

Company (ARM Power) applied to the Commission for (1) acceptance of ARM Power's Rate Schedule FERC No. 1; (2) a disclaimer of jurisdiction over ARM Power's Power brokering activities; (3) blanket authorization to sell electricity at market-based rates; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers.

ARM Power intends to engage in electric power and energy transactions as a marketer and broker. ARM Power is not in the business of generating, transmitting, or distributing electric power.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company
[Docket No. FA91-66-002]

Take notice that on September 25, 1995, Indiana Michigan Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Systems Energy Resources, Inc.
[Docket No. FA93-23-002]

Take notice that on January 31, 1997, Systems Energy Resources, Inc. tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Canal Electric Company
[Docket No. FA93-30-001]

Take notice that on May 26, 1995, Canal Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Detroit Edison Company
[Docket No. FA93-65-002]

Take notice that on January 27, 1997, Detroit Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation
[Docket No. FA94-56-001]

Take notice that on December 3, 1996, Florida Power Corporation tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company
[Docket No. FA95-25-001]

Take notice that on February 4, 1997, Wisconsin Electric Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3891 Filed 2-14-97; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces procedures concerning the refunding of \$214,236.37 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Consent Judgment and a Bankruptcy Distribution involving Houma Oil Company and Jedco, Inc., respectively.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC. 20585-0107. All Applications should conspicuously display a reference to either Case Number VEF-0023 (Houma Oil Co.) or VEF-0024 (Jedco, Inc.).

FOR FURTHER INFORMATION CONTACT:

Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585-0107, (202) 426-1575.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision relates to a Consent Judgment entered into by the Houma Oil Company which settled possible pricing violations in the firm's sales of motor gasoline during the period May 1, 1979 through April 30, 1980. The Decision also relates to a Bankruptcy Distribution which settled pricing violations stemming from Jedco, Inc.'s sales of motor gasoline during the period November 1, 1973 through March 31, 1974. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Houma and Jedco settlement funds was issued on October 28, 1996. 61 FR 57868 (November 8, 1996).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute funds remitted by Houma and Jedco and being held in escrow. The DOE has decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings. In the first stage, the DOE will consider claims for refunds made by firms and individuals that purchased motor gasoline from Houma and/or Jedco during the respective audit periods.

The second stage of the refund process will take place only in the event that the meritorious first stage applicants do not deplete the settlement funds. Any funds that remain after all first stage claims have been decided will be distributed to state governments for use in four energy conservation programs, in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

All first stage applications should be submitted within 90 days of publication of this notice. All comments and applications received in this proceeding will be available for public inspection between the hours of 1 to 5 p.m., Monday through Friday, except federal

holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. 20585-0107.

Dated: February 7, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firms: Houma Oil Company, Jedco, Inc.

Date of Filing: September 1, 1995

Case Numbers: VEF-0023, VEF-0024

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC) (formerly the Economic Regulatory Administration (ERA)) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Judgment and a Bankruptcy Distribution concerning Houma Oil Co. (Houma) and Jedco, Inc. (Jedco), respectively.

Background

Houma was a "reseller-retailer" during the period of price controls. The ERA audited Houma's business records and determined it violated DOE's regulations in its sales of motor gasoline during the period May 1, 1979 through April 30, 1980. On November 21, 1983, the ERA issued a Proposed Remedial Order (PRO) to Houma in which it determined the firm overcharged its customers by \$503,810 during the audit period. On August 1, 1984, Houma and DOE entered into a consent order in which Houma agreed to refund the overcharge amount, plus interest, in installment payments to DOE over a two year period. Houma ultimately defaulted on its repayment obligation and the matter was referred to the Department of Justice (DOJ) for enforcement. The DOJ then obtained a Consent Judgment against Houma on February 9, 1995. Pursuant to this Judgment, Houma remitted a total of \$210,414.73 to the DOE. Houma then stopped making payment, and the DOE determined that further legal action against Houma was unlikely to result in meaningful benefits to the taxpayer. The residual payment obligation was therefore declared uncollectible.

The DOE issued a Remedial Order (RO) to Jedco on October 24, 1978. *Jedco, Inc.*, Case No. DRW-0006. Like Houma, Jedco was a "reseller-retailer" during the audit period November 1, 1973 through March 31, 1974. The RO required the firm to implement a rollback of its motor gasoline prices, thereby restoring its overcharged customers to the position they would have been in absent the overcharges. After the deregulation of petroleum prices, the RO was modified and this requirement was replaced by an order requiring payment to the U.S. Treasury.

Jedco, Inc., 8 DOE ¶ 81,068 (1981). Jedco failed to comply with the directives of the DOE in this matter and ultimately declared bankruptcy. The DOE's claim against the firm led to a final distribution to the DOE of \$3,821.64. In accordance with current DOE policy, since OGC has been unable to identify the customers injured by the Jedco overcharges, it has petitioned OHA to distribute this amount pursuant to Subpart V.

The funds obtained from the two firms are presently in interest-bearing escrow accounts maintained by the Department of the Treasury. They will be distributed in accord with the procedures outlined herein.

Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of the settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Houma and Jedco. We therefore grant OGC's petitions and assume jurisdiction over distribution of the funds.

On October 28, 1996, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the Houma and Jedco settlement funds. The PDO was published in the Federal Register and a 30 day period was provided for the submission of comments regarding our proposed refund plan. See 61 Fed. Reg. 57868 (November 8, 1996). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Houma or Jedco settlement funds. Consequently, the procedures will be adopted as proposed.

Refund Procedures

In cases where the DOE is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of the proceeding, those who bought refined petroleum products from the consent order firm may apply for a refund, which is calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the consent order firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501-07.

In the two cases covered by this Decision, however, we lack much of the information

that we normally use to provide direct restitution to injured customers of the consent order firms. In particular, we have been unable to obtain any information on the volume of the relevant petroleum products sold by Houma and Jedco during the respective settlement periods. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we shall accept any refund claims submitted by persons who purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980 or from Jedco during the period November 1, 1973 through March 31, 1974. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts. See *Bell Fuels, Inc.*, 25 DOE ¶ 85,020 (1995).

Injury Presumptions/Showing of injury

As in previous Subpart V proceedings, those customers of Houma and Jedco who were ultimate consumers (end-users) of their motor gasoline shall be presumed injured by their alleged overcharges. These customers will therefore not be required to make a further demonstration of injury in order to receive a refund.

Reseller claimants (including retailers and refiners) who purchased motor gasoline from either of the two firms on a regular (non-spot) basis and whose refund claim is \$10,000 or less will also be presumed injured and therefore need not provide further demonstration of injury. See *E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

In addition, any reseller refund claimant advancing a refund claim in excess of \$10,000 must establish that it did not pass the alleged Houma or Jedco overcharges along to its customers. See, e.g., *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which a claimant could make this showing, a successful claimant should demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, such claimants must show that they had a "bank" of unrecovered product costs sufficient to support their refund claim in order to demonstrate that they did not subsequently recover those costs by increasing their product prices. However, the maintenance of a cost bank does not automatically establish injury. See *Tenneco Oil/Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶

85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982), *Motion for Modification denied*, 10 DOE ¶ 85,062 (1983).

Finally, we hereby establish a minimum amount of \$15 for refund claims. We have found in prior refund proceedings that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 C.F.R. § 205.286(b).

Refund Application Requirements

To apply for a refund from either the Houma or Jedco settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of the person to contact for any additional information, and the name and address of the person who should receive any refund check.¹ If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of motor gasoline from Houma and/or Jedco during the audit period: e.g., consumer (end-user), cooperative, or reseller;

(3) A statement certifying that the applicant purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980, or from Jedco during the period November 1, 1973 through March 31, 1974;

(4) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Houma and/or Jedco refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(5) If the applicant is or was in any way affiliated with Houma and/or Jedco, it should explain this affiliation, including the time period in which the affiliation existed;

(6) A statement as to whether the ownership of the applicant's firm changed during or since the respective audit periods.

¹ Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale, e.g., sale of corporate stock, sale of company assets;

(7) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of the relevant documents should also be provided;

(8) The following statement signed by the individual applicant or a responsible official of the firm filing the refund application:²

I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

Applications should be either typed or printed and clearly labeled "Houma Oil Company Special Refund Proceeding, Case No. VEF-0023" or "Jedco, Inc. Special Refund Proceeding, Case No. VEF-0024." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, two copies of the application with the confidential information deleted and an explanation of the basis for its confidentiality claim. All refund applications should be postmarked no later than 90 days from the publication of this Decision and Order in the Federal Register, and sent to: Houma Oil Company, OR, Jedco, Inc., Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107.

Any representative that requests that it be a payee of a refund check must file with the OHA if it has not already done so a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made

² We will not process applications signed by filing services or other representatives. In addition, the statement must be dated on or after the date of this Decision and Order. Any application signed and dated before the date of this Decision will be summarily dismissed.

payable solely to the applicants. Representatives who have not previously submitted an escrow account certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Distribution of Funds Remaining After First Stage

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of PODRA. PODRA requires that the Secretary of Energy determine annually the amount of all overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Houma and/or Jedco escrow accounts the OHA determines will not be needed to effect direct restitution to injured customers of either Houma or Jedco will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Houma Oil Company pursuant to the Consent Judgment that became effective on February 9, 1995, may now be filed.

(2) Applications for Refund from the funds remitted to the Department of Energy by Jedco, Inc., pursuant to a final bankruptcy distribution effective July 23, 1995, may now be filed.

(3) All Applications for Refund must be postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: February 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 97-3874 Filed 2-14-97; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5690-3]

National Environmental Justice Advisory Council Public Participation and Accountability Subcommittee; Notice of Meeting

March 17-18, 1997.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council will hold a subcommittee meeting on Monday, March 17, 1997, from 1-5 p.m. ET in Room 6226 and Tuesday, March 18, 1997 from 8:30 a.m. to 5 p.m. ET in Room 7216. Both meetings are located