

TABLE 1—TOTAL HOURLY BURDEN FOR INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

| Item No. | Item   | Estimated annual respondents | Estimated annual responses | Estimated time for response (hour) | Estimated annual burden (hour/year) | Rate <sup>1</sup> (\$/hour) | Estimated annual respondent cost burden |
|----------|--|------------------------------|----------------------------|------------------------------------|-------------------------------------|-----------------------------|---|
|          |  |                              | (a)                        | (b)                                | (a) × (b) = (c)                     | (d)                         | (c) × (d) = (e)                         |
| 1 .....  | Summer Teacher Institute Applicants: Application (NSTI 1).   | 2,100                        | 2,100                      | 0.50 (30 minutes)                  | 1,050                               | \$38.69                     | \$40,625                                |
| 2 .....  | Summer Teacher Institute Participants: Application (NSTI 1). | 900                          | 900                        | 0.50 (30 minutes)                  | 450                                 | 38.69                       | 17,411                                  |
|          | Survey (NSTI 2) .....  |                              | 900                        | 0.25 (15 minutes)                  | 225                                 | 38.69                       | 8,705                                   |
|          | Webinar/Workshop Survey (NSTI 3).                            |                              | 1,800                      | 0.13 (8 minutes) ...               | 234                                 | 38.69                       | 9,053                                   |
| 3 .....  | Webinar/Workshop Survey (NSTI 3).                            | 4,000                        | 8,000                      | 0.13 (8 minutes) ...               | 1,040                               | 38.69                       | 40,238                                  |
| Total    | .....  | 7,000                        | 13,700                     | .....                              | 2,999                               | .....                       | 116,032                                 |

<sup>1</sup> The USPTO expects that secondary schoolteachers will complete the applications and surveys. The professional hourly rate for secondary school teachers is \$31.69, based upon the May 2019 Occupational Labor Statistics Report for secondary school teachers (25–2031); <https://www.bls.gov/oes/current/oes252031.htm>.

*Estimated Total Annual (Non-hour) Respondent Cost Burden:* \$0. There are no capital start-up, maintenance, postage, or recordkeeping costs.

*Respondent's Obligation:* Required to obtain or retain benefits.

#### IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information in a comment, be aware that the entire comment—including personal identifying information—may be made

publicly available at any time. While you may ask in your comment to withhold personal identifying information from public view, USPTO cannot guarantee that it will be able to do so.

**Kimberly Hardy,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2021–04787 Filed 3–8–21; 8:45 am]

**BILLING CODE 3510–16–P**

#### DEPARTMENT OF ENERGY

**[Case Number 2019–001; EERE–2019–BT–WAV–0004]**

#### **Energy Conservation Program: Decision and Order Granting a Waiver to ECR International, Inc. From the Department of Energy Furnace Fan Test Procedure**

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

**ACTION:** Notification of decision and order.

**SUMMARY:** The U.S. Department of Energy (“DOE”) gives notice of a Decision and Order (Case Number 2019–001) that grants to ECR International, Inc. (“ECR”) a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified furnace fans basic models, which are belt-driven, single-speed, and designed for use in “heat-only” applications. Under the Decision and Order, ECR is required to test and rate the specified basic models of its furnace fans in accordance with

the alternate test procedure set forth in the Decision and Order.

**DATES:** The Decision and Order is effective on March 9, 2021. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for furnace fans located at title 10 of the Code of Federal Regulations (“CFR”), part 430, subpart B, appendix AA that addresses the issues presented in this waiver. At such time, ECR must use the relevant test procedure for these products for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

#### **FOR FURTHER INFORMATION CONTACT:**

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Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with section 430.27(f)(2) of Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE hereby provides notice of the issuance of its Decision and Order, as set forth below. More specifically, the Decision and Order grants ECR a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix AA for specified basic models of furnace fans, and it provides that ECR must test and

rate such products using the alternate test procedure set forth in the Decision and Order. ECR's representations concerning the energy consumption of the specified furnace fan basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and any such representations must fairly disclose these test results. Further, the manufacturer materials (e.g., catalogs, brochures, and installation and operation manuals) for the specified furnace fan basic models must make no representation that the basic models are designed to be installed in systems with an air conditioner. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of these products. (42 U.S.C. 6293(c))

Consistent with 10 CFR 430.27(j), not later than May 10, 2021, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27. 10 CFR 430.27(j).

#### Case #2019-001

#### Decision and Order

#### I. Background and Authority

The Energy Policy and Conservation Act, as amended ("EPCA"),<sup>1</sup> authorizes the U.S. Department of Energy ("DOE") to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles and sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include furnace fans, the focus of this document. (42 U.S.C. 6295(f)(4)(D))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for furnace fans is contained in the Code of Federal Regulations ("CFR") at 10 CFR part 430, subpart B, appendix AA, *Uniform Test Method for Measuring the Energy Consumption of Furnace Fans* ("Appendix AA").

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 430.27(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(3).

#### II. ECR's Petition for Waiver: Assertions and Determinations

By letter dated February 20, 2019, ECR filed a petition for waiver and a petition for interim waiver from the DOE test procedure applicable to furnace fans set forth in Appendix AA. In its petition, ECR asserted that the furnace fan basic models specified in its petition,<sup>3</sup> which are belt-driven, single-speed, and designed for "heating-only" applications, have design characteristics that prevent testing of the basic model according to the test procedure prescribed in Appendix AA. ECR claimed these basic models are factory-equipped for operation at an external static pressure ("ESP") of 0.20" w.c. and cannot operate within the ESP range of 0.65"–0.70" w.c. required in Appendix AA. ECR stated that the higher ESP required for the test reduces airflow, which in turn increases the temperature rise to the high temperature limit, resulting in the unit shutting off before the test can be completed. ECR provided laboratory test data during the course of follow-up communications on May 24, 2019, June 3, 2019, August 5, 2019, and November 11, 2019, showing that the basic models for which a waiver is requested shut off at various ESPs ranging from 0.30"–0.60" w.c., depending on the particular basic model, with the units shutting down at an average ESP of 0.47" w.c.

ECR further asserted that the test procedure is not representative of the lower ESPs encountered by heating-only systems that only have one airflow-control setting, as compared to combined heating/cooling systems. ECR stated that combined heating/cooling

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

<sup>3</sup> The specific basic models for which the petition applies are the Airco and Olsen branded furnace fans basic models BCLB90S2, BCLB100S2, BCLB120S2, BCLB130S2, BCLB145S2, BFLB90–2, BFLB100–2, BFLB120–2, BFLB130NX2, BFLB145NX2, BMLB60B2, BMLB80B2, and BMLB90B2. The petition is available at: <https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0004>.

systems operate at higher ESP than heat-only systems due to the installation of an evaporator coil as part of an air conditioning system, and typically require different blower speeds for heating operation and cooling operation. ECR provided information on the operating conditions for two field installations of belt-driven, single-speed furnaces that are intended for heating-only operation, showing field ESP readings that are lower than the ESP required by Appendix AA.

ECR requested that the specified models be tested under the current Appendix AA, with the following modifications: (1) In section 8.6.1, the ESP requirement is instead the factory-equipped ESP, increased by 0.08" w.c. to accommodate the fact that furnaces are tested for Fan Energy Rating ("FER") without the air filter under Appendix AA; (2) sections 8.6.2, *Constant circulation airflow-control setting measurements*, and 8.6.3, *Heating airflow-control setting measurements* are not required; and (3) calculations in section 10.1, *Fan Energy Rating (FER)*, are modified to account for the absence of a separate constant circulation airflow-control setting and heating airflow-control setting.

On August 18, 2020, DOE published in the **Federal Register** a notice that announced its receipt of the petition for waiver, granted ECR an interim waiver, and requested public comments. 85 FR 50808 ("Notice of Petition for Waiver"). In the Notice of Petition for Waiver, DOE reviewed ECR's description of the issue and suggested alternative test method, as well as test data submitted by ECR. DOE also reviewed data and analyses collected and conducted in support of the final rule establishing the furnace fan test procedure. Field data previously analyzed by DOE for a notice of proposed rulemaking published in the **Federal Register** on May 15, 2012 indicated that 0.50" w.c. is representative of field conditions for heating-only furnaces. 77 FR 28674, 28686 (May 15, 2012). Based on this review, DOE's Notice of Petition for Waiver modified the suggested alternate test procedure in ECR's petition for waiver to require that the basic models specified in the petition be initially tested at 0.50"–0.55" w.c., rather than the 0.28" w.c. suggested by ECR (which is the factory-equipped ESP of 0.20" w.c. for the basic models for which a waiver has been requested, increased by 0.08" w.c. to account for the use of an air filter in the field). 85 FR 50808, 50811 (August 18, 2020). However, given the difficulty that a number of the specified ECR basic models may have in operating at an ESP of 0.50"–0.55" w.c., the

alternate test procedure further specifies that if the unit under test shuts down prior to completion of the test, the ESP range is incrementally reduced by 0.05" w.c., and the test is to be re-run. *Id.* This process is repeated until a range is reached at which the test can be conducted to its conclusion, with a minimum allowable ESP range of 0.30"–0.35" w.c., which corresponds to the lowest ESP at which shut-off occurred in the ECR data. *Id.*

As DOE explained in the Notice of Petition for Waiver, the alternate test procedure for the interim waiver did not waive the requirements of section 8.6.3 of Appendix AA as requested by ECR because, as DOE discussed in the furnace fans test procedure final rule published on January 3, 2014 ("January 2014 Final Rule"), that section is not applicable to the basic models specified in the Interim Waiver Order (*i.e.*, models with only one airflow control setting). *Id.*, see also 79 FR 500, 514 (Jan. 3, 2014). In the January 2014 Final Rule, DOE stated that for single-stage units,  $E_{Max}$ , which is calculated in section 8.6.3 of Appendix AA, and  $E_{Heat}$ , which is calculated in section 8.6.1.2, are equivalent because the maximum airflow-control setting and the heating airflow-control setting in which measurements are specified to be made are the same, and consequently, the same value is used for both variables in the FER equation. 79 FR 500, 514 (Jan. 3, 2014). As such, there is no need to separately perform that calculation in section 8.6.3 of Appendix AA. In addition, section 10.1 of Appendix AA states that for furnace fans for which the maximum airflow-control setting is a default heating airflow-control setting,  $Q_{Heat}$  (the airflow in the heating airflow-control setting) is equal to  $Q_{Max}$  (the airflow in the maximum airflow-control setting). Based on the discussion in the January 2014 Final Rule and calculations in section 10.1, the test in section 8.6.3 of Appendix AA would not need to be performed, and, therefore, DOE found that a waiver was not required regarding sections 8.6.3 or 10.1 of Appendix AA. 85 FR 50808, 50811 (August 18, 2020).

Regarding the testing in section 8.6.2 of Appendix AA, DOE noted that the testing required under that section is different than that required under section 8.6.1.2 (and section 8.6.3) of Appendix AA, in that the burner would be firing only in testing performed under the latter section. Because the burner must be firing during the section 8.6.1.2 testing and must be off during the section 8.6.2 testing, it is possible that the resulting measurements would be different. As a result, in the Interim

Waiver Order, DOE modified the suggested alternate test procedure to require that section 8.6.2 of Appendix AA be conducted, and results of the testing must be used in the calculation of FER. 85 FR 50808, 50811–50812 (August 18, 2020).

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. 85 FR 50808, 50808 (August 18, 2020). DOE received one comment in response to the Notice of Petition for Waiver, which was from the California Investor-Owned Utilities ("CA IOUs").<sup>4</sup> The CA IOUs raised a series of concerns with the Interim Waiver Order and the specified alternate test procedure, specifically the CA IOUs stated: (1) The Interim Waiver Order results in an unfair competitive advantage for ECR by allowing it to sell lower-cost furnaces as compared to other competitors; (2) the alternate test procedure is inconsistent with the requirements of 10 CFR 430.27(a) in that it effectively creates a new efficiency metric; and (3) based on manufacturer materials, it seems that most of the subject furnace fan basic models are intended for use with an air conditioner. (CA IOUs, No. 5 at pp. 1–6)

In support of its assertion that the alternate test procedure would provide ECR an unfair competitive advantage, the CA IOUs referenced the rulemaking for the January 2014 Final Rule in which DOE did not establish a heating-only installation type for furnaces. (CA IOUs, No. 5 at p. 2). As explained in the April 2, 2013 supplemental notice of proposed rulemaking (SNOPR) for the furnace fans test procedure rulemaking, an industry stakeholder commented that it was not aware of any product on the market that would be categorized as a heating-only product, adding that this installation type could provide manufacturers with a means of gaming the test procedure by modifying its furnaces to eliminate factory-installed cooling capabilities, which would allow such furnaces to be tested at the lower ESP specified for heating-only units. 78 FR 19606, 19619 (April 2, 2013). Unaware of any products on the market that were heating-only and within the scope of the rulemaking, DOE agreed that heating-only installation types should be eliminated from consideration. *Id.* However, DOE would clarify that nothing in EPCA prohibits the manufacture of a furnace fan designed for heating-only installations.

<sup>4</sup> The CA IOU's comment can be accessed at: <https://www.regulations.gov/document?D=EERE-2019-BT-WAV-0004-0005>.

In its petition for waiver, ECR asserted that it manufactures furnace fan basic models for use in heating-only applications. DOE has further found that the subject basic models contain design characteristics which prevent testing of these basic models according to the prescribed test procedure at Appendix AA. Absent a waiver, ECR would be unable to test the specified furnace fans, and as a result, it would be unable to distribute these basic models in commerce. DOE notes if another manufacturer is distributing a product employing a technology or characteristic that results in the same need for a waiver, that manufacturer is directed to submit a petition for waiver to DOE. 10 CFR 430.27(j). Upon receiving a petition for waiver from any manufacturer that manufactures furnace fans designed for heating-only applications, DOE would evaluate whether such product should be required to test according to the same alternate test procedure as prescribed for the ECR furnace fans. All manufacturers have the same opportunity to apply for a similar waiver to test heating-only fans that are unable to complete the prescribed test procedure at Appendix AA.

As noted, the CA IOUs further argued that by prescribing an ESP for testing the specified basic models that is lower than the ESP required in Appendix AA, DOE is functionally establishing a different metric contrary to 10 CFR 430.27(a). DOE does not agree with the CA IOUs' assertion for the reasons that follow. Section 430.27(a) provides, in relevant part, that in granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard and to make representations about the energy use or efficiency of the covered product. 10 CFR 430.27(a). In support of its assertion, the CA IOUs referenced DOE's statement regarding variable-speed furnace fans in the January 2014 Final Rule that it was establishing a test procedure that specifies one reference system curve (*i.e.*, the curve characterized by an ESP value representing national average operating conditions of a residential duct system for a furnace fan operating in the maximum airflow-control setting) for each installation type because DOE cannot set standards based on multiple metrics. (CA IOUs, No. 5 at p. 2, referencing 79 FR 500, 507 (Jan. 3, 2014)). However, the discussion that the CA IOUs reference was in response to comments encouraging DOE to establish a multiple-reference system test

procedure and standards. 79 FR 500, 507 (Jan. 3, 2014). As prescribed by Appendix AA and the Interim Waiver Order, testing is conducted based on a single reference system curve, with the reference curve representative of the installation environment. Both Appendix AA and the Interim Waiver Order produce measured results using the FER metric. The FER test procedure in the alternate test procedure is identical to that specified for furnace fans in appendix AA, except for the ESP setting.

The CA IOUs recommended that because FER decreases as a function of ESP (specifically a lower ESP test condition, as was specified in the interim waiver, will result in a lower (*i.e.*, better) FER rating), DOE should specify an adjustment factor to provide for comparative results. Specifically, the CA IOUs suggested multiplying the tested FER rating by the ratio of the ESP required in Appendix AA to the ESP achieved during the test. (CA IOUs, No. 5, pp. 7–8) As stated in the January 2014 Final Rule, the ESP value specified in Appendix AA is based on field ESP data collected in cooling airflow-control settings and is representative of field ESP in maximum airflow-control settings. 78 FR 500, 507 (Jan. 3, 2014). However, as discussed previously in this notice, the ESP required in Appendix AA is not representative of field ESP in heat-only installations because heat-only installations will not typically include an evaporator coil in the air stream. Further, ECR has demonstrated through test data that these models cannot even operate at the ESP condition in the furnace fan test procedure. A modified rating using an adjustment factor, such as the one suggested by the CA IOUs, would attempt to represent the furnace fan efficiency at the ESP condition in the Appendix AA test procedure, which, as previously discussed, has been demonstrated to be a condition that these furnace fans cannot and would not operate at in the field.

Additionally, the CA IOUs did not provide information regarding the theoretical rationale for their proposed adjustment or whether the accuracy of their proposed adjustment has been validated. Further, DOE is not aware of any conversion equation that has been validated to accurately predict the change in FER as ESP varies at a given fan setting, and also notes that validating an equation for extrapolating to FER at an ESP that is higher than that at which the unit can operate may be difficult or even not possible (as the unit cannot operate at that point). As a result of these considerations regarding the

accuracy and representativeness of an adjustment factor, DOE has not added an adjustment factor to the test procedure in this waiver.

The CA IOUs also commented that ECR's manufacturer materials (*e.g.*, websites, marketing materials, product spec sheets, labels, nameplates) include cooling capacity specifications for installation of the basic models subject to the Interim Waiver Order, which would indicate that these basic models are intended to be installed in units that provide both heating and cooling. (CA IOUs, No. 5 at pp. 4–6). The CA IOUs also stated that because the furnace fans in question have the same nominal horsepower and higher full-load amperage as direct drive fans that are designed for use in systems with air conditioning, the furnace fans must be designed to move the same amount of air at the same pressure. (CA IOUs, No. 5, pp. 5–6)

In response, DOE again notes that ECR has provided test data showing that the furnace fans covered by the waiver request were unable to complete testing at the static pressures in the test procedure currently at Appendix AA. DOE is also requiring as a condition of the waiver that ECR not make any representations in any public-facing materials that these basic models are designed to be installed in systems that provide both heating and cooling. This condition was also included in the Interim Waiver Order, and ECR has since updated their literature to comply with this requirement. DOE has added recent copies of the material on Airco and Olsen's websites to this docket (EERE-2019-BT-WAV-0004).

The CA IOUs also questioned ECR's assertion that absent a waiver, ECR would be at a competitive disadvantage. (CA IOUs, No. 5. at pp 3–4) The issue of competitive disadvantage and economic hardship relate to evaluation of a petition for an interim waiver. DOE will grant an interim waiver from the test procedure requirements if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e)(2). Based on DOE's review presented in the Notice of Petition for Waiver, DOE determined that ECR's petition for waiver likely would be granted in part, and, therefore, granted the interim waiver. 85 FR 50808, 50812 (August 18, 2020). ECR asserted that substantial economic harm and competitive disadvantage would result absent a favorable determination and that the basic models at issue fulfill a unique need in the market for homes

that require heating-only solutions. Based on the totality of ECR's petition, DOE also determined that it was desirable for public policy reasons to grant ECR immediate relief pending a determination of the petition for waiver. *Id.*

The CA IOUs urged DOE to initiate a rulemaking to engage stakeholders in an update of the test procedure at Appendix AA to address the heating-only installation type, if DOE finds that such products do exist, to ensure that all manufacturers are able to test and certify their products without the need to apply for a waiver request. (CA IOUs, No. 5, p. 9) DOE notes that under 10 CFR 430.27(l), as soon as practicable after the granting of any waiver, it will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such a waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. 10 CFR 430.27(l).

For the reasons explained in this document and in the Notice of Petition for Waiver, absent a waiver, the basic models identified by ECR in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the alternate procedure specified in the interim waiver and concludes that it will allow for the accurate measurement of the energy use of the furnace fans, while alleviating the testing problems associated with ECR's implementation of DOE's applicable furnace fan test procedure for the specified basic models.

Thus, DOE is requiring that ECR test and rate the specified furnace fan basic models according to the alternate test procedure set forth in this Decision and Order, which is identical to the procedure provided in the interim waiver. Additionally, the Decision and Order is conditioned on all manufacturer materials (including brochures, catalogs, installation and operation manuals, etc.) for the basic models specified in the Order making no representation that these models are designed to be installed in systems with air conditioners.

This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. ECR may request that DOE extend the scope of this waiver to include additional basic models that

employ the same technology as those listed in this waiver. 10 CFR 430.27(g). ECR may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, ECR may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

As set forth above, the test procedure specified in this Decision and Order is the same as the test procedure proposed in the Interim Waiver. However, DOE has added conditions regarding the manufacturer materials associated with the covered models to make clear to consumers and installers that the models in question are not intended for use in systems with air conditioners.

### III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission staff concerning the ECR petition for waiver.

### IV. Order

After careful consideration of all the materials that were submitted by ECR, the various public-facing materials (*e.g.*, marketing materials, product specification sheets, and installation manuals) for the basic models identified in the petition, and comment received, in this matter, it is hereby *Ordered* that:

(1) ECR must, as of the date of publication of this Decision and Order in the **Federal Register** test and rate the following Airco and Olsen branded furnace fan basic models with the alternate test procedure as set forth in paragraph (2):

| Brand       | Basic model |
|-------------|-------------|
| Airco ..... | BCLB90S2    |
| Airco ..... | BCLB100S2   |
| Airco ..... | BCLB120S2   |
| Airco ..... | BCLB130S2   |
| Airco ..... | BCLB145S2   |
| Airco ..... | BFLB90–2    |
| Airco ..... | BFLB100–2   |
| Airco ..... | BFLB120–2   |
| Airco ..... | BFLB130NX2  |

| Brand       | Basic model |
|-------------|-------------|
| Airco ..... | BFLB145NX2  |
| Airco ..... | BMLB60B2    |
| Airco ..... | BMLB80B2    |
| Airco ..... | BMLB90B2    |
| Olsen ..... | BCLB90S2    |
| Olsen ..... | BCLB100S2   |
| Olsen ..... | BCLB120S2   |
| Olsen ..... | BCLB130S2   |
| Olsen ..... | BCLB145S2   |
| Olsen ..... | BFLB90–2    |
| Olsen ..... | BFLB100–2   |
| Olsen ..... | BFLB120–2   |
| Olsen ..... | BFLB130NX2  |
| Olsen ..... | BFLB145NX2  |
| Olsen ..... | BMLB60B2    |
| Olsen ..... | BMLB80B2    |
| Olsen ..... | BMLB90B2    |

(2) The alternate test procedure for the ECR's basic models listed in paragraph (1) of this Order is the test procedure for furnace fans prescribed by DOE at 10 CFR part 430, subpart B, appendix AA ("Appendix AA"), except that the external static pressure ("ESP") is adjusted in section 8.6.1.2 of Appendix AA as described below. All other requirements of Appendix AA and DOE's relevant regulations remain applicable. The change to section 8.6.1.2 reads as follows:

8.6.1.2. *Furnace fans for which the maximum airflow-control setting is a default heating airflow-control setting.* Adjust the main burner or electric heating element controls to the default heat setting designated for the maximum airflow-control setting. Burner adjustments shall be made as specified by section 8.4.1 of ASHRAE 103–2007 (incorporated by reference, see § 430.3). Adjust the furnace fan controls to the maximum airflow-control setting. Adjust the external static pressure to within the range of 0.50"–0.55" w.c. by symmetrically restricting the outlet of the test duct. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix and the temperature rise ( $\Delta T_{\text{Max}}$ ) is at least 18 °F. If at the external static pressure range of 0.50"–0.55" w.c. the unit under test automatically shuts off before the conclusion of a valid test, reduce external static pressure by an increment of 0.05" w.c. (*i.e.*, to a range of 0.45"–0.50" w.c.) by symmetrically restricting the outlet of the test duct and re-run the test. If at the reduced external static pressure range the unit under test automatically shuts off before the conclusion of a valid test, repeat the incremental reduction of the ESP range by 0.5" w.c. until an ESP range is achieved at which a valid test is completed. The minimum allowable external static pressure range is 0.30"

–0.35" w.c. Once the external static pressure is set, do not adjust the test duct for the remainder of the test. Measure furnace fan electrical input power ( $E_{Max}$ ), fuel or electric resistance heat kit input energy ( $Q_{IN, Max}$ ), external static pressure ( $ESP_{Max}$ ), steady-state efficiency for this setting ( $Effy_{SS, Max}$ ) as specified in sections 11.2 and 11.3 of ASHRAE 103–2007, outlet air temperature ( $T_{Max, Out}$ ), and temperature rise ( $\Delta T_{Max}$ ).

(3) *Representations*. ECR may not make representations about the energy use of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes, unless the basic model has been tested in accordance with the provisions set forth in the Order and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) DOE issues this waiver on the condition that the statements, representations, and information provided by ECR are valid and on the condition that ECR makes no representation on any public-facing materials, including websites, marketing materials, product spec sheets, labels, nameplates, *etc.*, that these basic models are designed to be installed in systems that provide both heating and cooling. If ECR makes any modifications to the controls or configurations of these basic models, such modifications will render the waiver invalid with respect to that basic model, and ECR will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this 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 a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, ECR may request that DOE rescind or modify the waiver if ECR discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this waiver does not release ECR from the various certification requirements set forth at 10 CFR part 429.

#### Signing Authority

This document of the Department of Energy was signed on March 4, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting

Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 4, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2021–04866 Filed 3–8–21; 8:45 am]

**BILLING CODE 6450–01–P**

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. EL21–56–000]

##### **Louisiana Public Service Commission, Arkansas Public Service Commission, Council of the City of New Orleans, Louisiana, v. System Energy Resources, Inc., Entergy Services, LLC, Entergy Operations, Inc., Entergy Corporation; Notice of Complaint**

Take notice that on March 2, 2021, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Louisiana Public Service Commission, Arkansas Public Service Commission, and Council of The City of New Orleans, Louisiana (Complainants) filed a formal complaint against System Energy Resources, Inc. (SERI), Entergy Services, LLC, Entergy Operations, Inc., and Entergy Corporation, (collectively, Respondents) alleging that SERI has violated the obligation of prudent utility management in operating the Grand Gulf nuclear unit, resulting in large overcharges to its four affiliated customers, Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy New Orleans, LLC, and Entergy Mississippi, LLC and their customers, pursuant to a Unit Power Sales Agreement, all as more fully explained in the complaint.

The Complainants certify that copies of the complaint were served on the

contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov/>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on March 22, 2021.

Dated: March 3, 2021.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2021–04852 Filed 3–8–21; 8:45 am]

**BILLING CODE 6717–01–P**