

MINUTE ITEM

8/21/75
WFY

15. PENALTY ASSESSMENT FOR LATE PAYMENT, ROYALTY OIL SALES CONTRACT PRC 4832, ORANGE COUNTY; GUSTAFSON OIL COMPANY OF CALIFORNIA - PRC 4832.

After consideration of Calendar Item 15 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO MAKE APPLICATION TO THE BOARD OF CONTROL FOR ACCEPTANCE OF THE \$1,000 PENALTY PAYMENT IN LIEU OF THE TOTAL CLAIM OF \$3,367.15 AND FOR DISCHARGE OF GUSTAFSON OIL COMPANY AND FURTHER LIABILITY ON THE PENALTY ASSESSMENT FOR LATE PAYMENT.

Attachment:

Calendar Item 15 (2 pages)

CALENDAR ITEM

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PRC 4832

15.

PENALTY ASSESSMENT FOR LATE PAYMENT

Royalty Oil Sales Contract PRC 4832 (State Oil and Gas Leases PRC 163 and PRC 426) was issued to Gustafson Oil Company of California on November 29, 1973.

Section 5 of the contract provides that the State shall invoice the purchaser for oil delivered during any month on or about the 10th day of the succeeding month and payment shall be made by the 20th day of that month. Under actual practice it was discovered that the State could not invoice the purchaser by the 10th of the following month. Therefore, after discussing this matter with each of the royalty oil purchasers it was orally agreed that the intent of the contract would be complied with if payment would be made no later than 10 days after receipt of the State's invoice.

Gustafson Oil Company was invoiced on January 10, 1975 (received January 14) for royalty oil delivered during the month of November 1974. The month delay in this billing was caused by an exempt oil posted price change which was announced in December and made retroactively effective to October 1, 1974. Gustafson's payment was received on January 28, 1975, and thereby delinquent by four days. In accordance with Section 6224 of the Public Resources Code, the purchaser was further invoiced for penalty and interest on the late payment in the amount of \$3,367.15.

By letter dated February 3, 1974, Gustafson protested the penalty and interest charge, claiming that the State had not adhered to the payment provision of the royalty oil sales contract, thereby relieving it from its obligations thereunder, and that any oral agreement modifying the payment provision of the contract was not certain with respect to the due date for payments.

Subsequent discussion with Gustafson resulted in a proposed compromise settlement of \$1,000. In view of the apparent misunderstanding of the penalty and invoicing procedures, the purchaser's past record of prompt payments and the likelihood that costs of legal proceedings required to collect the penalty would exceed the total claim, the compromise settlement is recommended by the staff.

The Office of the Attorney General has advised that the charge is legal and proper; however, in light of the fact that Gustafson has indicated an understanding of the oral agreement different from that of the State, a legal proceeding to recover the charge

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may not prove successful. Accordingly, the Office of the Attorney General recommends and supports the acceptance of the offer by Gustafson Oil Company because of the lack of certainty of success of a legal action and, even if successful, the costs of such litigation would very likely exceed the amount recovered.

A proposed amendment to all existing royalty oil sales contracts is currently being drafted to avoid any future misunderstanding with respect to the invoicing and penalty procedures.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO MAKE APPLICATION TO THE BOARD OF CONTROL FOR ACCEPTANCE OF THE \$1,000 PENALTY PAYMENT IN LIEU OF THE TOTAL CLAIM OF \$3,367.15 AND FOR DISCHARGE OF GUSTAFSON OIL COMPANY FROM FURTHER LIABILITY ON THE PENALTY ASSESSMENT FOR LATE PAYMENT.