



CUDD OPERATING CORP.

176 IBLA 192

Decided December 11, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CUDD OPERATING CORP.

IBLA 2008-108

Decided December 11, 2008

Appeal from a decision of the Director, Bureau of Indian Affairs, denying an appeal of an order of the Minerals Management Service, directing the reporting and payment of additional royalties for natural gas produced from allotted Indian oil and gas leases based on index zone prices and alternative dual accounting procedures. MMS-05-0043-IND.

Affirmed as modified.

1. Federal Oil and Gas Royalty Management Act of 1982:
Royalties--Indians: Mineral Resources: Oil and Gas:
Royalties--Oil and Gas Leases: Royalties: Payments

In accordance with 30 C.F.R. § 206.172, the Minerals Management Service properly requires a payor to report and pay royalties due on natural gas produced from allotted Indian oil and gas leases located within index zones using the index zone prices and alternative dual accounting procedures where the gas is processed before it flows into a pipeline with an index and the leases either contain a major portion provision or provide for the Secretary to determine the value of production.

APPEARANCES: Benjamin T. Willey, Jr., Esq., Oklahoma City, Oklahoma, for appellant; Matthew E. Fox, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GREENBERG

Cudd Operating Corporation (Cudd) has appealed the October 10, 2007, decision of the Director, Bureau of Indian Affairs (BIA), denying its appeal of an August 23, 2005, order of the Minerals Management Service (MMS), directing it to report and pay \$8,686.62 in additional royalties on natural gas produced from seven allotted Indian oil and gas leases for the months of January through December 2003. MMS based its order on Cudd's failure to use the proper index zone prices (\$4,865.82

in additional royalties due) and to perform dual accounting (\$3,820.80 in additional royalties due) as required by 30 C.F.R. § 206.172.

The Indian Gas Valuation Regulations codified at 30 C.F.R. Subpart 206.170 require that gas produced from allotted Indian oil and gas leases located in index zones and containing either major portion provisions or provisions for Secretarial determination of the value of production for royalty purposes using the applicable index zone prices and either actual or alternative dual accounting procedures if the gas is processed before it flows into a pipeline with an index price. We therefore affirm the Director's decision to the extent it denied the appeal of the requirement that Cudd report and pay royalties based on those factors. However, because MMS utilized the alternative dual accounting increment applicable when a payor has an ownership interest in the plant processing the gas and the record demonstrates that Cudd had no such ownership interest, we modify the amount of additional royalty due by substituting \$2,180.32, the amount of additional royalties due using the increment applicable when there is no plant ownership, for the \$3,820.80 assessed by MMS for failure to perform alternative dual accounting, which, when added to the \$4,865.82 in additional royalties due for failure to use the proper index zone prices, reduces the total amount of additional royalties due from \$8,686.62 to \$7,046.14.

BACKGROUND

Regulatory Background

Effective January 1, 2000, MMS extensively revised the regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. *See* 64 Fed. Reg. 43506 (Aug. 10, 1999). The changes added alternative valuation methods to the existing regulations and were designed

- (1) To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms; and
- (2) To improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties are due.

Id.

Key among the revisions relevant to this appeal is 30 C.F.R. § 206.172, which governs the valuation of gas produced from leases within an index zone when the lease either has a major portion provision or, if it does not contain a major portion

provision, authorizes the Secretary to determine the value of production. 30 C.F.R. § 206.172(a). The regulation provides:

(b) *Valuing residue gas and gas before processing.*

(1) Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (b) explains how you must value the following four types of gas:

(i) Gas production before processing;

(ii) Gas production that you certify on Form MMS-4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later;

(iii) Residue gas after processing; and

(iv) Gas that is never processed.

(2) The value of gas production that is not sold under an arm's-length dedicated contract is the *index-based value determined under paragraph (d)* of this section unless the gas was subject to a previous contract which was part of a gas contract settlement. . . .

(3) The value of gas production that is sold under an arm's-length dedicated contract is *the higher of the index-based value under paragraph (d) of this section or the value of that production determined under § 206.174(b).*^[1]

(c) *Valuing gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value this gas production based on the *higher* of the following two values:

(1) The value of the gas before processing determined under paragraph (b) of this section.

¹ The value of production under 30 C.F.R. § 206.174(b) is the gross proceeds accruing to the lessee or its affiliate.

(2) The value of the gas after processing, which is either the alternative dual accounting value under § 206.173 or the sum of the following three values:

(i) The value of the residue gas determined under paragraph (b)(2) or (3) of this section, as applicable;

(ii) The value of the gas plant products determined under § 206.174, less any applicable processing and/or transportation allowances determined under this subpart; and

(iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *Determining the index-based value for gas production.*

(1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must use the following procedures:

(i) For each MMS-approved publication, calculate the average of the highest reported prices for all index-pricing points in the index zone, except for any prices excluded under paragraph (d)(6)^[2] of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications; and

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

² Under 30 C.F.R. § 206.172(d)(6), “MMS may exclude an individual index price for an index zone in an MMS-approved publication if MMS determines that the index price does not accurately reflect the value of production in that index zone.”

(2) MMS will publish in the Federal Register the index zones that are eligible for the index-based valuation method under this paragraph. . . .

30 C.F.R § 206.172 (emphasis added).

As referenced in 30 C.F.R § 206.172(c)(2), if gas produced from an Indian lease requires dual accounting, that requirement can be met either through accounting for comparison (actual dual accounting) under 30 C.F.R. § 206.176, or through alternative dual accounting under 30 C.F.R. § 206.173. Actual dual accounting value for royalty purposes is the greater of the following two values:

(1) The combined value of the following products:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 206.172 or § 206.174, less any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 206.52, less applicable allowances.

(2) The value of the gas prior to processing determined under either § 206.172 or § 206.174, including any applicable allowances.

30 C.F.R. § 206.176(a).

The alternative method for dual accounting

(1) . . . adjusts the value of gas before processing determined under either § 206.172 or § 206.174 to provide the value of the gas after processing. You must use the value of the gas after processing for royalty payment purposes. The amount of the increase [above the value of the gas before processing] depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower, as provided in the table in paragraph (b)(2)(ii) of this section. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher, as provided in paragraph (b)(2)(ii) of this section.

(2) To calculate the value of the gas after processing using the alternative methodology for dual accounting, you must apply the increase to the value before processing, determined in either § 206.172 or § 206.174, as follows:

(i) Value of gas after processing = (value determined under either § 206.172 or § 206.174, as applicable) x (1 + increment for dual accounting); and

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range, determined under paragraph (b)(3) of this section, in the following table:

....

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from measurements at the facility measurement point(s) for gas production from the lease.

30 C.F.R. § 206.173(b).³ A payor must make a separate election to use the alternative methodology for dual accounting for Indian leases in each MMS-designated area and the election must apply to the payor's leases in that area.

30 C.F.R. § 206.173(a)(2). Dual accounting is not required if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone or into a mainline pipeline not in an index zone but, if dual accounting is not performed, the payor must certify to MMS that the gas flows into such a pipeline before it is processed. 30 C.F.R. § 206.176(c).⁴

Factual and Procedural Background

Cudd is the operator of seven Indian allotted oil and gas leases, all of which are situated in designated areas that have index zone prices. Six of those leases are

³ The regulation also provides that, if the Btu value is equal to or less than 1,000 Btu/cf, the payor is not required to perform dual accounting. 30 C.F.R. § 206.173(b)(4)(ii).

⁴ MMS requires payors to use MMS Form-4410 to either document that dual accounting is not required or, if dual accounting is required, to elect either actual dual accounting or alternative dual accounting. See Aug. 23, 2005, Order to Report and Pay Additional Royalties (Order to Pay) at 4.

located within Oklahoma Designated Area Zone 1 and one lease is located within Oklahoma Designated Area Zone 3.⁵ See Order to Pay, Enclosure 1. Section 3(c) of the leases contains major portion provisions which authorize the Secretary, in his discretion, to calculate the value of production for royalty purposes “on the basis of the highest price paid or offered . . . at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced or sold from the field where the leased lands are situated and the actual volume of the marketable product” The leases further provide that “[t]he actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary be deemed mere evidence of or conclusive evidence of such value.” *Id.* The natural gas produced from the leases is sold at the wellhead to Scissortail, a midstream company that gathers gas for processing, and goes into the Scissortail Gathering System for transportation via a non-index pipeline to a processing plant where it is processed, after which the residue gas goes into a pipeline with an index. See Mar. 27, 2007, Memorandum to Case Record; see also Aug. 17, 2007, Memorandum to Case Record and attached Aug. 16, 2007, facsimile transmittal. Cudd “has no markup for or involvement in transportation or treatment of the gas or anything else related to it.” Apr. 12, 2007, Letter from Benjamin T. Willey, Jr., attached to Apr. 23, 2007, Memorandum to Case Record.

After analyzing the information Cudd had reported for the months of January through December 2003, MMS advised Cudd in an August 23, 2005, Order to Pay that it had determined that Cudd had incorrectly reported its gas royalties for that period by failing to comply with 30 C.F.R. § 206.172.⁶ Order to Pay at 1. Specifically, MMS concluded that, based on the reported lines in Cudd’s Reports of Sales and Royalty Remittance, Forms MMS-2014, for the evaluated period, Cudd had underpaid royalties by \$4,865.82 due to not using the proper index zone price for its gas production and by an additional \$3,820.80 for not performing dual accounting. Order to Pay at 3. In addition to explaining how it had calculated the index zone

⁵ The leases within Zone 1 include leases 6150032800, 6150032810, 6150034470, 6150034480, 6150034650, and 6150036130; the lease in Zone 3 is lease 6020016180. Order to Pay, Enclosure 1.

⁶ MMS explicitly stated that its Aug. 23, 2005, Order to Pay did not constitute an audit and reserved the authority to perform an audit to verify Cudd’s performance in response to that order and to confirm the accuracy of the underlying volumes, product valuation, and supporting cost information. See Order to Pay at 1.

price liabilities⁷ and the dual accounting liabilities,⁸ MMS also informed Cudd of how the operator could comply with dual accounting requirements:

Cudd is required to perform accounting for comparison (dual accounting) as required by MMS regulations at 30 CFR 206.172(c) (2004). Cudd may compute and pay royalties using actual dual accounting or the alternative dual accounting as described in the regulations at 30 CFR 206.173 (2004). The alternative method utilizes an increment in value based on gas quality and *plant ownership* of the gas plant where production from Indian leases is processed. If Cudd is not required to perform dual accounting, Form MMS-4410 should be used to make the election not to perform dual accounting. Form MMS-4410 is also used to elect actual dual accounting or alternative dual accounting. Cudd failed to file Form MMS-4410, and no information was provided that documents plant ownership. Therefore, MMS calculated royalty due for Cudd based on the alternative dual accounting methodology using the increment required when there is ownership in the gas plant.⁹

Order to Pay at 4. MMS further advised Cudd of the importance of reporting accurate gas Btu values measured at the Bureau of Land Management approved facility measurement point at least semi-annually, citing 30 C.F.R. § 202.558(a)(2).
Order to Pay at 5.

⁷ MMS stated that it had calculated the \$/MMBtu gas sales price by converting the reported royalty value into a value in dollars per MMBtu; had computed gas Btu by using the formula ((Gas MMBtu/Sales Volume) x 1000); and had calculated the index zone liabilities by comparing the index zone price to the \$/MMBtu price, adjusted for transportation, reported on the Forms MMS-2014. Order to Pay at 4.

⁸ MMS explained, that applying the alternative dual accounting method, it had increased the index zone price by the appropriate increment listed in the table in 30 C.F.R. § 206.173(b)(2)(ii) for the gas Btu value calculated from the information on the Forms MMS-2014, and that, after applying the appropriate increment for dual accounting to the index zone price and calculating the dual accounting royalty value by lease on a monthly basis, it had compared this value to the individual royalty lines, as adjusted, as reported on the forms, to identify dual accounting liabilities. Order to Pay at 4.

⁹ MMS also noted that royalties in addition to the extra \$3,820.80 royalty related to alternative dual accounting might be due upon MMS' verification of other factors affecting royalty, such as incorrect reported volumes or incorrect royalty rates. Order to Pay at 4.

MMS ordered Cudd to pay the additional royalties shown in Enclosures 2 (Oklahoma Index Zone Liabilities for Sales Months 200301-200312) and 3 (Oklahoma Index Zones Designated Area - Dual Accounting Liabilities for Sales Months 200301-200312) by the due date in the attached invoice (Sept. 27, 2005), adding that because the enclosures were based on the information Cudd had reported on its Forms MMS-2014, Cudd should review the enclosures and identify any reporting errors before paying the additional royalties. Order to Pay at 5. MMS also informed Cudd of its right to appeal the order pursuant to 30 C.F.R. §§ 290.100-290.110. Order to Pay at 6.

Cudd appealed the Order to Pay to the Deputy Commissioner for Indian Affairs pursuant to 30 C.F.R. § 290.105. In its appeal, as amended, Cudd asserted that (1) dual accounting was not required because no gas was processed before it flowed into a pipeline with an index; (2) the volumes of gas used in making the calculations were inaccurate because production from the well at issue had declined from the reported 30.32967% to only 21.60320% of the production from the unit of which it was a part; (3) the Btu value of the gas was inaccurate because “the Scissortail Well payments from the sale of gas have been based on an MMBTU decimal of 1.154% whereas the MMBTU value that has been paid to MMS is based on 1.23%,” an error allegedly caused by outdated information; (4) royalties have in fact been overpaid by \$5,314.22 because, in addition to the inaccurate volumes and Btu values, its purchaser had paid a price lower than the index price; (5) it was being penalized for both allegedly not using the proper index zone price and also for not performing dual accounting; (6) MMS had not provided any documentation supporting the price used in computing royalty underpayments; and (7) it was not the seller of the gas produced and had no control over the price obtained. Response to Order to Report and Pay Additional Royalties (Response) at 1-2; Amended Appeal and Response at 2. Cudd attached a summary of the purported royalty overpayments, which included payments from July 2002 through May 2005, to its Response. Cudd did not submit any revised Forms MMS-2014. However, on July 5, 2006, Cudd filed a Form MMS-4410, electing alternative dual accounting for its leases in Oklahoma Zone 1, effective July 1, 2002, and stating that it had no ownership in the processing plant. See attachment to Aug. 17, 2007, Memorandum to Case Record.

Director's Decision

In his October 10, 2007, decision, the Director, BIA, denied Cudd's appeal of the Order to Pay. He identified five issues raised by the appeal: (1) was Cudd required to perform dual accounting in the absence of an MMS finding that the gas was processed?; (2) was Cudd required to use Oklahoma/Texas Index Zone prices in valuing lease production for royalty purposes?; (3) were the gas volumes and Btu values used by MMS correct?; (4) did Cudd overpay royalties; and (5) did MMS fail

to provide documentation supporting the prices used in calculating the royalty underpayments?. Decision at 2.

As to the first issue, the Director stated that, while dual accounting was not required if the lease production was never processed, such accounting was required if the gas was processed before it flowed into a pipeline with an index, citing 30 C.F.R. § 206.172(c), which provides that such gas must be valued for royalty purposes based on the higher of the value of the gas before processing *or* the value of the gas after processing as computed by alternative or actual dual accounting.¹⁰ Decision at 2. He rejected Cudd's argument that the lease production, while ultimately processed, was not processed before it flowed into a pipeline with an index, pointing out that the Scissortail Gathering System into which the gas flowed for transport to a processing plant did not have an index and that only after the gas was processed did the residue gas flow into a pipeline with an index. He further noted that the case record supported the dual accounting requirement, citing the Form MMS-4410 electing alternative dual accounting, which he opined Cudd would not have filed if dual accounting were not required, and Cudd's acknowledgment that it received Scissortail Well payments from the sale of the gas. Because Cudd had submitted nothing to support its allegation that the gas was not processed before it flowed into a pipeline with an index, the Director concluded that the gas was subject to 30 C.F.R. § 206.172(c) governing the valuation of gas processed before it flowed into a pipeline with an index and that MMS therefore properly required Cudd to perform dual accounting consistent with 30 C.F.R. § 206.173(c). Decision at 2-3.

Addressing the second issue, the question of the applicability of the Oklahoma/Texas Index Zone price, the Director noted that 30 C.F.R. § 206.172(a)(1) required the use of index zone prices if the lease was in an index zone and contained a major portion provision or provided for the Secretary to determine the value of production, both of which were undisputed here. Cudd's assertion that it could not obtain a price equal to the index zone price did not relieve it of the responsibility to value production based on that price, the Director explained, because even if the actual market value of the gas at the wellhead and the actual values of other gas produced and purchased in the index zone were less than the index zone prices, the lease terms, regulations, and precedent clearly established that the value of production could exceed a lessee's proceeds. He also pointed out that the regulations requiring the use of the index zone prices had the force and effect of law and were binding on MMS and could not be waived. Accordingly, he concluded that Cudd's

¹⁰ Although neither the Director nor the regulation explicitly state that actual dual accounting is one of the options, the values to be summed identified in 30 C.F.R. § 206.172(c)(1), (2), and (3), *i.e.*, the values of the residue gas before processing, the gas plant products, and any associated drip condensate, essentially track the components of actual dual accounting set out in 30 C.F.R. § 206.176(a)(1).

lease production was subject to index zone pricing for royalty valuation purposes. Decision at 3-5.

As to the third issue, the accuracy of the volumes and Btu values, the Director pointed out that MMS had used the values Cudd had reported on its Forms MMS-2014, which Cudd had not amended or corrected, despite being afforded the opportunity to do so. Absent any contrary documentary evidence, he concluded that MMS had not erred in using the reported volumes and values in computing the royalties due. He did, however, render this portion of the decision without prejudice to Cudd's right to submit properly documented amended Forms MMS-2014 which could serve as a basis for adjusting the royalty calculations. Decision at 5.

The Director also rejected Cudd's fourth argument, finding that Cudd's claim that it had overpaid royalties was based on its averments related to inaccurate volumes and Btu values and to its receipt of less than the index price from its purchaser for the gas. Relying on his earlier conclusions on those issues, he dismissed Cudd's royalty calculations. Decision at 5.

Finally, the Director found no merit in Cudd's contention that it had not been provided with documentation supporting the price MMS used to compute the royalty underpayments. He observed that the Order to Pay had clearly stated that the royalties had been calculated using the Oklahoma/Texas Index Zone pricing for the periods at issue and that three enclosures appended to the order had set forth in considerable detail the specific index prices used. He further noted that the index prices were published in the *Federal Register* and were a matter of public record, and that Cudd, as a holder of interests in Indian leases, was charged with knowledge of those prices. Decision at 5-6. The Director therefore denied Cudd's appeal.

DISCUSSION

On appeal Cudd contends that MMS has failed to provide any evidence that the natural gas was processed in such a manner as to require dual accounting, including any evidence that the gas "is processed before it is transported to a processing plant." Notice of Appeal at 2. Cudd asserts that the gas indisputably is sold at the wellhead, after which it is no longer Cudd's gas, and avers that MMS is improperly seeking to place the burden on Cudd to prove that the gas is not processed, whereas the burden should be on MMS to prove that the gas is in fact processed. Notice of Appeal at 1, 2. Cudd also reiterates both its contention that the gas volumes and Btu values used in MMS' computations are incorrect, stating that it will review the matter of the proper volume and Btu values and will submit revised Forms MMS-2014 if appropriate, and its position that royalties were overpaid. Cudd further maintains that the leases at issue indicate that alternative valuation by the Secretary is not mandatory; that the Secretary has the discretion to value royalties

based on the amount actually received or on the index zone price; and that where, as here, the payor does not receive the amount assessed as the basis for royalty value, valuing production based on the index zone price constitutes an abuse of discretion. We find none of these arguments to be persuasive.

[1] The Board has consistently held that section 3(c) of allotted Indian land oil and gas leases, as well as previous versions of the royalty valuation regulations for production from Indian leases, require and have always required dual accounting for processed gas produced from Indian leases and directed that processed gas must be valued and royalty paid on the value derived from dual accounting if that value is higher than the value of the unprocessed gas, even when the unprocessed gas is sold at the wellhead. *See, e.g., Union Oil Company of California*, 167 IBLA 263, 271-72 (2005); *Alexander Energy Corp.*, 153 IBLA 238, 242 (2000); *Robert L. Bayless*, 149 IBLA 140, 150-51 (1999). The recently revised Indian gas valuation regulations set forth in detail above, retain and refine those requirements and provide explicit instructions as to when and how dual accounting is to be performed. *See* 30 C.F.R. §§ 206.172, 206.173, 206.176. Thus, in accordance with those regulations, since the record establishes that Cudd's leases are located within an index zone and contain major portion provisions, the value of the gas produced from those leases is subject to dual accounting if it is processed before it flows into a pipeline with an index, regardless of the fact that Cudd sold the unprocessed gas at the wellhead. *See* 30 C.F.R. § 206.172(c); *Union Oil Company of California*, 167 IBLA at 271.

Although Cudd asserts that MMS has not shown that the gas was processed before it was transported to a processing plant, the key question is whether the gas was processed *before it entered a pipeline with an index*.¹¹ MMS determined that Cudd sold its unprocessed gas at the wellhead to Scissortail, a midstream company that gathers gas for processing; that the gas then went into the Scissortail Gathering System, which does not have an index, and was transported to a processing plant; and that after processing, the residue gas went into a pipeline with an index. Cudd neither disputes nor provides any evidence challenging those findings. In addition, Cudd's election of alternative dual accounting for its leases in Oklahoma Index Zone 1 on the Form MMS-4410 it submitted on July 5, 2006, effective July 1, 2002, implicitly acknowledges that its leases are subject to dual accounting. *See* attachment to Aug. 17, 2007, Memorandum to Case Record.¹² Accordingly, we find no error in

¹¹ Cudd's argument is somewhat puzzling since if the gas was already processed, there would be no need to transport it to a processing plant.

¹² Although Cudd complains that it was not provided with the Aug. 17, 2007, Memorandum to Case Record and its attachments, the memorandum and attachments are part of the administrative record. Cudd could have inspected the

(continued...)

the Director's and MMS' conclusion that the gas was processed before it entered a pipeline with an index, and that dual accounting was therefore required under the regulations.

Cudd's contention that MMS abused its discretion by refusing to accept the actual price received for the gas as the value for royalty purposes also fails. While the leases grant the Secretary discretion in determining value for royalty purposes, the Secretary has exercised that discretion by promulgating the Indian gas valuation regulations at 30 C.F.R. Subpart 206.170. These duly promulgated regulations have the force and effect of law and are binding on the Department. *Bookcliff Rattlers Motorcycle Club*, 171 IBLA 6, 16 (2006); *Richard S. and Cathy L. Maddock (On Reconsideration)*, 165 IBLA 200, 208 (2005); *Pacific Offshore Operators, Inc.*, 165 IBLA 62, 76 (2005); *Kathleen S. Rawlings*, 137 IBLA 368, 372 (1997); *Alamo Ranch Co., Inc.*, 135 IBLA 61, 69 (1996); *Conoco, Inc. (On Reconsideration)*, 113 IBLA 243, 249 (1990). MMS was therefore required to follow the regulations when valuing the gas produced from Cudd's Indian leases for royalty purposes and to use the appropriate index zone prices, rather than the prices Cudd actually received, when determining the value of the gas for royalty purposes.¹³ MMS' authority to base royalty on the value of processed gas, even if the lessee sells the unprocessed gas from the lease at a lower price, has also been upheld by the courts. *See Amoco Production Co. v. Watson*, 410 F.3d 722, 725-26 (D.C. Cir. 2005), *aff'd. sub nom. BP America Production Co. v. Burton*, 549 U.S. 84 (2006). Accordingly, we find that MMS did not abuse its discretion by refusing to assess value based on the prices Cudd actually received for its gas.

Although Cudd reiterates that the volumes and Btu values MMS used to compute royalties were inaccurate, it admittedly has not yet verified the volumes and Btu values nor has it filed revised Forms MMS-2014 correcting those alleged inaccuracies. Accordingly, it has presented no basis for reversing MMS' reliance on the reported volumes and values. And since Cudd relies on those purported inaccuracies and the actual prices it received for the gas as the basis for its claim that it overpaid royalties, we must reject that claim as well.

While we affirm the Director's decision to the extent it denied Cudd's appeal of MMS' conclusions that dual accounting was required and that the dual accounting

¹² (...continued)

record at the appropriate MMS office. *See Center for Native Ecosystems*, 161 IBLA 135, 138 (2004).

¹³ The regulatory determination to base royalty value on index zone prices if higher than the price actually received for unprocessed gas also comports with the Department's trust responsibility. *See* 64 Fed. Reg. 43506 (Aug. 10, 1999).

was properly based on the index zone prices and volumes and Btu values reported by Cudd, we must nevertheless modify the amount of additional royalties assessed because MMS based its alternative dual accounting computation on the increment applicable where the payor has an ownership interest in the gas processing plant. *See Order to Pay* at 4. The Form MMS-4410 submitted by Cudd on July 5, 2006, states that Cudd has no plant ownership. *See attachment to Aug. 17, 2007, Memorandum to Case Record.* Thus, MMS should have used the increment applicable where there is no gas plant ownership. *See 30 C.F.R. § 206.173(b)(2)(ii).* Using the correct increment reduces the additional royalty due for failure to perform dual accounting from \$3,820.80 to \$2,180.32. *See Order to Pay, Enclosure 3 at 2.* Accordingly we modify the amount of additional royalty due by substituting \$2,180.32 for the \$3,820.80 assessed by MMS for failure to perform alternative dual accounting, which, when added to the \$4,865.82 in additional royalties due for failure to use the proper index zone price, reduces the amount of additional royalties due from \$8,686.62 to \$7,046.14.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified by this decision.

_____/s/_____
Sara B. Greenberg
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge