

**Editor's note: Reconsideration denied by Order dated Dec. 19, 1989**

SANTA FE ENERGY CO.

IBLA 87-644

Decided August 21, 1989

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, granting in part an appeal of an order assessing late payment charges. MMS-86-0210-OCS.

Decision affirmed as modified.

1. Administrative Procedure: Generally--Appeals: Generally--Rules of Practice: Generally--Res Judicata

The doctrine of administrative finality applies to preclude reconsideration of an agency decision when a party had an opportunity to obtain review but failed to file an appeal.

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

Assessment of late payment interest charges is proper notwithstanding lessee's claim that payment was delayed because MMS did not provide necessary information before the deadline for payment.

APPEARANCES: Joyce Colson, Esq., of Houston, Texas, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Santa Fe Energy Company (Santa Fe) appeals a May 19, 1987, decision of the Assistant Director for Program Review, Minerals Management Service (MMS). In its decision, MMS granted in part Santa Fe's appeal of interest assessed for late payment of royalties due under oil and gas leases.

The interest assessments which are the basis for this appeal are the result of late payment of royalties on reimbursements received pursuant to Federal Energy Regulatory Commission (FERC) Order No. 94. There is no indication in the record that Santa Fe appealed the underlying royalty assessments. However, appellant did timely appeal the interest assessments pursuant to 30 CFR 290.3. In its decision, MMS agreed with appellant's argument concerning the date from which interest had been calculated and

accordingly reduced the amount assessed from \$19,022.60 to \$5,388.90. In addition, MMS rejected Santa Fe's contention that FERC Order No. 94 payments are non-royalty bearing, found the appeal of the underlying royalty assessment to be untimely, and disputed the allegation that the payment instructions were inadequate.

In its statement of reasons (SOR) before the Board, appellant argues that payments received under FERC Order No. 94 are not royalty bearing and that even if MMS were entitled to the royalties, Santa Fe should not be assessed interest for late payment because, despite its good faith efforts, it was unable to receive adequate payment instructions from MMS.

[1] Although the issue of an untimely filed appeal was addressed in both the MMS decision and its answer to appellant's SOR, 1/ that is not the issue presented by the record. Appellant did not file a notice of appeal of the decisions assessing the underlying royalties; rather, appellant presents arguments concerning the underlying royalties as a part of its appeal of the interest assessments.

The doctrine of administrative finality bars consideration of an issue after a party was given an opportunity to seek review but failed to do so. United States v. Jones, 106 IBLA 230, 246, 95 I.D. 314, 323 (1988); Turner Brothers, Inc., 102 IBLA 111, 121 (1988). Thus, as appellant had an opportunity to appeal the assessment of the underlying royalties but failed to do so, we need not consider appellant's arguments concerning their validity and the MMS decision is modified accordingly.

Appellant maintains that even if the FERC Order No. 94 payments are royalty bearing, MMS should not assess late payment interest because, despite numerous requests, appellant was unable to obtain appropriate payment instructions from MMS until September 4, 1985, and the payments were made promptly thereafter. 2/ Therefore, Santa Fe asserts that its royalty payments were in fact timely.

Pursuant to 30 U.S.C. | 1721 (1982), "In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall

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1/ Both the Assistant Director and counsel for MMS correctly maintain that untimely appeals to the Director are properly dismissed pursuant to 30 CFR 290.3(a). Pennzoil Oil & Gas, Inc., 61 IBLA 308 (1982); Texaco, Inc., 51 IBLA 243 (1980).

2/ Appellant does not specifically mention the defense of laches. However, to the extent, if any, that it maintains MMS is barred from assessment of late payment interest by laches, "the authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties." Amoco Production Co., 78 IBLA 93, 101 (1983).

charge interest on such late payments or underpayments \* \* \*." The applicable regulation, 30 CFR 218.54 (1985), provides: "An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due."

It is well established that the purpose of late payment charges is to reimburse the Government for the time value of royalties due but not paid. Cities Service Oil & Gas Corp., 104 IBLA 291, 295 (1988). Yet, appellant suggests that because its questions concerning calculation of royalties were not answered by MMS until September 1985, Santa Fe, rather than the United States, should benefit from the use of the funds.

On April 16, 1985, MMS issued a "Dear Payor" letter advising lessees of the proper method for paying royalties on FERC Order No. 94 reimbursements. The payment method described in the letter required reporting the royalties for each month individually, as is common for all MMS royalty reporting. The late payment charges at issue arose because certain of appellant's purchasers refunded FERC Order No. 94 monies in lump sums. Consequently, to calculate royalty due, appellant needed either the actual monthly breakdown of the funds from its purchasers or instructions from MMS on the proper method of allocation.

The record reveals that appellant requested from MMS instructions for the proper method of allocating the lump sum payments and those instructions were received by Santa Fe on September 4, 1985. Appellant also asserts that it attempted to obtain the monthly breakdowns from its purchasers, and that some of its purchasers did provide Santa Fe with figures for individual months (SOR at 4). <sup>3/</sup>

[2] "It is the responsibility of the lessee to report and fully pay all royalties timely." Cities Service Oil & Gas Corp., 104 IBLA 291, 295 (1988). Appellant would have the United States bear the cost of its inability to get the needed information from its purchasers; however, we have previously rejected lessees' arguments that they should be excused from late payment charges because of the actions of others. Dugan Production Corp., 107 IBLA 91 (1989); Christmann Energy Corp., 107 IBLA 179 (1989); Cities Service Oil & Gas Corp., *supra*.

Moreover, in Phillips 66 Natural Gas Co., 107 IBLA 223 (1989), Phillips' argued that there should be no late payment charge because MMS had failed to provide the information needed to properly calculate the royalty amount, despite possession of the same information by Phillips' co-operators. We rejected Phillips' argument. Appellant presents no evidence or contention to justify a different finding herein.

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<sup>3/</sup> Late payment charges for royalties due on those purchasers' reimbursements are not at issue here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Assistant Director's decision of May 19, 1987, is affirmed as modified.

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John H. Kelly  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge