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OWNERSHIP

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SUBMITTED BY FACSIMILE

Exxon Company U.S.A. Comments on Minerals Management Service
Further Supplementary Proposed Rule on Valuation of Crude Oil Produced
on Federal Leases, 63 FR 38353 (July 16, 1998)

Dear Mr. Guzy:

Exxon Company, U.S.A., a division of Exxon Corporation (Exxon) is pleased that the Minerals Management Service (MMS) has reopened the comment period with its July 16, 1998 supplementary proposal on oil valuation. Exxon has participated in each phase of the rulemaking process in efforts to work towards an appropriate and workable oil valuation rule by commenting at every opportunity, attending hearings and workshops, and working with trade associations. Despite the efforts put forth by Exxon, industry and the MMS in progressing this rule, Exxon remains disappointed in several critical areas where the MMS has been fundamentally immovable since the original rule was published in January 1997. Comments on these critical areas and, as requested by the MMS, on the definition of gathering for subsea follow.

I. Value at the Lease

Under the applicable mineral leasing statutes and leases, royalty is due on the value of production at the lease. In its February 5, 1998 news release, the MMS recognized this legal and contractual obligation when it stated that "royalty must be based on the value of production at the lease." Yet the MMS continues to target a market value other than the market value at the lease. The MMS proposed netback methodology using an index price with inadequate adjustments does not arrive at the value of production at the lease. The MMS has also not addressed the complications and burdens of using its proposed method of netting back from single arm's length exchanges.

The MMS has rejected viable options for arriving at a value at the lease. Although the MMS proposed a geographically limited and overly restricted tendering option in the Rocky Mountain area, the MMS has failed to propose a viable tendering program on a nationwide basis. Exxon urges the MMS to implement a workable tendering program that would arrive at a market value at the lease. In addition, the MMS has rejected other types of lease value benchmarks. The MMS should propose a valuation methodology that treats all lessees equally and arrives a value at the lease for all lessees. Finally, the MMS should consider a workable nationwide royalty in kind program that provides for the United States to be delivered its share of production at or near the lease.



II. Duty to Market

In previous comments, Exxon has objected to the MMS' attempt to expand the contractual obligation by adding the duty to market language contained in the proposed rule. Since the July 16, 1998 proposal does not change the proposed addition of this duty, please refer to Exxon's prior comments.

III. Subjectivity and Second-Guessing

The proposed rule is replete with subjectivity where second-guessing could occur. For example, in the July 16, 1998 proposal, the MMS stated that it will not second-guess a lessee's marketing decisions unless "a lessee or its affiliate inappropriately sells oil at a price substantially below market value." Terms such as "substantially below" remain undefined. Further, it is unclear whether or not the MMS will measure "market value" appropriately at the lease.

Furthermore, the MMS states that it will not provide a binding valuation determination so that the lessee can be assured that it will not be second-guessed in the audit process many years later. This process is untenable in a business relationship and needs to be fixed.

Exxon urges the MMS to remove the subjectivity in the rule which will eliminate the MMS' ability to second guess. Finally, the MMS should be willing to provide binding determinations upon request.

IV. Requested Comments on Gathering

The MMS requested comments on whether the definition of gathering should be modified. Historically, the MMS has recognized that the movement of production away from the lease constitutes "transportation." Exxon urges the MMS to recognize subsea movements as transportation where accumulation takes place underwater versus on the ground or a platform and the movement is away from the lease. The distinction between "gathering" and "transportation" should pivot on whether the movement is away from the lease and should not be dependent on the technology utilized. In addition, the MMS should provide commercial rates for transportation rather than discriminating against producers that invest in pipelines to move the government's production.

In closing, Exxon urges the MMS to delay finalizing a rule until it can address the issues outlined in these comments and prior comments. The time spent now creating clarity of rules and certainty of assessing market value at the lease will benefit both the United States and industry through significantly fewer and less costly disputes.

W. L. Stone