

Issued at Washington, DC on April 6, 2009.

**LaTanya Butler,**

*Acting Deputy Committee Management Officer.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. CAC-017]

#### Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Sanyo Fisher Company From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure and Denying a Waiver From the Residential Central Air Conditioner and Heat Pump Test Procedure

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

**ACTION:** Decision and Order.

**SUMMARY:** This notice publishes the Department of Energy's Decision and Order in Case No. CAC-017, which grants a waiver to Sanyo Fisher Company (Sanyo) from the existing Department of Energy (DOE) commercial package air conditioner and heat pump test procedure. The waiver is specific to the Sanyo Variable Refrigerant Flow (VRF) ECO-i multi-split heat pumps and heat recovery systems. As a condition of this waiver, Sanyo must test and rate its ECO-i VRF multi-split products according to the alternate test procedure set forth in this notice. DOE is denying as moot Sanyo's request for a waiver from the residential central air conditioner and heat pump test procedures, because those test procedures, as amended and currently effective, can be used to test Sanyo's ECO-i VRF multi-split residential products.

**DATES:** This Decision and Order is effective April 9, 2009 and will remain in effect until the effective date of a DOE final rule prescribing amended test procedures appropriate for the model series of Sanyo ECO-i VRF multi-split central air conditioners and heat pumps covered by this waiver.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov).

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-9507. E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov) or [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants Sanyo a waiver from the existing DOE commercial package air conditioner and heat pump test procedures<sup>1</sup> for its VRF multi-split products, subject to a condition requiring Sanyo to test and rate its VRF multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's Decision and Order requires that Sanyo may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions of the alternate test procedure set forth in the Decision and Order below, and unless such representations fairly disclose the results of such testing.<sup>2</sup> 42 U.S.C. 6314(d).

DOE is denying as moot Sanyo's request for a waiver from the DOE residential central air conditioner and heat pump test procedures for its VRF multi-split products. As amended, the applicable DOE test procedure for these residential products will allow Sanyo to test and rate its residential VRF multi-split products.

Issued in Washington, DC, on March 30, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

#### Decision and Order

*In the Matter of:* Sanyo Fisher Company (Sanyo) (Case No. CAC-017).

#### Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy

<sup>1</sup> For commercial products, the applicable 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)).

<sup>2</sup> Consistent with the statute, 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).

efficiency, including Part A<sup>3</sup> of Title III which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291-6309. Similar to the program in Part A, Part A-1<sup>4</sup> of Title III provides for an energy efficiency program titled, "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. 42 U.S.C. 6311-6317.

Today's notice involves residential products under Part A, as well as commercial equipment under Part A-1. Under both parts, the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6291-6309; 42 U.S.C. 6311-6317. With respect to test procedures, both parts generally authorize the Secretary to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3), 6314(a)(2).

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR Part 430, subpart B, Appendix M. On October 22, 2007, DOE amended the test procedures for residential central air conditioners and central air conditioning heat pumps. 72 FR 59906 (October 22, 2007). That final rule, which became effective on April 21, 2008, addressed issues that led to the requesting and granting of test procedure waivers for several models of residential multi-split systems. All waivers concerning residential modulating multi-split systems terminated on the effective date of that final rule. These amendments to the DOE test procedures, which are now incorporated in 10 CFR Part 430, subpart B, Appendix M, allow Sanyo to effectively test its ECO-i VRF residential multi-split air conditioners and heat pumps. Therefore, a waiver is no longer necessary for Sanyo's ECO-i VRF residential multi-split air conditioners and heat pumps. Accordingly, the following discussion will focus only on Sanyo's commercial ECO-i VRF multi-split products, for

<sup>3</sup> Part B of Title III of EPCA was redesignated Part A in the United States Code for editorial reasons.

<sup>4</sup> Part C of Title III of EPCA was redesignated Part A-1 in the United States Code for editorial reasons.

which its waiver request remains pertinent.

For commercial package air-conditioning and heating equipment, EPCA provides that “the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” 42 U.S.C. 6314(a)(4)(A). EPCA further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3). 42 U.S.C. 6314(a)(4)(B).

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 (December 8, 2006). DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. DOE’s regulations incorporate by reference the relevant ARI Standards. 10 CFR 431.95(b)(1) and (2). Table 1 of 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. The cooling capacities of Sanyo’s ECO–i VRF commercial multi-split products fall in the range covered by ARI Standard 340/360–2004.

DOE’s regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner’s basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if 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. 10 CFR 431.401(a)(1). Petitioners must include in their petitions any alternate test procedures known to evaluate 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 (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 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 remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

On February 22, 2007, Sanyo filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment. The petition was published in the **Federal Register** on January 2, 2008. *See* 73 FR 179. Sanyo did not include an alternate test procedure in its Petition for Waiver.

In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for commercial variable refrigerant flow multi-split products very similar to Sanyo’s VRF 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 responded favorably to DOE’s proposed alternate test procedure. *Id.* at 17529. Also, there was general agreement 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.*

DOE received no comments on the Sanyo petition.

#### *Assertions and Determinations*

##### Sanyo’s Petition for Waiver

Sanyo seeks a waiver and interim waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment. It seeks a waiver on the grounds that it’s ECO–i VRF multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Sanyo asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waiver granted to MEUS for a similar line of commercial multi-splits:

- Testing laboratories cannot test products with so many indoor units; and

- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660, 52661 (August 27, 2004); 72 FR 17529.

Further, Sanyo states that its ECO–i product offering is a multi-split system incorporating a diverse amount and configuration of indoor units for connection to a single outdoor unit, and that it is impractical to test the performance of each system under the current DOE test procedure. The number of connectable indoor units for each outdoor unit ranges from 6 to 28. Furthermore, the indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. A testing facility could not manage proper airflow at several different external static pressure values for the many indoor units that would be connected to an ECO–i outdoor unit. Accordingly, Sanyo requests that DOE grant a waiver from the applicable test procedure for its ECO–i product designs until a suitable test procedure can be prescribed.

Previously, in addressing MEUS’s R410A CITY MULTI VRFZ products, which are similar to the Sanyo ECO–i 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.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if DOE decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14861. Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. 72 FR 17529. The comments generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. *Id.*

DOE believes that the ECO-i Sanyo 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 is therefore granting to Sanyo an ECO-i product waiver similar to the previous MEUS multi-split waivers.

To enable Sanyo to make energy efficiency representations for its specified ECO-i multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of Sanyo's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

Therefore, as discussed below, as a condition for granting this Waiver to Sanyo, DOE is including an alternate test procedure similar to those granted to MEUS for its R22 and R410A products. That alternate test procedure served as the basis for the October 22, 2007 final rule's amendments to the test procedures for residential central air

conditioners and central air conditioning heat pumps, which became effective April 21, 2008. Since the residential test procedure is now in place for central air conditioners and central air conditioning heat pumps, Sanyo is able to make energy efficiency representations for its specified VRF residential multi-split products. Accordingly, a waiver for Sanyo's residential units is no longer necessary.

However, the same problem described above still applies to Sanyo's commercial products. Therefore, DOE is issuing today's Decision and Order granting Sanyo a test procedure waiver for its commercial VRF multi-split heat pumps and heat recovery systems, but is requiring the use of the alternate test procedure described below as a condition of Sanyo's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver published on April 9, 2007. *Id.*

#### Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver has two basic components. First, it permits Sanyo 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 from two to eight<sup>5</sup> indoor units so that it can be tested in available test facilities. 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.

Second, the alternate test procedure allows Sanyo to represent the energy efficiency of that product. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or, if the first method is not available, (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

<sup>5</sup> The "tested combination" was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.

As in the case of the MEUS waiver and alternate testing procedures, DOE believes that allowing Sanyo to make energy efficiency representations for non-tested combinations by adopting this 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. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for 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 of the indoor units must meet the same minimum external static pressure. This requirement allows 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 requirement 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. This would require that the test laboratory must be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Sanyo's ECO-i VRF multi-split basic

models according to the test procedures currently prescribed in 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 adopt the alternate test procedure for Sanyo’s commercial products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the FTC staff concerning the Sanyo Petition for

Waiver. The FTC staff did not have any objections to the issuance of a waiver to Sanyo.

Conclusion

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

(1) The “Petition for Waiver” filed by Sanyo Fisher Company (Sanyo) (Case No. CAC–017) is hereby granted as set forth in the paragraphs below.

(2) Sanyo shall not be required to test or rate its commercial ECO–i VRF multi-split air conditioner and heat pump models listed below on the basis of the current test procedure contained 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).

Outdoor units:

ECO–i OUTDOOR MODEL IDENTIFICATION

Model No.	Nominal Capacity		Type	Phase	Voltage	Connectable indoor units
	Cooling	Heating				
CHDX09053 .....	95,500	107,500	Heat Pump .....	3	208–230	16
CHDZ09053 .....	95,500	107,500	Heat Recovery (Simultaneous heating/cooling).	3	208–230	16
CHDX14053 .....	153,600	170,600	Heat Pump .....	3	208–230	28
CHDZ14053 .....	153,600	170,600	Heat Recovery (Simultaneous heating/cooling).	3	208–230	28

Indoor units:

- AHX\*\*52 Series; Ceiling Cassette, 1 Way Air Discharge, 7,500/9,600/12,000 BTU/hr nominal capacities.
- DHX\*\*52 Series; Concealed Ducted, Medium External Static, 36,000/47,800 BTU/hr nominal capacities.
- FHX\*\*52 Series; Exposed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- FMHX\*\*52 Series; Concealed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- KHX\*\*52 Series; Wall Mounted, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- LHX\*\*52 Series; Ceiling Mount Slim Design 1 Way Air Discharge, 12,000/19,000/25,000 BTU/hr nominal capacities.
- SHX\*\*52 Series; Ceiling Cassette, 2 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000/36,000/47,800 BTU/hr nominal capacities.
- THX\*\*52 Series; Ceiling Suspended, 12,000/19,000/25,000 BTU/hr nominal capacities.
- UHX\*\*52 Series; Concealed Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- UMHX\*\*52 Series; Concealed Slim Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- XHX\*\*52 Series; Ceiling Cassette, 4 Way Air Discharge, 12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- XMHX\*\*52 Series, Mini Ceiling Cassette, 4 Way Air Discharge, 7,500/

9,600/12,000/19,000/25,000 BTU/hr nominal capacities.

(3) Alternate test procedure.

(A) Test procedures. Sanyo shall be required to test the products listed in paragraph (2) according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Sanyo 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, Sanyo shall make representations concerning the ECO–i VRF multi-split 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 to meet the requirements of (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 that is 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) All be subject to the same minimum external static pressure requirement.

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

(i) For ECO–i VRF multi-split combinations tested in accordance with this alternate test procedure, Sanyo may make representations based on these test results.

(ii) For ECO–i VRF multi-split combinations that have not been tested, Sanyo may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method 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 of issuance of this Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the model series manufactured by Sanyo listed above.

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 30, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC09-585-001]

#### Commission Information Collection Activities (FERC-585); Comment Request; Submitted for OMB Review

April 2, 2009.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74 FR 5150, 1/29/09) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by May 12, 2009.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of

Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, *c/o oira\_submission@omb.eop.gov* and include OMB Control Number 1902-0138 as a point of reference. The Desk Officer may be reached by telephone at 202-395-4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09-585-001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09-585-001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact [fercolinesupport@ferc.gov](mailto:fercolinesupport@ferc.gov) or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by telephone at (202) 502-8663, by fax at (202) 273-0873, and by e-mail at [ellen.brown@ferc.gov](mailto:ellen.brown@ferc.gov).

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC-585 "Reporting of Electric Energy Shortages and Contingency Plans under PURPA" (OMB No. 1902-0138) is used by the Commission to implement the statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Public Law 95-617, 92 Stat. 3117. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202,

under which the Commission by rule, was to require each public utility to (1) report to the Commission and appropriate state regulatory authorities of any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and (2) report to the Commission and any appropriate state regulatory authority with a contingency plan that would outline what circumstances might give rise to such occurrences.

In Order No. 575, the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that: (a) During electric energy and capacity shortages it will treat firm power wholesale customers without undue discrimination or preference; and (b) it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of the contingency plan for accommodating such shortages. This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In Order No. 659, the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that the means by which public utilities must comply with the requirements to report shortages and anticipated shortages is to submit this information electronically using the Office of Electric Reliability's pager system at [emergency@ferc.gov](mailto:emergency@ferc.gov) in lieu of submitting an original and two copies with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate an appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) Examine and approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy, and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 294.

**Action:** The Commission is requesting a three-year extension of the current expiration date, with no change to the existing requirements.