

trademark owned or controlled on such date by a refiner. The unexpired portion of a transferred franchise is also included in the definition of the term.

#### *B. Franchise Relationship*

The term "franchise relationship" refers to the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

#### *C. Franchisee*

A "franchisee" is a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

#### *D. Franchisor*

A "franchisor" is a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

#### *E. Marketing Premises*

"Marketing premises" are the premises which, under a franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

#### *F. Leased Marketing Premises*

"Leased marketing premises" are marketing premises owned, leased or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

#### *G. Fail to Renew and Nonrenewal*

The terms "fail to renew" and "nonrenewal" refer to a failure to reinstate, continue, or extend a franchise relationship (1) at the conclusion of the term, or on the expiration date, stated in the relevant franchise, (2) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date, or (3) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978 and has not been renewed after such date.

#### *II. Legal Remedies Available to Franchisee*

The following is a more detailed description of the remedies available to the franchisee if a franchise is terminated or not renewed in a way that fails to comply with the Act.

#### *A. Franchisee's Right to Sue*

A franchisee may bring a civil action in United States District Court against a franchisor who does not comply with the requirements of the Act. The action must be brought within one year after the date of termination or nonrenewal or the date the franchisor fails to comply with the requirements of the law, whichever is later.

#### *B. Equitable Relief*

Courts are authorized to grant whatever equitable relief is necessary to remedy the effects of a violation of the law's requirements. Courts are directed to grant a preliminary injunction if the franchisee shows that there are sufficiently serious questions, going to the merits of the case, to make them a fair ground for litigation, and if, on balance, the hardship which the franchisee would suffer if the preliminary injunction is not granted will be greater than the hardship which the franchisor would suffer if such relief is granted.

Courts are not required to order continuation or renewal of the franchise relationship if the action was brought after the expiration of the period during which the franchisee was on notice concerning the franchisor's intention to terminate or not renew the franchise agreement.

#### *C. Burden of Proof*

In an action under the Act, the franchisee has the burden of proving that the franchise was terminated or not renewed. The franchisor has the burden of proving, as an affirmative defense, that the termination or nonrenewal was permitted under the Act and, if applicable, that the franchisor complied with certain other requirements relating to terminations and nonrenewals based on condemnation or destruction of the marketing premises.

#### *D. Damages*

A franchisee who prevails in an action under the Act is entitled to actual damages and reasonable attorney and expert witness fees. If the action was based upon conduct of the franchisor which was in willful disregard of the Act's requirements or the franchisee's rights under the Act, exemplary (punitive) damages may be awarded where appropriate. The court, and not the jury, will decide whether to award exemplary damages and, if so, in what amount.

On the other hand, if the court finds that the franchisee's action is frivolous, it may order the franchisee to pay reasonable attorney and expert witness fees.

#### *E. Franchisor's Defense to Permanent Injunctive Relief*

Courts may not order a continuation or renewal of a franchise relationship if the franchisor shows that the basis of the non-renewal of the franchise relationship was a determination made in good faith and in the normal course of business:

(1) To convert the leased marketing premises to a use other than the sale or distribution of motor fuel;

(2) To materially alter, add to, or replace such premises;

(3) To sell such premises;

(4) To withdraw from marketing activities in the geographic area in which such premises are located; or

(5) That the renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or additions to the franchise provisions which may be acceptable to the franchisee.

In making this defense, the franchisor also must show that he has complied with the notice provisions of the Act.

This defense to permanent injunctive relief, however, does not affect the franchisee's right to recover actual damages and reasonable attorney and expert witness fees if the nonrenewal is otherwise prohibited under the Act.

Issued in Washington, D.C. on June 12, 1996.

Marc W. Chupka,

*Acting Assistant Secretary for Policy.*

[FR Doc. 96-16124 Filed 6-24-96; 8:45 am]

BILLING CODE 6450-01-P

#### **Office of Energy Efficiency and Renewable Energy**

#### **Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Bard Manufacturing Company From the DOE Furnace Test Procedure. (Case No. F-086)**

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

**ACTION:** Notice.

**SUMMARY:** Today's notice grants an Interim Waiver to Bard Manufacturing Company (Bard) from the existing Department of Energy (DOE or Department) test procedure regarding blower time delay for the company's TU and TDH series furnaces.

Today's notice also publishes a "Petition for Waiver" from Bard. Bard's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time

delay specification. Bard seeks to test using a blower delay time of 30 seconds for its TU and TDH series furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

**DATES:** DOE will accept comments, data, and information not later than July 25, 1996.

**ADDRESSES:** Written comments and statements shall be sent to: Department of Energy, Office of Codes and Standards, Case No. F-086, Mail Stop EE-43, Room 1J-018, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-7140.

**FOR FURTHER INFORMATION CONTACT:**

Cyrus H. Nasser, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0121, (202) 586-9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0103, (202) 586-9507

**SUPPLEMENTARY INFORMATION:** The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding Section 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, Section 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic

model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined 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 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. Title 10 CFR Part 430, § 430.27 (g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 4, 1996, Bard filed an Application for Interim Waiver and a Petition for Waiver regarding blower time delay. Bard's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Bard requests the allowance to test using a 30-second blower time delay when testing its TU and TDH series furnaces. Bard states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an average 0.4 to 0.6 percent increase in AFUE. Since current DOE test procedures do not address this variable blower time delay, Bard asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous Petitions for Waiver for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992; 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14,

1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, 58 FR 68138, December 23, 1993, and 60 FR 62835, December 7, 1995; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993, 59 FR 14394, March 28, 1994, and 60 FR 62832, December 7, 1995; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992, 59 FR 12586, March 17, 1994 and 61 FR 17289, April 19, 1996; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992, and 61 FR 17887, April 23, 1996; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992, and 61 FR 4262, February 5, 1996; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, 60 FR 100, January 3, 1995, 60 FR 62834, December 7, 1995, and 60 FR 62837, December 7, 1995.

Thus, it appears likely that this Petition for Waiver for blower time delay will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Bard an Interim Waiver for its TU and TDH series furnaces. Bard shall be permitted to test its TU and TDH series furnaces on the basis of the test procedures specified in Title 10 CFR

Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103-82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Bard's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Bard seeks to test using a blower delay time of 30 seconds for its TU and TDH series furnaces instead of the specified 1.5-minute delay between burner on-time

and blower on-time. Pursuant to paragraph (b) of Title 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, D.C. June 13, 1996.

Christine A. Ervin,  
*Assistant Secretary, Energy Efficiency and Renewable Energy.*

April 4, 1996.

Ms. Christine A. Ervin  
Assistant Secretary for Conservation and Renewable Energy  
U.S. Department of Energy  
Forrestal Building  
1000 Independence Ave, SW  
Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver

Dear Assistant Secretary: Petition for Waiver and Application for Interim Waiver are requested pursuant to Title 10 CFR Part 430.27.

Waiver is requested from test procedures for measuring the energy consumption of furnaces that are found in Appendix N of Subpart B to 10 CFR Part 430. Presently the test procedure requires a 1.5 minute delay between burner ignition and the start of the circulating air blower.

Bard Manufacturing Company is requesting to use a 30 second delay instead of the specified 1.5 minutes. Furnace Series TU and TDH use an electronic fixed time blower control set at 30 seconds. Test results for these furnaces indicate an average .4-.6 percent increase in AFUE.

We are confident that this Waiver will be granted, and request Interim Waiver until a final ruling is made. Bard has been granted previous waivers 57 FR 53733 and 59 FR 30578, and many other manufacturers have been granted similar waivers.

Copies of confidential test data will be provided to you at your request. Please contact the undersigned if you have any questions or require additional information.

Sincerely,

Richard Hanna,  
*Manager, Heating and Application Engineering.*

[FR Doc. 96-16121 Filed 6-24-96; 8:45 am]

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## **Federal Energy Regulatory Commission**

[Docket No. EG96-76-000]

### **AYP Energy, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status**

June 19, 1996.

On June 7, 1996, AYP Energy, Inc. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt

wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a corporation organized under the laws of the state of Delaware. Applicant is a wholly owned subsidiary of AYP Capital, Inc. ("AYP"), which itself is a wholly owned subsidiary of Allegheny Power System, Inc. ("APS"), a registered electric utility holding company. Applicant's business address is c/o Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601 (Attn: Theresa Colecchia).

The eligible facility consists primarily of a 50 percent undivided interest in Unit No. 1 of the Fort Martin Power Station, an operating steam-electric generating unit, and associated portion of Ft. Martin Unit 1's main transformers. Ft. Martin Unit 1 is located in West Virginia on the Monongahela River between Morgantown, West Virginia and Point Marion, Pennsylvania. The portion of Ft. Martin Unit 1 that is the eligible facility is currently owned by Duquesne Light Company ("Duquesne"), a Pennsylvania public utility not affiliated with APS; however, Duquesne has entered into an Asset Purchase Agreement (dated November 28, 1995) with AYP, pursuant to which Duquesne will sell on or before December 31, 1996 its undivided ownership interest in Ft. Martin Unit 1 (including its interest in the transformers) to AYP, which will assign the Asset Purchase Agreement to AYP Energy, Inc. The remainder of the facility of which the eligible facility is a portion is owned by Monogahela Power Company ("MPC") and The Potomac Edison Company ("PEC"), two of the three wholly owned electric operating subsidiaries of APS.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions or comments should be filed on or before June 28, 1996, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on