

SANTA FE ENERGY CO.

IBLA 86-1561, 87-44, 87-45

Decided January 25, 1989

Appeals from decisions of the Director, Minerals Management Service, requiring restitution of unauthorized credits, and affirming, in part, the assessment of interest charges for the late payment of royalties. MMS-85-0190-OCS, MMS-85-0262-OCS, and MMS-85-0313-OCS.

Affirmed.

1. Outer Continental Shelf Lands Act: Refunds

A person claiming a refund of excess royalty payments must file a request within 2 years of the date payments were made. A refund claimant may not circumvent the refund procedures prescribed by Congress in sec. 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1339 (1982), by "offsetting" prior alleged overpayments against future payment obligations.

2. Oil and Gas Leases: Royalties--Payments: Generally

MMS properly assesses late payment interest charges if royalty payments for oil and gas leases are unpaid or underpaid on the date the amounts are due. The imposition of late payment charges is appropriate to compensate the Government for the loss of the time value of the funds due but not paid.

APPEARANCES: Joyce Colson, Esq., Houston, Texas, for appellant, Santa Fe Energy Company; Cass C. Butler, Esq., Peter J. Schaumberg, Esq., and Christina K. Navarro, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Santa Fe Energy Company (SFE) appeals from decisions dated June 27 and July 15, 1986, by the Director, Minerals Management Service (MMS), requiring restitution of unauthorized credits and affirming, in part, orders of the Royalty Management Program (RMP) assessing late payment interest charges. We have consolidated the appeals because the facts and legal issues are similar.

On September 11, 1985, the Manager, Tulsa Regional Compliance Office, MMS, issued an order assessing SFE late payment interest charges of \$6,415.04 under Lease OCS-G 3977, Vermilion Block 57. In January 1982,

SFE overpaid its royalties on this lease. In May 1983, SFE offset the overpayment by taking an unauthorized credit adjustment on its MMS Form

2014 (Report of Sales and Royalty Remittance). Pursuant to an RMP order, SFE, on October 25, 1984, paid MMS \$15,914.32, the amount it had offset on its May 1983 remittance. In MMS' September 11, 1985, order, the late payment interest charges (\$6,415.04) on the amount offset were calculated from February 1982 through October 24, 1984. SFE appealed, and in a decision dated July 15, 1986, the Director, MMS, found this interest calculation improper to the extent it included the period prior to May 1983. Accordingly, he affirmed the assessment of late payment interest charges as limited to the period May 1983 through October 1984. SFE's appeal from this decision was docketed as IBLA 87-44.

On August 2, 1985, the Tulsa Regional Compliance Office, MMS, issued an order requiring SFE to remit \$41,050.42 in unauthorized credit adjustments taken by SFE in the sales months October and December 1981, and in January and March 1982, under Lease OCS-G 3141, Vermilion Block 397. SFE paid the amount ordered on September 10, 1985, and appealed. By decision dated June 27, 1986, the Director, MMS, affirmed the order, holding essentially that SFE's credits constituted refunds not authorized by section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. | 1339 (1982). SFE's appeal from this decision was docketed as IBLA 86-1561.

On November 1, 1985, the Tulsa Office, MMS, issued an order assessing SFE late payment interest charges of \$20,980.89 on its unauthorized credits under Lease OCS-G 3141. In its order, MMS calculated late payment interest charges from the dates the credits were taken through September 9, 1985. The Director, MMS, affirmed the assessment by decision dated July 15, 1985. SFE's appeal from this decision was docketed as IBLA 87-45.

SFE does not challenge the amounts of interest charges. Instead, SFE contends that its credit adjustments, or offsets, corrected royalty overpayments and therefore did not result in underpayments or late payments of royalties on which interest charges could be assessed. Alternatively, SFE contends that no late payment interest charges should be assessed because its underpayments and overpayments should be regarded as estimated payments. SFE further suggests that no interest is due because (under its theory of offsetting) royalties have been paid in full and further payments would unjustly enrich MMS.

MMS contends that SFE's crediting violated section 10 of the OCSLA, 43 U.S.C. | 1339 (1982), and is subject to late payment interest charges under section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. | 1721 (1982), and applicable regulations. MMS asserts that SFE's credits cannot be considered as estimated payments exempt from interest charges under 30 CFR 218.150(b).

The issues in these appeals are whether SFE's unauthorized credits are subject to the statutory refund process under section 10 of OCSLA and whether MMS properly assessed late payment interest charges.

[1] Section 10(a) of OCSLA provides that where it appears to the Secretary of the Interior that any person has paid in excess of what he was lawfully required to pay, "such excess shall be repaid * * * if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment."

The credits taken by SFE in October and December of 1981 and March and January of 1982 were subject to the refund process of section 10 of OCSLA. In Mobil Oil Co., 65 IBLA 295, 304 (1982), the Board stated: "With respect to refunds, repayments, or credits, the 2-year period in the statute applies * * *. The purpose of the 2-year limit is to urge lessees to verify their accounts promptly and ascertain the correctness of payments within the time provided." (Emphasis supplied.)

In Mobil Oil, *supra*, the Board clarified the proper use of the term "offsetting." Agreeing with Solicitor's Opinion M-36942, Refunds and Credits under the Outer Continental Shelf Lands Act, 88 I.D. 1090 (1981), the Board observed that "offsetting" is the crediting of overpayments against past payments due and that "offsetting has nothing to do with refunds and is permissible within the auditing period, whether or not that period is within 2 years of the date of the audit." [1/] OCSLA's reference to crediting, as in section 10(b) ("refund of or credit for such excess payment") refers, on the other hand, to credits "against future payments due and is governed by the 2-year limitation in the statute just as refunds and repayments are." 65 IBLA at 303.

In Kerr McGee Corp., 103 IBLA 338 (1988), the appellant filed a request in January 1978 for reimbursement of royalty payments made between 1961 and 1970. In February 1978, the appellant deducted the amount for which it had requested reimbursement from its monthly report of sales and royalty, filed with the Geological Survey. Affirming MMS' decision that appellant's "offset" was improper, the Board stated:

If this procedure were countenanced, we would thwart the will of Congress, which has expressly provided how refunds for overpayments are to be processed. The Secretary of the Interior, not the individual claimant, is empowered to pass judgment on refund requests and only requests which are timely filed are entitled to be approved.

103 IBLA at 340. Under section 10 of OCSLA, a person claiming a refund must file a request within 2 years of the date the payments were made. SFE's attempt to obtain credits for prior overpayments through an offsetting

1/ Mobil Oil Co., *supra*, involved an audit by the Department in which under- and overpayments of royalties were discovered.

procedure which circumvents section 10 of OCSLA cannot be endorsed by this Board. Kerr-McGee, supra.

[2] Section 111(a) of FOGRMA, 30 U.S.C. | 1721(a) (1982), specifically provides in the case of oil and gas leases, that "where royalty payments are not received * * * on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments." Departmental regulation 30 CFR 218.54 implements this statutory provision. Moreover, this Board has held that the Government has the authority, independent of any specific grant thereof, to make a unilateral determination of interest owed. Yates Petroleum Corp., 104 IBLA 173 (1988), and cases cited. Royalty payments for oil and gas produced from a Federal lease are "due at the end of the month following the month during which the oil and gas is produced and sold." 30 CFR 218.50(a). Thus, royalty payments made after the end of the month following the month of production and sale are late and subject to the accrual of a late payment charge, in accordance with 30 CFR 218.54.

The record shows that SFE underpaid its royalties under these leases and that it paid MMS the amounts owing at times subsequent to the due dates. Clearly, these were untimely payments subject to the assessment of late payment interest charges under the above authorities. SFE's arguments ignore the time constraints of 30 CFR 218.50(a) and the equitable right of the United States to be compensated for the loss of funds due it under the royalty management program. Sonat Exploration Co., 105 IBLA 97, 120 (1988), and cases cited.

SFE's argument that underpayments and overpayments should be regarded as estimated payments is without merit. As MMS points out, the estimated royalty exception (to assessment of late charges) of 30 CFR 218.150(b) refers to situations where "estimated payments * * * have already been made timely and otherwise in accordance with instructions provided by MMS to the payor." Explaining its policies, MMS states that a lessee may make an estimated royalty payment for January production in February, whereupon the lessee will have until the end of March to make the actual payment. When the payment is made in March, however, MMS asserts the estimated payment rolls forward 1 month, thereby constituting the estimated payment for February production. If it is subsequently determined that the lessee owes additional royalties for January production, MMS states that the estimated payment is no longer available to cover that late payment, and interest charges are properly assessed (MMS Answer in IBLA 87-44) at 7). The facts in these cases are significantly different from the circumstances intended to be covered by MMS' estimated payment procedures.

Citing 30 CFR 290.4, SFE requests oral argument. This regulation refers to oral argument before the Director, MMS. In a case pending before the Office of Hearings and Appeals, oral argument may be granted at the discretion of the Director or an Appeals Board. 43 CFR 4.25. We have decided these appeals on the basis of clearly applicable statutory and regulatory authority and well-established precedent. Oral argument is unnecessary and the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the MMS Director's decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge