

least 30 percent must meet the definition of "high academic risk for failure." Grantees selected to participate in the evaluation would be required to refrain from admitting new students into their Upward Bound projects for project year 2007–2008 until the evaluator has completed its data collection and random assignment for those students. Eligible new students will be assigned randomly by the evaluator either to participate in Upward Bound or to serve as part of a control group (not in Upward Bound).

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we will invite applications through a notice in the **Federal Register**.

#### Priority

##### *Proposed Absolute Priority: Upward Bound Program Participant Selection*

This priority supports Upward Bound Program projects that select first-time participants from otherwise eligible students who have completed the 8th grade but not the 9th grade in secondary school, and that select not less than 30 percent of all first-time participants from students who have "high academic risk for failure."

Otherwise eligible students deemed to have "high academic risk for failure" are those who—

1. Have not achieved at the proficient level on State assessments in reading/language arts for grade eight;
2. Have not achieved at the proficient level on State assessments in math for grade eight; or
3. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

To meet this priority, an applicant also must agree to conduct its Upward Bound project in a manner consistent with the evaluation that the Department plans to conduct for the Upward Bound Program. An applicant also must agree, if selected to participate in the evaluation, to—

1. Recruit at least twice as many eligible new students in project year 2007–2008 as the grantee plans to serve in its project. Of that larger pool of eligible new students at least 30 percent

must meet the definition of "high academic risk for failure;"

2. Refrain from admitting new students into its Upward Bound project for project year 2007–2008 until the evaluator has completed its data collection and random assignment for those students; and

3. Agree that eligible new students will be assigned randomly by the evaluator either to participate in Upward Bound or to serve as part of a control group (not in Upward Bound).

This proposed absolute priority does not apply to the Veterans Upward Bound projects and Upward Bound Math/Science projects.

#### Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined are necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### Intergovernmental Review

This Program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Applicable Program Regulations:* 34 CFR part 645.

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(Catalog of Federal Domestic Assistance Number 84.047A Upward Bound Program)

**Program Authority:** 20 U.S.C. 1070a–13.

Dated: June 28, 2006.

**James F. Manning,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. E6–10398 Filed 6–30–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** The Department gives notice that on November 1, 2005, an arbitration panel rendered a decision in the matter of *Billie Ruth Schlank v. District of Columbia Department of Human Services, Rehabilitation Services Administration (Docket No. R–S/04–6)*. This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the complainant, Billie Ruth Schlank.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the

administration of vending facilities on Federal and other property.

### Background

This dispute concerned alleged violations of the Act (20 U.S.C. 107 *et seq.*), the implementing regulations in 34 CFR part 395, and State rules and regulations by the District of Columbia Department of Human Services, Rehabilitation Services Administration, the State licensing agency (SLA), regarding complainant's bid to operate a cafeteria at the National Imagery Mapping Agency (NIMA) located at the District of Columbia Navy Yard.

A summary of the facts is as follows: Complainant is a licensed vendor in the District of Columbia Department of Human Services, Rehabilitation Services Administration (DCRSA) Randolph-Sheppard vending facility program. In February 2003, DCRSA entered into a subcontracting agreement with the Department of Defense, Department of the Navy (Navy) and the State of Maryland Business Enterprise Program to operate three cafeterias, including a new cafeteria at NIMA, which was to take effect in March 2003. Subsequently, DCRSA, in accordance with its transfer and promotion policies, solicited bids from interested blind vendors to manage the NIMA cafeteria. The SLA's Promotion and Transfer Committee (Committee) makes decisions about a vendor's eligibility to transfer to another facility. Vendors receive points based on their seniority and performance, and the vendor with the highest number of points is given the first opportunity to transfer to a new facility.

In early 2003, the Committee determined that complainant was the second-ranked vendor who had submitted a bid to manage the NIMA cafeteria. However, soon thereafter, the Committee ruled that the highest-ranked vendor was ineligible and that complainant should be selected for the position.

Subsequently, complainant alleged that, although she was the next eligible vendor, the SLA refused to allow her to read the terms of the NIMA cafeteria contract or to visit the facility, both of which are standard procedures when a vendor is bidding on a new facility. On May 14, 2003, complainant requested an administrative review from DCRSA concerning her dissatisfaction with not being allowed to transfer to the NIMA cafeteria as the next eligible vendor. The SLA did not act on complainant's administrative review request. On May 16, 2003, complainant requested from DCRSA a State fair hearing on this matter.

Complainant alleged that DCRSA also did not act on her request for a State fair hearing. Consequently, in July 2003 complainant filed a request for a Federal arbitration with the Secretary of Education alleging DCRSA's failure to provide a State fair hearing to her concerning her bid on the NIMA cafeteria.

In the meantime, the Department of Education, Rehabilitation Services Administration (RSA) corresponded with the SLA requesting that complainant be given a State fair hearing. By letter dated September 10, 2003, the SLA informed RSA that a pre-hearing was scheduled for September 15, 2003, and a State fair hearing was scheduled for September 18, 2003.

On October 28, 2003, a pre-hearing was held by the SLA on complainant's request for a State fair hearing. However, on December 15, 2003, the SLA filed a Motion to Dismiss the complaint with the District of Columbia's Office of Fair Hearings. The hearing officer granted the SLA's Motion to Dismiss, thus canceling the State fair hearing that was scheduled for January 23, 2004. The SLA adopted the hearing officer's decision as final agency action.

By letter dated March 22, 2004, complainant informed the Commissioner of RSA that the hearing officer had dismissed her complaint and that DCRSA had adopted the hearing officer's decision. Complainant requested review by a Federal arbitration panel of that decision. On April 20, 2004, the Commissioner of RSA issued a letter to complainant and the SLA authorizing the convening of a Federal arbitration panel. A hearing on this matter was held on April 26 and May 12, 2005.

### Arbitration Panel Decision

The issues heard by the panel were—(1) whether DCRSA improperly refused complainant the right to transfer to the NIMA cafeteria, in violation of the Act and implementing regulations, and (2) whether DCRSA entered into a binding and enforceable agreement with the State of Maryland's Randolph-Sheppard Business Enterprise Program to subcontract the NIMA cafeteria using a teaming partner.

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled that the complainant was entitled to be assigned as the new vendor at the NIMA cafeteria in March 2003. Moreover, the panel majority found no evidence to support the SLA's contention that the highest-ranked vendor's protest to the Committee regarding the Committee's

decision to withdraw the vendor's assignment justified the Committee's failure to assign complainant as the next eligible vendor.

Concerning the second issue regarding the contractual arrangement between DCRSA and the State of Maryland to operate the NIMA cafeteria, the majority of the panel concluded that, since March 2003, DCRSA had acted in a manner that could be reasonably construed as entering into a subcontracting partnership among the State of Maryland's Business Enterprise Program, the teaming partner, and DCRSA.

Specifically, the majority of the panel found that DCRSA had been receiving monthly payments of the vendor's salary from the teaming partner. However, the panel found that DCRSA had not used the money collected from the NIMA cafeteria contract for any services pertaining to the SLA's Randolph-Sheppard program in violation of the Act and regulations.

Accordingly, the panel majority ruled that the complainant was the next eligible vendor and should have been transferred to the NIMA cafeteria. Additionally, the panel majority ruled that complainant was entitled to back pay at the rate of \$3,750.00 per month retroactive to March 2003 minus her monthly set-aside fees. Thus, the amount that the complainant should receive is \$2,925.00 per month from March 2003 including interest at the statutory rate as well as reasonable costs of attorney fees.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

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Dated: June 27, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E6-10397 Filed 6-30-06; 8:45 am]

BILLING CODE 4000-01-P

*Comment Date:* 5 p.m. Eastern Time on July 6, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-10332 Filed 6-30-06; 8:45 am]

BILLING CODE 6717-01-P

*Comment Date:* 5 p.m. Eastern Time on July 11, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-10333 Filed 6-30-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER05-115-001]

#### Duke Energy Oakland LLC; Notice of Filing

June 26, 2006.

Take notice that on May 2, 2006, Duke Energy Oakland LLC filed a refund report pursuant to the Commission's January 23, 2006 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL06-52-001]

#### New York Power Authority v. Consolidated Edison Company of New York, Inc.; Notice of Filing

June 26, 2006.

Take notice that on June 20, 2006, Consolidated Edison Company of New York, Inc. filed a refund report pursuant to the Commission's Order issued on April 12, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 906-006]

#### Virginia Electric & Power Co.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

June 26, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No:* 906-006.

c. *Date Filed:* June 12, 2006.

d. *Applicant:* Virginia Electric and Power Company, doing business as Dominion Virginia Power.

e. *Name of Project:* Cushaw Hydroelectric Project.

f. *Location:* On the James River in near Glasgow, Virginia, in Bedford and Amherst Counties, Virginia. The project's impoundment occupies 4.1 acres of United States Forest Service lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* James Thornton, Dominion Virginia Power, 5000 Dominion Boulevard, 1 NE, Glen Allen, VA 23060 (804) 273-3257.

i. *FERC Contact:* Kristen Murphy, (202) 502-6236 or [kristen.murphy@ferc.gov](mailto:kristen.murphy@ferc.gov).

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if