UNION TEXAS PETROLEUM CORP.

IBLA 86-1562 Decided July 26, 1988

Appeal from a decision by the Director, Minerals Management Service, affirming an order by the Review and Assessment Office, Minerals Management Service, directing Union Texas Petroleum Corporation to pay additional royalties and interest, and denying its request for a refund of those payments. MMS-82-0400-O & G.

Affirmed in part; set aside and remanded in part.

l. Accounts: Refunds--Oil and Gas Leases: Royalties

MMS is not bound by the terms of a consent agreement in which the lessee and the Department of Energy settle all claims and disputes with regard to overcharges in sales of crude oil. MMS properly ordered the lessee to pay the amount, plus late payment charges, which the lessee had withheld from royalty payments as representing MMS' proportionate share of the settlement amount contained in the consent agreement.

2. Accounts: Refunds--Oil and Gas Leases: Royalties

Although MMS is not bound by the terms of a consent agreement in which the lessee and the Department of Energy settle all claims and disputes with regard to overcharges in sales of crude oil from numerous leases, including a Federal lease, the Board will set aside MMS' denial of the lessee's request for a refund of the overcharge allocable to the Federal lease and remand the case for a determination of whether the lessee can show, independently of the consent agreement, whether it is entitled to a refund under 43 U.S.C. | 1734(c) (1982).

APPEARANCES: Scott E. Rozzell, Esq., Houston, Texas, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Union Texas Petroleum Corporation (UTP) has appealed from the June 12, 1986, decision of the Director, Minerals Management Service (MMS), affirming a previous order of the Review and Analysis Office, MMS, dated July 9, 1982, which directed UTP to pay $10,547.65 in withheld royalties plus $l,209.59 in

late payment charges, with regard to crude oil sales from Federal Lease No. 29-000766 (the Carlson "A" Lease).

In a letter dated August 12, 1982, to the Chief, Review and Analysis, MMS, counsel for UTP set forth the facts giving rise to this appeal. These facts are not in dispute and are set forth below:

> In early 1979, the DOE [Department of Energy] completed an audit of the prices charged for crude sold from certain properties operated by UTP during the period September l, 1973 through June 30, 1978. Of the 123 audited properties, DOE initially took the position that there had been overcollections in the sale of crude oil from nineteen. The total amount of these alleged overcollections was $4,412,905. Included in this amount was $51,404 attributable to the Carlson "A" Lease. The DOE alleged that the overcollections attributable to the Lease were the result of an accounting error made during the month of September 1973 and an erroneous calculation of the Lease's base production control level (BPCL) for the period February 1976 to June 1978. * * *
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> Following a review of the DOE's workpapers as well as UTP's records concerning the Lease, UTP determined that DOE was correct in its assertions that (l) UTP had made an accounting error in September 1973 and (2) UTP had erroneously calculated a revised BPCL for the Lease when new regulations became effective in February 1976. It was further determined, however, that the DOE calculations had not taken into consideration the fact that UTP was authorized, under regulations effective September l, 1976, to treat as separate properties the two separate and distinct producing reservoirs which underlie the Lease.
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> At a meeting held on July 11, 1979, UTP informed DOE of its agreement with the government's position concerning the September 1973 accounting error and the erroneous BPCL calculation. UTP further presented its position concerning the treatment of the Lease as two separate properties after September l, 1976. At that meeting, DOE indicated that it would accept UTP's position with respect to separate treatment for the Lease's two reservoirs provided that satisfactory evidence could be provided which would indicate that the appropriate state agency recognized the existence of such reservoirs. By letter dated August 10, 1979, information was furnished to DOE concerning the New Mexico Oil Conservation Commission's recognition that the Lease contains two separate and distinct reservoirs. Also furnished at that time were alternative BPCL calculations for the period subsequent to February 1976. The effect of UTP's alternative BPCL calculation was to reduce by $21,455 the overcollections alleged to have occurred during the period September 1973 through June 1978. * * *
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> Following the receipt of the August 10, 1979 letter, the DOE accepted UTP's position concerning the lease and furnished UTP

> with a revised computation which indicated alleged overcollections attributable to the Lease in the amount of $29,949. UTP reviewed the revised schedule and determined that DOE's contentions with respect to the Lease were correct and that the owners of interests in that property had received excess revenues for the oil sold therefrom. * * *
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> [T]he Lease was only one of nineteen properties that were the subject of overcharge allegations. Of the nineteen, UTP determined that DOE's initial position was correct as to seven. With respect to nine properties (including the Lease), UTP determined that the DOE's position contained either errors of fact or law or accounting mistakes. UTP presented DOE with additional evidence as to these properties. After reviewing such additional evidence, DOE modified its position on all nine properties. UTP determined that DOE's modified position as to such properties was correct.
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> UTP also presented additional evidence as to the correctness of DOE's allegations concerning the remaining three properties * * *. Following several settlement conferences, UTP and DOE were able to agree in February 1980 on a compromise settlement concerning the three remaining properties, thus clearing the way for a Consent Order which concluded all matters raised in DOE's audit of UTP. [Footnotes omitted.]

(Letter dated Aug. 12, 1982, at 2-4).

By letters dated June 26 and November 26, 1980, UTP informed the Review and Analysis Office, MMS, that UTP had entered into the consent order with DOE, that the consent order required UTP to refund the sum of $2.1 million, and that MMS' share of the overcharge refund was $10,547.65, including interest. Subsequently, UTP withheld $10,547.65 from royalty payments due MMS for the production month of August 1981.

By letter dated July 9, 1982, the Review and Analysis Office, MMS, notified UTP of its conclusion that "it is inappropriate for our office to participate in UTP's settlement with the Department of Energy and that UTP's recovery of $10,547.65 from the August 1981 royalty payment was improper." MMS explained this conclusion as follows:

> The Consent Order entered into by UTP represents a voluntary settlement with the Department of Energy involving alleged overcharges on a number of properties other than the Federal lease. No specific settlement amount was designated as applicable to our lease. We noted that it was a negotiated, uncontested settlement of unexplained and alleged pricing violations for which no liability was ever admitted. It appears the settlement was reached to avoid the disruption of UTP's ongoing business as well as the expense and inconvenience of litigation.

(Letter from MMS dated July 9, 1982). MMS directed UTP to remit $10,547.65 plus $l,209.59 in late payment interest charges within 30 days. UTP paid this amount and appealed to the Director, MMS.

UTP presented its reasons for appeal to the Director, MMS, in its letter dated August 12, 1982. UTP argued that "[a]lthough the Consent Order does include refunds attributable to properties where the existence and amount of any overcollections was disputed and thus subject of a compromise between DOE and UTP, the Lease was not such a property" (Letter dated Aug. 12, 1982, at l-2). According to UTP, "only the refunds attributable to three properties were the subject of a compromise. On all other properties (including the Lease), UTP and DOE were in agreement as to the existence and amount of the overcollections." Id. at 5. UTP asserts that as the owner of the largest interest in the lease, it "had no incentive to pay a larger refund than was required by law and UTP is convinced that its resolution of the overcharge allegations with respect to the Lease was correct and in the best interests of all owners of interests in the Lease." Id. In addition, UTP pointed out that "the DOE regulations make all interest owners, including royalty interest owners, responsible for seeing that the crude oil sold for their account was lawfully priced. See 10 C.F.R. || 212.31, 212.72 et seq." Id. UTP concludes that "the participation of MMS in the refunding of these overcollections is not only appropriate, it is required." Id. at 6.

By decision dated June 12, 1986, the Director, MMS, denied UTP's appeal, for the following reasons:

> It has not been established to my satisfaction that the settlement as it relates to alleged overcharges on the Federal lease requires MMS to refund royalties paid. It is not certain whether the Appellant agreed to refund the full amount of overcharges alleged for the Federal lease as a consideration in its compromise of overcharges alleged for the fee leases. In addition, MMS was not a party to the settlement negotiations or agreement. Accordingly, the order denying the refund of royalty and directing payment of the withheld amount is affirmed.

(Decision at 3).

In addition, the Director, MMS, explained that "[i]t is the policy of the MMS to assess late payment charges on all debts not received by the due date. Section 218.102 of 30 CFR and its predecessor provisions state that the failure to make timely payments under leases will result in the collection of late payment charges." Id.

In its statement of reasons for appeal to the Board, UTP advances the same arguments which were rejected by the Director, MMS. For the reasons given below, we agree, essentially, with the rationale given by the Director, MMS, for denying UTP's appeal.

[l] There is no question as to the correctness of MMS' ruling that it was not bound by the consent agreement between UTP and DOE. A valid compromise and settlement agreement is "binding upon the parties and upon those who knowingly accept its benefit." 15A Am. Jur. 2d Compromise and Settlement | 25 (1976). However, such an "agreement is not binding on those not parties thereto, or in privity with some party to it." 15A C.J.S. Compromise and Settlement | 28 (1967). In Scott Burnham, 100 IBLA 94, 94 I.D. 429 (1987), the Board ruled that the Department was not bound by the factual and legal conclusions stated in a settlement agreement which had been reviewed and approved by the court, since the Department was not a party to that agreement.

We find merit in MMS' position that "since MMS did not participate in the settlement process, and since the Consent Order is not explicit as to how the settlement was reached lease by lease, MMS cannot be bound by this settlement which was entered into to protect the lessee's interests but is adverse to the royalty owner" (Answer at 3). MMS contends that UTP and DOE "agreed to settle this case for their own interest, including UTP's desire to avoid civil penalties, disruption to its business and the expense of litigation." Id. at 4. The following provisions of the consent order validate MMS' argument:

> The execution of this Consent Order constitutes neither an admission by UTP nor a finding by DOE that UTP has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration or the DOE * * *.
>
> At the same time and without admitting any liability, UTP desires to settle these matters with DOE and thereby avoid further disruption of its ongoing business activities as well as the expense of protracted complex litigation.

(Consent Order at l).

We find no authority which countenances UTP's procedure of withholding the $10,547.65, which it says represents MMS' share of the overcharge, from royalty payments which subsequently became due. Regulation 30 CFR 218.50 provides that "[r]oyalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday." With regard to onshore oil and gas royalty payments, 30 CFR 218.102 1/ provides that "[t]he failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the MMS of the full amount past due plus a late payment charge." MMS properly applied these provisions in this case.

1/ Regulation 30 CFR 221.80, the predecessor of 30 CFR 218.102, was to the same effect. The regulation was redesignated by final rulemaking dated Aug. 5, 1983 (48 FR 35639).

[2] The proper course would have been for UTP to request a refund of the $10,547.65 pursuant to 43 U.S.C. | 1734(c) (1982), which provides as follows:

> In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

See Blackhawk Coal Company (On Reconsideration), 92 IBLA 365, 93 I.D. 285 (1986).

We cannot determine, based upon the record, whether UTP is entitled to a refund under 43 U.S.C. | 1734(c) (1982). MMS argues that "UTP may have agreed to pay 100 percent of the alleged overpayment on the Federal lease (with the expectation that the lessor would refund the royalty share and reduce UTP's burden) to get a better deal from DOE on the three leases that were compromised," and that "[i]t is because of the possibility of such tradeoffs in a multiple lease settlement that the MMS cannot be bound, for royalty management purposes, to refund a proportional share of the alleged overcharge when that amount may include compromise of civil penalties or tradeoffs for settlements on the leases" (Answer at 5).

Although it is true that MMS cannot be bound under the circumstances, it is equally true that MMS is obligated to refund that amount which UTP can show is allocable to the Carlson "A" Lease. We cannot say, based upon the record, that a portion of the settlement figure contained in the consent agreement should not be attributed to the Carlson "A" Lease. Therefore, we conclude that this case should be remanded to MMS for a determination as to whether UTP can show, independently of the consent agreement, that it is entitled to a refund under 43 U.S.C. | 1734(c) (1982). The determination of MMS shall be appealable to this Board pursuant to 30 CFR 290.7.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and set aside and remanded in part for action consistent herewith.

John H. Kelly
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge