

Commission Orders attributable to royalty payments in the 1983 to 1988 period unrecoverable. The Producers state that any attempts by first sellers to seek such recovery now violates Kansas law. The Producers argue that the standard for uncollectibility under *Wylee* has now been met, and the Commission has the authority to grant adjustment relief in the form of a waiver of uncollectible refunds.

Using procedures described by the Commission in its order, the Producers claim they implemented efforts over the past six months to recover Kansas *ad valorem* tax refunds from the royalty owners during the 1983–88 period. However, Kansas House Bill No. 2419 now legally bars such efforts by the Producers to recover refunds attributable to royalties. The Producers state that under Section 7(b) of the law:

No first seller of natural gas shall maintain any action against royalty interest owners to obtain refund of reimbursements for *ad valorem* taxes attributable to royalty interests, ordered by the Federal Energy Regulatory Commission.

Further, the Producers state that Sections 7(c)(1) and (c)(2) provide:

It is hereby declared under Kansas law:

(1) The period of limitation of time for commencing civil actions to recover such refunds attributable to reimbursements of *ad valorem* taxes on royalty interests during the years 1983 through 1988 has expired and such refunds claimed to be owed by royalty interest owners are uncollectible;

(2) first sellers of natural gas are prohibited from utilizing billing adjustments or other set-offs as a means of recovering from royalty owners any such claimed refunds . . .

The Producers contend that the language of Section 7 of the Kansas House Bill No. 2419 provides that the statute of limitations prevents any recover of *ad valorem* tax refunds for the 1983–88 period which are attributable to royalties. In addition, the Producers state that the Bill prohibits producers from taking any action (through set-offs or deductions from future royalties) to recover such refunds.

Each of the Producers requests that the Commission recognize that passage of Kansas House Bill No. 2419 prohibits any ability of producers to recover *ad valorem* tax reimbursements refunds from royalty owners. It is stated that the Kansas Bill meets the test under *Wylee* and a waiver is appropriate and necessary. In addition, the Producers contend that they should not be required to expend further resources and monies in seeking to recover payments which are not recoverable under the Kansas law. The Producers argue that none of them should continue to be at risk for such refunds.

Accordingly, they ask that the Commission expeditiously grant to each named Producer a waiver of refunds as to royalties finding that, based upon the Kansas House Bill No. 2419, such refunds are collectible.

In the alternative, the Producers request that the Commission grant a generic waiver of refunds attributable to royalties. It is stated that such a generic ruling would avoid the duplication of expense and administrative burdens of having the same issue considered on a case-by-case basis.

If a waiver of royalty refunds is granted as requested, the Producers request that any producer which has paid royalty refunds to the pipeline is entitled to recovery of such amounts plus interest for the period the pipeline (or its customers) held such monies.

Any person desiring to be heard or to make any protest with reference to said motion should on or before June 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.W. Washington, D.C. 20436, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696-004]

Niagara Mohawk Power Corporation; Notice of Availability of Environmental Assessment

June 1, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the license surrender application for the Stuyvesant Falls Project, No. 2696-004. The

Stuyvesant Falls Project is located on Kinderhook Creek in Columbia County, New York. The licensee is applying for a surrender of the license due to leaks in the pipelines that are uneconomical to repair for safe and effective operation of the project. A Final Environmental Assessment (FEA) was prepared for the application. The FEA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact Ms. Hillary Berlin, at (202) 219-0038.

David P. Boergers,

Acting Secretary.

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of March 9 Through March 13, 1998

During the week of March 9 through March 13, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 76; Week of March 9 Through March 13, 1998

Appeals

Dr. Nicolas Dominguez, 313/10/98, VFA-0377, VFA-0378, VFA-0379