

**Office of Hearings and Appeals****Proposed Implementation of Special Refund Procedures**

**AGENCY:** Office of Hearings and Appeals; Department of Energy.

**ACTION:** Notice of proposed implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of \$275,000,000 (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc., Case No. VEF-0030. The OHA has tentatively determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

**DATES AND ADDRESSES:** Comments must be filed in duplicate by January 19, 1996, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0107. All comments should conspicuously display a reference to Case No. VEF-0030.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Wieker, Deputy Director, Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585-0107, (202) 586-2390 [Wieker]; (202) 586-2400 [Freimuth].

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of \$275,000,000 plus interest, remitted or to be remitted to the DOE by Occidental Petroleum Corporation. The DOE is currently holding \$100,000,000, plus accrued interest, of these funds in an interest bearing escrow account pending distribution. The DOE will receive additional annual payments of \$35,000,000 plus interest during the years 1996 through 2000.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are

divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. Any party whose crude oil application is approved will share in all crude oil overcharge funds.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585-0107.

Dated: December 1, 1995.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

Proposed Decision and Order of the Department of Energy

*Implementation Order*

Name of Case: OXY USA, Inc.

Date of Filing: September 18, 1995

Case Number: VEF-0030

The Office of General Counsel, Regulatory Litigation (OGC), formerly the Economic Regulatory Administration (ERA), filed a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The Petition concerns funds remitted to the DOE pursuant to a Consent Order executed by the DOE and Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA, Inc. (OXY). OXY was formerly Cities Service Oil and Gas Corporation, which in turn was a successor in interest to Cities Service Corporation (Cities). Unless otherwise indicated, the firms collectively are referred to as Occidental.

Pursuant to the Consent Order, Occidental agreed to remit \$100 million within 30 days of the Consent Order and then to make five annual payments of \$35 million plus interest. On September 17, 1995, OXY remitted \$100 million to the DOE.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations which were resolved by the Consent Order. This Decision and Order sets forth the OHA's proposed procedures for distributing the consent order funds.

**I. Background**

The Consent Order at issue was executed on June 27, 1995 in proposed form. The DOE published notice of the Proposed Consent Order and the opportunity to file comments. See 60 FR 35186 (July 6, 1995). Following the comment period, the DOE issued the Proposed Consent Order as a final order, pursuant to 10 C.F.R. 205.199j. See 60 FR 43130 (August 18, 1995).

The Consent Order covers the period October 1, 1979 through January 27, 1981 and reflects the resolution of enforcement proceedings related to 91 reciprocal crude oil transactions engaged in by Cities during that period. In those transactions, Cities sold price-controlled crude oil in its refinery inventory in exchange for deeply discounted exempt crude oil.

In 1988, the DOE issued a Remedial Order (RO) holding that the transactions violated the price regulations and that the violation amount of \$264 million, plus interest, should be remitted to the DOE. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). The 1988 RO also remanded the issue of whether the transactions violated other regulations.

In 1992, the OGC issued a Revised Proposed Remedial Order (RPRO), specifying an alternate liability of \$254 million, plus interest, on the ground that 83 of the transactions violated the entitlements reporting requirements. OXY filed objections to the RPRO with the OHA. *OXY USA, Inc.*, Case No. LRO-0003 (dismissed August 30, 1995). The case was ready for oral argument at the time of the June 27, 1995 execution of the Proposed Consent Order.

During the pendency of the OHA proceeding on the RPRO, the Federal Energy Regulatory Commission (FERC) reversed the 1988 RO. *Cities Service Oil and Gas Corp.*, 65 FERC ¶ 61,403 (1993), *reconsideration denied*, 66 FERC ¶ 61,222 (1994). After FERC's denial of reconsideration motions filed by the DOE and intervenor parties, intervenor parties appealed to federal district court, which dismissed their appeals for lack of standing. *Alabama v. FERC*, 3 Fed. Energy Guidelines ¶ 26,693 (D.D.C. June 8, 1995). One of the intervenors had noticed an appeal at the time of the June 27, 1995 execution of the Proposed Consent Order. See 60 FR 35187 note 2.

Although the Consent Order resulted from the enforcement proceeding involving the 91 reciprocal crude oil transactions, the Consent Order is global. The Consent Order provides that it settles all pending and potential civil and administrative claims against Occidental