

COLUMBIA GAS DEVELOPMENT CORP.

IBLA 89-385

Decided August 7, 1992

Appeal from a decision of the Minerals Management Service assessing a late payment charge. MMS-88-0374-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

Where late payment of royalty on a lease results from a mistake by a Federal offshore lessee in paying between two separate lease accounts, MMS properly assesses a late payment charge although the second lease account was overpaid by the amount of the underpayment on the first lease.

APPEARANCES: Michael A. Zakrajsek, Staff Accountant, for appellant; George Fishman, Esq., 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 ARNESS

Columbia Gas Development Corporation (Columbia) has appealed from a December 20, 1988, decision of the Assistant Director, Minerals Management Service (MMS), denying Columbia's appeal from an order assessing late payment charges. MMS-88-0374-OCS. On March 29, 1988, MMS issued an invoice (bill No. 01800120) for a total of \$821.48 in late payment charges arising from underpayment of royalties for production from leases on the Outer Continental Shelf (OCS). Columbia filed an appeal with respect to \$135.88, a late payment charge MMS assessed because Columbia failed to pay \$3,503.47 of the March 1987 royalty for an OCS lease identified as AID 054-002845-0 until October of that year. Columbia's appeal dated April 7, 1988, stated as follows:

AID numbers 054-002845-0 and 054-002846-0 are for West Cameron 426/427 Platform. The March 1987 gas royalty was paid correctly in total on the May 1987 MMS-2014. However, it was split incorrectly between the two AID numbers. Additional royalty was paid on AID 054-002845-0 on the October 1987 report. A refund has been filed for the over payment on AID 054-002846-0.

We feel no interest should be due since the MMS was paid correctly in total for the platform.

In the decision ruling that late payment interest charges were properly assessed, MMS offered this explanation:

It is the general policy of MMS that an error in royalty reporting should not in and of itself give rise to the assessment of late payment interest where there is no actual deficiency in royalty payments at the lease level. This is consistent with the longstanding MMS policy that royalty overpayments on one lease may not be used to offset royalty underpayments on another lease. [Emphasis in original.]

(Decision at 2-3). MMS further explained that the single account for each lease is based on the fact each lease constitutes a separate contract, MMS' accounting system is designed on an individual lease basis, and allowance of offset between leases having differing royalty provisions would deprive those entitled to a share of Federal royalty proper lease revenue.

Columbia argues that none of the reasons advanced by MMS are relevant because the provisions of the leases are identical, MMS still calculates its charges at the payor level, and that there are no other parties entitled to share in the royalties of these leases. MMS responds by pointing out that the issue is whether a lessee may offset underpayments on one lease against overpayments on another. MMS amplifies the reasons stated in its decision, arguing that the need for a uniform rule against cross-lease offsetting is justified by the fact that "MMS administers the collection of royalties on over 26,000 Federal and Indian leases. To do this effectively MMS must establish and follow firm procedures. The rule against inter-lease offsetting is just such a procedure utilized by MMS" (Answer at 9).

[1] In another appeal involving similar facts, we held as follows:

If we were to accept FMP's argument that its combined royalty payments for the two leases in January 1985 satisfied its royalty obligation for Lease No. OCS-G 2728, we would in effect be allowing its overpayment for Lease No. OCS-G 2729 to offset its underpayment for Lease No. OCS-G 2728. We have consistently held, however, that offsetting may only take place within a single lease account. Mesa Petroleum Co., 111 IBLA 201, 205 (1989); Chevron U.S.A. Inc., 111 IBLA 92, 94 (1989); Union Oil Company of California, 110 IBLA 62, 64 (1989); Mesa Petroleum Co., 108 IBLA 149, 150 (1989); Sun Exploration & Production Co., 106 IBLA 300, 302-03 (1989). Because the royalty for the December 1984 production from Lease No. OCS-G 2728 remained unpaid for several months, MMS properly assessed interest for the late payment of that royalty. 30 U.S.C. § 1271(a) (1982); 30 CFR 218.54(a). [Footnote omitted.]

FMP Operating Co., 111 IBLA 377, 379-80 (1989). We adhere to this decision and the decisions cited in the quotation from it.

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.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

