

Appeals from decisions of the Director, Minerals Management Service, denying transportation allowances for line losses. MMS-84-0053-OCS, et al.

Affirmed.

1. Minerals Management Service -- Oil and Gas: Pipelines: Generally -- Oil and Gas Leases: Royalties -- Outer Continental Shelf Lands Act: Oil and Gas Leases

The Minerals Management Service correctly concluded that 30 CFR 202.150(a) precludes the deduction of line losses attributed to the transportation of royalty oil from the wellhead of an Outer Continental Shelf oil and gas lease to an onshore delivery point, as a transportation allowance.

APPEARANCES: Michael A. Gist, Esq., Houston, Texas, for appellant; Peter J. Schaumberg, Esq., and Douglas O. Bowman, Esq., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Conoco, Inc. (Conoco), has appealed from four decisions of the Director, Minerals Management Service (MMS), affirming orders issued by the Chief, Royalty Valuation and Standards Division, Royalty Management Program, MMS, denying that part of Conoco's transportation allowance requests attributable to a 0.2-percent line loss for royalty oil produced on Outer Continental Shelf oil and gas leases (see Appendix).

The leases in question issued pursuant to section 8 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337 (1982). In accordance with the terms of these leases, the Government exercised its option to take its royalty in kind. Conoco was required to transport Federal royalty oil to an onshore delivery point. Conoco contracted with pipeline companies to transport the royalty oil from the wellheads to onshore facilities. Conoco paid those third parties for the transportation costs and then sought a transportation allowance in accordance with 30 CFR 209.120. MMS issued orders disallowing the 0.2-percent line loss allowances sought by Conoco.

In accordance with 30 CFR 290.2, Conoco appealed those orders to the Director, MMS. He affirmed the orders, concluding that line loss allowances

should be disallowed pursuant to 30 CFR 202.150. Conoco appeals the Director's decisions.

In its statements of reasons for appeal, Conoco argues that applying 30 CFR 202.150 to these leases violates specific lease terms that entitle lessees to reimbursement of the reasonable cost of transporting Federal royalty oil from the offshore wellhead to the onshore delivery point. Conoco asserts that MMS' application of this regulation conflicts with industry practice and legal authority. It maintains that the regulation is applicable only when the wellhead and the delivery point are the same, which is not the situation in these cases. Conoco insists that the 0.2-percent line loss allowance it requested is reasonable as it is the percentage the Federal Energy Regulatory Commission (FERC) tariff scheme allows. Conoco claims that the MMS denial of a line loss allowance was arbitrary, capricious, and a violation of the intent and purpose of the OCSLA, 43 U.S.C. § 1337 (1982).

MMS responds that the Director applied the plain meaning of 30 CFR 202.150, a duly promulgated regulation, and that consistency with industry practice is not the measure of the validity of a regulation. MMS also argues that the FERC tariff scheme is irrelevant and that Conoco has not met its burden of showing error in the Director's decisions.

[1] Appellant insists that an allowance for transportation losses should be included in the reimbursement of transportation costs. Neither the leases nor the OCSLA mention transportation loss allowances. Nevertheless, the Department has long recognized the necessity for transportation allowances. However, the Secretary "has discretionary authority to determine the factors to be used in computing such a transportation allowance for royalty purposes." Shell Oil Co., 52 IBLA 15, 20, 88 I.D. 1, 3-4 (1981).

The Secretary exercised that discretion in promulgating 30 CFR 202.150(a), which provides:

(a) The royalty on crude oil, including condensates separated from gas without the necessity of a manufacturing process, shall be a percentage of the value or amount of the crude oil produced from the leased area. The percentage shall be established by statute, regulation, or the provisions of the lease. No deduction shall be made for actual or theoretical transportation losses. [Emphasis added.]

MMS applied the clear language of regulation 30 CFR 202.150 and correctly determined that it precluded deduct on of line losses as a transportation allowance. There is no basis for appellant's argument that the regulation is applicable only when royalty valuation is at the wellhead; the regulation makes no such distinction.

This Board has no authority to declare invalid a duly promulgated regulation of this Department. Such a regulation has the force and effect of law and is binding on the Department. Western Slope Carbon, Inc., 98 IBLA 198

(1987); Sam P. Jones, 71 IBLA 42, 44 (1983). Thus, the Secretary's regulatory conclusion that no deduction for transportation losses may be made must be applied.

Conoco's argument that a 0.2-percent line loss allowance is reasonable because it is part of the FERC tariff for the pipeline used to transport oil from the leases in question lacks merit. The fact that a line loss allowance may be included as part of the FERC tariff is not controlling. What is controlling, as explained above, is the Secretary's duly promulgated regulation which specifically states that line losses are not deductible.

Finally, Conoco contends that MMS' decisions violate the intent and purpose of OCSLA. However, that Act specifically provides the Secretary of the Interior with authority to promulgate regulations to carry out its purposes. 43 U.S.C. § 1334(a) (1982). The regulation applied in this case, 30 CFR 202.150, was promulgated pursuant to that authority.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Director, Minerals Management Service, are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

R. W. Mullen
Administrative Judge

APPENDIX

IBLA Docket No.	MMS Docket No. Subject to Appeal	Lease Numbers
86-1541	MMS-84-0053-OCS	OCS-G-1665
		OCS-G-2213
		OCS-G-4264
	MMS-84-0055-OCS	OCS-G-1673
		OCS-G-3339
86-1542	MMS-84-0018-OCS	OCS-G-1666
		OCS-G-2589
		OCS-G-3776
86-1643	MMS-84-0037-OCS	OCS-G-1673
		OCS-G-2213
		OCS-G-3339
		OCS-G-4253
		OCS-G-4264
86-1644	MMS-84-0052-OCS	OCS-G-2588
		OCS-G 2110

Certain leases (OCS-G-1673, OCS-G-2213, OCS-G-3339, OCS-G-4253, and OCS-G-4264) are included in more than one appeal because the MMS orders denying line loss allowances related to different periods of time, e.g., the time period involved for lease OCS-G-2213 in IBLA 86-1541 is Aug. 1 to Dec. 31, 1984, while in IBLA 86-1643 the time period for that same lease is June 1 to July 31, 1984.