

INTERIOR BOARD OF LAND APPEALS

Oxy USA, Inc.

125 IBLA 308 (March 18, 1993)

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OXY USA INC.

IBLA 90-518

Decided March 18, 1993

Appeal from a decision of the Associate Director for Management and Budget, Minerals Management Service, denying an appeal of a Royalty Management Program assessment of late payment interest charges on retroactive lump-sum royalty payments. MMS-90-0180-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

Under 30 CFR 218.54, MMS is authorized to assess a late payment interest charge if royalty payments for oil and gas leases are unpaid or underpaid on the date the amounts are due. Under 30 CFR 218.50(a), royalty payments are normally due at the end of the month following the month in which the oil and/or gas is produced and sold, and MMS properly rejects an argument that royalty on additional proceeds resulting from retroactive price adjustments is not due until the lessee receives the additional payment from its purchaser.

APPEARANCES: Deborah Bahn Price, Esq., and Jane J. Boleware, Esq., New Orleans, Louisiana, and Cookie Nitz, Esq., and Patricia A. Patten, Esq., Tulsa, Oklahoma, for Oxy USA Inc.; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Oxy USA Inc. (Oxy) has appealed from a July 10, 1990, decision of the Associate Director for Management and Budget, Minerals Management Service (MMS), denying Oxy's appeal of a Royalty Management Program (RMP), MMS, assessment of \$2,407.71 in interest charges for the late payment of royalties on production from Federal oil and gas leases.

On February 26, 1990, RMP issued a bill for collection (Invoice No. 10900144) requiring Oxy to pay \$2,407.71 in interest charges for, inter alia, the late payment of royalties for the sales months of December 1987

through April 1989. ^{1/} MMS received these royalties, which were due by February 1, 1988, through May 31, 1989, on May 31 and June 30, 1989, 30 to 485 days late.

Oxy appealed the RMP assessment to the Director, MMS, arguing that the royalties were timely paid because it had complied with the regulations dealing with gross proceeds. Oxy asserted that it had remitted royalties based on the gross proceeds it had received from its purchaser within 30 days from the date of production, and when it had received subsequent proceeds from the purchaser as a result of retroactive adjustments, it had promptly remitted the royalty based on those proceeds within 30 days of their receipt. Oxy also contended that the RMP interest assessment was contrary to congressional intent and unreasonable.

In his July 10, 1990, decision denying Oxy's appeal, the Associate Director stated that MMS had the legal obligation to assess late payment charges on all debts not received by the due date, and that those assessments, which were intended to compensate for the replacement costs of funds due but not timely paid, were not penalties. He noted that royalty payments are due by the last day of the month following the production month and indicated that the record established that Oxy's royalty payments for the December 1987 through April 1989 sales months were not received by MMS until May 31 and June 30, 1989, 30 to 485 days late.

The Associate Director rejected Oxy's contention that its royalty payments were timely because it had promptly tendered additional royalties upon receipt of additional proceeds resulting from retroactive price adjustments by its purchaser. He concluded that a lessee's problem in obtaining timely accurate payments from its purchaser was not a burden that could be transferred to the Government, nor did it justify deferral of royalty payments beyond the established due date. The Associate Director further found that the assessment was not contrary to congressional intent with respect to section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721 (1988), because Congress' fundamental reason for authorizing late payment charges was to ensure that the Government would not lose the time value of money due and owing to it, and when royalties were initially underpaid and then later corrected, the Government had been deprived of the time value of the funds to which it was entitled. Accordingly, he determined that the RMP interest assessment was appropriate.

On appeal Oxy again maintains that its royalty payments were not late. It asserts that under both the regulation in effect prior to March 1, 1988, 30 CFR 206.103 (1987), and the current regulation, 30 CFR 206.152(b)(1)(i), the value of production for royalty purposes is established by reference to the gross proceeds accruing to the lessee. It argues that if the value of production depends on the lessee's gross proceeds, it is arbitrary, capricious, an abuse of discretion, and contrary to law to require that royalties

^{1/} The \$2,407.71 late payment charge included \$5.50 for the late payment of four previous invoices.

be paid before the lessee actually receives those proceeds. ^{2/} Oxy insists that it properly paid royalties on the gross proceeds it originally received from its purchaser within 30 days after the date of production, and that it properly paid royalties on the additional proceeds it received as a result of the purchaser's retroactive adjustments within 30 days after its receipt of those additional proceeds. Oxy contends that the record contains no evidence that its late receipt of the proceeds stemmed from a breach of its marketing obligation or from its failure to take proper or timely action to receive the prices or benefits to which it was entitled, and that absent such a showing, its payments must be considered timely.

Oxy claims that the Associate Director's decision is contrary to Congress' intent in enacting FOGRMA, asserting that the legislative history of the provision authorizing the assessment of late payment charges indicates that the imposition of an interest rate higher than the prime rate against those owing money to the United States was designed to remove the incentive to hold the money owed and invest it rather than pay it on time to MMS. Oxy contends that it did not hold any money owed to MMS; rather, it paid the additional royalties promptly upon receipt of the additional proceeds from its purchaser.

Alternatively, Oxy argues that the assessment of late payment charges in this case should be waived. Oxy asserts that, in response to a comment at the time of the promulgation of 30 CFR 218.54, MMS indicated that it would waive an interest assessment if, in the judgment of MMS, the late payment or underpayment was not the fault of the lessee. Oxy further contends that MMS has recognized that adjustments to royalty payments caused by purchaser adjustments are not the fault of the lessee. Because its payment of additional royalties was occasioned by the retroactive price adjustments by its purchaser and not by any fault on its part, Oxy maintains that MMS policy requires waiving late payment charges in this case.

In response, MMS argues that a lessee's difficulties in obtaining timely and complete payment from its purchaser does not excuse the lessee from paying late payment charges since interest charges compensate for the loss of the use of funds due but not paid. MMS also asserts that its assessment of late payment charges fully comports with its contemporaneous interpretation of FOGRMA and its implementing regulations.

[1] Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1988), provides, in pertinent part, that "[i]n the case of oil and gas leases where royalty payments are not received by the Secretary on the date such payments are

^{2/} We note that Chevron U.S.A., Inc. v. United States, 17 Ct. Cl. 537 (1989), relied upon by Oxy as providing support for its position that basing royalties on proceeds but requiring royalty payments before the proceeds are received is unreasonable, was reversed by the United States Court of Appeals for the Federal Circuit. Chevron U.S.A. Inc. v. United States, 923 F.2d 830 (Fed. Cir. 1991), cert. denied sub nom., Phillips Petroleum Co. v. United States, 112 S. Ct. 167 (1991).

due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments * * *." Similarly, 30 CFR 218.54, which implements that FOGRMA provision, states that "[a]n interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." See also 30 CFR 218.150.

Oxy does not challenge MMS' general authority to assess interest charges; rather, it contends that its royalty payments were timely and that, therefore, no interest should have been assessed. Oxy's position rests on its contention that royalties are not due until the lessee actually receives payment from its purchaser regardless of whether payment by the purchaser was timely or not. ^{3/} The applicable regulations and Board precedent, however, flatly contradict Oxy's position.

The regulation dealing with payment of royalties for oil and gas leases, 30 CFR 218.50(a), specifically provides that "[r]oyalty payments are due at the end of the month following the month during which the oil and gas is produced and sold * * *." Oxy does not dispute that it submitted additional royalty payments for the December 1987 through April 1989 production and sales months on May 31 and June 30, 1989, well after the regulatory due date for those payments. Therefore, those payments were clearly late.

This Board has consistently rejected the contention that the payment of additional royalty is not due until the purchaser has paid the lessee the additional consideration resulting from a subsequent adjustment in the price and affirmed the assessment of interest from the date on which the royalty is due under the regulations. See, e.g., Cotton Petroleum Corp., 112 IBLA 1, 3 (1989); Christmann Energy Corp., 107 IBLA 179, 182 (1989); Dugan Production Corp., 107 IBLA 91, 94 (1989); Cities Service Oil & Gas Corp., 104 IBLA 291, 295 (1988). Late payment charges compensate for the loss of the use of funds due but not paid, Cities Service Oil & Gas Corp., *supra*, and Oxy has not persuaded us that the assessment of interest in this case is contrary to congressional intent.

To the extent Oxy may be arguing that its payments were timely under 30 CFR 206.152(j), which provides that if a lessee makes timely application for a contractually authorized price increase but the purchaser refuses and the lessee takes documented reasonable steps to force purchaser compliance, no additional royalties will be due until the lessee receives the additional price, it has failed to meet its burden of demonstrating its entitlement to the benefits of that regulatory provision. See Anadarko Petroleum Corp.,

^{3/} Oxy apparently equates the gross proceeds accruing to the lessee with the amount of the funds actually received by the lessee. The regulations, however, define "gross proceeds" to embrace the monies accruing to, as well as received by, the lessee, and also other consideration to which the lessee is contractually or legally entitled, including such consideration which the lessee fails to seek to collect through reasonable efforts. 30 CFR 206.151.

123 IBLA 361, 366-68 (1992). Oxy has offered no explanation for the retroactive price adjustment by its purchaser, nor has it documented any steps it took to obtain a contractually authorized higher price for its gas. Contrary to Oxy's assertion, the lack of any evidence in the record indicating that Oxy failed to take timely or proper action to receive a higher price does not establish that its royalty payments were timely. As 30 CFR 205.152(j) clearly states, "[t]his paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas."

We similarly reject Oxy's contention that the interest assessment should be waived because Oxy's delay in payment of the royalties was not its fault. A lessee's difficulties in obtaining payments from a purchaser does not vitiate the lessee's responsibility of timely payment to the Government, and neither Congress nor MMS intended that interest should be deferred pending resolution of a dispute between the lessee and purchaser. Oxy USA Inc., 123 IBLA 383, 391 (1992), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 4/

John H. Kelly
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

4/ Oxy has requested an opportunity for oral argument. Because we conclude that oral argument would serve no useful purpose, we deny that request.