

July 17, 2007

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Supplemental Order

Name of Petitioner: Crude Oil Supplemental Refund Distribution

Date of Filing: July 13, 2007

Case Number: RB272-10119

In this Decision and Order, we announce the final procedures for the distribution of Subpart V crude oil refunds, and order payments required under a May 1, 2007 settlement agreement between the Department of Energy and certain claimants in the present proceeding (the May 1, 2007 Settlement Agreement) .

The Office of Hearings and Appeals (OHA) published a Notice of final procedures for final crude oil refunds in the Federal Register on May 21, 2004. 69 Fed Reg. 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. Since that time, events and proliferating litigation affecting the windup of this proceeding precluded the Department from proceeding with the calculation of the per-gallon “volumetric” refund amount that was necessary to make 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, the ongoing litigation had the potential to affect both the numerator and the denominator of the volumetric calculation.

As a result, in a January 13, 2006 Federal Register notice, we announced procedures for an interim round of refunds based upon a volumetric calculated using as a numerator approximately 90% of all available funds, and as a denominator the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants plus the number of gallons claimed in an application denied by OHA that was then the

subject of pending litigation. Finally, we stated that, in view of the uncertainties posed by the outstanding litigation, we were not in a position to commit ourselves to additional refunds until all pending litigation was resolved.

The prudence of this approach was confirmed when on January 26, 2005 the U.S. District Court for the District of Columbia awarded plaintiff's attorneys fees in the amount of "thirty percent (30%) of the [crude oil escrow] 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). The amount that the Court awarded was approximately \$13.5 million. After both sides appealed to the U.S. Court of Appeals for the D.C. Circuit, the case was remanded for further fact finding concerning what amount of attorneys fees, if any, should be awarded from the crude oil escrow fund to the plaintiffs. *Consolidated Edison v. Bodman*, 445 F.3d 438 (D.D.C. 2006)

Given this claim and other litigation challenges against the crude oil escrow fund, DOE entered into negotiations to resolve all outstanding claims. Following negotiations facilitated by the U.S. Court of Appeals' mediation office, a settlement agreement was reached. The U.S. District Court for the District of Columbia, in the case remanded by the U.S. Court of Appeals, approved the May 1, 2007 Settlement Agreement by an order issued on July 9, 2007.

The May 1, 2007 Settlement Agreement both resolves the litigation between the parties to the agreement and provides for the payment of final refunds to all eligible claimants in this proceeding. Specifically, the DOE agreed to the payment of final refunds to 96 claimants specified in the Agreement by sixty days following the entry of the court order approving the Agreement. The DOE further agreed to the payment of refunds to all other eligible claimants "insofar as practicable and as soon as practicable . . ." Paragraph 1(b) May 1, 2007 Settlement Agreement. Finally, the Agreement provides for the payment of \$6,000,000.00 from available funds to Philip P. Kalodner.

Pursuant to the May 1, 2007 Settlement Agreement, OHA will adopt the following final refund procedures. First, we note that the volumetric refund amount announced in our January 13, 2006 Federal Register notice was based upon the total amount of funds available for distribution as of December 28, 2005, \$284,126,991.33. Of that total, we used \$254,738,494.09 as the numerator of the volumetric calculation, thus reserving \$29,388,497.24 for future payments. From December 28, 2005 through June 30, 2007, an additional \$6,442,820.56 in interest has accrued on these funds. Also adding to the amount available for final refund payments is \$120,785.00 in refunds that would otherwise have been paid to five claimants in this proceeding that have since been found to be ineligible for refunds. We will therefore use the total of these amounts less the \$6,000,000.00 to be paid to Philip P. Kalodner, \$29,952,102.80, as the numerator of the volumetric calculation. As the denominator, we will use 365,541,413,386 gallons, i.e., the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants. This produces a per gallon final volumetric refund amount of \$0.000081939 per gallon.

DOE will not attempt to locate payees of returned refund payments and, as set forth in the May 1, 2007 Settlement Agreement, any remaining undistributed funds will be divided equally between the State governments and the Federal Treasury as a form of indirect restitution in accordance with the Department of Energy's 1986 Modified Statement of Restitutionary Policy.

This decision approves supplemental refunds for the applicants listed in the Appendices to this decision. For each applicant, the Appendices contain the name, case number, and the amount of the supplemental refund. The decision approves supplemental refunds for 96 applicants, totaling \$6,905,898.00.

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 appropriate action to disburse \$6,000,000.00 to Philip P. Kalodner, via ACH payment, as set forth in a memorandum accompanying this Decision and Order.

(2) 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 appropriate action to disburse supplemental refunds to Philip P. Kalodner, on behalf of the Applicants listed in Appendix A to this Order, in the amount of \$5,161,738.00, via ACH payment, as set forth in a memorandum accompanying this Decision and Order.

(3) 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 appropriate action to disburse supplemental refunds to Stanley O. Sher, on behalf of the Applicants listed in Appendix B to this Order, in the amount of \$351,670.00 via ACH payment, as set forth in a memorandum accompanying this Decision and Order.

(3) 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 appropriate action to disburse a total of \$1,392,490.00 in supplemental refunds to the Applicants listed in Appendix C to this Order, in the individual refund amounts specified therein.

(4) The funds shall be disbursed from the escrow fund denominated Crude Tracking-Claimants 4, Account No. 999DOE010Z, maintained at the Department of the Treasury.

(5) Any conditions imposed that applied to an applicant's receipt of the initial crude oil refund shall also apply to that applicant's receipt of this supplemental refund.

(6) The determinations made in this Decision and Order are based upon the presumed validity of the statements and documentary material submitted by the applicants. This Decision and Order may be revoked or modified at any time upon a determination that the basis underlying a refund application is incorrect.

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

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: July 17, 2007

**Appendix A - Supplemental Refund Case No. RB272-10119**

<b>Case No.</b>	<b>Firm</b>	<b>Volume</b>	<b>Refund</b>
RA272-00016	DAIICHI CHUO KISEN KAISHA	261,744,000	\$21,447.00
RA272-00040	GULF STATES PAPER CORP.	78,604,284	\$6,441.00
RF272-00266	KAWASAKI KISEN KAISHA LTD.	780,454,183	\$63,950.00
RF272-00267	NIPPON YUSEN KAISHA	614,617,321	\$50,361.00
RF272-00268	mitsui O.S.K. LINES LTD.	309,427,947	\$25,354.00
RF272-00269	SHINWA KAIUN KAISHA, LTD.	160,951,923	\$13,188.00
RF272-00271	mitsui O.S.K. LINES LTD.	518,527,342	\$42,488.00
RF272-00272	STAR SHIPPING A/S	154,623,118	\$12,670.00
RF272-00274	NIPPON YUSEN KAISHA	297,600,147	\$24,385.00
RF272-00275	mitsui O.S.K. LINES, LTD.	427,537,312	\$35,032.00
RF272-00276	N.V. BOCIMAR S.A.	49,785,885	\$4,079.00
RF272-00277	ISLAND NAVIGATION CORP.	462,317,856	\$37,882.00
RF272-00278	SANKO STEAMSHIP CO., LTD.	949,753,420	\$77,822.00
RF272-00279	WEYERHAUSER CO.	1,662,918,000	\$136,258.00
RF272-00280	INTERNATIONAL PAPER	1,289,160,945	\$105,633.00
RF272-00281	INTERNATIONAL PAPER	718,676,490	\$58,888.00
RF272-00282	SOUTHERN CALIFORNIA EDISON CO.	13,733,696,700	\$1,125,326.00
RF272-00283	CONSOLIDATED EDISON CO. OF NY	12,374,556,408	\$1,013,959.00
RF272-00284	LONG ISLAND LIGHTING CO.	6,098,886,978	\$499,737.00
RF272-00285	SAN DIEGO GAS & ELECTRIC CO.	3,383,405,162	\$277,233.00
RF272-00286	ORANGE & ROCKLAND UTILITIES	2,813,624,646	\$230,546.00
RF272-00287	PACIFIC GAS & ELECTRIC CO.	7,228,540,714	\$592,299.00
RF272-00322	OSCAR A. HERNANDEZ GOMEZ	73,771,214	\$6,045.00
RF272-00387	INTERNATIONAL PAPER	792,064,348	\$64,901.00
RF272-00436	Mittal Steel USA ISG Inc.	2,759,078,224	\$226,076.00
RF272-05189	TECHNOGRAPHICS LIQUID. TRUST	40,950,252	\$3,355.00
RF272-06112	Weyerhaeuser Company	78,498,747	\$6,432.00
RF272-06446	INTERNATIONAL PAPER CO.	3,550,932,590	\$290,960.00
RF272-06447	LITTLE RAPIDS CORP.	1,070,820	\$88.00
RF272-07644	TRADE & TRANSPORT INC.	71,342,376	\$5,846.00
RF272-14611	WEYERHAUSER COMPANY	1,856,193	\$152.00
RF272-14612	WEYERHAUSER COMPANY	203,826	\$17.00
RF272-15878	MEADWESTVACO CORPORATION	14,218,128	\$1,165.00
RF272-21137	WEYERHAUSER COMPANY	1,594,003	\$131.00
RF272-43432	INTERNATIONAL PAPER CO.	686,966	\$56.00
RF272-52846	P. & O. BULK CARRIERS, LTD.	56,050,000	\$4,593.00
RF272-52847	J. LAURITZEN A/S	73,098,981	\$5,990.00
RF272-55119	HOLLINGSWORTH & VOSE CO.	40,913,379	\$3,352.00
RF272-55836	AVONDALE MILLS, INC.	21,817,600	\$1,788.00
RF272-61368	BROSTROMS REDERI AB	141,632,254	\$11,605.00
RF272-61370	VERMAR SHIPPING CO. LTD.	75,411,391	\$6,179.00
RF272-65717	WEYERHAUSER COMPANY	2,214,588	\$181.00
RF272-67316	MEADWESTVACO CORP.	587,998,347	\$48,180.00
RF272-67822	INTERNATIONAL PAPER COMPANY	5,598,153	\$459.00
RF272-77174	INTERNATIONAL PAPER CO.	1,111,878	\$91.00
RF272-93248	ESCANABA PAPER CO.	6,559,579	\$537.00
RK272-00239	LK INC.	42,977,396	\$3,522.00
RK272-00240	LK INC.	23,687,000	\$1,941.00
RK272-01067	INTERNATIONAL PAPER	12,689,223	\$1,040.00
RK272-02311	INTERNATIONAL PAPER COMPANY	1,469,478	\$120.00
RK272-03286	Weyerhaeuser Company	15,166,325	\$1,243.00
RK272-04226	ANDERSON, KILL & OLICK P.C.	130,773,000	\$10,715.00
<b>Totals</b>	<b>52 Applicants</b>	<b>62,994,847,040</b>	<b>\$5,161,738.00</b>

**Appendix B - Supplemental Refund Case No. RB272-10119**

<b>Case No.</b>	<b>Firm</b>	<b>Volume</b>	<b>Refund</b>
RA272-00033	Philippines, Micronesia and Orient Navigation Co.	2,163,681	\$177.00
RF272-00239	A.P. Moller-Maersk A/S	627,172,508	\$51,390.00
RF272-00240	EXEL PLC	88,606,650	\$7,260.00
RF272-00241	Hamburg Sud North America, Inc	230,317,323	\$18,872.00
RF272-00242	HAPAG-LLOYD, A.G.	240,996,571	\$19,747.00
RF272-00243	COMPANIA TRASATLANTICA ESPAÑOLA, S.A..	11,743,982	\$962.00
RF272-00244	CHRISTIAN HAALAND A/S	71,803,764	\$5,884.00
RF272-00245	P&O Nedlloyd B.V.	104,625,524	\$8,573.00
RF272-00246	Volkswagen Transport	10,419,351	\$854.00
RF272-00496	Wilh. Wilhelmsen ASA	174,052,844	\$14,262.00
RF272-03383	ITALIA DI NAVIGAZIONE	174,114,165	\$14,267.00
RF272-04528	ALMI MARITIME AGENCY	18,874,098	\$1,547.00
RF272-06226	BANK LINE, LTD.	52,769,822	\$4,324.00
RF272-09646	LEIF HOEGH & CO.	337,411,999	\$27,647.00
RF272-09908	KUWAIT MARITIME CORP.	7,631,442	\$625.00
RF272-10192	BANGLADESH SHIPPING CORP.	13,503,612	\$1,106.00
RF272-11300	BROSTROMS SHIPPING CO., LTD.	8,984,439	\$736.00
RF272-15357	OVERSEAS ENTERPRISES, INC.	8,804,645	\$721.00
RF272-15363	CONSTELLATION LINE, S.A.	22,651,346	\$1,856.00
RF272-25262	Vrontados, S.A.	26,603,938	\$2,180.00
RF272-41538	Sitinas Shipping Company SA	5,663,304	\$464.00
RF272-41700	Philippines, Micronesia and Orient Navigation Co.	12,954,216	\$1,061.00
RF272-42764	Zim Integrated Shipping Services, Ltd.	595,158,304	\$48,767.00
RF272-43252	OSCO SHIPPING A/S	15,724,612	\$1,288.00
RF272-44156	SEAGROUP, INC.	147,493,230	\$12,085.00
RF272-45853	Compania Commercial San Martin	1,513,984	\$124.00
RF272-45925	SHIPPING CORP. OF INDIA, LTD.	130,620,509	\$10,703.00
RF272-53782	HARALD JACOBSEN SHIPPING A/S	2,222,993	\$182.00
RF272-53783	CROATIA LINE	52,657,556	\$4,315.00
RF272-60953	CHINA OCEAN SHIPPING CO.	18,358,992	\$1,504.00
RF272-63404	ORION SCHIFFFAHRTS-GESELLSCHAFT	572,560	\$47.00
RF272-63458	KOCTUG LINE	8,107,386	\$664.00
RF272-77857	HELLENIC LINES, LTD.	140,492,503	\$11,512.00
RF272-89779	EINAR RASMUSSEN	6,988,260	\$573.00
RF272-89780	JAN-ERIK DYVI	5,500,038	\$451.00
RF272-93324	TITAN NAVIGATION, INC.	14,438,915	\$1,183.00
RF272-98801	GENERAL COUNCIL ON FINANCE AND ADMINISTRATION	742,659,010	\$60,853.00
RK272-00188	STANDARD MARINE, LTD.	4,039,312	\$331.00
RK272-00259	HOME LINES, INC.	153,439,398	\$12,573.00
<b>Totals</b>	<b>39 Applicants</b>	<b>4,291,856,786</b>	<b>\$351,670.00</b>

**Appendix C - Supplemental Refund Case No. RB272-10119**

<b>Case No.</b>	<b>Firm</b>	<b>Volume</b>	<b>Refund</b>
RF272-00204	FLORIDA POWER CORP.	5,553,142,888	\$455,019.00
RF272-00290	PUBLIC SERVICE ELECTRIC & GAS	6,088,325,949	\$498,871.00
RF272-19929	GENERAL MOTORS CORP.	1,493,107,029	\$122,344.00
RK272-02215	EASTMAN CHEMICAL CO.	2,898,562,697	\$237,505.00
RK272-03414	NEW YORK CITY LAW DEPT.	961,092,074	\$78,751.00
<b>Totals</b>	<b>5 Applicants</b>	<b>16,994,230,637</b>	<b>\$1,392,490.00</b>