

# **Notice of Issuance of Decisions and Orders for the Week of November 27 Through December 1, 1995**

During the week of November 27 through December 1, 1995, 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, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., 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: August 28, 1996.

Thomas O. Mann,

*Acting Director, Office of Hearings and Appeals.*

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585

Decision List No. 948

Week of November 27 Through December 1, 1995

## *Appeals*

Burlin McKinney, 11/28/95, VFA-0094

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Burlin McKinney. In his Appeal, Mr. McKinney sought access to the deleted portions of a memorandum concerning an interview of an individual with the Office of the Inspector General (OIG). Portions of the memorandum which tended to identify the individual were deleted pursuant to Exemptions six and seven of the FOIA. In the Decision, the DOE stated that the individual's interest in remaining anonymous outweighed the public interest in disclosure. The DOE therefore concluded that the OIG properly withheld the deleted portions of the document.

National Security Archive, 11/30/95, VFA-0095

The National Security Archive (NSA) filed an Appeal from a determination issued by the Office of Policy (Policy) of the Department of Energy (DOE) in response to a request from NSA under the Freedom of Information Act (FOIA). NSA requested documents concerning the US-Mexico oil negotiations during 1977-78. In considering the Appeal, the Office of Hearings and Appeals found that the scope of the search performed by Policy was not broad enough and that responsive documents may exist within the Office of General Counsel. Moreover, a new search was performed with additional information provided by NSA on appeal. This new search located possibly responsive documents. Accordingly, the Appeal was remanded to the Freedom of Information and Privacy Act Division of the DOE to (1) coordinate a search of the Office of General Counsel and (2) issue a determination with respect to the newly discovered documents.

Paul W. Fox, 11/30/95, VFA-0096

Paul W. Fox filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request For Information that he had submitted under the Freedom of Information Act (FOIA). The request concerned negotiations between the U.S. and Canada concerning delivery of electric power pursuant to the Columbia River Treaty.

The documents at issue were withheld pursuant to the deliberative process privilege of Exemption 5, which applies to inter- or intra-agency documents.

The DOE rejected the argument that documents could not be inter- or intra-agency if they were between BPA and the Mid-Columbia Partners (MCPs), a coalition of private power companies. The DOE found that the matter should be remanded to BPA to consider the purpose for which those documents were created, as the MCPs could be government consultants (and therefore intra-agency) where the documents were created primarily for the benefit of BPA. The DOE further noted that documents created by the MCPs might fall within the scope of Exemption 4. The DOE also rejected the contention that DOE waived any privilege for documents that it provided to the MCPs, since limited disclosure to outside parties with a common interest does not waive a privilege. In addition, the DOE noted that release of certain documents could undermine BPA's negotiation position with the Canadian authorities, and consequently, they could be withheld pursuant to Exemption 5's qualified privilege for commercial information. Finally, the DOE found that certain purely factual information, such as reports of meeting between the MCPs

and Canadian officials could not be withheld pursuant to Exemption 5. Accordingly, the Appeal was granted in part and the matter was remanded to BPA.

## *Supplemental Order*

National Recovery Aide, 12/1/95, VFX-0005

The DOE issued a Decision and Order concerning National Recovery Aide. The DOE determined that National Recovery Aide will be denied the privilege of receiving refund checks on behalf of its applicants in all proceedings before the Office of Hearings and Appeals of the Department of Energy. Accordingly, refund checks will be made payable to, and sent directly to, the applicants.

## *Refund Applications*

Georgia Kraft Company, 12/1/95, RK272-313

The DOE issued a Decision and Order granting a supplemental crude oil refund to two companies, The Mead Corporation (Mead) and Inland Container Corporation (Inland). Mead and Inland were joint owners of the original applicant company, Georgia Kraft Company (GKC), which ceased to exist in 1993. The joint venture consisted of three mills, one of which was sold to a third party, Pratt Industries (Pratt), in 1987. When submitting their Application for Supplemental Refund, the three companies also submitted a contractual agreement in which they requested that the DOE distribute the crude oil supplemental refund monies among them based on a mutually agreed upon percentage breakdown. The DOE determined that complying with the agreement between the companies would mean abdicating its statutory responsibility to identify injured parties and provide restitution. In accordance with applicable procedure, the DOE granted the supplemental refund for GKC to Mead and Inland.

Quantum Chemical Corp., 11/28/95, RF272-64273, RD272-64273, RF272-93712

Quantum Chemical Corporation applied for a crude oil overcharge refund based on purchases of gasoline, diesel fuel, fuel oils, kerosene, cyclohexane, lube oils, propane, butane, isobutylene and ethane. The DOE found that the cyclohexane and isobutylene are petrochemicals and therefore not eligible for refunds. The DOE further found that Quantum had not demonstrated that the ethane that it purchased came from a crude oil refinery. Accordingly, Quantum's request for refunds based on its purchases of that product was denied. Quantum was granted a refund of \$2,734,470 for the remaining eligible products. The DOE denied a Motion for Discovery filed by a group of States and dismissed a duplicate refund application inadvertently filed by Quantum.

## **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 Company/Jimmy's Arco .....	RF304-15484	12/01/95
Fremont Farmers Union Corp., et al .....	RF272-86307	11/28/95

Globe Union, Inc .....	RF272-77429	12/01/95
Gulf Oil Corporation/Chief Freight Lines Co. et al .....	RF300-12744	11/28/95
Radcliffe Community School District et al .....	RF272-95901	11/28/95
Tajon, Inc .....	RF272-97076	12/01/95
Texaco Inc./Fairlawn Oil Service, Inc .....	RF321-20700	12/01/95
Waybec Ltd. et al .....	RK272-00001	12/01/95
Wise Aviation .....	RF272-98001	12/01/95
Zenda Grain Supply et al .....	RF272-97571	11/28/95

## Dismissals

The following submissions were dismissed:

Name	Case No.
Air East, Inc .....	RF272-98019
Pantasote, Inc .....	RF272-78081
The Pasha Group .....	RF272-97413

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**Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of December 4 Through December 8, 1995**

During the week of December 4 through December 8, 1995, 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, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., 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: August 28, 1996.  
Thomas O. Mann,  
*Acting Director, Office of Hearings and Appeals.*

Decision List No. 949 for the Week of December 4 Through December 8, 1995

*Refund Applications*

*Ellsworth Freight Lines, Inc., 12/7/95, RF272-97361*

The DOE issued a Decision and Order denying an Application for Refund filed by Ellsworth Freight Lines, Inc. in the Subpart V crude oil refund proceeding. Ellsworth had filed an earlier claim for a refund from the Surface Transporters (ST) Escrow and signed a waiver which made the firm ineligible to file in the crude oil proceeding. Ellsworth's ST claim was dismissed because it lacked sufficient documentation to verify its gallonage claim. Since Ellsworth had signed a waiver in the ST proceeding, it was bound by the waiver even though the claim was dismissed. Therefore,

Ellsworth's Application for Refund was denied.

*Trans-Continental Express, Inc., 12/7/95, RF272-212*

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Trans-Continental Express, Inc. in the Subpart V crude oil refund proceeding. Trans-Continental had failed to submit documents verifying its gallonage claim in support of its original refund application, and it was therefore denied. However, since Trans-Continental subsequently submitted those documents, and showed good cause for delay in providing the material, its refund claim was granted in the amount of \$13,183.

*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 Company/Matt's ARCO .....	RF304-14389	12/04/95
Berman Moving & Storage, Inc. et al .....	RK272-572	12/06/95
Brentwood Union School District et al .....	RF272-96243	12/07/95
Halko Farms et al .....	RK272-692	12/06/95
Jeffrey Management Co. et al .....	RK272-2743	12/06/95

## Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office .....	VSA-0019
Consequential Holding Corp .....	RK272-00230
Ethyl Corp .....	RF300-21567
Federal Aviation Administration .....	RF300-21313
J&R Cartage .....	RF272-89122
Williams Energy Company .....	RF304-15076

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