



XTO ENERGY, INC.

191 IBLA 110

Decided September 21, 2017



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Office of Hearings and Appeals
Interior Board of Land Appeals
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XTO ENERGY, INC.

IBLA 2014-222

Decided September 21, 2017

Appeal from an Order to Perform Restructured Accounting and Pay Any Additional Royalties of the Director, Office of Natural Resources Revenue.
Case No. 12-00248.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982:
Royalties;
Oil and Gas Leases: Royalties: Payments

To issue an order for a restructured accounting, ONRR must find that the lessee has made identified underpayments or overpayments based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months. These repeated, systemic reporting errors must constitute a pattern of violations that are likely to result in significant underpayments or overpayments.

2. Administrative Procedure: Burden of Proof

In challenging an order to perform restructured accounting and pay any royalties found to be due, an appellant must demonstrate that ONRR committed an error of law or a material error in its factual analysis, or that ONRR's decision is not supported by a record showing that ONRR gave due consideration to all relevant factors and based its decision on a rational connection between the facts found and the choice made.

APPEARANCES: Jonathan A. Hunter, Esq., and Sarah Y. Dicharry, Esq., New Orleans, Louisiana, for XTO Energy, Inc.; Michael P. Marchetti, Esq., Office of the

Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Office of Natural Resources Revenue.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

XTO Energy, Inc. (XTO) has appealed from a June 3, 2014, Order to Perform Restructured Accounting and Pay Any Additional Royalties (Order) issued by the Director, Office of Natural Resources Revenue (ONRR). In the Order, the Director required XTO to perform a restructured accounting and to report and pay any additional royalties due on the production of natural gas from over 30 Federal onshore oil and gas leases and associated communitization agreements (CAs) situated in Shelby County, Texas, over a 7-year period from July 1, 2007, through June 30, 2014.

SUMMARY

ONRR has the statutory authority to issue orders to perform a restructured accounting when it discovers that the lessee made incorrect royalty payments based upon repeated, systemic reporting errors.¹ Here, ONRR properly ordered XTO to perform a restructured accounting because XTO reported gas volumes from an unauthorized measurement point, commingled gas without authorization, failed to separately report and pay royalties for each approved CA, did not correctly report gas volumes on a dry basis, improperly reported the quality of unprocessed gas at the point of royalty settlement, and applied an erroneous transportation deduction to its gross proceeds. XTO has not shown that ONRR did not satisfy the statutory prerequisites for issuing a restructured accounting order, nor has XTO shown that ONRR failed to support its identification of the reporting and payment errors.

ONRR must order a restructured accounting within a reasonable time from when it detects repeated, systemic errors in a lessee's royalty reporting and payment. ONRR must also specify the reasons and factual bases for the order and provide the lessee with a reasonable period of time to perform the restructured accounting. Because the record demonstrates that ONRR satisfied these requirements, and XTO does not demonstrate otherwise, we affirm ONRR's Order.

¹ See section 115(d)(4) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. § 1724(d)(4) (2012). Unless otherwise specified, all references to the United States Code are to the 2012 edition.

BACKGROUND

XTO is responsible for reporting and paying royalties due for gas produced from over 30 Federal leases and associated CAs in Shelby County, Texas.² Starting in November 2011, ONRR conducted an audit of royalty reporting and payment for the Shelby County leases over a 3-year period from January 1, 2009, through December 31, 2011 (referred to as the “audit period”).³ ONRR used two sample leases, ONRR Lease Numbers 076-025666-0 and 076-105599-0.⁴ The sample leases had acreage committed to CAs with ONRR Agreement Numbers NM 100064, 100089, 100090, 100091, and 100171, and ONRR Agreement Number NM 100157, respectively.⁵

In a preliminary determination set forth in an April 2013 Audit Issue Letter to XTO, ONRR identified eight systemic issues in royalty valuation, reporting, and payment.⁶ In the case of each error, ONRR specified the corrections in royalty reporting and payment that XTO could undertake to rectify the error. XTO timely responded to the Audit Issue Letter in a June 2013 letter (Response Letter), specifically responding to six of the issues and indicating that it would address the two additional issues separately.⁷

Based on information submitted by XTO and ONRR’s analysis, the Director of ONRR issued the Order in June 2014, restating the six systemic issues XTO addressed in its Response Letter and requiring XTO, within 60 days of receipt of the Order, to perform restructured accounting and pay any additional royalties found to be due with respect to natural gas produced from the leases, over the 7-year period from July 1, 2007, through the date of the Order in June 2014 (referred to as the “correction period”).⁸

The Director identified the six repeated, systemic errors in XTO’s royalty reporting and payment, as identified by the ONRR audit, specifically (1) XTO’s failure to obtain approval by the Bureau of Land Management (BLM) for the commingling and off-lease measurement of gas produced from the leases; (2) XTO’s

² Statement of Reasons (SOR) at 1; Answer at 1 n.2.

³ Entrance Conference Record (Administrative Record (AR) 551); Audit Issue Letter (AR 329).

⁴ Order, Enclosure (Encl.) 1, at 1.

⁵ *Id.*

⁶ AR 329-341.

⁷ AR 225-228.

⁸ Order at 1 and Encl. 1 at 1.

failure to properly report and pay royalty due on production associated with buy-back volumes; (3) XTO's improper allocation of gas volumes from multiple CAs to one CA; (4) XTO's improper reduction of the gas sales volumes by a wet-to-dry conversion factor; (5) XTO's failure to correctly report British thermal units (Btu) for gas production from the leases; and (6) XTO's improper deduction of non-arm's-length transportation costs from the value of gas produced from the leases.⁹ The Director outlined the six repeated, systemic errors in royalty reporting and payment in his Order and provided a "detailed explanation" in an enclosure to the Order.¹⁰

On appeal to this Board, XTO objects to ONRR's requirement to perform restructured accounting and pay any additional royalties found to be due with respect to all natural gas production from over 30 leases, over a 7-year period. XTO argues that it is improper to base such an order—covering more than 30 leases and 7 years—on only one sample lease in which the United States had a royalty interest (Lease Number 076-025666-0) and only a limited 3-year audit period. It also objects to the 60-day time period the Director afforded it to undertake all of the required corrective actions. XTO asserts that ONRR exceeded its statutory authority and contravened basic principles of administrative law, and, therefore, the Order must be set aside.¹¹

ONRR'S AUTHORITY TO ISSUE ORDERS TO PERFORM RESTRUCTURED ACCOUNTING

Royalty payment on production from Federal onshore oil and gas leases is governed by the Mineral Leasing Act (MLA)¹² and FOGRMA.¹³ Under the MLA, the holder of Federal onshore oil and gas leases must pay royalty to the United States at a rate of not less than 12.5 percent of the "amount or value of the production removed or sold from the lease."¹⁴ Under section 115(c) of FOGRMA and ONRR's implementing regulations, the amount of royalty owed for any particular production month is fixed on the last day of the calendar month following the month the oil or gas is produced.¹⁵

⁹ Order at 1.

¹⁰ Order at 1 and Encl. 1 at 1-8.

¹¹ *See* SOR at 3, 28; Reply at 13.

¹² 30 U.S.C. §§ 181-287.

¹³ 30 U.S.C. §§ 1701-1759.

¹⁴ 30 U.S.C. § 226(b)(1).

¹⁵ 30 U.S.C. § 1724(c); 30 C.F.R. § 1218.50(a).

FOGRMA provides for the accurate and timely assessment, accounting, and collection of royalties owed for oil and gas produced from Federal onshore oil and gas leases.¹⁶ Section 101(c)(1) of FOGRMA directs the Secretary of the Interior to “audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted.”¹⁷ ONRR is the agency in the Department charged with the audit, collection, and refund authority under the statute.¹⁸

[1] FOGRMA permits ONRR to issue an order to perform a restructured accounting to a lessee when ONRR determines during an audit that the lessee made identified underpayments or overpayments of royalties based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months, and the errors constitute a pattern of violations and are likely to result in either significant underpayments or overpayments of royalties.¹⁹

We note that, during the early part of the audit period in this case, ONRR’s regulations were codified in 30 C.F.R. Parts 201-290, which were redesignated as 30 C.F.R. Parts 1201-1243, respectively, effective October 2010.²⁰ In this decision, we cite only the regulations in effect on the date of ONRR’s decision.

XTO’S BURDEN OF PROOF

[2] In challenging ONRR’s Order to perform restructured accounting and pay any royalties found to be due, XTO must show error in ONRR’s Order by demonstrating that ONRR committed an error of law or a material error in its factual analysis, or that ONRR’s decision is not supported by a record showing that ONRR gave due consideration to all relevant factors and based its decision on a rational connection between the facts found and the choice made.²¹ This burden of proof will not be met by mere expressions of disagreement; instead, XTO must show a clear error of law or demonstrable error of fact.²²

¹⁶ See, e.g., 30 U.S.C. §§ 1711 (duties of the Secretary for inspection, collection, accounting, and auditing), and 1712(a) (liability for royalty payments).

¹⁷ 30 U.S.C. § 1711(c)(1).

¹⁸ 30 C.F.R. § 1201.100.

¹⁹ 30 U.S.C. § 1724(d)(4)(B)(i).

²⁰ Reorganization of Title 30, Code of Federal Regulations, 75 Fed. Reg. 61051 (Oct. 4, 2010).

²¹ *Oxbow Properties, Inc.*, 190 IBLA 328, 332 (2017).

²² *Pacific Northwest Aggregates, Inc.*, 189 IBLA 316, 332-33 (2017) (citing *California Wilderness Coalition*, 176 IBLA 93, 101-02 (2008) (quoting *Howard G. Booth*, 134 IBLA 300, 305 (1996))).

DISCUSSION

On appeal, XTO sets forth six arguments that ONRR failed to comply with FOGRMA, and then reviews each of the six issues ONRR identified in its Order in an “issue-by-issue discussion.” We will structure this decision in a similar manner. We first examine XTO’s arguments that ONRR exceeded its statutory authority under FOGRMA.

A. ONRR Satisfied the Basic Statutory Prerequisites for an Order to Perform Restructured Accounting

XTO contends, first and foremost, that ONRR exceeded its statutory authority under FOGRMA. It argues that, while ONRR is entitled to require a lessee to essentially “self-audit” its royalty accounts, ONRR is required to satisfy the statutory “prerequisites” set forth in section 115(d)(4) of FOGRMA before issuing an order to perform restructured accounting, and, absent satisfaction, ONRR must be deemed to have exceeded its statutory authority, and the order must be set aside.²³ It states that ONRR failed to meet the statutory “prerequisites” before issuing the Order to perform restructured accounting.

Relying on the requirements of section 115(d)(4) of FOGRMA, XTO asserts that ONRR (1) failed to identify a repeated, systemic error in royalty reporting in the case of a “significant number of leases”; (2) improperly ordered restructured accounting for 7 years based on an analysis of sample months during 3 years; (3) failed to establish that royalty reporting errors were likely to result in royalty payment errors, let alone “significant” underpayments or overpayments; (4) failed to specify in the Order the “reasons and factual bases” for its order to perform restructured accounting and to issue the Order “within a reasonable period of time”; (5) failed to afford XTO “a reasonable period of time” to perform the restructured accounting; and (6) unlawfully required XTO to amend its oil and gas operations reports (OGORs).²⁴

1. ONRR’s analysis of at least one lease substantiates the Order’s requirement to perform a restructured accounting on over 30 leases.

FOGRMA requires that ONRR base an order to perform a restructured accounting on repeated, systemic reporting errors for a significant number of leases

²³ SOR at 4.

²⁴ SOR at 4-10.

or a single lease for a significant number of reporting months.²⁵ Once ONRR identifies a repeated, systemic error in the case of a single lease, the statute authorizes it to require the lessee to rule out the existence of that error in the other leases.²⁶ It is sufficient that ONRR samples only a portion of a producer's production accounts, and when that sampling shows a systemic error, ONRR "can impose upon the lessee the burden of reviewing the lease accounts in an effort to disclose other instances when royalty computation has been distorted by the identified error or deficiency in order to make the necessary correction and pay additional royalty found due, if any."²⁷ The "lease accounts" subject to self-audit may involve any leases that may have been distorted by the identified error or deficiency in royalty accounting.²⁸ What is critical to an order to perform restructured accounting is that ONRR has identified a reporting error that is capable of repetition.²⁹

Here, ONRR based its findings on systemic reporting errors on two leases and associated CAs over three years.³⁰ Based on these findings, ONRR ordered XTO to perform restructured accounting on all 30 of its leases for the entire correction period. This action—ordering an accounting of 30 leases over 7 years based on a sampling of 2 leases over 3 years—was permissible under FOGMA.

XTO argues that ONRR did not identify a repeated, systemic error in royalty reporting in a "significant number of leases," since ONRR audited only one lease in

²⁵ 30 U.S.C. § 1724(d)(4)(B)(i).

²⁶ *Devon Energy Production Co., L.P.*, 176 IBLA 396, 409 (2009) (citing *Union Texas Petroleum Energy Corp.*, 153 IBLA 170, 179 (2000)).

²⁷ *Id.*

²⁸ *See, e.g., XTO Energy, Inc.*, 185 IBLA 219, 220 (2015) (restructured accounting order appropriate to address royalty computation error associated with improper deduction of compression costs necessary to place gas in marketable condition with respect to all leases and months where gas similarly compressed as part of transporting it from wellhead through processing facility to point of sale); *Union Oil Company of California*, 167 IBLA 263, 264-65, 271-72 (2005), *aff'd*, *Union Oil Company of California v. Reiger*, No. 06-cv-00434-MSK-CBS (D. Colo. Mar. 31, 2009) (restructured accounting order appropriate to undertake required dual accounting with respect to all leases and months).

²⁹ 30 U.S.C. § 1724(d)(4)(B)(i) ("repeated, systemic reporting errors"); *see Vastar Resources*, 148 IBLA 107, 116 (1999) ("irregularities that were capable of repetition"); *Texaco Inc.*, 138 IBLA 202, 205 (1997) ("reporting errors capable of repetition").

³⁰ Order, Encl. 1, at 1.

which it had a royalty interest (Lease Number 076-025666-0) and, even if it justifiably relied on the royalty accounts of two leases (Lease Numbers 076-105599-0 and 076-025666-0), two does not constitute a significant number of the more than 30 leases affected by the Order.³¹

But even if ONRR only relied on one lease for which it found repeated, systemic reporting errors, it would have been permissible under FOGDMA for ONRR to order XTO to perform restructured accounting on all of its leases. As discussed above, FOGDMA authorizes the ordering of restructured accounting on many leases “based upon repeated, systemic reporting errors . . . for a single lease for a significant number of reporting months.”³² This is the authority for ONRR’s Order.

Also, XTO has provided no evidence that would justify treating any of its leases differently. Instead, the record establishes that all of the leases subject to the Order are held by XTO in Shelby County, Texas, and produced natural gas during the July 2007-June 2014 correction period.³³ It appears that all of the leases were subject to the same royalty valuation and computation methodology, and XTO has not shown otherwise.³⁴ And, as ONRR notes, XTO admitted to systemic errors in its Response Letter, which further supports ONRR’s order to perform restructured accounting on all leases.³⁵

Furthermore, XTO has not established that the United States has no royalty interest in Lease Number 076-105599-0. Paragraph 6 of the CA associated with the lease states that “[t]he royalties payable on communitized substances allocated to the individual leases comprising the communitized area . . . shall be determined and paid on the basis prescribed in each of the individual leases.”³⁶ Section 1 of Lease Number 076-105599-0, in turn, provides that “royalties shall be paid [to the United States] on the production allocated to th[e] lease” under any CA to which the lease is committed.³⁷ The CA and the lease therefore provide for a royalty interest held by the United States.

³¹ See SOR at 5.

³² 30 U.S.C. § 1724(d)(4)(B)(i); *Devon Energy Production Co., L.P.*, 176 IBLA at 409.

³³ See SOR at 1; Entrance Conference Record (AR 552).

³⁴ See Answer at 24 (“XTO apparently used the same accounting system since July of 2007 to prepare its production and royalty reports for all the Shelby leases.”).

³⁵ See AR 225, 226, 227; Answer at 10-11, 19, 26, 32.

³⁶ CA No. NM 100157, ¶ 6, at unpaginated (unp.) 4 (AR 498).

³⁷ AR 482 (also Exhibit A to ONRR’s Sur-reply).

In addition, neither of the documents XTO cites in support of its position demonstrates that the United States has no royalty interest in Lease Number 076-105599-0 because both only cover a portion of the 723 acres encompassed by the lease.³⁸ Furthermore, one of the documents, a title opinion, indicates that even with respect to the acreage it addresses (300.75 acres), the United States holds a 12.5% royalty interest.³⁹ Finally, ONRR notes that XTO submitted royalty reports and payments to the United States on Lease Number 076-105599-0, attributable to another CA, Agreement Number NM 122602, indicating that the United States has a royalty interest in the lease.⁴⁰ XTO does not dispute this.

We conclude that ONRR's analysis of two leases—or even only one—substantiates the Order's requirement to perform a restructured accounting on over 30 leases. Where ONRR has identified a repeated, systemic error in at least one lease, we think that the fact that the lessee engaged in similar royalty accounting for similarly situated leases establishes that the error is capable of repetition across all of the other leases, warranting an order to perform restructured accounting for all of those leases.

2. ONRR's analysis of sample months during 3 consecutive years substantiates the Order's requirement to perform a restructured accounting for a 7-year correction period.

As set forth above, FOGDMA requires that ONRR base an order to perform a restructured accounting on repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months.⁴¹ Here, ONRR based its findings on systemic reporting errors on 2 leases and associated CAs during sample months over 3 consecutive years.⁴² The number of sample months varied depending on the audit issue. For example, for issue 1 (off-lease measurement without BLM approval), ONRR reviewed 10 sample months for Lease Number 076-025666-0.⁴³ For issue 4 (sales volume reduced by a wet-to-dry

³⁸ AR 502, 508 (Exhibit B to CA No. NM 100157) (regarding 129 acres and 21 acres of the lease, respectively); Bruce Bowers Declaration (Bowers Decl.), Exhibit 5 at "Page 57" (regarding 300.75 acres of Lease No. 076-105599-0).

³⁹ Bowers Decl., Exhibit 5 at "Page 57" ("Royalty" of "12.5%" in the case of 300.75 acres of Lease No. 076-105599-0).

⁴⁰ See Answer at 18 n.14.

⁴¹ 30 U.S.C. § 1724(d)(4)(B)(1).

⁴² Order, Encl. 1, at 1.

⁴³ Answer at 4 (citing Audit Working Papers).

conversion factor), ONRR reviewed 11 sample months for this lease.⁴⁴ Based on these findings, ONRR ordered XTO to perform restructured accounting on all 30 of its leases for the entire correction period. This action—ordering an accounting of 30 leases over 7 years based on a sampling of 2 leases during multiple sample months over 3 years—was permissible under FOGRMA.

XTO argues that, having only audited 1 lease over the 3-year period from January 2009 through December 2011, ONRR was not justified in requiring XTO to perform restructured accounting over the 7-year period from July 2007 through June 2014, dates which are “outside of the Audit Period,” where ONRR failed to establish the existence of a repeated, systemic error during that period.⁴⁵ It states that the correction period “must be limited to, at most, the period of time to which the audit findings [that justify the restructured accounting order] relate.”⁴⁶ XTO therefore concludes that the audit findings do not disclose the continuation of a repeated, systemic error extending before or after the audit period.⁴⁷

But section 115(d)(4) of FOGRMA allows ONRR to require a lessee to perform restructured accounting for more months, before or after the audit period during which ONRR detected the error, once ONRR has found the existence of a repeated, systemic error. The statute only provides that ONRR must, before ordering restructured accounting, identify a repeated, systemic error, which consists of a particular type of error that has been repeated over a “significant number of reporting months,” sufficient to establish a “pattern of violations,” and that indicates the likelihood of significant underpayments or overpayments of royalty.⁴⁸ Once established, however, the statute does not limit the remedy, and therefore does not preclude ONRR from requiring the lessee to undertake restructured accounting for leases other than the single lease for which the error was detected and for months other than the particular months for which the error was detected.⁴⁹

In *Union Texas Petroleum Energy Corp.*,⁵⁰ we disagreed with the lessee’s argument that ONRR could not order restructured accounting “in one time period” where the repeated, systemic error was discovered “in another time period,” stating:

⁴⁴ *Id.* at 32.

⁴⁵ SOR at 6.

⁴⁶ Reply at 4.

⁴⁷ SOR at 6.

⁴⁸ 30 U.S.C. § 1724(d)(4)(B)(i).

⁴⁹ *See, e.g., XTO Energy, Inc.*, 185 IBLA at 232 (affirming an order to perform restructured accounting of royalties due over several years based on errors found in 1 sample month).

⁵⁰ 153 IBLA at 179-80.

Unless it can be shown that a producer used different royalty computation methodologies during these time periods which would account for the existence of the systemic error in one period but not the other, there is no basis for a conclusion that the errors found in one period will not be found in the other. . . . What is important is that there is sufficient evidence to demonstrate a *systemic error or deficiency* in the producer's royalty computations.

The same is true here because XTO has not demonstrated that it used a different royalty computation methodology any time within the July 2007-June 2014 correction period. ONRR found that XTO "apparently used the same [royalty] accounting system since July of 2007," and XTO does not dispute this.⁵¹

Finding nothing in the statute that limits the particular number of leases or months properly subject to the order to perform restructured accounting, we find that ONRR was authorized to issue its June 2014 Order.

3. ONRR's analysis identifies particular payment errors.

FOGRMA requires ONRR to base an order to perform restructured accounting on, among other things, a finding that the lessee made "identified underpayments or overpayments."⁵² XTO argues that ONRR failed to base its Order on a determination that XTO made identified underpayments or overpayments because ONRR failed to demonstrate that any of the "alleged *reporting* violations" were likely to result in any royalty *payment* errors, let alone "significant" underpayments or overpayments, justifying an order to perform restructured accounting.⁵³ We will address this argument under each of the issues ONRR identified in its Order, discussed below. In each case, we conclude that ONRR properly based its order to perform restructured accounting on the identification of specific underpayments or overpayments of royalty during the January 2009-December 2011 audit period, and the likelihood of other significant underpayments or overpayments during the July 2007-June 2014 correction period.

⁵¹ Answer at 28 (citing Entrance Conference Record at unp. 6-10 (AR 557-561)).

⁵² 30 U.S.C. § 1724(d)(4)(B)(i).

⁵³ SOR at 6 (emphasis added); see Reply at 6 n.7 ("[W]hile XTO admitted to certain reporting errors, XTO did *not* admit to payment errors").

4. *ONRR properly specified the reasons and factual bases for its Order and issued the Order within a reasonable period of time.*

Section 115(d)(4) of FOGRMA recites five requirements for any order to perform a restructured accounting.⁵⁴ The order must 1) be issued within a reasonable period of time, 2) specify the reasons and factual bases for the order, 3) specifically state that it is an “order to perform a restructured accounting,” 4) provide a reasonable period of time to perform the restructured accounting, and 5) provide 60 days to file an administrative appeal of the order.⁵⁵

XTO argues that ONRR failed, in its Order, to “specify the reasons and factual bases” for the Order and to issue the Order within a reasonable period of time, as required by section 115(d)(4) of FOGRMA.⁵⁶ It states that, at a minimum, ONRR failed to justify its finding of royalty payment errors; that such errors resulted from repeated, systemic reporting errors; and that such reporting errors are likely to result in significant royalty underpayments or overpayments.⁵⁷ XTO asserts that FOGRMA requires “detailed findings,”⁵⁸ but ONRR acted on the basis of impermissible “conclusory finding[s].”⁵⁹

We find that the Order sufficiently specified the reasons and factual bases for ONRR’s order to perform restructured accounting. In the Order, ONRR referred XTO to the enclosures, including Enclosure 1 (“Basis for this Order”), “for a detailed explanation of the Order, supporting information, and appeal procedures.”⁶⁰ In Enclosure 1, for each identified issue, ONRR explained what information it reviewed, the applicable law or guidance, XTO’s position, and ONRR’s position. ONRR also noted when XTO had conceded error.⁶¹ We conclude that these recitations met the requirement that ONRR “specify the reasons and factual bases” for its Order.

⁵⁴ 30 U.S.C. § 1724(d)(4)(B)(ii).

⁵⁵ *Id.* § 1724(d)(4)(B)(ii)(I)-(V).

⁵⁶ SOR at 7 (quoting 30 U.S.C. § 1724(d)(4)(B)(ii)(II)).

⁵⁷ *Id.*

⁵⁸ Reply at 6; *see id.* (“ONRR’s arguments consistently turn a blind eye to the numerous details that Congress required ONRR to satisfy”).

⁵⁹ *Id.* at 8.

⁶⁰ Order at 2.

⁶¹ *See, e.g., id.*, Encl. 1, at 2 (“XTO . . . agreed that it did not have BLM approval for off-lease measurement.”), 3 (“XTO agreed that there was no BLM approval to deduct buy-back gas.”).

With respect to the timing of ONRR's Order, XTO asserts, without explanation or supporting argument, that ONRR failed to issue its order to perform restructured accounting "within a reasonable period of time from when the audit identifie[d] the systemic, reporting errors," as required by section 115(d)(4) of FOGRMA.⁶² ONRR issued its Audit Issue Letter, informing XTO of the repeated, systemic errors it believed it had detected in XTO's royalty reporting and payment, on April 19, 2013. XTO responded by letter dated June 11, 2013, providing information that factored into ONRR's final conclusions regarding the existence of such errors. ONRR issued the Order embodying its final conclusions almost a year later on June 3, 2014—13½ months after the Audit Issue Letter. XTO has not supported its bare allegation that this amount of time is unreasonable, so it has not carried its burden of proof to show error in ONRR's Order on this basis.

5. ONRR afforded XTO a reasonable period of time to perform restructured accounting.

FOGRMA requires ONRR to provide a reasonable period of time—but not less than 60 days—to perform a restructured accounting.⁶³ In this case, ONRR required XTO to perform restructured accounting and pay any additional royalties within 60 days of receiving the Order.⁶⁴ ONRR therefore provided the minimum amount of time to perform the restructured accounting.

XTO argues that 60 days, "the statutory minimum timeframe," is not a reasonable period of time to perform restructured accounting with respect to over 30 leases, focused on 6 separate royalty errors that may have occurred during the 7-year correction period.⁶⁵ XTO claims that the restructured accounting requires "complicated accounting and legal analyses," especially when XTO will be required, in certain cases, to obtain approvals from other agencies.⁶⁶ XTO concludes that it is "impossible" to accomplish the required restructured accounting within 60 days.⁶⁷

ONRR responds that it regards the 60 days as a reasonable period of time to perform the restructured accounting, because XTO has had "over two years" since issuance of ONRR's April 19, 2013, Audit Issue Letter, notifying it of the six repeated, systemic reporting errors, to assess whether and to what extent these

⁶² SOR at 7 (quoting 30 U.S.C. § 1724(d)(4)(B)(ii)(I)); *see* Reply at 6.

⁶³ 30 U.S.C. § 1724(d)(4)(B)(ii)(IV).

⁶⁴ Order at 1.

⁶⁵ SOR at 9.

⁶⁶ Reply at 7; SOR at 9.

⁶⁷ SOR at 10 (citing Bowers Decl., ¶ 17, at 5).

errors existed, and thus “should be in a position to comply with the Order within 60 days.”⁶⁸ We agree. The years since XTO received the Audit Issue Letter should have afforded it the opportunity to gather all of its relevant royalty reporting and payment data. In fact, in some instances XTO appeared to agree with ONRR’s assessment of the existence of an error when it responded to the Audit Issue Letter in June 2013 and agreed to correct it.⁶⁹ Having admitted to errors in June 2013, XTO was obligated by ONRR’s regulations to correct them within 30 days of its discovery of the error, a timeframe that had long since passed by the time ONRR issued its June 2014 Order.⁷⁰ For those errors XTO did not admit, the time that passed since it received ONRR’s Audit Issue Letter should have put it in a good position to comply with ONRR’s Order within 60 days.

We conclude that XTO has not demonstrated that 60 days was an unreasonable period of time or otherwise shown error in ONRR’s direction to perform restructured accounting within 60 days of XTO’s receipt of ONRR’s Order.

6. ONRR lawfully required XTO to amend its OGOR reports.

Finally, XTO’s sixth argument about ONRR’s statutory authority is that ONRR requires XTO to amend its OGOR reports where doing so will have no impact on XTO’s royalty payments, in violation of FOGRMA’s requirement that ONRR only issue orders to perform restructured accounting when it finds that reporting errors will likely result in significant payment errors.⁷¹ XTO specifically states that issues 2 and 4, discussed below, have no royalty payment consequences.⁷²

ONRR responds that the errors identified in issues 2 and 4 impact the gas sales volume, which in turn implicates the amount of royalty payment due.⁷³ ONRR also argues that XTO interprets FOGRMA too narrowly, because the law clearly imposes on ONRR the duty to ensure proper royalty reporting, in addition to payment, and Congress authorized ONRR to impose penalties for misreporting regardless of whether additional royalties are due.⁷⁴

⁶⁸ Answer at 40.

⁶⁹ *See id.* (“XTO admitted to many of the errors at the Entrance Conference in November of 2011”); *see also supra* note 61.

⁷⁰ *Id.* (citing 30 C.F.R. § 1210.30).

⁷¹ SOR at 10 (citing 30 U.S.C. § 1724(d)(4)(B)(i)).

⁷² *Id.*

⁷³ Answer at 21, 34.

⁷⁴ *Id.* at 21-23.

We find that ONRR acted within its statutory authority to require the correction of OGOR reports, regardless of any impact on the amount of royalties due. Apart from the requirements for restructured accounting orders, FOGDRA directs the Secretary to “audit and reconcile . . . all current and past lease accounts”⁷⁵ To implement this obligation, ONRR directs “[e]ach lessee . . . [to] make and retain accurate and complete records necessary to demonstrate that payments of . . . royalties . . . are in compliance with lease terms, regulations, and orders.”⁷⁶ If a royalty payor does not file an amended report after discovering an error in a previous report, ONRR may assess civil penalties.⁷⁷ The correction of erroneous records is necessary to demonstrate accurate payment of royalties, and ONRR has authority to ensure compliance with its regulations in conjunction with an order for restructured accounting.

B. ONRR’s Identification of Six Reporting and Payment Errors is Supported by the Record, and XTO Has Not Shown Error

We turn now to the six specific royalty reporting and payment errors identified by ONRR, to the extent we have not already addressed XTO’s arguments above.

Issue 1: XTO Failed to Obtain BLM’s Approval for Commingling and Off-Lease Measurement.

ONRR’s regulations state that royalties will be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM for onshore leases.⁷⁸ BLM’s regulations state that gas production must be measured on the lease, although BLM may approve off-lease measurement or commingling with production from other sources before measurement.⁷⁹

The question raised by XTO’s appeal is whether the regulations requiring approval of off-lease measurement apply equally to off-CA measurement. XTO explains that its “Shelby County leases are unusually large and contribute acreage to multiple [CAs] (as opposed to the more frequent situation in which a lease is a

⁷⁵ 30 U.S.C. § 1711(c)(1).

⁷⁶ 30 C.F.R. § 1212.51(a) (2013).

⁷⁷ *Id.* § 1210.30 (2013).

⁷⁸ 30 C.F.R. § 1206.154(a)(1) (2013).

⁷⁹ 43 C.F.R. § 3162.7-3 (2013).

portion of a larger [CA]).”⁸⁰ XTO asserts that because it produced, commingled, and measured gas from different wells (and CAs) on one lease, BLM approval for off-lease measurement was not required under ONRR’s and BLM’s regulations.⁸¹ ONRR disagrees, contending that the approval requirement applies to off-CA measurement as well as to off-lease measurement. We agree with ONRR.

At the time of ONRR’s Order, BLM’s regulation at 43 C.F.R. § 3162.7-3 stated 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[.]” One of the “applicable orders” referred to in 43 C.F.R. § 3162.7-3 is Onshore Oil and Gas Order No. 5, Measurement of Gas on Federal and Indian Oil and Gas Leases (Onshore Order 5),⁸² which, at the time of ONRR’s Order, governed the measurement of gas on Federal onshore leases.⁸³ In Onshore Order 5, BLM expanded measurement “on the lease” to include measurement on “the lease, unit, unit participating area, or communitized area.”⁸⁴ BLM explained that a lessee must submit to BLM a written application for “measurement at a location off the lease, unit, unit participating area, or communitized area” and obtain BLM’s written approval.⁸⁵ Accordingly, where gas is produced from a CA, the lessee must obtain BLM approval for measurement taken at a location off of that CA, regardless of whether the production and measurement occur on the same *lease*.

On appeal, ONRR explains that to properly account for production and royalty, production must be measured at the wellhead on each CA within the single lease, rather than at the central meter after the production from the several CAs within the lease is commingled.⁸⁶ ONRR explains that the Federal interest in production from each CA may differ, so ONRR must know the quality and volume of production from each CA in order to ensure that royalty is properly paid with respect to that production.⁸⁷ When measurement occurs after commingling at the

⁸⁰ SOR at 13.

⁸¹ *Id.* at 11-15.

⁸² 54 Fed. Reg. 8100 (Feb. 24, 1989) (replaced by 43 C.F.R. Part 3170, subparts 3173 and 3175, through Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas (Final rule), 81 Fed. Reg. 81,516 (Nov. 17, 2016), effective Jan. 17, 2017).

⁸³ *Devon Energy Production Co., L.P.*, 176 IBLA at 406 n.9.

⁸⁴ Onshore Order 5 at III.D.

⁸⁵ *Id.* at III.D.2.

⁸⁶ Answer at 9.

⁸⁷ *Id.*

master meter, ONRR cannot determine the quality and volume of production from each CA and, consequently, cannot determine if XTO properly paid royalties based on the correct quality and volume of gas produced from each CA.⁸⁸ Furthermore, without the ability to properly apportion production to each CA, XTO may be improperly making higher or lower royalty payments than what is actually due to ONRR.⁸⁹

Given these regulatory parameters and ONRR's explanation, we conclude that BLM approval is required for a lessee to measure gas from a CA off of that CA.

Here, ONRR reviewed gas production over 10 sample months from Lease Number 076-025666-0, which included production from 5 CAs.⁹⁰ ONRR found no requests from XTO for approval to commingle gas or establish a measurement point off the CAs for any of the Shelby leases, nor did it find approvals from BLM.⁹¹ Indeed, XTO agreed that it commingled gas and measured it at an off-CA master meter for all CAs except for one and that it did not have BLM approval for off-CA measurement.⁹² ONRR concluded, based on its audit, that XTO had failed to obtain BLM's approval for the commingling and off-CA measurement of natural gas for five CAs.⁹³ Having determined that this failure resulted in identified underpayments or overpayments of royalties,⁹⁴ ONRR directed XTO to determine whether it had BLM approval for commingling and off-CA measurement for all of the gas produced from the CAs during the 7-year correction period.⁹⁵ Where XTO lacked such approval, ONRR ordered it to pay any additional royalties found to be due based on the BLM-approved royalty measurement point.⁹⁶

We find that ONRR reasonably applied its regulations to the facts before it. XTO needed BLM's approval to measure production from a CA off that CA, and the record shows that XTO did not have that approval.

Finally, we reject XTO's assertion that ONRR was not authorized, as part of its royalty accounting duties, to determine whether XTO was required to obtain,

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Order, Encl. 1, at 1; Answer at 4.

⁹¹ Order, Enc. 1, at 1.

⁹² Order, Encl. 1, at 2.

⁹³ *Id.*

⁹⁴ Audit Issue Letter at 3 and Encls. 1 and 2.

⁹⁵ Order, Encl. 1, at 2.

⁹⁶ *Id.*

and had obtained, BLM's approval under 43 C.F.R. § 3162.7-3.⁹⁷ Because ONRR's regulations provide for royalty measurement "at the point of royalty settlement approved by BLM,"⁹⁸ we believe ONRR was justified in determining whether measurement had occurred at the BLM-approved royalty measurement point. While BLM is responsible for determining where the correct measurement point is,⁹⁹ ONRR has an independent responsibility to ensure that royalty is properly reported and paid. This requires that ONRR ensure that production from onshore leases has been measured, for royalty purposes, at the royalty measurement point approved by BLM, and, where it has not, that ONRR take steps to require such measurement, as the proper basis for royalty calculations.¹⁰⁰

We conclude that XTO has not shown error in ONRR's determination that XTO failed to obtain BLM approval for off-CA measurement.

Issue 2: XTO Failed to Properly Report and Pay Royalty Due on Production Associated with Buy-Back Volumes.

At the time ONRR issued its Order, BLM's regulation at 43 C.F.R. § 3162.7-3 authorized BLM to approve "commingling with production from other sources prior to measurement."¹⁰¹ "Other sources" may include gas produced from a lease or CAs which a lessee "buys back" to use on a different lease or CA, for example, as fuel or

⁹⁷ See Reply at 8 n.11.

⁹⁸ 30 C.F.R. § 1206.154(a)(1) (2013).

⁹⁹ See *Robert L. Bayless*, 149 IBLA 140, 149 (1999) (the location of the correct volume measurement points is an "issue . . . entrusted solely to BLM"); see also *Devon Energy Production Co., L.P.*, 176 IBLA at 408 ("BLM is responsible for the accuracy of the volumes which are reported by operators to [ONRR] for royalty computation purposes").

¹⁰⁰ See *Priority Energy, LLC*, 186 IBLA 363, 376 (2015) (ONRR properly requires payment of additional royalties due based on on-lease measurement, where record establishes that BLM approval of off-lease measurement was no longer in effect).

¹⁰¹ 43 C.F.R. § 3162.7-3 (2013).

for gas-lift operations to increase production.¹⁰² Buy-back volumes and gas-lift systems must be approved by BLM.¹⁰³

ONRR concluded, based on its audit, that XTO had put three wells that produce from ONRR Agreement Number NM 100157, allocated to Lease Number 076-105599-0, on gas lift, using buy-back volumes, in November 2007, but did not request permission to do so.¹⁰⁴ Indeed, XTO acknowledged in its June 2013 letter, responding to ONRR's Audit Issue letter, that it had deducted buy-back volumes without BLM approval.¹⁰⁵ Also, although XTO reported production and sales from ONRR Agreement Number NM 100157, ONRR found that XTO did not pay corresponding royalty, suggesting that XTO had deducted the buy-back volumes from the sales volumes at the master meter.¹⁰⁶ ONRR concluded that XTO used the buy-back volumes on this CA without BLM's approval, and therefore directed XTO to determine whether it had properly deducted buy-back volumes from all of the CAs throughout the 7-year correction period, and, where it had done so improperly, to pay any additional royalties found to be due after eliminating the deduction of buy-back volumes.¹⁰⁷ We find that XTO has not shown error in ONRR's findings related to the deduction of buy-back volumes.

First, XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR's assessment of the existence of a repeated, systemic error in royalty reporting was based on Lease Number 076-105599-0, in which the United States has no royalty interest.¹⁰⁸ As discussed earlier in this decision, we conclude that the United States has a royalty interest in that lease, so

¹⁰² See SOR at 16 n.14 (explaining that the gas XTO used for its gas-lift operation might have been considered buy-back volumes of gas); Dear Reporter Letter, Subj: Reporting Changes for Reporting Beneficial Use and Buy-Back and Spilled/Lost Volumes at 1 (Dec. 15, 2010) ("Buy-Back volumes are considered any *non-native* oil or gas purchased off the lease or agreement . . . [that the] reporting entity used on or for the benefit of the reporting [lease or agreement] operations.").

¹⁰³ 43 C.F.R. §§ 3162.3-1 through 3162.3-3 (2013); Onshore Oil and Gas Order Number 1, Approval of Operations, 72 Fed. Reg. 10308 (Mar. 7, 2007) (amended by 82 Fed. Reg. 2906 (Jan. 10, 2017)); Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases (NTL-4A), Royalty or Compensation for Oil and Gas Lost (Jan. 1, 1980).

¹⁰⁴ Order, Encl. 1, at 2.

¹⁰⁵ AR 226; Order, Encl. 1, at 3.

¹⁰⁶ Order, Encl. 1, at 2-3; Audit Issue Letter at 4; Answer at 16.

¹⁰⁷ Order, Encl. 1, at 3.

¹⁰⁸ See SOR at 15, 18.

any reporting or payment error found with respect to the lease can be the basis for an order to perform restructured accounting pursuant to section 115(d)(4) of FOGRMA.

Second, XTO concedes no error in its royalty reporting, arguing that the buy-back volumes may, in fact, have been gas used for beneficial purposes on the lease from which it was produced, and thus deemed to be royalty-free.¹⁰⁹ It argues that the royalty-free status of the gas is not altered by the fact that the gas is produced from part of a lease subject to one CA, and beneficially used on another part of the same lease subject to a different CA.¹¹⁰

ONRR's regulation at 30 C.F.R. § 1202.150(b) provides, in relevant part, that all gas produced from a Federal lease is subject to royalty, except gas that is "unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by [BLM]." Such beneficially-used gas is royalty-free. However, at most, XTO raises a possibility that the gas used in gas-lift operations came from the same lease from which it was produced and therefore was beneficial-use gas.¹¹¹ But a mere possibility is not sufficient to show error in ONRR's Order.¹¹²

Third, XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR failed to establish that any repeated, systemic error in royalty reporting, with respect to the deduction of buy-back volumes, resulted in any "identified [royalty] underpayments or overpayments," as required by section 115(d)(4) of FOGRMA.¹¹³ It asserts that, even if it deducted the buy-back volumes used in a gas-lift operation for which it did not have BLM approval, there was "no royalty payment consequence," as follows: "The 'buy-back' volumes, having already been accounted for on the lease(s) from which they were produced, are *not* included in the volume on which royalties are owed for the [CA]

¹⁰⁹ SOR at 16-17 ns.14 and 15 (citing 30 U.S.C. § 226(b)(1)(A) (providing for payment of royalty "in amount or value of the production removed or sold from the lease"); *Plains Exploration & Production Co.*, 178 IBLA 327, 343 (2010) ("The extent of the lessee's right is that he may use lease production to fuel conditioning operations without paying royalty on the fuel as long as he does so before the production leaves the lease or unit or communitized area.")).

¹¹⁰ SOR at 16 n.14.

¹¹¹ See SOR at 16 n.14 ("The volumes used for the gas lift operation may have been natively produced.").

¹¹² *XTO Energy, Inc.*, 185 IBLA at 225.

¹¹³ SOR at 16 (quoting 30 U.S.C. § 1724(d)(4)(B)(i)).

on which the buy-back volumes were ultimately used—Agreement No. NM 100157.”¹¹⁴

XTO asserts that the absence of any royalty payment consequences was acknowledged by ONRR in a December 15, 2010, Dear Reporter Letter. The Letter stated, in relevant part: “Since Buy-Back volumes that were produced on a different [lease or CA] and royalty was already paid on those volumes by the off-lease operator, the Buy-Back volumes are not considered native production. Therefore, royalty is not due for the month you purchased the Buy-Back [volumes].”¹¹⁵ An enclosure to the Letter stated, in relevant part: “The volume of oil/gas in which royalty is due is based on the volume measured by the Sales meter **minus** the volume measured by the Buy-Back meter.”¹¹⁶ XTO concludes that, having paid royalty on the buy-back volumes, it properly deducted these volumes from the volumes of gas produced from CA Number NM 100157, for royalty computation purposes.¹¹⁷ XTO does not, however, address the fact that the Letter assumed BLM approval to buy back the gas volumes.¹¹⁸

ONRR determined that XTO paid no royalty with respect to the production from CA Number NM 100157 that is attributable to Lease Number 076-105599-0, and determined that this was because XTO was deducting buy-back volumes used in gas-lift operations on the CA, but without the required BLM approval.¹¹⁹ Regardless of the fact that royalty may have already been paid on the buy-back volumes, this deduction for use that BLM had not approved decreased the volumes of production from CA Number NM 100157, diminishing XTO’s royalty liability. ONRR therefore concluded that the royalty reporting error resulted in “significant payment errors,” which it estimated, in the case of 10 sample months, to amount to a royalty underpayment of more than \$15,000.¹²⁰ We conclude that the repeated, systemic error concerning the deduction of buy-back volumes had resulted in “identified [royalty] underpayments” during the January 2009-December 2011 audit

¹¹⁴ *Id.* at 16, 17.

¹¹⁵ Dear Reporter Letter at 1 (AR 284).

¹¹⁶ *Id.*, Encl. 1 at unp. 1 (AR 287).

¹¹⁷ SOR at 17.

¹¹⁸ Dear Reporter Letter, Encl. 1 at unp. 1 (AR 287) (listing “BLM approval” as a “key consideration”).

¹¹⁹ *See* Answer at 20-21.

¹²⁰ *Id.* at 20; *see id.* at 15, 21 (“[B]ecause of the direct relationship between [gas] volumes and royalties due, an under reported volume necessarily implies underpayment of royalties due. When the under-reporting occurs over years and many properties, as is the case here, the payment errors are significant.”).

period, and was “likely to result in . . . significant [royalty] underpayments” throughout the July 2007-June 2014 correction period.¹²¹

Finally, XTO argues that because the gas-lift operation and associated deduction of buy-back volumes occurred only during the period from November 2007 through May 2012, ONRR erred in requiring XTO to perform restructured accounting concerning this matter throughout the 7-year period from July 2007 through June 2014.¹²² But, as discussed in the context of XTO’s second statutory authority argument above, FOGRMA expressly allows this. Once ONRR has found the existence of a repeated, systemic error, section 115(d)(4) of FOGRMA allows ONRR to require a lessee to perform restructured accounting for more than the months during which ONRR detected the error. It is particularly reasonable to conclude that the errors found in one period will be found in others where, like here, a payor has not demonstrated that it used a different royalty computation methodology at any time during the correction period.¹²³ In these circumstances, we find no error in ONRR requiring XTO to undertake restructured accounting for the entire correction period.

XTO has not shown error in ONRR’s Order with respect to the deduction of buy-back volumes.

*Issue 3: XTO Improperly Attributed Gas Volumes
from Multiple CAs to One CA.*

When a lease is committed to a CA, “the full share of production attributable to the lease under the terms of the [CA] . . . is subject to the royalty payment and reporting requirements.”¹²⁴ ONRR’s Oil and Gas Payor Handbook provides that, for royalty computation purposes, “all oil and gas produced from a Federally approved CA must be allocated to the communitized Federal . . . tract(s)” according to the production allocations set forth in the CA, which are “normally . . . based on the ratio of the surface acreage of the tract(s) to the total surface acreage within the CA.”¹²⁵ In addition, the version of the Minerals Revenue Reporter Handbook in effect at the time of ONRR’s Order stated: “We expect to receive royalties based on

¹²¹ 30 U.S.C. § 1724(d)(4)(B)(i).

¹²² See SOR at 18-19.

¹²³ *Union Texas Petroleum Energy Corp.*, 153 IBLA at 179.

¹²⁴ 30 C.F.R. § 1202.150(e)(1) (2013).

¹²⁵ Oil and Gas Payor Handbook, Volume III, Product Valuation, Section 2.6, at 2-27 (Rel. 2.1 (Feb. 15, 2001)) (available at <http://www.onrr.gov/ReportPay/PDFDocs/ogphb3.pdf> (last visited Aug. 22, 2017)).

the CA allocation schedule. Report a separate line on Form [ONRR]-2014 for each lease-agreement combination in the CA.”¹²⁶ The current version of the Minerals Revenue Reporter Handbook contains identical language.¹²⁷ Accordingly, ONRR’s regulations and guidance require royalty reporters to report the oil and gas produced from each CA and from each communitized Federal lease according to the allocation in the governing CA (a “lease-agreement combination”).

Based on its audit, ONRR concluded that XTO did not report gas production information separately for each lease-agreement combination.¹²⁸ Instead of allocating production from Lease Number 076-025666-0 to each CA in which the lease participates, XTO had improperly combined production allocated to the various CAs in which the lease participates and reported the combined volume as production from one CA, ONRR Agreement Number NM 100171.¹²⁹ ONRR found that, as a result, the lease-agreement allocations are incorrect in that some gas sales volumes are over-reported and others are under-reported.¹³⁰ ONRR therefore directed XTO to correct all instances during the correction period for all leases where XTO incorrectly allocated gas to each lease-agreement combination, correctly report those allocations, and pay any additional royalty due.¹³¹

In finding that XTO had improperly attributed combined production from several CAs to a single CA, ONRR noted that XTO admitted to these allocation errors in its Response Letter.¹³² XTO stated that it “did in fact incorrectly report royalties” for Lease Number 076-025666-0 from January 2009 to May 2009 and “incorrectly rolled royalties from several agreements tied to lease 076-025666-0 all under Agreement NM 100171.”¹³³ XTO wrote that it discovered the problem for its September 2011 production and corrected it “from that point forward.”¹³⁴

¹²⁶ Minerals Revenue Reporter Handbook, Section 2.1, at 2-2 (Rel. 2.0 (July 1, 2003)) (available at <http://www.onrr.gov/ReportPay/PDFDocs/RevenueHandbook.pdf> (last visited Aug. 22, 2017)).

¹²⁷ See Minerals Revenue Reporter Handbook (Rel. 3.0 (May 1, 2015)), Section 2.1, at 2-1 (available at <https://onrr.gov/ReportPay/Handbooks/index.htm> (last visited Aug. 22, 2017)).

¹²⁸ Audit Issue Letter at 5 (AR 333).

¹²⁹ Order, Encl. 1, at 3; Answer at 24.

¹³⁰ Audit Issue Letter at 5 (AR 333).

¹³¹ Order, Encl. 1, at 4.

¹³² *Id.*; Answer at 24.

¹³³ Response Letter at unp. 2-3 (AR 226-27).

¹³⁴ *Id.* at unp. 3 (AR 227).

In addition, on appeal, ONRR states that (1) XTO acknowledged, at the November 2011 Entrance Conference, that it was improperly attributing production from several CAs to one CA and needed to fix the problem; (2) XTO acknowledged, in its June 2013 Response Letter, that both its predecessor and it had likewise done so from January through May 2009 and September 2010 through August 2011, respectively; and (3) ONRR determined, during the audit, that XTO had, in the case of January 2011 production, failed to attribute production from several CAs to each individual CA and had been doing so since July 2007.¹³⁵ ONRR states that XTO corrected its royalty reporting for September 2010 through August 2011 and for July 2007, but that ONRR later found additional errors: “Of the 30 reporting months reviewed, 25 had incorrect reporting.”¹³⁶

XTO asserts several errors in ONRR’s findings. First, XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR’s assessment of the existence of a repeated, systemic error in royalty reporting was based on one lease (Lease Number 076-025666-0) for one month (January 2011), because it does not amount to a finding of error in the case of “a single lease for a significant number of reporting months,” as required by section 115(d)(4) of FOGRMA.¹³⁷

We find that the evidence independently developed by ONRR before the Entrance Conference in 2011 only consisted of a single lease over one month.¹³⁸ However, following its determination that XTO had improperly attributed production from several CAs to one CA with respect to the January 2011 production from Lease Number 076-025666-0, XTO acknowledged, in its June 2013 Response Letter, that it had committed the same error in its royalty reporting over the 12 months that encompassed the period from September 2010 through August 2011.¹³⁹ XTO’s Lead Revenue Accountant for its ONRR/Indian Royalty Group, Bruce Bowers, admits this error in his January 2015 declaration.¹⁴⁰ We therefore conclude that XTO’s admissions in its Response Letter are equally probative of the existence of an error, and together with ONRR’s evidence, constitutes evidence of a

¹³⁵ Answer at 24 (citing Entrance Conference Record (AR 557-561), Audit Working Papers (AR 218-223), and Response Letter (AR 227)).

¹³⁶ *Id.* at 25.

¹³⁷ SOR at 20 (citing 30 U.S.C. § 1724(d)(4)(B)(i)).

¹³⁸ Answer at 24.

¹³⁹ *Id.* at 24, 26-27.

¹⁴⁰ See Bowers Decl., ¶ 14, at 3-4.

repeated, systemic error for “a single lease for a significant number of reporting months.”¹⁴¹

Second, XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR has not established that any repeated, systemic error in royalty reporting, with respect to the allocation of production, resulted in any “identified underpayments or overpayments” of royalty, as required by section 115(d)(4) of FOGRMA.¹⁴²

ONRR contends the repeated, systemic error in royalty reporting resulted in an identified royalty overpayment with respect to the single CA to which all of the production from several CAs was attributed and an identified royalty underpayment in the case of the several CAs to which no production was attributed.¹⁴³ ONRR admits that the “net” result of the overpayment and underpayment as between the various CAs is that no additional royalty is owed, but concludes that ONRR, nevertheless, “identified underpayments [and] overpayments” that were likely to result in “significant underpayments or overpayments,” within the meaning of section 115(d)(4) of FOGRMA.¹⁴⁴ As XTO states, “ONRR concedes that there is no overall payment error,”¹⁴⁵ but ONRR argues that “FOGRMA does not explicitly require that orders for restructured accounting have a ‘net’ impact on royalty payments.”¹⁴⁶

We agree with ONRR that neither FOGRMA nor the implementing regulations require a net impact on royalty payments before ONRR may issue an

¹⁴¹ 30 U.S.C. § 1724(d)(4)(B)(i); see *Union Oil Company of California*, 167 IBLA at 265, 279 (restructured accounting order properly based on audit performed on one lease over three sample months); *United States v. Copple*, 81 IBLA 109, 119-20 (1984) (finding that an Administrative Law Judge would be justified in relying on an admission against interest as proof of a fact); *United States v. O’Callaghan*, 29 IBLA 333, 341 (1977), *aff’d*, *O’Callaghan v. Morton*, No. 73-129-S (S.D. Cal. May 16, 1978), *aff’d*, No. 78-2588 (9th Cir. May 8, 1980) (“Such admissions are recognized as probative. Any review of the record of this case must give appropriate probative weight to this admission, and [the Administrative Law Judge] rightly considered it in making his decision.”); Answer at 32 (“[T]here is no legal requirement to exclude admissions from audit findings.”).

¹⁴² 30 U.S.C. § 1724(d)(4)(B)(i); see SOR at 20-21 n.25.

¹⁴³ Answer at 28-29.

¹⁴⁴ 30 U.S.C. § 1724(d)(4)(B)(i); see Answer at 28-29.

¹⁴⁵ Reply at 11 n.16.

¹⁴⁶ Answer at 29.

order to perform restructured accounting.¹⁴⁷ Further, we find that ONRR's establishment of the reporting error necessarily implicates a finding of a corresponding payment error as to both the single CA to which production was attributed and the other CAs to which no production was attributed. In both the Audit Issue Letter and on appeal, ONRR explained the effect of the reporting error on the royalty payments for each associated CA.¹⁴⁸ This constitutes a sufficient "identifi[cation]" of royalty underpayments and overpayments based on "repeated, systemic reporting errors" that are "likely to result in either significant underpayments or overpayments" during the correction period, justifying a restructured accounting order, in accordance with section 115(d)(4) of FOGDMA.¹⁴⁹

Third, XTO argues that, since its attribution of gas volumes from several CAs to a single CA occurred only during the period from September 2010 through August 2011, ONRR erred in requiring XTO to perform restructured accounting concerning this issue throughout the 7-period from July 2007 through June 2014.¹⁵⁰ But as we discussed above, FOGDMA expressly allows this. Once ONRR finds the existence of a repeated, systemic error, section 115(d)(4) of FOGDMA allows ONRR to require a lessee to perform restructured accounting for more than the months during which ONRR detected the error. It is particularly reasonable to conclude that the errors found in one period will be found in others where, like here, a payor has not demonstrated that it used a different royalty computation methodology at any time during the correction period.¹⁵¹ In these circumstances, we find no error in ONRR requiring XTO to undertake restructured accounting for the entire correction period.

*Issue 4: XTO Improperly Reduced Gas Volumes
by Wet-to-Dry Conversion Factor.*

ONRR's regulations require royalty reporters to report gas volumes and British thermal unit (Btu) heating values under the same degree of water saturation.¹⁵² In an instruction memorandum (IM) to its field officials, BLM provided guidance to ensure that proper gas heating values are being reported to

¹⁴⁷ See generally 30 U.S.C. § 1724(d)(4); 30 C.F.R. Parts 1201–1218.

¹⁴⁸ Audit Issue Letter at 5 (AR 333); Answer at 28-29.

¹⁴⁹ 30 U.S.C. § 1724(d)(4)(B)(i).

¹⁵⁰ See SOR at 21 (citing Bowers Decl., ¶ 14, at 4); Reply at 11 n.17.

¹⁵¹ *Union Texas Petroleum Energy Corp.*, 153 IBLA at 179.

¹⁵² 30 C.F.R. § 1202.152(a)(1)(i) (2013).

ONRR.¹⁵³ BLM explained that the heating value of a gas can be reported in three different ways, depending on the amount of water vapor that is present or assumed to be present in a gas sample at the measurement point: dry, wet or saturated, or real or actual.¹⁵⁴ BLM stated that, when verifying heating values, the “dry” heating value shown on the gas analysis must be used unless the water vapor content of the gas has been determined, in which case the “real” or “actual” heating value must be used.¹⁵⁵ BLM explained that volume is “almost always” determined on a dry basis, and “[a]ccording to the [ONRR] regulation[,] . . . if volume is reported on a ‘dry’ basis, heating values must also be reported on a dry basis.”¹⁵⁶ BLM stated in the IM that the reported heating value “has a direct relationship to the amount of royalty due”: if a heating value is reported on a wet or saturated basis, the heating value is reduced because of the water vapor, which results in a decrease in royalties paid.¹⁵⁷

Based on its audit, ONRR concluded that XTO had improperly reduced the gas volumes on which it paid royalty by using a wet-to-dry conversion factor to calculate volume instead of reporting the volume as dry, a practice that “distorts the volume reported for production and royalty purposes.”¹⁵⁸ In finding that XTO had improperly reduced the gas volumes by using the conversion factor, ONRR relied on information XTO provided during the Entrance Conference at the start of the audit and in its June 2013 Response Letter, in which XTO stated that it had been using the wet-to-dry conversion factor even though the gas was already considered to be dry.¹⁵⁹ ONRR states, on appeal, that it also determined that this practice had occurred with respect to the McMahon and Madeley wells of Lease Numbers 076-025666-0 and 076-105599-0 for, respectively, 11 and 10 sample months.¹⁶⁰ ONRR therefore directed XTO to determine whether it had used the wet-to-dry conversion factor to determine gas volume for all of the leases during the 7-year correction period, and, if so, to pay any additional royalties found to be due, without using the conversion.¹⁶¹

¹⁵³ IM No. 2009-186, Policy for Verifying Heating Value of Gas Produced from Federal and Indian Leases (July 28, 2009).

¹⁵⁴ *Id.* at 1.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 2.

¹⁵⁷ *Id.*

¹⁵⁸ Order, Encl. 1, at 4-5; *see* Audit Issue Letter at 3 (the wet-to-dry reduction factor “caused gas sales volumes to be under-reported to ONRR”).

¹⁵⁹ Order, Encl. 1, at 4-5; Response Letter at unp. 2 (AR 226).

¹⁶⁰ *See* Answer at 30.

¹⁶¹ *See* Order, Encl. 1, at 5.

XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR failed to specify any “reasons and factual bases” for its assertion of the existence of a repeated, systemic error in royalty reporting with respect to any particular lease or any particular month, as required by section 115(d)(4) of FOGDMA.¹⁶² It further argues that ONRR has failed to establish a repeated, systemic reporting error for “a significant number of leases” or “a single lease for a significant number of reporting months.”¹⁶³ XTO asserts that ONRR, rather than making an independent determination of a repeated, systemic reporting error, relied on information XTO provided at the start of the audit.¹⁶⁴ It objects to ONRR’s reliance on self-audit evidence presented by XTO, rather than evidence independently developed, through audit, by ONRR.¹⁶⁵ Further, XTO asserts that the information it presented at the Entrance Conference, which only involved Lease Number 076-025666-0 for the months of May 2009 and January 2011, cannot establish the existence of a repeated, systemic reporting error sufficient to support an order to perform restructured accounting for over 30 leases over a 7-year correction period.¹⁶⁶

While not stated in the Order, ONRR establishes on appeal that the Order was based not only on XTO’s admissions during the November 2011 Entrance Conference and in the June 2013 Response Letter, but also an independent determination based on ONRR’s audit of royalty reporting and payment with respect to the McMahon and Madeley wells for, respectively, 11 and 10 sample months, in the case of Lease Numbers 076-025666-0 and 076-105599-0.¹⁶⁷ XTO’s admissions, buttressed by ONRR’s determination, were proof of erroneous royalty reporting. Based on ONRR’s Order and XTO’s admissions, we find that ONRR adequately complied with the requirement to specify its reasons and factual bases. Furthermore, we conclude that ONRR’s finding of a repeated, systemic error regarding the reduction of gas volumes due to the wet-to-dry conversion factor was based, at least, on “a single lease [Lease Number 076-025666-0] for a significant number of reporting months.”¹⁶⁸

¹⁶² SOR at 23 (quoting 30 U.S.C. § 1724(d)(4)(B)(ii)(II)).

¹⁶³ *Id.* (quoting 30 U.S.C. § 1724(d)(4)(B)(i)).

¹⁶⁴ *Id.* (citing Order, Encl. 1, at 4).

¹⁶⁵ *Id.* at 24-25 (citing *Phillips Petroleum Co. v. Lujan*, 963 F.2d 1380, 1386 (10th Cir. 1992) (referencing “FOGRMA’s requirement that an independent audit be performed” by the agency)).

¹⁶⁶ *See id.* at 23-24.

¹⁶⁷ *See Answer* at 30, 31-32.

¹⁶⁸ 30 U.S.C. § 1724(d)(4)(B)(i).

In addition, we find that ONRR identified underpayments of royalty caused by XTO's use of the wet-to-dry conversion factor, which was a repeated, systemic reporting error that is likely to result in significant underpayments. ONRR explained in its Audit Issue Letter and its Order that use of the conversion factor caused XTO to underreport gas sales for production and royalty.¹⁶⁹ ONRR states on appeal that a "restructured accounting order[] based on identified underreported gas volumes satisfies [the requirement to identify underpayments] . . . because underreported volumes always cause royalty underpayments."¹⁷⁰

Finally, XTO argues that its use of the wet-to-dry conversion factor ended in September 2010, so ONRR erred in requiring it to perform restructured accounting concerning this matter with respect to any time after September 2010.¹⁷¹ XTO asserts that any restructured accounting should be limited to the portion of the correction period from January 2009 through August 2010.¹⁷² But as we have stated in this opinion, once ONRR finds the existence of a repeated, systemic error, section 115(d)(4) of FOGRMA allows ONRR to require a lessee to perform restructured accounting for more than the months during which ONRR detected the error. Because ONRR identified the existence of the wet-to-dry conversion error, it was justified in requiring XTO to undertake restructured accounting to rule out the existence of the same error throughout the correction period.¹⁷³ XTO has not shown error in ONRR's Order regarding this issue.

Issue 5: XTO Failed to Correctly Report Btus for Gas Production.

As we stated earlier in this decision, ONRR's regulations require lessees to compute royalties "on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement."¹⁷⁴ Gas quality may be determined by its overall heating value, which is measured in Btus.¹⁷⁵ Lessees are also required to "make

¹⁶⁹ Audit Issue Letter at 3 (AR 331); Order at 5.

¹⁷⁰ Sur-reply at 8.

¹⁷¹ SOR at 24.

¹⁷² *Id.*

¹⁷³ See *Union Texas Petroleum Energy Corp.*, 153 IBLA at 182 ("It is not sufficient that a producer attests to the fact that [it calculated royalties correctly]. [ONRR] is obligated to verify that the royalty amount is correct, and when the error is systemic, . . . [ONRR] may properly require restructured accounting to achieve that end.").

¹⁷⁴ 30 C.F.R. § 1206.154(a)(1) (2013).

¹⁷⁵ See *Oil and Gas Payor Handbook*, Section 2.4 (Quantities and Qualities); Order, Encl. 1, at 6 ("In order to determine quality, the correct Btu must be used.").

and retain accurate and complete records necessary to demonstrate that payments of . . . royalties . . . are in compliance with lease terms, regulations, and orders” and to “mak[e] the records available for inspection.”¹⁷⁶

In its Order, ONRR found that XTO had reported the incorrect heating value of gas in Btus.¹⁷⁷ ONRR directed XTO to determine whether it had done so as to all of the leases throughout the 7-year correction period and pay any additional royalties found to be due, based on the correct Btu.¹⁷⁸ In finding that XTO had not reported the correct Btus, ONRR relied on XTO’s acknowledgment that “it did not keep its own records to support the Btu heating value reported to ONRR,” and therefore could not substantiate its Btu reporting, and ONRR’s finding that the Btus XTO reported on its ONRR-2014 forms for “many of the wells” were inconsistent with the Btu analyses provided by Gardner Consultants, Inc. (Gardner).¹⁷⁹

On appeal, ONRR explains that, during the audit, it determined that XTO did not have adequate documentation for its Btu reporting, and, upon notifying XTO of this fact in its April 2013 Audit Issue Letter, XTO provided copies of the Gardner documents, though these documents did not cover the period before January 2009 and after May 2010.¹⁸⁰ It explains that, upon receiving the Gardner documents, it compared them with XTO’s original royalty reports and found “112 months with variances, affecting 19 CAs and 7 different leases.”¹⁸¹ ONRR stated that it calculated the royalties due on 4 CAs, in which 6 Federal leases participated, and identified “32 distinct royalty underpayments related to the use of erroneous Btu factor in XTO’s royalty calculations.”¹⁸²

XTO argues that ONRR erred in requiring XTO to undertake restructured accounting where ONRR failed to establish that any repeated, systemic error in royalty reporting, with respect to Btus, resulted in any “identified underpayments

¹⁷⁶ 30 C.F.R. § 1212.51(a) and (c) (2013).

¹⁷⁷ Order, Encl. 1, at 6 (citing XTO’s letter responding to ONRR’s Audit Issue Letter at unp. 3 (AR 227)).

¹⁷⁸ *Id.* at 7.

¹⁷⁹ *Id.* at 6.

¹⁸⁰ *See Answer* at 35.

¹⁸¹ *Id.* (citing Audit Working Papers (AR 602-608)); *see* Order, Encl. 3 (Btu Comparison between ONRR-2014 and Gardner Consultant Gas Analysis Statements).

¹⁸² *Id.* (citing Audit Working Papers (AR 608)).

or overpayments,” as required by section 115(d)(4) of FOGRMA.¹⁸³ It notes that ONRR, in fact, failed to establish that there had been any underpayment or overpayment, because it was unable to determine the correct Btus.¹⁸⁴ XTO acknowledges that ONRR was able to demonstrate that the Btus originally reported by XTO differed from the Btus identified on “various Gardner Consultant gas analysis reports,” which were provided along with its June 2013 Response Letter, but asserts that such discrepancies “merely show[] a volume variance without also establishing a particular payment error.”¹⁸⁵

ONRR responds that the Order “identifie[d] 112 instances where XTO mostly underreported Btu values,” further noting that “[u]nderreported Btus result in underpaid royalties because the Btu factors directly affect gas volumes and therefore royalties due” because “[a] higher gas quality results in higher royalty payments.”¹⁸⁶ Given the direct correlation between the proper reporting of the Btu values of gas production and the payment of royalty, which is not denied by XTO, we find that ONRR justifiably concluded that once it detected a repeated, systemic error in royalty reporting regarding Btus, there necessarily was a corresponding error in the associated royalty payment. ONRR demonstrated this correlation on appeal.¹⁸⁷ We conclude that these findings were sufficient to require XTO to undertake restructured accounting of all of the more than 30 leases over the July 2007-June 2014 correction period.¹⁸⁸

Issue 6: XTO Improperly Deducted Non-arm’s-length Transportation Costs from Value of Gas Production.

ONRR’s regulations instruct lessees how to value unprocessed gas for royalty purposes. For unprocessed gas, “[t]he value of production, for royalty purposes, . . . shall be the value of gas determined under this section less applicable

¹⁸³ SOR at 25 (quoting 30 U.S.C. § 1724(d)(4)(B)(i)).

¹⁸⁴ See *id.* at 25-26.

¹⁸⁵ *Id.* at 26.

¹⁸⁶ Answer at 36 (citing Order, Encl. 3).

¹⁸⁷ *Id.* at 35 (citing AR 608).

¹⁸⁸ See *Union Texas Petroleum Energy Corp.*, 153 IBLA at 182 (“We find it proper for [ONRR] to require submittal of the correct Btu measurements, which are needed to comply with [ONRR’s] obligation under FOGRMA to ensure collection of the appropriate royalty[.] . . . [A]nd when the error [in royalty reporting] is systemic, as it is in the case of improperly reported BTU values, [ONRR] may properly require restructured accounting to . . . [verify that the royalty amount is correct].”).

allowances.”¹⁸⁹ The value of gas determined under the regulation generally starts with the gross proceeds accruing to the lessee, depending on how the gas is sold.¹⁹⁰ The applicable allowances include transportation allowances, and the regulations provide that, where the value of the gas has been determined at a point off the lease (*e.g.*, a sales point or point of value determination), “ONRR shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas . . . from a lease to a point off the lease[.]”¹⁹¹ In addition, in instances where gas is transported under a non-arm’s-length transportation contract, the lessee is permitted to deduct from the value of the gas, as a transportation allowance, “the lessee’s reasonable actual costs”¹⁹² incurred in transporting the gas.

Based on its audit, ONRR concluded that XTO had improperly deducted non-arm’s-length transportation costs from the value of natural gas production for royalty computation purposes.¹⁹³ ONRR’s finding that XTO had improperly deducted these costs was based on information XTO provided during the Entrance Conference and later confirmed in XTO’s Response Letter.¹⁹⁴ XTO disclosed that, during the relevant time period, XTO had transported gas produced from the leases through the English Bay Pipeline system and the Shelby Pipeline in Shelby County, Texas, both of which are affiliates of XTO.¹⁹⁵ Agreements between XTO and English Bay and Shelby allow for a standard reduction in gas volumes for “Fuel, Lost, and Unaccounted” (F, L, & U), based on a pre-determined contract rate and not actual costs.¹⁹⁶ ONRR determined that, during five sample months, XTO deducted non-arm’s-length contract transportation costs from the gross proceeds received based on the pre-determined contract rates for F, L, & U, resulting in a total royalty underpayment of \$1,292,420.16.¹⁹⁷ ONRR therefore directed XTO to determine whether it had improperly deducted transportation costs as to all of the leases throughout the 7-year correction period, and to pay any additional royalties found to be due, after correcting the deduction.¹⁹⁸

¹⁸⁹ 30 C.F.R. § 1206.152(a)(2) (2013).

¹⁹⁰ *See* 30 C.F.R. § 1206.152(b)(1)(i) and (c)(1) (2013).

¹⁹¹ 30 C.F.R. § 1206.156(a) (2013).

¹⁹² 30 C.F.R. § 1206.157(b)(1) (2013).

¹⁹³ *See* Order, Encl. 1, at 7-8.

¹⁹⁴ *Id.* at 7; Answer at 37, 38.

¹⁹⁵ Answer at 37-38; Entrance Conference Record at 5 (AR 556); Response Letter at unp. 3 (AR 227).

¹⁹⁶ Order, Encl. 1, at 7; Answer at 38.

¹⁹⁷ Answer at 38 (citing Audit Issue Letter at 9 (AR 337)).

¹⁹⁸ Order, Encl. 1, at 8.

XTO argues that ONRR erred in requiring XTO to perform restructured accounting where ONRR failed to specify any “reasons and factual bases” for its assertion of the existence of a repeated, systemic error in royalty reporting with respect to any particular lease or any particular month, as required by section 115(d)(4) of FOGDRA.¹⁹⁹ Further, XTO asserts that, rather than making an independent determination through its audit, ONRR relied on information provided by XTO during the Entrance Conference.²⁰⁰ Also, noting that its presentation at the Entrance Conference only involved Lease Number 076-025666-0 for the months of May 2009 and January 2011, XTO argues that this does not establish the existence of a repeated, systemic reporting error sufficient to support an order to perform restructured accounting for over 30 leases throughout a 7-year correction period.²⁰¹

While not stated in the Order, ONRR establishes on appeal that the Order was based not only on XTO’s admissions during the Entrance Conference and in its Response Letter, but also, as evidenced by the record, ONRR’s independent audit of XTO’s royalty reporting and payment with respect to five sample months for Lease Number 076-025666-0.²⁰² And ONRR’s independent analysis, together with XTO’s admissions, constitutes evidence of a repeated, systemic error for “a single lease for a significant number of reporting months,” justifying an order to perform restructured accounting covering the entire July 2007-June 2014 correction period.²⁰³ Finally, ONRR’s Order, which recounts the information provided by XTO, adequately complies with the requirement to specify ONRR’s reasons and factual bases. XTO has not shown error in ONRR’s findings with respect to the deduction of transportation costs.

CONCLUSION

We conclude that ONRR’s findings that XTO made identified underpayments or overpayments based upon repeated, systemic reporting errors, which are likely to result in significant underpayments or overpayments, justified ONRR’s order to perform restructured accounting. XTO has not shown that ONRR made an error of law or material error in its factual analysis, or that the Order is not supported by a record showing that ONRR gave due consideration to all relevant factors and based its decision a rational connection between the facts found and choice made.

¹⁹⁹ SOR at 26 (quoting 30 U.S.C. § 1724(d)(4)(B)(ii)(II)).

²⁰⁰ See *id.* at 26-27 (citing *Phillips Petroleum Co. v. Lujan*, 963 F.2d at 1386).

²⁰¹ See *id.* at 27; Cover Sheet to Entrance Conference Record (AR 551).

²⁰² Answer at 37-38, 39 (citing Audit Working Papers).

²⁰³ See *supra* note 141.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁰⁴ we affirm ONRR's Order.

/s/

Silvia M. Riechel
Administrative Judge

I concur:

/s/

James F. Roberts
Deputy Chief Administrative Judge

²⁰⁴ 43 C.F.R. § 4.1.