

Name	Case No.
AUTOMATIC GAS COMPANY, INC	RF304-14250
DISCOUNT FUEL	LEE-0090
DIXIE ELECTRIC MEMBERSHIP CORP	RF272-78389
FRANK THOMPSON TRANSPORT	RF272-78153
IDAHO OPERATIONS OFFICE	VSO-0070
MCDONALD & DONOVAN HEATING	RF304-15001
NATIONAL FRUIT PRODUCT COMPANY	RF272-78120

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Notice of Issuance of Decisions and Orders; Week of April 29 Through May 3, 1996

During the week of April 29 through May 3, 1996, 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: September 10, 1996.

George B. Breznay,
Director, Office of Hearings and Appeals.

Appeal

Stoel, Rives LLP, 4/29/96, VFA-0145

A Freedom of Information Act (FOIA) Appeal from a determination issued by the DOE's Office of Inspector General (OIG) with respect to a request for information concerning the OIG's audit of the Bonneville Power Authority's (BPA) Energy Resource programs was considered by the Office of Hearings and Appeals. The Office of Hearings and Appeals issued a decision on April 29, 1996 remanding part of the Appeal to OIG and denying the Appeal in all other aspects. In reaching its determination, the Office of Hearings and Appeals found that: (1) the identities of audit information sources were properly withheld under Exemptions 6 and 7(C); and (2) the DOE is not required to

produce a *Vaughn* index at the administrative appeal level.

Personnel Security Hearing

Albuquerque Operations Office, 5/1/96, VSO-0079

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. Part 710 concerning eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual has been a user of alcohol habitually to excess, which is derogatory information under 10 C.F.R. § 710.8(j), and has an illness or mental condition, Substance Dependence, Alcohol, which, in the opinion of a board-certified psychiatrist, causes or may cause a significant in judgment or reliability and is thus derogatory information under 10 C.F.R. § 710.8(h). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information. Specifically, the Hearing Officer found that the individual's abstention from alcohol for five months and participation in alcohol abuse counseling for two and a half months were not of sufficient duration to significantly reduce the risk that the Individual might resume drinking. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Oak Ridge Operations Office, 5/2/96 VSO-0068

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The individual was alleged to be alcohol dependent, based upon the diagnosis of a board-certified psychiatrist. The Hearing Officer found that the term "alcohol dependence" as used in DOE regulations meant alcohol dependence as it is commonly understood in the mental health community. However, the psychiatrist

did not apply generally accepted standards in making his diagnosis of alcohol dependence. The Hearing Officer, consequently, could not find that the individual was alcohol dependent. However, the Hearing Officer did find that the individual was a user of alcohol habitually to excess. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Pittsburgh Naval Reactors Office, 5/3/96, VSO-0081

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because of doubts concerning his financial situation and his reliability and trustworthiness. The Hearing Officer found that the individual had failed to mitigate the DOE's concerns arising from the individual's unpaid debts of approximately \$32,000. She found that although the individual's financial crisis appeared to have been caused by the loss of employment, the individual had failed to take any steps to reduce or eliminate the debt once he was reemployed. Accordingly, the Hearings Officer found that the individual had done nothing to mitigate the DOE's concerns regarding his reliability and trustworthiness, and that his access authorization should not be restored.

Request for Exception

Lakes Gas Company, 4/30/96, VEE-0018

Lakes Gas Company (Lakes) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers—Retailers" Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Lake's Application for Exception.

Visa Petroleum, Inc., 4/30/96, VEE-0017

Visa Petroleum, Inc., filed an Application for extension of the exception relief previously granted the firm from the requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In view of the firm's precarious

financial condition resulting from continuing losses and the poor health of the owner's wife, who prepares the report, the DOE found that submitting the report would cause the firm unusually severe problems. Accordingly, exception relief was extended through May 1998.

Supplemental Order

Akin Energy, 4/30/96, VFX-0007

The DOE issued a Supplemental Order regarding Akin Energy (Akin), a

private filing service. In the Supplemental Order, the DOE announces that Akin, its officers and employees are barred from receiving future refund checks in any proceedings conducted by OHA under 10 C.F.R. Part 205, Subpart V. DOE's action was prompted by two instances where Akin failed to repay money erroneously paid to it and are of its clients by DOE. Because Akin failed to repay the amount it owes to DOE, the DOE found that

Akin should be barred from receiving refund checks on behalf of its clients.

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.

CAPITAL TRANSPORT CO., INC.	RR272-0198	04/30/96
CIMARRON VALLEY COOPERATIVE	RF272-97138	05/03/96
AGRI-URBAN, INC.	RF272-97158	
CRUDE OIL SUPPLEMENTAL REFUND	RB272-00074	04/29/96
CRUDE OIL SUPPLEMENTAL REFUNDS	RB272-00075	04/29/96
DALLAS CARRIERS CORPORATION ET AL	RK272-02251	05/03/96
DAVID VOLKERDING ET AL	RK272-02400	05/02/96
EDWARD HUCKMAN ESTATE ET AL	RK272-2920	04/29/96
GEORGIA WILLOUGHBY ET AL	RK272-02640	05/02/96
GULF OIL CORPORATION/FRENCH & CURTIS, INC./WEBBER ENERGY FUELS	RF300-20417	04/30/96
LONDON & OVERSEAS FREIGHTERS ET AL	RK272-2956	04/29/96
LYONDELL PETROCHEMICAL COMPANY	RG272-00532	05/03/96
POWER PRO EQUIPMENT CO./E.V. MARTIN CORPORATION	RK272-03432	05/03/96
PROVIDENCE HOSPITAL	RC272-338	05/02/96
RENNER MOTOR LINES, INC.	RF272-97081	04/29/96
ROGERS DYE-FINISHING	RF272-69198	04/30/96
ROGERS DYE-FINISHING	RD272-69198	

Dismissals

The following submissions were dismissed:

Name	Case No.
CAMERON IRON WORKS	RF272-98747
COKER AVIATION, INC.	RF272-98731
KITTY HAWK AIR CARGO, INC.	RF272-98730
RENTON-ISSAQUAH AUTO TRANSPORT	RF272-99069
WILDER CONSTRUCTION CO., INC.	RF272-77984

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Notice of Issuance of Decisions and Orders; Week of May 27 Through May 31, 1996

During the week of May 27 through May 31, 1996, 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.

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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: September 9, 1996.
George B. Breznay
Director, Office of Hearings and Appeals.
Decision List No. 974

Appeals

Ball, Janik & Novack, 5/29/96, VFA-0159

The DOE's Office of Hearings and Appeals (OHA) issued a determination denying a Freedom of Information Act (FOIA) Appeal filed by Ball, Janik & Novack (Ball). Ball appealed the Bonneville Power Administration's (BPA) withholding of information created as a result of its marketing research. OHA found that the information was properly withheld

under Exemption 5's confidential commercial information privilege.

Gilberte R. Brashear, 5/30/96, VFA-0161

Gilberte R. Brashear filed an Appeal from a determination issued to her on April 8, 1996 by the Department of Energy's Albuquerque Operations Office (AO) which denied a request for information she had filed under the Freedom of Information Act (FOIA). The request sought information regarding the possible exposure to radiation of Mrs. Brashear's late husband while he was in the U.S. Army at Los Alamos, New Mexico. AO stated that it conducted a search of its records at AO's Occupational Safety and Health Division and that it found no responsive documents. The Appeal challenged the adequacy of the search conducted by AO. In considering the Appeal, the DOE found that AO conducted an adequate search which was reasonably calculated to discover documents responsive to