

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. SA98-76-000]

Edwin A. Cornell; Notice of Petition for
Adjustment

June 1, 1998.

Take notice that on March 16, 1998, as supplemented on May 29, 1998, Edwin A. Cornell (Cornell), filed a petition, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for relief from making Kansas as valorem tax refunds, with interest, to Northern Natural Gas Company (Northern), with respect to: (1) Cornell's 1.0 percent working interest in the Bouziden oil and gas lease, that Cornell held from November 29, 1978 to August 27, 1984; and (2) Cornell's 0.76563 percent working interest in the McMinimy lease, that Cornell held from May 20, 1980 to August 27, 1984.¹ Absent the relief requested, Cornell will have to make the refunds, as required by the Commission's September 10, 1997 order in Docket No. RP97-369-000 *et al.*,² on remand from the D.C. Circuit Court of Appeals.³ That order directed First Sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Cornell's petition is on file with the Commission and open to public inspection.

Cornell's March 16, petition consists of a March 10, 1998, letter stating that Cornell filed for Chapter 7 bankruptcy on March 7, 1986, and that such bankruptcy was discharged by the U.S. Bankruptcy Court for the District of Kansas on September 23, 1986. Cornell's May 29, supplement consists of a May 19, 1998 letter, in which Cornell explains (a) that he seeks to be relieved from paying the Kansas ad valorem tax refunds claimed by Hummon (\$572.24 in all), (b) that the court, in Cornell's August 27, 1984, divorce decree, entitled his ex-wife to all royalties, profits, proceeds, and interest in any mineral, oil, and/or gas leases, (c) that such divorce decree resulted in the loss of his business and subsequent bankruptcy, and (d) that, due to extended illness, he has been unable to work since 1992.

¹ Cornell's May 29 supplement indicates that the wells on the Bouziden and McMinimy leases were operated by Hummon Corporation (Hummon).

² See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

³ *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96-954 and 96-1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, 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, 385.211, 385.1105, and 385.1106). 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.

[FR Doc. 98-14966 Filed 6-4-98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission[Docket No. RP97-369-003, RP98-39-006,
RP98-40-005, RP98-42-004, RP98-43-004,
RP98-52-005, RP98-53-005 and RP98-54-
006]Public Service Company of Colorado,
et al., Northern Natural Gas Company,
Panhandle Eastern Pipe Line
Company, ANR Pipeline Company,
Anadarko Gathering Company,
Williams Natural Gas Company, KN
Interstate Gas Transmission Company,
and Colorado Interstate Gas Company;
Notice of Motion for Waiver

June 1, 1998

Take notice that on May 19, 1998, Graham-Michaelis Corporation; Kansas Petroleum, Inc.; John W. LeBosquet; The Trees Oil Company; Pickrell Drilling Company; R.J. Patrick d/b/a/ R.J. Patrick Operating Company; Quinque Operating Company; Quinque Oil & Gas Producing Company; Lester Wilkonson; Kaiser-Francis Oil Company, CLX Energy, Inc.; Banks Oil Co.; Hummon Corporation; Osborn Heirs Company; Cabot Oil & Gas Corporation; Dorchester Hugoton, Ltd.; Ensign Oil & Gas Inc.; Helmerich & Payne, Inc.; Midgard Energy Company; and Pioneer Natural Resources USA, Inc. [jointly referred to herein as Producers], filed a motion pursuant to Rule 212 of the Commission's Rules of Practice and Procedure [18 CFR 385.212], where each request that the

Commission grant a waiver of the refund liability in these proceedings which is attributable to their respective royalties based on the enactment of Section 7 of Kansas House Bill No. 2419. In the alternative, the Producers request that the Commission grant generic relief of the same. In either case, the Producers request that the Commission direct the pipelines to return any refunds paid previously by the Producers pursuant to the Commission's prior orders which are attributable to such royalties, with interest at the Commission's prescribed rates.

The Producers state that the captioned proceedings involve the Commission's directives that first sellers refund Kansas *ad valorem* taxes paid over the period 1983 to 1988, based on the decision of the United States Court of Appeals for the District of Columbia Circuit in *Public Service Company of Colorado v. FERC*.¹ In addition, the Commission's general refund orders were issued in *Public Service Company of Colorado, et al.*, Docket No. RP97-369 (Commission Orders).² It is stated that the individual cases captioned above were commenced upon the filing by the individual pipelines of a Statement of Refund Due.

In June 1997 producers (including many submitting the motion) filed a request that the Commission waive royalties that were unrecoverable. The Producers state that in PSC of Colorado, the Commission recognized that there may be situations where producers are unable to collect refunds attributable to royalty interest owners.³ However, the Producers note that the Commission determined that it would not grant a generic waiver of uncollectible royalties, but rather would consider waiver of a refund on grounds of uncollectibility from royalty owners on a case-by-case basis, if a person seeking such relief can demonstrate that it attempted to collect the refund from the royalty owner and that the refund is uncollectible.⁴ The Producers contend that the Commission ruled that the standard for uncollectibility would be that set forth in *Wylee Petroleum Corporation*.⁵

The Producers state that on April 20, 1998, the Governor of Kansas signed into law House Bill No. 2419, which went into effect on April 30, 1998. They contend that the enactment of the House Bill makes refunds under the

¹ 91 F.3d 1478 (1996), cert. denied, 65 USLW 3751 and 3754 (May 12, 1997) (PSC of Colorado).

² 80 FERC ¶ 61,264 (1997) and 82 FERC ¶ 61,058 (1998).

³ 80 FERC ¶ 61,264 at 61,953 (1997).

⁴ Id.

⁵ 33 FERC ¶ 61,014 (1985).

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.

[FR Doc. 98–14968 Filed 6–4–98; 8:45 am]

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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.

[FR Doc. 98–14965 Filed 6–4–98; 8:45 am]

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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*