

March 30, 2005

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Motion for Modification

Name of Petitioner: ONC Freight Systems

Date of Filing: March 22, 2004

Case Number: RR272-00320

On July 8, 2003, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order granting an additional crude oil refund of \$22,298 to ONC Freight Systems (ONC). *ONC Freight Systems*, Case No. RR272-00318 (July 8, 2003). Before ONC's representative, McMickle and Edwards (McMickle), could distribute the refund to ONC's parent company, Rocor International (Rocor), Rocor filed for bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code. ONC's representative has filed a submission (which we are deeming a Motion for Modification) requesting OHA's permission to pay the refund to Rocor International's Liquidating Trustee (Trustee) as approved by the U.S. Bankruptcy Court for the Western District of Oklahoma.

As background, we have been informed that pursuant to approval by the Trustee, Rocor sold many of its assets to another firm, New Prime, Inc. (New Prime). However, the sales agreement specifically excluded "capital stock or other equity interest in any of the Seller's (Rocor International) direct or indirect subsidiaries." Section 2.2(g) of Sales Agreement between New Prime and Rocor. ONC and Rocor's other companies were subsequently dissolved. All of Rocor's assets were then transferred to the Liquidating Estate created pursuant to Rocor's bankruptcy petition. *See* First Amended Plan of Liquidation, Case No. 02-17658-TRC (W.D. Okla. July 24, 2003).

After examining the documents presented to us by McMickle, we find that ONC's refund should be paid to the Trustee. We have consistently held that in cases where there is a change in ownership, the right to a refund remains with the owner during the refund period unless (i) the firm was a corporation whose stock was purchased by the current owner or (ii) the business was sold under a contract which specified potential refunds as an asset being transferred. *American Fiber & Finishing, Inc.*, 21 DOE ¶ 85,453 at 89,320-21 (1991). In the present case, Rocor retained the corporate stock of ONC when it transferred ONC's assets to New Prime pursuant to the sales agreement. When ONC was

dissolved Rocor would have then assumed ONC's right to a refund which was then subsequently transferred to the Liquidated Estate of Rocor. Consequently, the Trustee is the appropriate party to receive ONC's refund.

It Is Therefore Ordered That:

- (1) The Decision and Order issued by the DOE on July 8, 2003, *ONC Freight Systems*, Case No. RR272-00318 (July 8, 2003), is hereby modified as indicated in Paragraph (2).
- (2) McMickle & Edwards are ordered to dispense the refund it received on behalf of ONC Freight Systems, Case No. RR272-00318 redesignated RR272-00320, minus any approved fees, to Ms. Janice Lloyd, Esq., Liquidating Trustee for Rocor International, U.S. Bankruptcy Court for the Western District of Oklahoma.
- (3) The determinations made in this Decision and Order are based upon the presumed validity of the statements and documentary material submitted by the applicant. This Decision and Order may be revoked or modified at any time upon a determination that the basis underlying the refund applications is incorrect.
- (4) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: March 30, 2005