

DEPARTMENT OF ENERGY**[OE Docket No. EA-281-A]****Application To Export Electric Energy; Manitoba Hydro****AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.**ACTION:** Notice of application.

SUMMARY: Manitoba Hydro, a Canadian Crown Corporation, has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 31, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0350 (FAX 202-586-5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586-4708 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 17, 2003, the Department of Energy (DOE) issued Order No. EA-281 authorizing Manitoba Hydro to export electric energy from the United States to Canada. That two-year authorization will expire on November 17, 2005. On September 2, 2005, Manitoba Hydro applied to DOE to renew its authority to export electric energy from the United States to Canada for a five (5) year period.

In OE Docket No. EA-281-A, Manitoba Hydro proposes to purchase electric energy in Canada and wheel that energy through transmission facilities in the United States and return it to Canada using certain transmission facilities located at the U.S. border with Canada. In addition, Manitoba Hydro proposes to purchase electric energy from generators, power marketers, or federal power marketing agencies in the U.S. and export that energy to Canada. Manitoba Hydro will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Booneville Power Administration, Eastern Maine Electric Cooperative, International Transmission

Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Manitoba Hydro has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the Manitoba Hydro application to export electric energy to Canada should be clearly marked with Docket EA-281-A. Additional copies are to be filed directly with K. Jennifer Moroz, Barrister & Solicitor, Legal Department, Manitoba Hydro, 820 Taylor Avenue, Winnipeg, Manitoba Canada R3M 3T1 AND David Martin /Connolly, Bruder, Gentile & Marcoux, L.L.P., 1701 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006-5805.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at <http://www.fe.doe.gov>. Upon reaching the Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on September 26, 2005.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 05-19591 Filed 9-29-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Proposed Procedures for Distribution of Remaining Crude Oil Overcharge Refunds****AGENCY:** Office of Hearings and Appeals, Department of Energy.**ACTION:** Notice of proposed procedures for distribution of remaining crude oil overcharge refunds and opportunity for comment.

SUMMARY: In a May 21, 2004 Notice, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) announced procedures for making one final round of refund payments in this proceeding. However, there is ongoing litigation that could affect the amount of crude oil monies available for distribution, thus making it unworkable at this point to have a single, last round of payments that would exhaust the remaining crude oil refund monies. We instead propose here to issue partial refunds amounting to approximately 90% of the money due each eligible claimant.

DATES: Comments must be filed in duplicate within 30 days of publication of this Notice in the **Federal Register**.

ADDRESSES: Comments should be addressed to: Crude Oil Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585-1615, and submitted electronically to steven.goering@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Steven Goering, Staff Attorney, or Richard Cronin, Assistant Director, Office of Hearings and Appeals, Department of Energy; telephone: 202-287-1449, e-mail: steven.goering@hq.doe.gov, richard.cronin@hq.doe.gov.

SUPPLEMENTARY INFORMATION: OHA published a Notice of final procedures for final crude oil refunds in the **Federal Register** on May 21, 2004. 69 FR 29300. In the May 21 notice, we explained that we would be sending notice to all claimants (or their representatives of record) who purchased more than 280,000 gallons of eligible petroleum products during the relevant period. We also stated that claimants would be required, no later than December 31, 2004, to submit verification of the information in our database. Shortly after issuing the May 21 Notice, we sent notice to claimants and received 30,873 timely submissions.

In the May 21 notice, we set forth a plan to make one final round of refund payments, with the intent "to distribute all of the reserved funds to claimants

'insofar as practicable.''' 69 FR at 29302. We rejected a proposal by a representative of a few large claimants that would have required two disbursements, the second a "closeout payment" available only to clients of that representative and other large claimants. *Id.*

Since that time, events and proliferating litigation affecting the windup of this crude oil refund proceeding have precluded the Department from proceeding with the calculation of the per-gallon "volumetric" refund amount that is necessary to a single, final payment of refunds to all qualified applicants. Calculating the volumetric amount requires two fixed numbers: (1) The amount of funds available for distribution ("the numerator"), which is divided by (2) the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants ("the denominator"). However, as explained below, the increasing litigation that has been brought to bear on the proceeding may affect both the numerator and the denominator of the volumetric calculation. As a result, the plan to make a single, final round of refunds to eligible persons is unworkable.

Among matters affecting our ability to proceed with the calculation of a final volumetric and proceed with a final distribution is a decision on January 26, 2005, by the United States District Court for the District of Columbia. In *Consolidated Edison Co. v. Abraham*, Civil Action No. 03-1991, in which the Court awarded plaintiffs attorney's fees in the "amount of thirty percent (30%) of the fund derived from the amount of the increase in the per million-gallon distribution over the \$670 [per million gallons] initially proposed by DOE." *Consolidated Edison v. Abraham*, Civil Action No. 03-1991, slip op. at 12 (January 26, 2005). Under this decision, a significant amount of the crude oil refund monies—approximately \$10 million—would be paid directly to plaintiffs' counsel and not be available for distribution to individual claimants. The Department has filed Notices of Appeal regarding this decision, and plaintiffs have filed appeals of the order insofar as it denied the full amount of attorney's fees they sought, which would have amounted to 10% of the entire "Subpart V" crude oil fund, *i.e.*, about \$28 million. See D.C. Cir. Docket Nos. 05-5089, 05-5090, 05-5223, and Fed. Cir. Docket Nos. 05-1309, 05-1310, 05-1450.

The same Consolidated Edison plaintiffs have also filed actions challenging several outstanding OHA

Decisions granting refunds. For example, plaintiffs are challenging the crude oil refunds granted to the Defense Logistics Agency and other federal and state agencies. The district court dismissed this challenge and plaintiffs have appealed that decision to both the United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for the D.C. Circuit. See D.C. Dist Ct. Dkt. No. 04-382, 2005 Lexis 5663 (March 31, 2005) (OHA Case No. RF272-00011) (Fed. Cir. Dkt. No. 05-1509 and Ct. App. D.C. Dkt. No. 05-5302). For other pending litigation instituted by the Consolidated Edison plaintiffs challenging OHA refund decisions, see *Lubrizol Corporation v. Bodman*, D.C. Dist Ct. Dkt. No. 05-1467 RWR (OHA Case No. RC272-00438); *Hercules, Inc v. Bodman*, Fed. Cir. No. 05-1442; D.C. Cir. No. 05-5201; Dist Ct. Dkt. 02-1507 (OHA Case No. RR272-00204); and *Chesebrough-Pond's USA Co. v. Bodman*, Energy Management ¶ 26,752, aff'd Fed. Cir. Dkt. No. 04-1615, 128 Fed. App. 153 (May 4, 2005), (OHA Case No. RF272-97101). The outcome of these cases affects the amount of money available for distribution to individual applicants. Also, a decision concerning a Motion for Reconsideration of OHA's denial of a refund in International Steel Group, Inc. D.C. D.Ct. # 05-1466, (OHA Case No. RR272-00321), is also in litigation. See *Mittal Steel USA ISG, Inc. v. Bodman*, D.C. Dkt. No. 05-1466. In that case, a reversal of OHA's decision would add 609,873,817 gallons (the number of gallons claimed on the application) to the denominator of the volumetric. Because of the potential impact of the pending litigation on both the numerator and denominator of the volumetric, it is not feasible to have one final distribution of the crude oil funds at this time.

Significant time that has elapsed since the deadline for refund claimants to submit verification information, such as present addresses and other locators. Our experience in previous crude oil refund rounds is that this verification information becomes quickly and increasingly obsolete. Insofar as it is able, OHA has resolved the issues barring the commencement of a final crude oil refund distribution and is in a position to propose—in lieu of the planned, single refund distribution—a partial crude oil refund distribution of the moneys that are not threatened by the litigation referenced above. That would encompass a vast majority of the funds on hand. While a partial refund increases the burden on the Department, OHA believes that the refund claimants

deserve relief from the effects of the ongoing litigation. To make a round of partial crude oil refunds, OHA is issuing this notice announcing a provisional volumetric refund amount and defining that portion of the crude oil monies that would be reserved pending the resolution of the litigation. We ask interested parties to comment on the proposed refund procedure. Upon resolution of the aforementioned litigation, we would then consider procedures for another and final distribution of the remaining crude oil monies which would exhaust the crude oil fund.

Specifically, therefore, we are proposing to make refunds to all claimants based upon a volumetric calculated using a numerator of \$252,000,000, *i.e.*, approximately 90% of all available funds, and a denominator of 366,324,981,322 gallons, *i.e.*, the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants (365,715,107,505 gallons) plus the number of gallons claimed in the application denied by OHA that is currently the subject of pending litigation (609,873,817 gallons). This produces a volumetric refund of \$0.00068 and distributes approximately 90% of the money due to over 99.75% of all eligible claimants.¹

However, prudence requires that we not distribute funds to those claimants whose refunds are currently being challenged by third parties in pending litigation. Upon the conclusion of litigation and a final upholding of our refund awards, we propose to promptly release the funds to the affected claimants. The following is a list of the individual claimants whose refunds we propose to handle in this fashion:

RF272-00011 DEFENSE LOGISTICS
AGENCY
RF272-00350 WISCONSIN DEPT.
TRANSPORTATION
RF272-00512 STATE OF WEST
VIRGINIA
RF272-04416 STATE OF
CONNECTICUT
RF272-08074 STATE OF
CONNECTICUT
RF272-09853 WASHINGTON STATE
PATROL
RF272-11717 WASHINGTON STATE
DEPT. TRANS.
RF272-12181 NEBRASKA PUBLIC
POWER DIST.
RF272-12588 STATE OF
CONNECTICUT

¹ We arrive at the volumetric refund amount by rounding down to the fifth decimal place. Rounding down ensures that there will be sufficient funds to pay refunds at a given volumetric refund amount.

RF272-17487 KENTUCKY DEPT. OF EDUCATION
 RF272-18164 STATE OF NORTH DAKOTA
 RF272-18963 STATE OF NEW MEXICO
 RF272-19364 STATE OF MISSOURI
 RF272-19386 STATE OF VERMONT
 RF272-19457 STATE OF SOUTH DAKOTA
 RF272-20947 LUBRIZOL CORPORATION
 RF272-23229 DISTRICT OF COLUMBIA
 RF272-23790 HERCULES, INC.
 RF272-28260 WASHINGTON STATE FERRIES
 RF272-35431 MARYLAND STATE AVIATION ADMIN.
 RF272-44094 OHIO STATE HWY. PATROL
 RF272-44344 STATE OF SOUTH CAROLINA
 RF272-45477 ILLINOIS STATE TOLL HWY. AUTH.
 RF272-49283 COMMONWEALTH OF KENTUCKY
 RF272-49892 NEBRASKA ENERGY OFFICE
 RF272-49898 STATE OF KANSAS
 RF272-50638 WASHINGTON STATE DEPT OF TRANS
 RF272-51829 WASHINGTON STATE PARKS & REC.
 RF272-54955 U.S. POSTAL SERVICE
 RF272-56597 STATE OF OKLAHOMA
 RF272-59085 STATE OF UTAH, ENERGY OFFICE
 RF272-59907 STATE OF COLORADO
 RF272-60251 STATE OF WISCONSIN
 RF272-61569 STATE OF MINNESOTA
 RF272-61591 ARKANSAS HWY. & TRANS. DEPT.
 RF272-62009 STATE OF NEW HAMPSHIRE
 RF272-62522 STATE OF NEW YORK
 RF272-63433 STATE OF DELAWARE
 RF272-63623 MARYLAND STATE HWY. ADMIN.
 RF272-63624 MARYLAND DEPT. GENERAL SERVICE
 RF272-64195 STATE ARIZONA DEPT. OF TRANS.
 RF272-64288 STATE OF ARKANSAS
 RF272-64986 STATE OF FLORIDA
 RF272-65199 STATE OF IOWA
 RF272-65398 STATE OF NEVADA
 RF272-65470 STATE OF MICHIGAN
 RF272-65524 ILLINOIS DEPT. OF COMMERCE
 RF272-65526 ALASKA DEPT OF TRANS & PUB FAC
 RF272-66878 NEW YORK TRANSIT AUTHORITY
 RF272-67007 COMMONWEALTH OF PENNSYLVANIA
 RF272-67187 STATE OF INDIANA
 RF272-67248 STATE OF CALIFORNIA
 RF272-67313 STATE OF TEXAS
 RF272-67507 STATE OF VERMONT DEPT. OF COR.
 RF272-67509 STATE OF VERMONT—TRANSPORTTN
 RF272-67586 STATE OF ALABAMA
 RF272-68243 NEW JERSEY TRANSIT CORP.
 RF272-68934 NEW YORK STATE THRUWAY AUTH.
 RF272-69744 STATE OF NEW JERSEY
 RF272-69948 WEST VIRGINIA HWY. DEPT.
 RF272-71331 STATE OF TENNESSEE
 RF272-74169 STATE OF MAINE
 RF272-75269 VIRGINIA DEPT. OF STATE POLICE
 RF272-87985 STATE OF MARYLAND
 RF272-97101 CHESEBROUGH-POND'S USA CO.
 RF272-98890 COMMONWEALTH OF VIRGINIA
 RG272-00507 STATE OF OHIO
 RK272-00147 STATE OF MONTANA
 RK272-00362 STATE OF KANSAS
 RK272-03404 WYOMING DEPT. OF TRANSPORTATN.
 RK272-03418 STATE OF GEORGIA—ENERGY RES.
 RK272-04041 STATE OF NORTH CAROLINA
 RR272-00207 STATE OF TENNESSEE
 OHA seeks comments on these proposed procedures. Interested parties should send comments to the address shown on the present Notice. After OHA considers the comments received, we will issue a final Notice that will explain how we will proceed with the refund process. The final Notice will be published in the **Federal Register**, and it will be available on the OHA Web site, <http://www.oha.doe.gov/>.

Issued in Washington, DC on September 26, 2005.

George B. Breznay,

Director, Office of Hearings and Appeals.

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which

contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for \$30, or without charge at the following Internet address: <http://www.bpa.gov/corporate/business/>.

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for \$15 each, or available without charge at the following Internet address: <http://www.bpa.gov/corporate/business/>.

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CK-4, Bonneville Power Administration, PO Box 3621, Portland, Oregon 97208-3621.

FOR FURTHER INFORMATION CONTACT: Manager, Corporate Communications, 1-800-622-4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A-21 Cost Principles for Educational Institutions.

A-87 Cost Principles for State, Local and Indian Tribal Governments.

A-102 Grants and Cooperative Agreements with State and Local Governments.

A-110 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of