

DUGAN PRODUCTION CORP.

IBLA 87-518

Decided October 6, 1989

Appeal from a determination of the Assistant Director for Program Review, Minerals Management Service, assessing late payment charges. MMS-87-0021-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties: Payments: Generally

Late payment interest charges are properly assessed if royalty payments for oil and gas leases are underpaid when due.

2. Oil and Gas Leases: Royalties: Payments

The Associate Director, MMS, has considerable latitude in determining the value of production for the purpose of computing royalty and he properly requires a lessee to remit royalty on the basis of the price the lessee could have obtained for a certain category of gas where such price was higher than the price for which the lessee actually sold the gas.

APPEARANCES: Robert G. Stovall, Esq., Farmington, New Mexico, for appellant Dugan Production Corporation; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Dugan Production Corporation (Dugan) has appealed from a March 24, 1987, decision by the Assistant Director for Program Review, Minerals Management Service (MMS), sustaining an assessment of \$2,146.52 imposed for late payment of royalties.

By invoice No. 02500323, dated April 3, 1985, MMS billed Dugan \$2,316.66 in late payment charges for untimely payment of royalties on certain wells in the San Juan Basin, New Mexico. Upon consideration of additional information submitted by Dugan, MMS reduced the late payment charges to \$2,146.52, the amount in controversy herein.

The circumstances giving rise to this appeal are not in dispute. Dugan explains in its statement of reasons (SOR) that the appeal involves allocation of gas production from two central purchase meters it operates. One of these is the "Good Times" central purchase meter measuring the production of 10 gas wells. Production from 24 wells is metered at the "WAW" central purchase meter. Dugan's gas purchaser is the El Paso Natural Gas Company (El Paso). Dugan asserts that because of "pipeline delay," production from the above wells was not allocated properly for certain months for which late payment assessments were made. Dugan states that even though it reported the correct total volumes of gas flowing through the purchase meters for the months in question, the volume allocations to individual leases "behind the meters" were not correct. When Dugan's purchaser, El Paso, corrected the allocations, Dugan, in turn, filed with MMS revised royalty reports adjusting volumes to specific wells as those volumes should have been reported initially. Dugan asserts that this resulted in a reduction in production on some wells and leases and an increase in production on others. Therefore, Dugan states the total volume of production, as well as the royalty paid, remained the same.

Dugan explains that at the end of each month its gas purchasers send it a report showing production from each well, the price paid, and a remittance. Dugan reviews these documents and prepares and files with MMS Form MMS 2014 together with royalty payments. Thereafter, pipeline purchasers may make various adjustments, including volume allocations between wells, which may result in an increase or decrease of royalty due the Government. Dugan in turn reports these adjustments to MMS, paying increased royalty if due, or taking a credit where a royalty overpayment occurred (SOR, Exh. 1).

In the decision here appealed, MMS ruled that Dugan could not escape liability for late payment charges where late royalty payments were due to incorrect reporting by its pipeline purchasers, and could not offset overpayment on one lease by underpayment on another. In so ruling, MMS pointed out that it does not assess late payment charges on volume reallocation where the aggregate royalty owed "on a particular lease" remains the same, but that it does assess such payments where, as in this case, reallocation occurs among a number of different leases. <sup>1/</sup>

Dugan's first argument on appeal is that reallocation of gas production from its central purchase meters should not result in the imposition of late payment charges, i.e., that offsets between leases should be allowed.

[1] Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (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

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<sup>1/</sup> MMS submits that it does not assess late payment charges for adjustments among leases if those leases are in the same unit, but that in this case there is no evidence that any of the leases were in the same unit (Answer at 3).

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 Board's decision in Sun Exploration & Production Co., 106 IBLA 300 (1989), contains an exhaustive discussion rejecting the argument that offsets between leases should be allowed. The Board held that because leases are assessed royalty on an individual basis, any allowable offset must be discovered within the limits of an individual lease. The Board has also held that late payment charges cannot be waived where late royalty payments are due to irregularities between the lessee and its purchasers. See Christmann Energy Corp., 107 IBLA 179 (1989); Cities Service Oil & Gas Corp., 104 IBLA 291 (1988).

Dugan's second argument is based on the fact that a portion of the late payment charges was assessed on proceeds it received from El Paso as compensation for the differential between the price originally paid and the higher Natural Gas Policy Act (NGPA) price for stripper well gas to which Dugan was subsequently determined to have been entitled. Section 108 of the NGPA, 15 U.S.C. | 3318 (1982), sets a ceiling price for stripper well natural gas. Dugan contends that its late lump-sum royalty payment on those proceeds was timely and not subject to assessment of late payment charges. Dugan argues that the regulation authorizing the collection of the stripper well price is permissive, not mandatory, pending final determination of well status by the Federal Energy Regulatory Commission.

In his decision, the Assistant Director for Program Review, MMS, responded to these arguments as follows:

It is the policy of MMS that late payment charges will not be assessed when a lessee has paid its royalty in a timely manner after successfully applying to the Federal Energy Regulatory Commission (FERC) for a revised price classification and receiving a retroactive lump-sum payment, if FERC review is required before charging the higher price.

Here, however, the Appellant could have received the higher NGPA price for the gas produced from its Federal lease pending the FERC determination. The collection of price increases for various NGPA price categories (including stripper well natural gas) is governed by 18 CFR | 273.202 which provides:

(a) General Rule. (1) If an application has been filed with the jurisdictional agency for a determination of

eligibility under Subpart B, C, G, or H of Part 271 (relating to new natural gas and certain OCS natural gas, natural gas from new onshore production wells, regulated high-cost natural gas or stripper well natural gas), the price specified in | 273.201(a)(1) or the highest maximum lawful price [for] which application is made may be charged and collected.

(2) If an application has been filed with the jurisdictional agency for a determination of eligibility under Part 272 (relating to deregulated natural gas), the deregulated price may be charged pending the jurisdictional agency determination.

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It is the responsibility of the lessee to act prudently and promptly to obtain the full value of the product for the benefit of the royalty owner. Here the Appellant, by its own admission, could have begun collecting the higher NGPA price at an earlier date, but chose not to do so. The Appellant must bear the consequences of that choice.

The Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. | 1701, and MMS regulations at 30 CFR || 218.54 and 218.102 require MMS to assess late payment charges for the fail-ure to make timely payment of any monies due from activities covered by the regulation. The collection of late payment charges has been approved by the Interior Board of Land Appeals (IBLA). Peabody Coal Co. and Hopi Indians, 72 IBLA 337, 348 (1983). These charges are equivalent to the time value of money.

It is clear that the Government was deprived of the time value of money by Dugan's decision to forego interim collection of the higher NGPA price. The Appellant's argument that its post-determination lump-sum payment was timely must, therefore, be rejected. [Emphasis added.]

(Decision at 4-5).

[2] The Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. | 181 (1982), reserves to the Department the authority and responsibility to establish reasonable value for royalty purposes. Marathon Oil Co. v. United States, 604 F. Supp. 1375, 1381 (D. Alaska 1985), aff'd, 794 F.2d 1461 (9th Cir. 1986). Accord, California Co. v. Udall, 296 F.2d 384 (D.C. Cir. 1961); Continental Oil Co. v. United States, 184 F.2d 802 (9th Cir. 1950); United States v. Ohio Oil Co., 163 F.2d 633, 639-40 (10th Cir. 1947), cert. denied, 333 U.S. 833 (1948). Departmental rules for determining value for royalty purposes are set forth at 30 CFR 206.103 (formerly 30 CFR 221.47), which states:

The value of production, for the purpose of computing royalty, shall be the estimated reasonable value of the product as determined by the Associate Director [of MMS], due consideration being given to the highest price paid for a part or for a major-ity of production of like quality in the same field, to the price received by the lessee, to posted prices, and to other relevant matters. Under no circumstances shall the value of production

of any of said substances for the purpose of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per barrel, thousand cubic feet, or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality oil, gas, or other products produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value.

Under these provisions, the Associate Director is given wide latitude to determine what is the value of production from a lease. See Amoco Production Co., 78 IBLA 93 (1983). Moreover, the lessee has an obligation to market the gas at the best price obtainable. Harding v. Cameron, 220 F. Supp. 466 (W.D. Okla. 1963).

Dugan's final argument is that the current scheme requiring late payment charges is unfair and inappropriate as applied to a fact situation such as that presented here. This same argument was fully addressed and rejected in Dugan Production Corp., 107 IBLA 91 (1989). Dugan has shown no reason why the decision appealed from should not be affirmed.

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.

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Wm. Philip Horton  
Chief Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge