AMOCO PRODUCTION CO.

IBLA 86-253 Decided April 8, 1987

Appeal from a decision of the Director, Minerals Management Service, affirming an order denying a claim for refund of royalties paid on gas production under lease OCS-G 2113.

Affirmed.

1. Oil and Gas Leases: Royalties -- Outer Continental Shelf Lands Act: Oil and Gas Leases

Where the lessee under an Outer Continental Shelf oil and gas lease commits 10 percent of its gas production from the lease to buyer A and enters into a transportation agreement with buyer A to transport the uncommitted production to other buyers, the value of a "transportation allowance" (a percentage of the natural gas being delivered to buyer A as compensation for transportation service) will be calculated on the basis of a value determination letter pertaining to the sale of 10 percent of the production to buyer A and not warranty contract prices for sale of gas to other buyers.

APPEARANCES: George J. Domas, Esq., Anne E. Tate, Esq., New Orleans, Louisiana, for appellant; Charles R. Shockey, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Amoco Production Company (Amoco) appeals from a decision of the Director, Minerals Management Service (MMS), dated October 4, 1985, affirming a decision issued by the Regional Manager, Tulsa Regional Compliance Office, dated September 25, 1984, which denied Amoco's request for refund of overpaid royalties on gas produced from lease OCS-G 2113, Eugene Island Block 322, Offshore Louisiana.

By letter dated October 31, 1980, Amoco forwarded a copy of its Gas Purchase and Sales Agreement with Tennessee Gas Pipeline Company (Tennessee) to the Geological Survey (GS), informing GS that this agreement covered the purchase and sale of 10 percent of the gas from lease OCS-G 2113. In addition, Amoco informed GS that "[t]he remaining ninety percent (90%) of the gas has been reserved by Amoco to supply gas under its warranty to Florida Gas Transmission Company [Florida Gas] and Florida Power & Light Company [FP&L]."

On March 12, 1982, the Metairie Office, MMS, issued its royalty value determination letter which provides in pertinent part:

> In accordance with 30 CFR 250.66, effective with the date of first production, the value for computing royalties shall be based upon the lease delivery volume times the regulated sales price, or higher if received, including adjustments for BTU content, and the 0.5 cents per MCF gathering allowance as provided in the Natural Gas Policy Act (NGPA) of 1978. All volumes and prices shall be reported and adjusted to a pressure base of 15.025 PSIA.

Amoco sold all of its gas production from the lease to Tennessee from the time of first production in February 1981 through September 1982. Beginning in October 1982, and continuing through December 1983, Amoco elected to deliver a portion of the gas from this lease to Florida Gas and FP&L. These deliveries were made in partial satisfaction of Amoco's long-standing warranty contract obligations to those two companies.

On November 14, 1983, Amoco requested a refund, claiming excess royalty payments had been made on gas produced from lease OCS-G 2113 for the production months of October 1982 through July 1983. Amoco stated the excess royalty payment was primarily due to errors in the BTU adjustment and the allocation of sales between Florida Gas and FP&L. Subsequently, on February 23, 1984, Amoco modified its refund request and lowered the amount of refund requested to $55,485.49.

By decision of September 25, 1984, the Regional Manager denied Amoco's refund request. He found that during September 1982 through December 1983, 3.09 percent of the gas produced from Eugene Island Block 322 was delivered to Tennessee as compensation for transportation of gas to a delivery point on the Florida Gas Transmission Pipeline. The Regional Manager noted that Amoco had valued this 3.09 percent of the gas produced and sold at the Florida Gas contract price. He stated the MMS value determination letter to Amoco dated March 12, 1982, established the appropriate NGPA price as the basis for royalty calculation for gas from Eugene Island Block 322 delivered to Tennessee. He explained that when the 3.09 percent volume of the "uncommitted" gas was delivered to Tennessee it should have been priced at the proper NGPA classification. He found no overpayment of royalties on the subject lease and denied Amoco's refund request.

On October 18, 1984, Amoco appealed the Regional Manager's denial. Amoco asserted that it had properly valued all gas being sold from lease OCS-G 2113 in accordance with the royalty valuation letter. Amoco argued that the 3.09 percent of natural gas identified by the Regional Manager as a "transportation allowance" should be valued at the Florida Gas price because this volume was not a part of the 10 percent of the total gas production sold to Tennessee, but was a part of the 90 percent of gas production sold to Florida Gas.

On October 4, 1985, the Director issued his decision affirming the Regional Manager's denial of Amoco's refund request. In his decision, the Director stated that the value determination letter covered the gas production under lease OCS-G 2113, and that the value determination letter contained no limitation restricting its application to the 10 percent committed to Tennessee. He concluded that the "transportation allowance" gas delivered to Tennessee is included within the scope of the letter. The Director noted that the value determination required the gas be valued at the regulated price or a higher price if received. Under 30 CFR 206.150, production may properly be valued at the regulated price. Accordingly, he concluded that the Regional Manager properly valued the "transportation" gas at the appropriate NGPA price.

The Director referred to Amoco's statement of reasons in which it asserts that the gas in question was utilized by Tennessee and was "deducted from the 90 percent of the gas production being delivered to Florida Gas or FP&L." The Director concluded that under the circumstances it was appropriate to value this gas at the NGPA price applicable under the Tennessee sales contract rather than the Florida Gas contract and, therefore, Amoco is not entitled to a royalty refund for the period October 1982 through July 1983. 1/

In its statement of reasons Amoco contends that it has properly valued royalties on all gas produced from lease OCS-G 2113 for royalty purposes in compliance with the value determination letter. Again, Amoco's primary contention is that the transportation allowance (the 3.09 percent of natural gas being delivered to Tennessee for Tennessee's fuel and use requirements associated with the transportation service) is part of the gas sold to Florida Gas to be transported by Tennessee. Therefore, Amoco reasons that this transportation allowance is properly valued at the Florida Gas price because this volume was not part of the 10 percent of the gas being sold to Tennessee.

Amoco asserts that it is valuing the gas for royalty purposes at the highest prices legally permissible. It notes that the gas being sold to Florida Gas is being sold at the "FPC-approved price" which is the price that was established by the Federal Power Commission in the certificate issued to Amoco for the sale of this gas. Amoco states that the gas being sold to FP&L is valued at the maximum lawful price established under section 105 of NGPA, 15 U.S.C. § 3345 (1982), the section under which gas being sold to FP&L qualifies.

1/ In addition, the Director found that Amoco had failed to meet the requirements of 30 CFR 290.3(a) which provides that "the notice of appeal shall incorporate or be accompanied by such written showing or argument on the facts and laws as the appellant may deem adequate to justify reversal or modification of the order or decision." On appeal, MMS does not contend that Amoco's prior appeal to MMS was defective (MMS Answer at 2.)

In response, MMS contends that Amoco's decision to use royalty gas from this lease to compensate Tennessee could not possibly permit that gas to be valued at the warranty contract prices. MMS emphasizes that the gas in question was never sold to Florida Gas or FP&L and was never used to meet Amoco's warranty obligations. MMS points out that the gas was delivered to Tennessee, not Florida Gas or FP&L, and Tennessee was at all times the beneficial owner of the gas under the terms of the Transportation Agreement. Accordingly, MMS reasons that the 3.09 percent of the gas from the lease delivered to Tennessee under the Transportation Agreement, like the 10 percent of the gas sold out-right under the terms of the Gas Purchase and Sales Agreement, was properly valued based on the value determination letter issued to Amoco in March 1982.

[1] The sole issue for consideration is whether the royalty for the "transportation allowance," the 3.09 percent of natural gas being delivered to Tennessee for its fuel and use requirements under the Transportation Agreement, should be calculated in accordance with the value determination agreement of March 12, 1982, or in accordance with the warranty contract prices.

The value basis for computing royalties for the lease in question is set forth in 30 CFR 206.150:

> The value of production shall never be less than the fair market value. The value used in the computation of royalty shall be determined by the Director. In establishing the value, the Director shall consider: (a) The highest price paid for a part or for a majority of like-quality products produced from the field or area; (b) the price received by the lessee; (c) posted prices; (d) regulated prices; and (e) other relevant matters. Under no circumstances shall the value of production be less than the gross proceeds accruing to the lessee from the disposition of the produced substances or less than the value computed on the reasonable unit value established by the Secretary.

There is no doubt that under the Gas Purchase and Sales Agreement, Amoco has committed for sale to Tennessee 10 percent of Amoco's gas to be produced from the lease. The royalty value for that 10 percent of the gas is governed by MMS' value determination letter of March 12, 1982. This letter has not been challenged or amended and it remains applicable for royalty determinations for gas produced during the time period in question. Amoco Production Co., 85 IBLA 121, 127 (1986).

Under section 4.2 of the Transportation Agreement between Amoco and Tennessee, Amoco agreed to deliver up to 3.09 percent of the uncommitted 90 percent of the gas to Tennessee to compensate Tennessee for the transportation of gas for sale to other buyers. There is no logical way that this gas can be differentiated from the 10 percent sold by Amoco to Tennessee. It is like-quality gas sold from the same field to the same buyer by the same seller. Therefore, as for that transportation allowance percentage, the value for royalty determination purposes is the same as the 10 percent sold to Tennessee.

Amoco contends that this transportation allowance should be "deducted" from the 90 percent of the gas production not committed to Tennessee and held for delivery to Florida Gas or FP&L and should be valued for royalty purposes at either Florida Gas or FP&L value. A discussion of royalty valuation based on these warranty contracts necessarily involves consideration of Amoco Production Co., 85 IBLA 121 (1985), and Amoco Production Co. (On Reconsideration), 94 IBLA 129 (1986). In those cases we held a value determination letter to be binding upon MMS and the producers unless and until rescinded or modified. Amoco Production Co. (On Reconsideration), 94 IBLA at 132.

The March 12, 1982, value determination letter provided the basis for determining the value for computing royalties with respect to the natural gas produced by Amoco from OCS-G 2113 and 2606, and sold to Tennessee. The proper basis for determining the value of gas produced under lease OCS-G 2113 is thus the price paid by Tennessee pursuant to the October 20, 1980, agreement between Amoco and Tennessee. There has never been a dispute regarding who received the gas. The October 20, 1980, agreement provided for "payment in kind" for transportation of gas to others. The Gas Purchase and Sales Agreement was executed contemporaneously with the Transportation Agreement (Transportation Agreement at 1). We are hard pressed to believe that the charges were not negotiated using the same values as set in the Gas Purchase and Sales Agreement. In effect, Amoco committed 10 percent of the gas to Tennessee and an additional amount under the Transportation Agreement in lieu of payment of transportation charges being assessed by Tennessee. The value determination agreement set the basis for determination of royalties for gas delivered to Tennessee and is binding on Amoco. 2/

We hold that the "transportation allowance" gas delivered to Tennessee to compensate Tennessee for its transportation of gas to Florida Gas and FP&L has the same value for royalty calculation purposes as the 10 percent of the gas production sold by Amoco to Tennessee. The March 12, 1982, value determination letter is applicable to the "transportation allowance" gas, either as a direct result of the value determination letter or by way of application of the value determination letter to a value determination made pursuant to 30 CFR 206.150(a). The results are the same.

Therefore, 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.

R. W. Mullen
Administrative Judge

We concur

Gail M. Frazier
Administrative Judge

John H. Kelly
Administrative Judge

2/ The value of the gas delivered to parties other than Tennessee is not at issue in the case now before us.