

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Commonwealth Oil Refining)
Company, Inc./Commonwealth of Puerto Rico)
)
)
Filing Date: June 27, 2014)
_____)

Case No.: RFA-14-0001

Issued: July 29, 2014

Decision and Order

This Decision will consider a plan (Distribution Plan) submitted by the Commonwealth of Puerto Rico (Puerto Rico) to distribute funds held by the Department of Energy (DOE) on Puerto Rico's behalf arising from various settlement agreements entered into by the DOE with Commonwealth Oil Refining Company, Inc. (Corco).¹ These agreements resolved DOE allegations regarding Corco's violations of the federal petroleum price and allocation regulations administered and enforced by the DOE and its predecessor agencies. For the reasons described below, we will approve the Distribution Plan.

I. BACKGROUND

Prompted by rapid increases in world oil prices in 1973, a predecessor agency of DOE, the Cost of Living Council, acting pursuant to the Economic Stabilization Act of 1970, Pub. L. No. 91-39, 84 Stat. 796, 799, on August 22, 1973, issued a system of price controls on the first sale of all domestic production of crude oil. Eventually, regulations were promulgated controlling the allocation and prices of many refined petroleum products in addition to crude oil and providing for enforcement of these regulations.² See 10 C.F.R. 210 *et seq.*; see also Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93-159, Exec. Order 11,748, 38 Fed. Reg. 33,577 (December 6, 1973); Economic Stabilization Act of 1970, as amended, Pub. L. No. 92-210, 85 Stat. 743; Pub. L. No. 93-28, 87 Stat. 27, Exec. Order 11,748, 38 Fed. Reg. 33,575

¹ In this Decision, the acronym DOE will also refer to the DOE-predecessor agencies that originally were charged with instituting and enforcing the various price control regulations. For a brief history of the various governmental agencies responsible for the price control of petroleum products, see *Department of Energy 1977-1994 A Summary History*, DOE/HR-0098 at 5-7, 17-19; see also, OHA website available at <http://www.energy.gov/oha/services/application-refund> (last visited July 18, 2014).

² The price control regulation ended in January 1981.

(December 4, 1973); Cost of Living Council Order No. 47, 39 Fed. Reg. 24 (January 2, 1974).

In 1974, DOE began an audit of Corco's records to determine its compliance with the federal petroleum price and allocation regulations pertaining to the refining and sale of crude oil and other covered petroleum products.³ At the conclusion of the audit, DOE raised issues with regard to Corco's application of various petroleum price and allocation regulations. To avoid litigation, DOE and Corco entered into a settlement agreement (1981 Settlement Agreement) on January 8, 1981. In the 1981 Settlement Agreement, DOE agreed, in exchange for Corco refunding \$7 million to DOE, to resolve all alleged regulatory violations concerning Corco's application of the petroleum price and allocation regulations. Along with the 1981 Settlement Agreement, the parties also entered into a refund distribution agreement (DR Agreement) specifying the procedures to be used to distribute the \$7 million by Puerto Rico to benefit its citizens. These agreements were incorporated into a Consent Order, Case No. RCRA-00001 (1981 Consent Order), between Corco and DOE. *See* 46 Fed. Reg. 8099 (January 26, 1981) (announcement of proposed 1981 Consent Order); 46 Fed. Reg. 29497 (June 2, 1981) (final adoption of 1981 Consent Order).

Under the DR Agreement, DOE would hold the \$7 million until Puerto Rico submitted a distribution plan. Once DOE approved the distribution plan, it would then transfer the monies to a Puerto Rican trust fund and Puerto Rico could then distribute the funds in accordance with the approved plan. DR Agreement at ¶ 3. Puerto Rico established a trust fund and received Corco monies totaling \$5,833,332 from DOE.⁴ However, Corco filed for Chapter 11 bankruptcy protection in July 1984 and stopped making further payments to the DOE. *See* December 29, 1993, Agreed Order Withdrawing Claim of the United States Department of Energy, Case No. 84-01153 LEK (Bankruptcy Ct. W.D. Texas). On November 13, 1984, DOE filed a proof of claim for the \$1,166,668 Corco had failed to transfer to the DOE pursuant to the 1981 Settlement Agreement. *Id.* Eventually, DOE agreed, pursuant to a December 1993 bankruptcy settlement agreement (1993 Bankruptcy Settlement Agreement), to withdraw its claim in Corco's bankruptcy proceeding upon payment of \$700,000 to DOE along with other actions to be taken by DOE. The December 1993 Bankruptcy Settlement Agreement specified that distribution of these monies be made in a manner consistent with the purposes and agreements reflected in the

³ Corco was an oil refinery firm whose facilities were located in Puerto Rico and which transacted most of its petroleum sales in Puerto Rico.

⁴ The DR Agreement specified that the Governor of Puerto Rico propose a plan to distribute the trust fund monies that included the following requirements:

1. Puerto Rico must establish a specific trust fund for holding the Corco moneys.
2. The Governor of Puerto Rico must submit a plan of distribution for the Corco funds to OHA for its approval. The plan should achieve the following objectives in the order of priority in which these are listed:
 - a. To compensate persons in Puerto Rico affected by Corco's pricing practices;
 - b. To assist persons in Puerto Rico that have been affected most severely by the increased costs of energy in Puerto Rico;
 - c. To promote and encourage energy conservation that ultimately will reduce energy costs of those persons in Puerto Rico that have incurred significantly increased costs in their energy consumption; and
 - d. to reduce the dependence of Puerto Rican consumers on high cost imported crude oil and refined petroleum products and to increase the usage of lower cost and more secure sources of energy in order to provide future protection for these consumers which have suffered from these high costs.

DR Agreement at ¶ 3.

1981 Consent Order. 1993 Bankruptcy Settlement Agreement at ¶ 3. This fund, plus interest as of May 31, 2014, totaled approximately \$1,281,000.

II. THE PROPOSED DISTRIBUTION PLAN

On June 27, 2014, Puerto Rico submitted to DOE's Office of Hearings and Appeals (OHA) its proposed distribution plan (Distribution Plan) for the approximately \$1.2 million currently held by the DOE. Request for Authorization/Plan for Distribution of Funds submitted by Jose Maeso, Interim Executive Director, State Office of Energy Policy, Puerto Rico (dated June 26, 2014). The Distribution Plan consists of two components – a program to spend \$2 million to replace street lights with energy efficient LED street lights and a proposed Solar Water Heater Rebate Program for the Island of Vieques (Vieques).⁵ The total amount of funds to be spent for the two projects would total approximately \$2.2 million.⁶

A. LED Street Light Replacements

Puerto Rico proposes to use \$2 million to replace approximately 5,000 street lights with energy efficient LED lamps. This would constitute approximately 1 percent of all of the street lights in Puerto Rico. In determining where the new LED street lights would be placed Puerto Rico has certified that it would use criteria based upon the impact LED street lights would have on municipalities such as: the size of municipalities (smaller municipalities would realize a higher percentage of savings in their energy usage with replacement with LED street lights); a municipality's lack of funds to develop capital projects; and other census data. E-mail from Jose G. Maeso, Interim Executive Director, State Office of Energy, Commonwealth of Puerto Rico, Richard A. Cronin, Jr., Attorney-Advisor, OHA (July 8, 2014).

The Puerto Rico Electric Power Authority (PREPA) is the sole electric, commonwealth-owned utility in Puerto Rico and generates most of the electricity it provides to consumers by burning imported oil and diesel fuels. Distribution Plan at 7. PREPA charges the costs of operating street lights to all of its consumers of electric power. Distribution Plan at 5. Approximately \$120 million per year is charged to PREPA's customers for power used by street lights. Distribution Plan at 5. The proposed 200-watt LED street lights are 50 percent more energy efficient than the current street lights. Puerto Rico estimates that, with the replacement of 5,000 street lights with LED lamps, PREPA customers would save approximately \$600,000 per year. Distribution Plan at 5. Additionally, the LED lamps would produce annual savings of some \$900,000 in operating and maintenance expenses. Distribution Plan at 5. Puerto Rico also points out that the LED lamps would reduce light pollution and could serve as links for the control of the street lights network, wireless communication systems and other systems. Distribution Plan at 5.

B. Solar Water Heater Rebate Program

In its Plan, Puerto Rico proposes to use \$200,000 to establish a Solar Heater Rebate Program for Vieques. Distribution Plan at 8. The population of Vieques resides in approximately 3,700 homes

⁵ Vieques lies in the northeastern Caribbean Sea and is a part of Puerto Rico. For governmental purposes, it is also considered a municipality of Puerto Rico.

⁶ The \$2.2 million would include the \$1.2 million currently held by the DOE along with some approximately \$1.0 million taken from Corco funds already distributed to Puerto Rico. Distribution Plan at 2.

most of which use electric water heaters. Electric water heaters, while relatively cheap and easy to install, are costly to operate. Distribution Plan at 7. The Rebate Program would provide up to \$2,000 in rebates to Vieques homeowners when they purchase and install solar water heaters certified with the Government of Puerto Rico's State Office of Energy Policy. Distribution Plan at 7. Puerto Rico estimates that approximately 100 homes on Vieques, approximately 3 percent of all residences in Vieques, could receive assistance under the Rebate Program. Distribution Plan at 8. Puerto Rico also asserts that this program could encourage other homeowners to adopt this technology.

III. ANALYSIS

In our review of the Distribution Plan, OHA must ensure that Puerto Rico distributes these funds in a manner consistent with the purposes and agreements reflected in the 1981 Consent Order. As discussed below, we find both proposed programs to be consistent with a specified purpose listed in the 1981 Consent Order.

A. LED Street Light Replacement Program

Puerto Rico estimates that by replacing approximately 5,000 street lights, approximately one percent of the total number of street lights in Puerto Rico, with energy efficient LED street lights an annual savings of more than 2 million kilowatt hours (kWh) per year could be saved. Distribution Plan at 5. As referenced above, this would save Puerto Rican consumers a total of \$1.5 million per year. Because PREPA is the sole provider of electricity to Puerto Rico and generates electricity by using imported oil and diesel fuel and because the costs of operating street lights are indirectly charged to Puerto Rican consumers by "fuel adjustment" and "purchased energy clause" charges, the \$1.5 million in annual savings would be distributed to all Puerto Rican electric consumers. This use of the Corco funds would be consistent with a goal listed in Paragraph 3, Section 2.d, of the DR Agreement – "to reduce the dependence of Puerto Rican consumers on high cost imported crude oil and refined petroleum products. . . ." DR Agreement at ¶ 3. As such, we approve the use of Corco funds for the LED Street Light Replacement Project.⁷

B. Solar Water Heater Rebate Program

Vieques is charged the same electric rate as the rest of Puerto Rico, approximately \$0.28 per kWh. Distribution Plan at 7. However, being relatively isolated from Puerto Rico the cost of other energy use is higher because of the need to transport retail gasoline and diesel fuel by air or sea from Puerto Rico or other locations. Distribution Plan at 7. Most of the residential water heaters in Vieques are electric and relatively inefficient and thus costly to operate. Replacement of a residential electric water heater with a solar water heater would result in a 35 percent reduction in a residential unit's monthly energy electricity consumption.⁸ An average residential

⁷ We note that neither this program nor the Solar Water Heater Rebate Program specifically targets consumers injured by Corco's alleged pricing violations. Nonetheless, given the relatively limited amount of funds, and the significant amount of time that has elapsed since the alleged Corco pricing violations, we find that this proposed methodology to effect restitution to almost all Puerto Rican electricity purchasers complies with the DR Agreement since it furthers one of the stated goals in the DR Agreement.

⁸ This estimate was derived by using the DOE's Energy Plus energy modeling software. Distribution Plan at 8.

unit, with an installed solar water heater, would save approximately \$78 on its \$220 monthly electricity costs. If 100 Vieques residences converted from electric to solar water heaters using the proposed Solar Water Heater Rebate Program, 336,000 kWh annually would be saved. Distribution Plan at 8. The proposed rebates of up to \$2,000 would encourage the adoption of solar water heater technology on Vieques.⁹

We find that use of \$200,000 of the Corco funds for the Solar Water Heater Rebate Program would be consistent with the DR Agreement. While the primary effect of the Solar Water Heater Rebate Program would flow to the residents of Vieques, all Puerto Rico electricity consumers would benefit indirectly from the program.¹⁰ Because the residents of Vieques pay the same rate for electricity as the rest of Puerto Rico, all of the residents of Puerto Rico, in part, subsidize the cost of providing electricity to Vieques. Thus, the benefits from this program, reduced energy demand and associated costs, would reach all the consumers of electricity in Puerto Rico. This use of the Corco funds would be consistent with a goal listed in Paragraph 3, Section 2.d, of the DR Agreement – “to reduce the dependence of Puerto Rican consumers on high cost imported crude oil and refined petroleum products. . . .” DR Agreement at ¶ 3.

C. Administrative Costs

In the Distribution Plan, Puerto Rico has budgeted approximately 2.5 percent (\$48,750) of the proposed \$2.2 million (including the approximately \$1.2 million in DOE-held Corco funds) Distribution Plan for administrative costs. We find this proposed expenditure of Corco funds to be reasonable. *See Palo Pinto*, 21 DOE ¶ 85,322 at 88,949 n.1 (approving use of five percent of restitutionary funds to administer programs).

IV. SUMMARY

We approve Puerto Rico’s Distribution Plan for the Corco funds currently held by DOE. Consequently, we will order the transfer of the Corco funds to Puerto Rico for distribution pursuant to the Distribution Plan.

It Is Therefore Ordered That:

(1) The Distribution Plan submitted by the Commonwealth of Puerto Rico on June 27, 2014, to distribute the Commonwealth Oil Refining Company, Inc., funds held by the Department of Energy, as described in the above Decision, is hereby approved.

(2) The Office of Finance and Accounting, Office of the Chief Financial Officer, of the Department of Energy shall take appropriate action to transfer all funds contained in the DOE deposit fund escrow account maintained at the Department of Energy and funded by

⁹ The approximate cost for a 1-panel or 2-panel solar water heater is approximately \$2,200 and \$2,600 respectively. Distribution Plan at 8.

¹⁰ The fact that a certain group of consumers may receive a larger or more direct benefit from the use of restitutionary funds does not necessarily mandate that the proposed use of such funds be rejected. *Cf. Palo Pinto Oil & Gas/Utah*, 21 DOE ¶ 85,322 (1991) (*Palo Pinto*) (OHA approval of the State of Utah’s request to use crude oil overcharge restitutionary funds for State agricultural energy programs).

Commonwealth Oil Refining Company, Inc., Consent Order No. CDCCCCCCCC. Such transfer to the Commonwealth of Puerto Rico shall be made by Automated Clearing House debit. The Commonwealth of Puerto Rico shall provide any needed Automated Clearing House financial transfer instructions to OHA or the Office of Finance and Accounting to facilitate the transfer of the deposit fund escrow account.

(3) The determination made in this Decision and Order is based on the presumed validity of statements and documentary material submitted by the Commonwealth of Puerto Rico. This determination may be revoked or modified at any time upon a determination that the factual basis underlying the Distribution Plan is incorrect.

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

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 29, 2014