

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Commonwealth Oil Refining)
 Company, Inc./Commonwealth of Puerto Rico)
)
) Case No.: RFA-18-0001
Filing Date: May 8, 2018)
_____)

Issued: May 23, 2018

Decision and Order

This Decision will consider a plan (Distribution Plan) submitted by the Commonwealth of Puerto Rico (Puerto Rico) to distribute funds it holds in trust 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 cannot approve Puerto Rico’s request.

I. BACKGROUND

Prompted by rapid increases in world oil prices in 1973, a predecessor agency of DOE, the Cost of Living Council, 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

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 at www.energy.gov/oha/services/application-refund. For a more detailed background of Puerto Rico’s Corco funds, please see *In the Matter of Commonwealth Oil Refining Company, Inc./Commonwealth of Puerto Rico*, OHA Case No. RFA-14-0001 (2014) (“*Puerto Rico I*”).

regulations.² *See, e.g.*, 10 C.F.R. 210 *et seq.*; 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 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).

Puerto Rico established a trust fund ("Corco Trust") and received Corco monies totaling \$5,833,332 from DOE.⁴ However, after Corco filed for Chapter 11 bankruptcy protection, 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 1981 Consent Order. 1993 Bankruptcy Settlement Agreement at ¶ 5.1.

In 2014 Puerto Rico sought authorization to use Corco money to partially fund two projects: the LED Street Light Replacements Program (\$2,000,000.00), estimated to save all Puerto Ricans a collective \$600,000.00 per year in energy costs, and the Solar Water Heater Rebate Program (\$200,000.00), estimated to save each participating household \$78.00 per month in energy costs

² The price control regulation ended in January 1981.

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 distribution plans adhere to 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 the DOE Office of Hearings and Appeals 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 ¶ 5.

and bring down energy prices across the island. *Puerto Rico I*. DOE approved this plan on July 29, 2014, and funds were distributed. *Id.*

On May 8, 2018, Puerto Rico submitted to DOE's Office of Energy Efficiency and Renewable Energy (EE) a Request for Authorization to spend approximately \$1.08 million of its Corco funds pursuant to the Distribution Plan. Request for Authorization/Plan for Distribution of Funds submitted by Francisco J. Rullán Caparrós, Executive Director, State Office of Energy Policy (SOEP), Puerto Rico (dated May 8, 2018) (submitting the Distribution Plan for approval) ("Distribution Plan"). The Distribution Plan proposes to spend the requested Corco funds to build an energy-focused educational complex, the Energy Pavilion, at the Science Park in Bayamon, Puerto Rico. EE referred the Distribution Plan to this office for review.⁵

II. JURISDICTION

We consider Puerto Rico's Distribution Plan under the authority of the Consent Order and DOE regulations. Paragraph 5 of the DR Agreement requires approval by the Secretary of Energy for distributions of Corco funds, even those in Puerto Rico's designated trust. Approval authority is delegated to the Office of Hearings and Appeals (OHA) under 10 C.F.R. 205.287.

III. THE PROPOSED DISTRIBUTION PLAN

The Energy Pavilion would educate visitors on different aspects of energy production and consumption, including energy's origins, its application in daily life, energy efficiency and conservation, power generation, climate change, and renewable energy sources. Distribution Plan at 2. The project would include a 360° theater, interactive tours, establishment of a local energy research center, and lighting retrofitting in the Pavilion's building. Distribution Plan at 2–3; Telephone Conversation between Javier Nuñez, SOEP, and Kristin L. Martin, Attorney-Advisor, OHA (May 11, 2018) (Telephone Conversation). SOEP projects energy savings of 126 MMBtu annually due to reductions in energy consumption by Pavilion visitors, which translates to an annual savings of about \$8,500.00 per year.⁶ Distribution Plan. These savings are based on SOEP's assumption that 3% of Pavilion visitors—300,000 annually, mostly students on school trips—would change their energy use habits⁷. Telephone Conversation; Ex. B at 22. SOEP also asserts

⁵ Puerto Rico tendered 2 exhibits into the record (Exhibits A-B). The exhibits will be cited in this Decision as "Ex." followed by the appropriate alphabetical designation.

⁶The estimated energy savings of 126 MMBtu is equal to 36,927 kWh. *See* Conversion Tool, <http://www.endmemo.com/sconvert/kwhmmbtu.php>. In Puerto Rico, one kWh costs \$0.23. Email from Javier Nuñez (May 11, 2018). Therefore, the cost savings to Puerto Ricans would be approximately \$8,500.00 annually. In a May 11, 2018, email, the SOEP claimed estimated savings of 125,715 kWh per year, which converts to about 436 MMBtu, over three times the energy savings projected in the Distribution Plan. *Id.*; Conversion Tool. If this number is accurate, cost savings would reach nearly \$29,000.00 annually in total.

⁷ This assumption is based on a projection from a 2009 DOE guidance that projected energy savings from a public outreach program in Puerto Rico. Ex. A. Outreach methods for that program included mass media and internet campaigns, seminars targeting specific groups and communities, energy inspections, and implementations of energy conservation measures in state agencies. Ex. A at 1–2. The guidance predicted that 2% of residences reached would implement changes.

Because the Energy Pavilion would primarily reach children, it seems unrealistic that more households would implement changes than would under a program designed to reach the adult decision-makers of households. SOEP did not provide OHA with data supporting its claim that 3% of visitors would implement changes. Furthermore, SOEP offered neither data to support its conflicting projection offered in the May 11, 2018, email, nor a reason why it abandoned its previous, lower projection. Without sufficient data to support them, we cannot give significant weight to SOEP's projections.

that the Energy Pavilion would change energy consumption habits for future generations and that it would reduce dependence on fossil fuel-based energy consumption through increased use of renewable energy sources and decreased energy demand. Distribution Plan at 3; Telephone Conversation.

The Energy Pavilion's research center proposes to use technology to increase energy efficiency on the island. Telephone Conversation. The center intends to develop an "app" that advises users on how to decrease their personal energy consumption. *Id.* The app would also collect data on personal energy use which could be used to formulate and issue recommendations for the entire island. *Id.* The research center also intends to study alternative energy delivery systems that are less vulnerable to hurricane damage than power lines. *Id.* The research center would account for about 25% of the project cost. *Id.*

III. ANALYSIS

Puerto Rico is required to distribute its Corco funds in a manner consistent with the purposes and agreements reflected in the DR Agreement. OHA has always maintained that the primary purpose of the oil overcharge refund settlements and consent orders is to channel the money or its value to consumers. As discussed below, we find the proposed uses of the Corco funds as proposed in the Distribution Plan to be insufficiently related to the purposes specified in the DR Agreement.

A. What Constitutes Restitution to Consumers?

1. *State of Hawaii*

When considering the distribution of oil overcharge refunds, such as the money in Puerto Rico's Corco Trust, "OHA has traditionally favored non-speculative programs that create or channel tangible benefits to customers." *In the Matter of State of Hawaii*, 2000 EOHA Lexis 26 *12. In *State of Hawaii*, the state wanted to use overcharge refund money to fund its Gasoline Overcharge Litigation. *Id.* at *7. While that litigation would, if successful, return over \$150 million to Hawaii's consumers, those consumers would receive nothing if the litigation was unsuccessful. *Id.* at *7, *12. We denied the state's petition because the chances of Hawaiians receiving the restitution envisioned in Hawaii's settlement agreement⁸ were too remote and speculative. *Id.* at *11.

2. *State of Louisiana*

OHA has previously considered the use of overcharge refunds for educational facilities. In *State of Louisiana; Baton Rouge, Louisiana*, 25 DOE ¶ 82,501 (1995), we approved the use of crude oil overcharge refund money to construct and staff a Petroleum Information Center (PIC).⁹ This project, like the Energy Pavilion, consisted of a museum/educational component and a research/data collection component. *Id.* Unlike the Energy Pavilion, however, the PIC's main function was to serve as a data repository for crucial geological and geophysical data that would have been destroyed were the PIC not available for storage. *Id.* The PIC's educational facilities were tangential. *Id.* Its primary public benefit was the free availability of detailed and extensive data that could be used in myriad public works and government research projects. *Id.*

⁸ Hawaii was part of the Stripper Well Settlement. *State of Hawaii* at *1. If the state's proposal did not fall within certain specified programs, the state needed to show that its proposal would (1) reduce the future energy costs of its citizens by enjoining further violations of law that have resulted in overcharges; (2) provide timely restitution to the state's citizens; and (3) be appropriately balanced with the state's overall plan of restitution. *Id.* at *11.

⁹ The funds at issue were also subject to the Stripper Well Settlement. *State of Louisiana*, 25 DOE ¶ 82,501.

B. The Energy Pavilion Distribution Plan

The DR Agreement is meant to pass Corco funds to Puerto Rican energy consumers affected by high energy prices because it was those consumers who overpaid Corco. *See* DR Agreement at 1. The Corco Trust is, after all, a refund. The Agreement identified Plan Objectives that would realize that purpose. *See supra* n.4. The proposed Distribution Plan, however, does not align with those Objectives.

1. Objectives A and B: To compensate persons in Puerto Rico affected by Corco's pricing practices; and To assist persons in Puerto Rico that have been affected most severely by the increased costs of energy in Puerto Rico

After examining the proposed Energy Pavilion project, it is unclear how the funds used to construct the Pavilion would flow to Puerto Rico's energy customers. The cost savings attributable to the Energy Pavilion are, at best, meager in comparison to the investment. While the 2014 projects were projected to return their value in cost savings within 2–4 years,¹⁰ we estimate that it will take nearly 35 years for Puerto Ricans to realize savings equivalent to the cost of the construction of the Energy Pavilion from Corco funds.¹¹

Furthermore, unlike Louisiana's PIC, the Energy Pavilion would not critically support public works or government research projects, nor would it serve a unique, indispensable data storage purpose for Puerto Rico—both purposes that would create a tangible benefit for Puerto Ricans. Rather, its main objective would be to educate the Science Park's visitors. While this goal is important, it will not channel the Corco funds or their value back to consumers.

2. Objective 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

While the Pavilion may promote energy conservation, it would do so only for a self-selected group—those who choose to visit the Science Park—and would not offer concrete incentives for energy conservation, such as those in the 2014 Solar Water Heater Rebate Program. The project's energy conservation efforts would arise primarily from children applying at home what they learned on a field trip. Telephone Conversation. However, children do not have control over household energy consumption habits. In particular, they cannot make the switch to energy efficient appliances or renewable energy sources. Furthermore, even if parents are receptive to their children's newfound wisdom, the Distribution Plan offers no financial assistance for those struggling to afford energy-conserving technology.

3. Objective D: To reduce Puerto Rican consumers' dependence on high cost fossil fuels and to increase the usage of lower cost and more secure sources of energy in order to provide future protection for these consumers

Finally, it is unclear how the Energy Pavilion would reduce Puerto Rican consumers' dependence on fossil fuel-based energy. The SOEP asserts that fossil fuel use will decline due to reduced demand for energy. Telephone Call. However, since most of the Energy Pavilion's visitors would

¹⁰ The streetlight replacements, at savings of \$600,000.00 per year, would return their \$2 million cost in about 3.5 years. *See Puerto Rico I*. The solar water heater rebate program, at savings of \$78.00 per month for 100 households, would return its \$200,000.00 cost in about 14 months. *See Id.*

¹¹ Our estimate of the break-even point for the construction of the Energy Pavilion assumes an annual cost savings of approximately \$29,000. *See supra* at n. 6.

be children, there is insufficient evidence that Puerto Rico would begin shifting to renewable energy sources as a result of this project or would experience significantly decreased power demand.

The energy research center's proposed projects holds promise for improving Puerto Rico's energy future. However, the center would be a relatively small component of the overall project. While it may interact with the public, it would have no discernable nexus with public works projects. It is unclear who would own its data and whether its data and recommendations will be publicly accessible. Moreover, the proposed energy research center focuses on long-term energy plans and policies and does not have a significant impact on reducing Puerto Rico's dependence on fossil fuels in the foreseeable future. Consequently, we cannot conclude that it has a sufficient nexus with any of the purposes specified in the DR Agreement.

IV. CONCLUSION AND ORDER

For the foregoing reasons, we must reluctantly deny Puerto Rico's Request to use its Corco funds pursuant to the Distribution Plan.

It Is Therefore Ordered That:

(1) The Commonwealth of Puerto Rico's May 8, 2018, request to distribute its Commonwealth Oil Refining Company, Inc., funds pursuant to the Distribution Plan, is hereby denied.

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

Poli A. Marmolejos

Director

Office of Hearings and Appeals