though PB's Petition for Waiver requested permission to report information supplemental to AFUE rather than to only report different data expected to be more representative than AFUE, PB asserted that the DOE test procedure generates results that are so unrepresentative of the true energy consumption characteristics of its basic models as to provide materially inaccurate comparative data.

After subsequent inquiry concerning PB's assertion and in light of the above, DOE has determined that the PB boilers in question can and do operate at the higher water temperatures specified in the DOE test procedure. PB did not state that its units are incapable of operating at higher water temperatures; DOE understands the units are neither shipped with an add-on component nor equipped with an integral part that precludes operation at higher water temperatures. As stated earlier in this Decision and Order, system water temperatures are a function of many factors unrelated to the unit itself and can range significantly. In the absence of outdoor temperature reset, the incoming water temperatures can vary greatly depending on heating load, installation, and other factors. Thus, because the PB boilers can operate at the temperatures specified in the existing DOE test procedures, it is appropriate to test at those temperatures when rating the unit's AFUE. Testing in this manner provides a steady-state test condition that generates results that can be compared across a range of products and manufacturers. PB has provided no evidence to suggest that the existing test procedure generates results that are either inaccurate or are not representative when testing is conducted at the higher temperatures specified in the test procedure. Therefore, a waiver is not appropriate, which in turn provides no basis for granting an alternative test procedure.

The PB Petition for Waiver has raised a legitimate issue of whether the DOE test procedure would benefit from amendments to test and rate the performance of boilers at lower water input and output temperatures, as well as the efficiency effects of various

controls for those products. PB has suggested that results generated at lower water temperature conditions would be more typical of the specified models' performance, although it did not state that its products would be unable to be tested using DOE's test procedure or to meet the energy conservation standard when testing is conducted at the higher water temperatures specified in the existing DOE test procedure for residential boilers. However, given their potential complexity, DOE believes that such issues should be addressed in the context of a rulemaking with the opportunity for public notice and comment. The results of such rulemaking would apply on an industry-wide basis, thereby resulting in no advantage or disadvantage to any particular manufacturer. DOE may consider potential amendments to the test procedure regarding testing the energy efficiency of condensing boilers at lower water temperatures as part of a future rulemaking.

In the meantime, DOE points out that PB and similarly situated manufacturers may make supplemental statements regarding the energy efficiency of their boilers (*e.g.*, on marketing materials, Web sites), provided that they continue to disclose the AFUE result generated using the DOE test procedure. Such supplemental results must not mislead the consumer and must be clearly distinguished from the AFUE results. With that said, DOE notes that it has examined ASHRAE Standard 103–2003 (Public Review Draft) and believes it to be generally adequate for the supplemental testing purposes envisioned by PB, provided that the significance of LWTSE results are explained and clearly differentiated from AFUE results, so as to prevent consumer confusion in the marketplace. Since LWTSE test conditions promote condensing operation, DOE would caution, in the interest of consumer safety, that units tested accordingly, and advertised with a LWTSE, be appropriately designed or equipped to contend with potential corrosion issues which are typically associated with condensates produced from low-temperature flue gases. Accordingly, nothing currently prevents PB (or any other manufacturer) from reporting low-water-temperature test results for the boilers in question, along with the required AFUE results in marketing or other informative materials for consumers. DOE suggests any manufacturer that wishes to show the LWTSE values in addition to the AFUE values clearly distinguish the differences between the two tests,

including the different operating characteristics, for consumers. DOE notes, however, that such supplemental information could not be placed on the product's Energy Guide label, because the FTC's regulations limit such information to results generated under the DOE test procedure.

Consultations With Other Agencies

DOE consulted with the FTC staff concerning the PB Petition for Waiver. The FTC staff did not have any objections to the decision to deny a waiver to PB.

Conclusion

After careful consideration of all the materials submitted by PB and consultation with the FTC staff, for the reasons above, it is ordered that:

(1) The "Petition for Waiver" filed by PB Heat, LLC (PB) (Case No. WAV–0140) is hereby denied for the reasons discussed above; and

(2) PB shall be required to test or rate the AFUE of its residential PO–50, PO–60, PO–63, and PO–73 oil-fired boilers on the basis of the current test procedure contained in 10 CFR 430.23(n) and 10 CFR part 430, subpart B, appendix N.

PB may conduct LWTSE testing and report the results in product literature (other than supplementation of the certification label), provided that the AFUE test results generated under the DOE test procedure continue to be disclosed and that the LWTSE results provide reasonable, clear, and distinguishable representations of those results to the consumer.

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

Cathy Zoi,
Assistant Secretary,
Energy Efficiency and Renewable Energy.
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1089–000]

EquiPower Resources Management, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 29, 2010.

This is a supplemental notice in the above-referenced proceeding of EquiPower Resources Management, LLC's application for market-based rate authority, with an accompanying rate

tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 19, 2010.

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-referenced proceeding 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 docket(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. 2010-10803 Filed 5-6-10; 8:45 am]

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FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER10-1110-000]

Mint Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Mint Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 19, 2010.

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-referenced proceeding 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 docket(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.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-1109-000]

Eagle Creek Hydro Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Eagle Creek Hydro Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 19, 2010.

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.