

BYRON OIL INDUSTRIES, INC.

IBLA 2000-46R

Decided February 23, 2004

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, on State Director Review, affirming a decision of the Farmington Field Office that recalculated the volumes of natural gas produced from oil and gas lease NMNM-080273. SDR 99-12.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982:
Royalties--Indians: Mineral Resources: Oil and Gas:
Royalties--Oil and Gas Leases: Production--Oil and Gas Leases:
Royalties

43 CFR 3162.7-3 requires that all gas production be measured on the lease, with volumes subject to certain adjustments. Off-lease measurement or commingling with production from other sources prior to measurement requires approval by the authorized officer.

APPEARANCES: John A. Dean, Esq., Farmington, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Byron Oil Industries, Inc. (Byron), produced oil and gas from the Hanson Federal # 1 and # 2 wells on lease NMNM-080273 located on the Jicarilla Apache Indian Reservation in Rio Arriba County, New Mexico. The gas from each well was separated from the oil and metered on the lease before it was combined with gas from two wells on another Byron lease and sold to Bannon Energy, Inc. (Bannon). From Bannon's facility Byron's gas was mixed with other gas and transported to the Lybrook gas processing plant. There some of it was processed into natural gas liquids, some was used in processing, and the rest was sold as residue gas. The amount of gas entering the plant was metered, as was the amount of residue gas sold.

In December 1995, the Farmington Field Office, Bureau of Land Management (BLM), selected Byron's lease for a Production Accountability Review (PAR) for the months of May, June, and July 1995 "to determine how accurately [its] production records match the volumes [it] reported on [its] Monthly Report of Operations (Form MMS-3160)." BLM ordered Byron to submit records of its production volumes that it was required to keep under 43 CFR 3162.7-5(b)(6). See Robert L. Bayless, 150 IBLA 188 (1999).

After some delay in obtaining the information it needed, Byron explained in a May 5, 1999, letter to BLM that every month the total amount of its gas was measured at the "Byron master meter," located off Byron's leases, before it entered Bannon's facility, and Bannon's monthly statement to Byron reported the total volume. A consultant to Byron provided it with estimates of the amount of gas produced by each of its four wells each month. Based on these estimates, Byron allocated how much gas was produced from each lease. For example, for July 1995, Bannon reported 5,197 mcf total gas from the Byron master meter and Byron's consultant estimated 33% of that month's production was attributable to the two Hanson wells, i.e., 1715 mcf.

Byron explained further that Bannon's monthly statement reported residue gas sales from the Lybrook plant. For example, for July 1995, the Bannon statement showed a total of 4,347 mcf residue gas sales. Using the same 33%, Byron attributed 1,435 mcf to the two Hanson wells. On its Monthly Report of Operations for its lease NMNM-080273 filed with BLM, Byron recorded 1,715 mcf gas produced, 1,435 mcf gas sold, and the difference, i.e., 280 mcf, as "used on or for the benefit of lease."

The Farmington Field Office issued a decision on May 27, 1999. It determined that Byron had not "received approval to measure the gas for the Hanson Federal #1 and #2 wells at either the Byron Master CDP [central delivery point] meter or the Lybrook Plant Residue Gas meter. This resulted in the lease not receiving the correct volumes of gas Produced or Sold." In addition, it determined that the formula used by Byron to allocate residue gas sold from the Lybrook plant to the Byron master meter and thus to the individual wells was "not in conformance with the 'Guidelines for Surface Commingling and/or Off-Lease Sales, Storage, Usage, and Measurement'." Therefore, "[b]ecause accurate measurement from the lease meters was not done during the PAR period, [the Field Office] * * * determined the volumes of gas recorded as Sold by the Byron Master meter (with the correct allocation * * *) to be the correct data that should have been reported on the form MMS-3160 * * *."

Byron sought administrative review before the State Director, BLM, of the Field Office's May 1999 decision, pursuant to 43 CFR 3165.3(b). Relying on the explanation it had previously submitted to the Field Office in its May 5, 1999, letter, it asked BLM to note that "all quantities as reported conform to the Gas Purchaser

Statements for the PAR period, and that the Gas Purchaser had exclusive authority to operate and measure all individual well meters as well as the Byron Master Meter (the Point of Delivery)." (Letter to BLM, dated July 28, 1999.)^{1/}

In its September 2, 1999, decision on State Director review, BLM upheld the Field Office's May 1999 decision that Byron had understated the volumes of gas produced. After reciting Byron's method of reporting, BLM stated:

This procedure is flawed and contrary to the regulations in 43 CFR Part 3162.7-3 [Measurement of gas] and Onshore [Oil and Gas] Order No. 5. In addition to the flawed method for allocating production back to the wells, there are several other problems and regulatory violations, associated with production measurement on the lease * * *. [T]he gas meter flow charts at the individual well heads [were] not integrated, so an indication of volume could not be made. There was no record of calibration of these meters, and there was no analysis of the gas as required by the regulations and Onshore Oil and Gas Order No. 5. Using an off-lease master meter (central delivery point) from which to back-allocate production requires prior approval from BLM. Byron did not have authorization for this off-lease measurement. [Finally], records show the pressure base on which Byron calculated gas flow at the master meter was 15.025 psi [per square inch]. The above cited regulation requires gas measurement based on a standard of 14.73 psia [per square inch absolute].

(Decision at 2.)

BLM observed that the "record shows no means to determine how the residue gas, measured at the gas plant, is allocated to the many leases and wells which feed the plant." It pointed out that Byron's method "cannot account for the volume of natural gas liquids or other valuable hydrocarbons that are not accounted for at the tail gate of the plant." BLM upheld the Farmington Field Office's determination recalculating the volume of gas produced by Byron's wells, which was

based on the gas sales measurement reported by Byron from their master meter, corrected to the required pressure base, then allocated back to the individual wells using the "field estimate" provided by

^{1/} The record includes a note from Byron dated July 26, 1996, stating: "Regarding the Master Meter, Bannan Energy claimed that individual well meters overstated production, and they cancelled our gas contracts because we wouldn't agree to use a single Master Meter. We were forced to give in, in order to keep selling gas (and oil). We had no choice."

Byron's field representative. Then, the gas-used-on-lease volumes provided by Byron were added to the sales volumes to arrive at the wells' production volumes.

Id. at 2-3. BLM concluded by stating that Byron "must assure that the appropriate applications are filed to authorize * * * off-lease measurement."

Byron filed a timely notice of appeal. In March 2000, we reinstated Byron's appeal, having dismissed it in December 1999 in the mistaken belief that Byron had not filed a statement of reasons in support of its appeal.

On appeal from BLM's September 1999 decision, Byron states that it believes the volumes were reported to it at the correct pressure on the monthly statement it received from Bannan and that it has been shown no documentation to the contrary. Byron acknowledges it had not received permission from BLM to measure its gas off-lease, but states it does not know if Bannan did. Byron believes it correctly allocated the volumes reported from the Byron master meter to the wells on its monthly Form 3160 reports. Finally, Byron feels that the difference between the volumes at the Byron master meter and the residue gas meter of the processing plant "was used on the lease for the production or transportation of the gas" and is therefore an allowable deduction on the Form 3160 reports. "Byron believes that it reported all information on Form 3160 correctly and accurately and that it has paid royalty on all oil and gas products produced from [its] wells as required by law and applicable regulations." (Statement of Reasons at 3.)

The Secretary of the Interior is directed by section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1711(a) (2000), to establish a "comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine [Federal] oil and gas royalties, * * * and to collect and account for such amounts in a timely manner." In addition, the Secretary is required to prescribe regulations reasonably necessary to carry out the statute. 30 U.S.C. § 1751(a) (2000).

The responsibility for such accounting has been delegated to BLM as part of its broad range of duties concerning onshore oil and gas operations under the regulations in 43 CFR Part 3160. See 43 CFR 3160.0?2. Under 43 CFR 3161.2, BLM is authorized and directed to approve, inspect and regulate the operations that are subject to the regulations in Part 3160 and to require compliance with the regulations. 43 CFR 3162.4-3 requires an oil and gas lease operator, using Form MMS-3160, to report production data to BLM each month, including "[t]he quantity of oil, gas and water produced." The regulation states that "[t]he report on this form shall disclose accurately all operations conducted on each well during each month."

[1] In order to facilitate the accurate reporting of production from Federal leases, 43 CFR 3162.7-3 provides that “[a]ll gas production shall be measured by orifice meters or other methods acceptable to the authorized [BLM] officer on the lease pursuant to methods and procedures prescribed in applicable orders and notices” and that the “measurement of the volume of all gas produced shall be adjusted by computation to the standard pressure and temperature of 14.73 psia and 60°F * * *.” See Luff Exploration Co., 115 IBLA 134, 136-37 (1990). The regulation also states that “commingling with production from other sources prior to measurement” and “[o]ff-lease measurement * * * may be approved by the authorized officer.” Id. However, before affording such approval, BLM must be assured that any off-lease measurement of production, following commingling, is properly allocated back to the lease, thus accurately accounting for lease production: “Allocating production back to the specific lease from which it is produced is critical, as lessee[s] must account for royalty on a lease basis.” Enron Oil & Gas Co., 122 IBLA 224, 241, 99 I.D. 20, 29 (1992).

BLM issued Onshore Oil and Gas Order No. 5, effective March 27, 1989, to implement and supplement this regulation. 54 FR 8100 (Feb. 24, 1989). Part III.D of this order, which is binding on lessees and operators of Federal and restricted Indian oil and gas leases (see 43 CFR 3164.1), discusses gas measurement by methods other than orifice meters at a location on the lease and requires that prior approval from the authorized officer be obtained before using any alternative method. 54 FR 8109 (Feb. 24, 1989). See Robert L. Bayless, 143 IBLA 267, 271-72 (1998); Robert L. Bayless, 138 IBLA 210, 221-22 (1997). BLM has also issued Guidelines for Surface Commingling and/or Off-Lease Sales, Storage, Usage and Measurement that set forth what must be included in an application for off-lease measurement. The guidelines state: “The combining (commingling) of production, or the off-lease measurement * * * of production * * * may be authorized when it can be demonstrated by the operator that such action is economically beneficial and/or in the best interest of conservation and will not result in improper allocation of Federal production and sales.”

As noted above, Byron acknowledges that it did not obtain BLM’s authorization to measure production from its lease off-lease. Assuming Bannon could do so on Byron’s behalf, the record does not show that it did, either. The record does show that the pressure did not conform to the regulation: the “compressibility factor” of the Byron master meter shown on the reports that Southern Flow Companies prepared for Bannon is 15.025 psia, which is what BLM listed on its May 13, 1999, PAR checklist. We conclude BLM properly determined that Byron was not in compliance with 43 CFR 3162.7-3.

We also conclude BLM properly determined that Byron’s Monthly Report of Operations forms did not fully report the amounts of gas produced from the lease.

By allocating these amounts based only on sales of the residue gas from the processing plant, Byron did not include the amount of natural gas liquids contained in the gas produced from the wells.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

James F. Roberts
Administrative Judge