at 888 First Street, NE., Washington, DC 20426.

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Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent

Issued May 16, 1996.

The Commission's regulations include a methodology for oil pipelines to change their rate through use of an index systems that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Prince Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1994 was 125.5 and the annual average PPI–FG index for 1995 was 127.9.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1994 to 1995, minus one percent, is .009124.[2] Oil pipelines must multiply their July 1, 1995–June 30, 1996 rate ceiling levels by 1.009124 to compute their rate ceiling levels for the period July 1, 1996, through June 30, 1997, in accordance with 18 342.3(d).

To obtain July 1, 1996–June 30, 1997 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995–June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.009175. Pipelines must then multiply those ceiling levels. Finally, pipelines must multiply their July 1, 1995–June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996–June 30, 1997 ceiling levels. See Explorer Pipeline Company, 71 FERC ¶ 61,416 at n. 6 (1995) for an explanation of how ceiling levels must be calculated.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12850 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes.*

[2] [127.9 – 125.5]/125.5=.019124; .019124 – .01=.009124.

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.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces procedures for disbursement of $48,307.13 of crude oil overcharge funds obtained by the DOE from Texas American Oil Corporation (Texas American), Case No. VEF–0019. The OHA has determined that these funds, plus accrued interest, be distributed as direct restitution to individual claimants who were injured by crude oil overcharges.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington DC 20585–0107, Telephone No. (202) 426–1575.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $48,307.13 (plus accrued interest) remitted to the DOE by the trustee-in-bankruptcy for Texas American. The DOE is currently holding these funds in an interest-bearing escrow account pending distribution.

The OHA will allocate all of the crude oil overcharge funds obtained from Texas American for individual claimants. This is in accordance with *Texas American Oil Corp.* v. *DOE*, 44 F.3d 1557 (Fed. Cir. 1995) (en banc), in which the United States Court of Appeals for the Federal Circuit held that the DOE's claim in the Texas American bankruptcy proceeding on behalf of individual claimants should have a higher priority than its claim on behalf of the states and federal government. Pursuant to that decision, the bankruptcy court distributed to the DOE an amount equivalent to only 20 percent of its liquidated claim in the Texas American bankruptcy proceeding, since under the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986), a maximum of 20 per cent of the crude oil overcharge funds remitted to the DOE are reserved for injured purchasers of refined petroleum products.

Refunds to eligible purchasers will be based on the volume of products that they purchased during the price control period. The volumetric refund amount is $0.0016 per gallon. Because the June 30, 1995 deadline for crude oil refund applications has passed, no new applications for refund will be accepted in this proceeding. As we state in the Decision, the Texas American funds will be added to the general crude oil overcharge pool for direct restitution to claimants that have filed timely applications.

Dated: May 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 14, 1996.

Name of Case: Texas American Oil Corporation.

Date of Filing: September 1, 1995.

Case Number: VEF–0019.

On March 14, 1996, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Proposed Decision and Order (PDO) which tentatively established refund procedures for the distribution of crude oil overcharge funds obtained from Texas American Oil Corporation (Texas American). *Texas American Oil Co.*, Case No. VEF–0019, 61 Fed. Reg. 13170 (March 26, 1996). After a review of the comments received, the DOE has determined that the procedures set forth in the Proposed Decision and Order should be adopted.

I. Background

On September 19, 1988, the OHA issued a Remedial Order (RO) that found that Texas American had violated 10 CFR § 211.67(e)(2) by receiving excessive small refiner bias benefits under the DOE's Entitlements Program.

Texas American Oil Corp., 17 DOE ¶ 83,017 (1988). However, Texas American had filed a petition in bankruptcy on July 2, 1987, and its bankruptcy proceeding was still pending when the RO was issued. The trustee-in-bankruptcy approved the DOE's claim in the amount of $241,535.67, but classified it as a non-pecuniary loss in accordance with Section 726(a)(4) of the Bankruptcy Code and Class 9 of the Plan of Liquidation.[1] Since Class 9 claims were inferior to Class 7 claims, and there were insufficient assets to satisfy any Class 9 claim, or to satisfy fully the Class 7 claims, the effect of the trustee's determination was to preclude the DOE from receiving any compensation from Texas American's estate.

The DOE argued before the Bankruptcy Court that the trustee's determination was erroneous on the grounds that its claim was for restitution and therefore was a Class 7 claim. The Bankruptcy Court, however, rejected the DOE's position and held that Class 9 was the proper classification since the DOE's claim was not for actual pecuniary loss suffered by the holder of the claim. *In re Texas American Oil Corp.*, No. 387–33522–SAF–11 (Bankr. N.D. Tex. Mar. 5, 1992). This decision was reversed by the U.S. District Court which, relying on a prior decision of the Temporary Emergency Court of Appeals (TECA), held that a DOE claim under Section 209 of the Economic Stabilization of 1970 (ESA), 12 U.S.C. § 1904 note, was properly placed in the same class and priority as the general unsecured claims of other creditors. *Texas American Oil Corp.* v. *DOE*, No. 3:92–CV–1146–G (N.D. Tex. Sept. 14, 1992) (citing *DOE* v. *West Texas Marketing Corp.*, 763 F.2d 1411 (Temp. Emer. Ct. App. 1985) (*West Texas*)). This decision was in turn reversed by the United States Court of Appeals for the Federal Circuit, which held that the DOE's claim in the Texas American bankruptcy proceeding should be bifurcated, with the portion claimed on behalf of individual persons who suffered actual injury to be classified in Class 7 of the Plan of Liquidation and the portion to be paid to the federal and state governments to be classified in Class 9. *Texas American Oil Corp.* v. *DOE*, 44 F.3rd 1557 (Fed. Cir. 1995)(en banc). On remand, the Bankruptcy Court implemented the Federal Circuit's decision by distributing the 20 percent of DOE's liquidated claim ($48,307.13) that fell within Class 7 to DOE and the remaining 80 percent ($193,228.53) to the other Class 7 creditors. *In re Texas American Oil Corp.*, No. 387–33522–SAF–11 (Bankr. N.D. Tex. April 12, 1995). The funds that the DOE received from Texas American were deposited in an interest-bearing escrow account maintained by the Department of the Treasury.[2]

In accordance with 10 CFR Part 205, Subpart V, on September 1, 1995, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration) filed a Petition for the Implementation of Special Refund Procedures that requested OHA to formulate and implement procedures to distribute the Texas American funds. On January 16, 1996, we issued a Proposed Decision and Order that tentatively established refund procedures for the distribution of crude oil overcharge funds obtained from Texas American and four other firms. *Brio Petroleum, Inc.*, Case Nos. VEF–0017 *et al.*, 61 FR 1919 (January 24, 1996). In accordance with the Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 FR 27899 (August 4, 1986), that the DOE issued in connection with the Final Settlement Agreement approved in *In re The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986), the January 16 Proposed Decision proposed that 40 percent of the funds be disbursed to the federal government, another 40 percent be disbursed to the states, and the remaining 20 percent be reserved for applicants who file claims showing that they were injured by crude oil overcharges. However, we subsequently determined that the circumstances under which the DOE obtained the Texas American funds required that the funds be disbursed in a manner different than that set forth in the Proposed Decision. Accordingly, we issued the March 14, 1996 PDO, in which we tentatively determined that all of the funds received from Texas American be allocated to individual claimants. On April 24, 1996, we received comments on behalf of 14 designated states (the States). In their comments, the States disagreed with the refund procedures set forth in the PDO, but asserted that they would not formally object to them in view of the small amount of money involved. Instead, they reserved their right to object to any future proposed distributions of crude oil funds solely to individual claimants.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is 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, *see* Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501 *et seq. See also Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Refund Procedures

Since the States have not formally objected to the proposed refund procedures, it is not necessary for us to respond to the specific arguments that they raise. We do, however, disagree with the States' position that the decisions of the Federal Circuit and the Bankruptcy Court (on remand) do not affect the manner in which we must distribute the crude oil funds in the present case.[3] Thus, we shall distribute the funds received from Texas American (and accrued interest on those funds) solely to individual claimants in the DOE's crude oil refund proceeding. In our view, which we believe to be correct, this distribution scheme is required by the unique circumstances under which these funds were obtained

[1] Section 726(a)(4) places non-pecuniary loss claims in the fourth priority in the distribution of a bankrupt estate:

11 U.S.C. § 726. Distribution of property of the estate

* * * * *

(a)(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim[.]

Class 7 (Unsecured Claims) consisted of allowed claims of unsecured creditors, while Class 9 (Non-Pecuniary Loss) consisted of ''Allowed Claims for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, as further described in 11 U.S.C. § 726(a)(4).'' Texas American Bankruptcy Committee Plan of Liquidation §§ 3.07, 3.09.

[2] As of March 31, 1996, the account contained $50,815.65, consisting of $48,307.13 principal and $2,508.52 interest.

[3] We also do not accept the States' attempt to blur the distinction between recipients of direct and indirect restitution. It is true that, prior to the Federal Circuit decision, it was the DOE's consistent position that both types of recipients should be treated the same for purpose of distributing funds from bankrupt estates. Nevertheless, our prior Decisions make it clear that, unlike the beneficiaries of indirect restitution, individual claimants cannot receive direct refunds without a finding of injury, though that finding may be based on a presumption of injury. *See* 10 C.F.R. § 205.282(e) (''[T]he standards for evaluation of individual claims may be based upon appropriate presumptions''). *See also Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,175–76 (1988); *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

by the DOE. While the *Texas American v. DOE* decision is contrary to the position of the DOE that had been upheld in the *West Texas* case,[4] we are constrained by the Federal Circuit's decision. The clear import of that determination is that we must use the funds received from Texas American solely for direct restitutionary purposes. Moreover, as indicated above, the Bankruptcy Court, in accordance with the Federal Circuit's determination, distributed to the DOE only 20 percent of its liquidated claim in the Texas American bankruptcy proceeding. This percentage is equivalent to the portion of crude oil overcharge funds that we have consistently reserved for individual claimants under the MSRP. We therefore decline to modify our proposed allocation of the Texas American funds in response to the States' comments.

Except for the manner in which the funds will be allocated, we shall follow the procedures set forth in prior refund proceedings involving crude oil overcharge funds. Thus, claimants will be required to (i) document their purchase volumes of petroleum products during the August 19, 1973–January 27, 1981 crude oil price control period, and (ii) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations will be presumed to have been injured by Texas American's crude oil overcharges. In order to receive a refund, end-users will not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the price control period. We shall base refunds to claimants on a volumetric amount that is currently $0.0016 per gallon. *See* 60 FR 15562 (March 24, 1995).

A party that has already submitted a claim in the DOE crude oil proceeding need not file another claim in order to obtain its appropriate restitutionary share of crude oil funds. Moreover, because the June 30, 1995 deadline for crude oil refund applications has passed, we shall not accept any new applications. *See Western Asphalt Service,* 25 DOE ¶ 85,047 (1995).

[4] The Federal Circuit in *Texas American v. DOE* ascribed its unwillingness to follow the *West Texas* decision to judicial, statutory, and related policy changes that had occurred since the issuance of that decision. The Federal Circuit also specifically overruled TECA's ruling that a DOE bankruptcy claim under the ESA to be paid to the federal and state governments on behalf of their citizens was for restitution and not for a penalty.

Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution. Finally, an applicant who has executed and submitted a valid waiver pursuant to one of the escrows established by the Final Stripper Well Settlement Agreement will be considered to have waived its rights to apply for a crude oil refund under Subpart V. *See, e.g., Mid-America Dairymen, Inc., v. Herrington,* 878 F.2d 1448 (Temp Emer. Ct. App. 1989); *see also Hoechst Celanese Chemical,* 25 DOE ¶ 85,066 (1996).

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the $48,307.13 obtained from Texas American Oil Corporation, COTS No. N00S90460, plus accrued interest, into the subaccount denominated ''Crude Tracking-Claimants 4,'' Number 999DOE010Z.

(2) This is a final Order of the Department of Energy.

[FR Doc. 96–12823 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Boulder Canyon Project—Proposed Firm Power Service Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge Adjustment.

SUMMARY: The Western Area Power Administration (Western) is announcing the Fiscal Year 1996 annual rate adjustment for Rate Year 1997 under Rate Order WAPA–70 for firm power service for the Boulder Canyon Project (BCP). The annual rate adjustments are a requirement of the ratesetting methodology of WAPA–70 which was approved on a final basis by the Federal Energy Regulatory Commission on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. The power repayment spreadsheet study indicates that the proposed Base Charge for BCP firm power service is necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The proposed Base Charge for firm power service is expected to become effective October 1, 1996.

DATES: The consultation and comment period will begin with publication of this notice in the Federal Register and will end not less than 90 days later, or August 22, 1996, whichever occurs later. A public information forum will be held at 10 a.m. on June 13, 1996, at Western's Desert Southwest Customer Service Regional office, 615 South 43rd Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 10 a.m. on July 15, 1996, at Western's Desert Southwest Customer Service Regional office. Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

Mr. Anthony H. Montoya, Assistant Regional Manager, For Power Marketing, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2780.

SUPPLEMENTARY INFORMATION: The proposed Base Charge for BCP firm power is based on an Annual Revenue Requirement of $46,421,533. The Base Charge consists of an Energy Dollar of $23,968,846 and a Capacity Dollar of $22,452,687. The Forecast Energy Rate will be 5.46 mills/kilowatthour (mills/kWh), Forecast Capacity Rate will be $0.96 per kilowatt per month ($/kW-mo).

The existing BCP firm power Base Charge is based on an Annual Revenue Requirement of $45,196,960, consisting of an Energy Dollar of $23,460,351 and a Capacity Dollar of $21,736,609. The existing BCP forecast energy rate is 6.12 mills/kWh and forecast capacity rate is $0.93/kW-mo.

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend proposed charges/rates for approval on a final basis by the Deputy Secretary of DOE pursuant to Section 13.13 of the BCP Implementation Agreement.

The power rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), as amended and supplemented by subsequent