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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 12 Through October 16, 1998

During the week of October 12 through October 16, 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: November 12, 1998.

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

Decision List No. 107—Week of October 12 Through October 16, 1998

Refund Applications

Apex Oil/Clark Oil Co./Kickapoo Oil Co., Inc., 10/13/98, RF342-284

The DOE denied a refund application filed in the Apex/Clark special refund proceeding. The OHA found that applicant is precluded by the doctrine of *res judicata* from relitigating its claims in Apex/Clark proceeding.

Atlantic Richfield Company/Saturn Petroleum Company, 10/13/98, RF304-15516

A refund that was granted to Saturn Petroleum Company in the ARCO refund proceeding was rescinded. The original refund had been based upon the firm's claim to have purchased about 300,000 gallons of ARCO products per month at each of four retail outlets between 1973 and 1976. However, a

review of information that the firm had submitted in the Texaco refund proceeding indicated that these outlets had not purchased ARCO products for most of the time period the firm had claimed and the monthly volume of ARCO purchases had been much lower. The firm failed to respond to an Order to Show Cause why the refund should not be rescinded in full. Accordingly, the firm was ordered to repay the refund together with interest.

State Escrow Distribution, 10/14/98, RF302-21

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute \$24,150,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Mike's Fuel Oil Co., et al	RF304-14663	10/15/98
Bureau Valley Comm. Dist. #340	RK272-01819	10/14/98
Crude Oil Supplemental Refunds	RB272-00145	10/14/98
Harrison County Road Dept., et al	RF272-94137	10/14/98
Lincoln County	RK272-03576	10/14/98
Santa Cruz County Off. Eductn	RF272-96310	10/14/98
Larry R. or Debra F. Garner	RF272-96328
St. Mary of Mt. Carmel Church, et al	RF272-98909	10/15/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO-0234
Redway Carriers, Inc	RK272-04832

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DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders During the Week of August 10 Through August 14, 1998

Office of Hearings and Appeals

During the week of August 10 through August 14, 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.

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: November 12, 1998.

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

Decision List No. 98
Week of August 10 Through August 14, 1998

Appeals

Arnold Kramish, 8/11/98, VFA-0426

Arnold Kramish appealed a determination of FOIA/Privacy Act Division of the Office of the Executive Secretariat. He had requested copies of all personnel records the DOE possesses

concerning Robert and Charlotte Serber. The DOE confirmed that no DOE offices possess responsive information beyond the information the DOE already provided to Mr. Kramish. Accordingly, the DOE denied Mr. Kramish's appeal.
 Gary A. Davis, 8/14/98, VFA-0429

The DOE granted a Freedom of Information Act Appeal filed by Gary A. Davis. Davis sought a further search for responsive documents by the Oak Ridge Operations Office. DOE found that Oak Ridge failed to adequately explain why it did not find or release a document DOE and had not appropriately justified the adequacy of its search. Accordingly, the matter was remanded to Oak Ridge.
 International Brotherhood of Electrical Workers, 8/11/98 VFA-0421

International Brotherhood of Electrical Workers appealed a Determination issued to it by the Savannah River Operations Office (SR),

in response to a request under the Freedom of Information Act (FOIA). The Appellant sought information concerning SR's and Wackenhut Services, Inc.'s activities concerning a union election that the Appellant participated in. The Appellant argued that SR's refusal to release certain withheld information was improper, SR's search was inadequate, and that SR should have granted the Appellant a fee waiver or reduced its fees. The Appellant also appealed an earlier FOIA determination by SR of a different request. DOE found with regard to the earlier request that SR had correctly determined that the responsive records were contractor, not agency, records. DOE upheld SR's denial of a fee waiver, and found with the exception of some improper photocopying charges, most of the fees charged to be reasonable. DOE further found that SR had (1) made an inadequate determination regarding

some requested videos and that it must conduct a further search, (2) improperly withheld a contractor-prepared document under Exemption 5 because it was neither intra-agency nor inter-agency, (3) some portions of attorney billing records were incorrectly withheld under Exemption 4, and (4) had made an inadequate determination regarding its Exemption 4 withholding of a labor consultant's normal rates. Accordingly, the Appeal of SR's determination was granted in part.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Colloid Co	RK272-4531	8/14/98
Amertex Service Group	RK272-04833	8/14/98
Englewood City Board of Educ et al	RF272-96301	8/14/98
Enron Corp./Liquid Petroleum Corp	RR340-00006	8/11/98
Randolph Township Brd of Educ. et al	RK272-04834	8/14/98

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 3 Through August 7, 1998

During the week of August 3 through August 7, 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: November 12, 1998.

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

Decision List No. 97

Week of August 3 Through August 7, 1998

Refund Application

ENRON CORP./MAPCO, INC., 8/3/98, RF340-149

DOE granted a refund to MAPCO, Inc. (MAPCO) in the Enron Corporation (Enron) special refund proceeding. DOE concluded that MAPCO's NGL purchases were not discretionary in

nature, and were dictated by the firm's need to supply its regular customers and maintain the flow of product in its pipeline system. However, DOE excluded purchases of ethane because they were insufficiently documented. DOE also excluded certain quantities of natural gasoline that appear to have been purchased pursuant to a fixed price contract. DOE then found that MAPCO had shown that it was injured by its purchases of propane from Enron to some extent, but limited the firm's refund to approximately 85.5% of its full volumetric refund for that product.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Army & Air Force Exch Svc	RF272-16333	8/3/98
Crude Oil Supplemental	RB272-00139	8/5/98
Crude Oil Supple Ref Dist	RB272-00141	8/6/98
Great Western Onshore Inc.	RF272-75456	8/3/98
Grooms Oil Co. Inc.	RF272-99087
Valley Farmers Co-Op, Inc. et al	RF272-98907	8/5/98

Dismissals

The following submissions were dismissed.