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**Re: RIN 1012-AA13 Comments on Proposed Rule to Amend Federal Oil & Gas Valuation Regulations,  
80 Fed. Reg. 608 (Jan. 6, 2015)**

**Submitted via : <http://www.regulations.gov> and US Mail**

Dear Mr. Southall:

The following are WPX Energy's ("WPX") comments to the Office of Natural Resources Revenue's ("ONRR") Proposed Rule to amend Federal Oil & Gas Valuation Regulations. See, 80 Fed. Reg. 608. ("Proposed Rule") One aspect of WPX's business involves the exploration and production of oil, gas and natural gas liquids from producing properties in a number of states including New Mexico, Colorado, Wyoming and North Dakota. A significant amount of WPX production is from Federal and Indian leases. By way of example only, during 2014, WPX has averaged paying approximately \$20,000,000.00 in royalty on Federal and Indian lands per month.

WPX adopts and incorporates by reference herein the Comments on the Proposed Rule dated May 8, 2015 submitted jointly in this same matter by the American Petroleum Institute and the Independent Petroleum Association of America (collectively referred to as "API"). API's detailed comments describe the numerous problems with the proposed rule. WPX concurs with API's conclusion that the proposed rule must be revised and re-proposed. WPX agrees that the issues presented by the proposed rule cannot be corrected through minor revisions.

Consistent with API's comments, WPX would advise further:

1. The ONRR has failed to establish a sufficient basis for the amendments/revisions it has proposed. Nothing in the agency's submission provides the substantial justification that is required before an Agency's previous policies upon which industry has relied are to be altered.
2. Similar to the ONRR's attempts to expand the scope of its authority regarding fines and penalties unfairly, (See, 79 Fed. Reg. 28862, May 20, 2014) the proposed definition of *misconduct* is improper. Defining a term whose plain legal meaning connotes some element of wrongful conduct in a manner that would include innocent clerical errors is wrong. The problem with the definition is heightened given the Proposed Rule's provision that permits the Agency to use a finding of misconduct to utilize the "default provision" to unilaterally impose a new value.
3. The proposed definition of Gross Proceeds, 30 CFR 1206.20, needs clarification because as currently phrased it appears to represent a misstatement of the law and is inconsistent with the proposed regulations. The definition states that gross proceeds include costs incurred for certain "services". The new definition then lists several services including treating, compression and dehydration. The phrase closes with the statement that appears to categorically state that these services are ones that "...the lessee must perform at no cost to the Federal Government". That simply is not true even under the Secretary's decision in the *Devon* case cited in the Notice. Under *Devon* some costs for a service like compression of unprocessed gas may be deductible if certain pressures have been achieved once. The proposed language should be clarified to permit the ability to charge for the cost of services incurred for the item listed to the extent they are incurred outside of the requirements of the Marketable Condition Rule. WPX proposes rephrasing this provision to state "... (1) payments for services ... **to the extent it is determined that the lessee must perform the service** at no cost to the Federal Government...".
4. The Proposed Rule's self described "default provisions" represent an egregious example of impermissible Agency overreaching. See, proposed 30 CFR Sec. 1206.105 (oil) and 30 CFR Sec. 1206.144 (gas). API's comments detail the myriad issues with the broad, vague and draconian powers ONRR wants to claim with regard to setting value through the incorporation of these provisions in the new rule. An agency's authority is not limitless or unfettered. Language that the ONRR can determine value "based on any other information [the agency] believes is appropriate" is entirely unworkable and inconsistent with the stated purpose of the proposed rule to provide clarity and certainty to the royalty payment process. In fact, these provisions

eliminate all certainty to the complicated process of determining, reporting and paying federal royalty.

5. WPX supports the concept of providing an index based option with respect to value. Concepts like this have proven successful in terms of providing efficiencies and transparency to all of the stakeholders involved in the royalty process. The Federal Oil and Indian Gas index based provisions are good examples of how a fair Index based method of valuation can be formulated. That said, the index based provisions of the Proposed Rule fall short of this mark. A key component of the successful existing index based methodologies is that they represent a reasonable/fair value for production at the lease. The Proposed Rule's use of prices that are unrealistic and in some cases impossible to actually achieve either in terms of price or lease based value does not represent reasonable/fair value. Setting the price as the highest price at an index point including an index point where the gas at issue may not be able to physically flow creates a meaningless starting point. In addition, limiting the deductions from that price based on outdated information or over restrictive limits creates a meaningless ending point.
6. WPX believes that the rationale for excluding actual/theoretical line losses from the gas transportation allowance is misplaced. The agency states that eliminating this provision is consistent with the concept that royalty is due on the "production removed from the lease". That concept has been clarified and modified by the longstanding concept that no royalty is due on production that is unavoidably lost through no fault of the producer. See, e.g. Bureau of Land Management's NTL-4A, Jan. 1, 1980. Situations will occur where minor amounts of oil or gas may be lost or unaccounted for during transmission through a pipeline under normal operating circumstances. The cost for transporting production through that pipeline must be born by the companies that are shipping the oil and gas. Because of this it is an actual cost of transportation that should be included in the manner in which an allowance is calculated.

The notice requests specific comment on three areas. WPX submits the following comments to two:

1. Crude Oil Line Fill: The concept of line fill is a function of the difference that exists between the transportation of a liquid versus a gas. The line fill obligation is akin to the demand charges incurred by gas transporters to reserve space in a line. The expense serves as a basis for reserving space in the oil pipeline by requiring that an oil transporter occupy its contracted space in the line with actual production. This allows for the movement of oil through the line for which a transporter will be settled based on receipts and deliveries. A company cannot

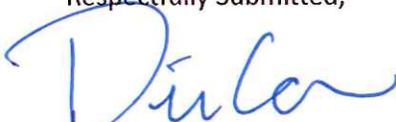
transport on the line without satisfying this obligation and it is therefore uniquely and purely a cost of transportation properly included in an allowance. The suggestion that it is a marketing expense is wrong. Nothing about a line fill requirement is related to the marketing of the volumes that are delivered by a pipeline for the purpose of making a sale. The line fill volumes represent a cost of transportation and do not represent the volumes that are actually sold.

2. Accounting for Comparison: WPX agrees that if the specific provisions of the proposed rule regarding the value of affiliate sales are adopted the need for accounting for comparison on federal gas will no longer be necessary.

Finally, WPX also supports the detailed comments submitted by the Council of Petroleum Accountants Societies' ("COPAS"). COPAS has not only provided useful comments to the Proposed Rule but also raised additional issues the agency should consider as part of this process.

WPX understands the importance of the need to periodically review and refine regulations that govern activity in an industry that is changing over time. That said, the mere passage of time between when a regulation is promulgated and reviewed cannot serve as the basis for abandoning the core concepts of a regulatory framework that represents a fair balance between the interest of all those impacted. It definitely cannot serve as the basis for an agency to attempt to grant to itself the type of limitless power that the Proposed Rule seeks to grant to the ONRR. Thank you for the opportunity to comment on the proposed rule. If you have any questions about these comments, please contact me.

Respectfully Submitted,



Dennis Cameron