

ACTION: Notice of intent to retain extraordinary cost provisions.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) has regulatory provisions for gas processing cost allowances that exceed normal industry standards. The MMS had intended to develop criteria for the conditions and practices in the gas processing industry and for technologies that are unusual, extraordinary, or unconventional. However, after careful analysis of the comments received on the gas valuation regulations, as well as comments concerning whether extraordinary cost allowance provisions should be developed for its oil, coal, and geothermal product value regulations, MMS has decided to determine on a case-by-case basis whether an operation is outside of normal industry operational standards.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, MMS, Royalty Management Program, at (303) 231-3432.

SUPPLEMENTARY INFORMATION:

Background

(a) History of Regulation for Extraordinary Cost Allowances

The MMS gas valuation regulations at 30 CFR 206.158(d)(2)(i) (1993) state that MMS may grant an allowance for extraordinary costs of processing if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional. The MMS intended to apply this provision to advanced processing technologies or unusual conditions that are outside of normal industry operational standards.

The MMS published a Notice in the Federal Register on November 28, 1988 (53 FR 47829), entitled "Allowances for Extraordinary Costs, Transportation, and Gas Processing" and solicited comments on what factors would comprise criteria for standard practices and conditions and for assessing when a project would qualify for an extraordinary cost allowance. The comment period was originally due to close on January 27, 1989, but MMS, by Federal Register Notice dated January 25, 1989 (54 FR 3623), extended the due date for public comments to March 15, 1989.

(b) Summary of Comments

In response to the above referenced Notice, MMS received comments from the following entities:

- Industry,

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Allowances for Extraordinary Gas Processing Costs

AGENCY: Minerals Management Service (MMS), Interior.

- Industry trade groups or associations,
- State representatives,
- An Indian tribe,
- State/Indian associations,
- A royalty-interest group, and
- Members of Congress.

Many commenters did not provide the data or information requested by MMS necessary to define standard conditions and practices. Numerous industry, State, and State/Indian association commenters stated that the standard conditions and practices for the gas processing industry could not be defined since the technology is dynamic. They also stated that what constitutes extraordinary costs today may become standard in a few years and too many factors influence the economic and operating characteristics of a processing plant (for example, the location, size, age of a plant, gas stream composition, and environmental constraints).

One industry commenter commissioned a study on extraordinary gas processing costs and the underlying causes for such costs. The MMS could not compare the results of this study against other data since few commenters actually offered their definition of standard conditions for the gas processing industry. Although most industry commenters recommended criteria for determining whether a gas processing operation is extraordinary, many commenters believed that all projects should be granted allowances for extraordinary costs on a case-by-case basis rather than by a standard.

State and Indian respondents generally opposed allowances for extraordinary costs, and only a few commented on what standards would be used to classify a processing technology as extraordinary. Some State commenters reasoned that the extraordinary cost allowances should focus on high unanticipated costs above normal standards and not on low revenues generated by the plant.

For oil, coal, and geothermal production, State and Indian respondents unanimously opposed provisions for extraordinary cost allowances. Many industry commenters supported the extraordinary cost allowances for other minerals. However, the information provided was not relative for developing extraordinary-cost criteria.

Following the comment process, MMS evaluated all suggestions and submitted a summary to the Royalty Management Advisory Committee (RMAC) in June 1989 for its review and recommendations. On June 22, 1989, RMAC held a meeting with MMS in

Denver, Colorado, to discuss issues and comments regarding extraordinary cost allowance provisions. The MMS presented its analysis to RMAC; however, RMAC took no action regarding this issue.

(c) Review of Applications Submitted to MMS

In addition to analyzing the comments received as a result of the Notices in the Federal Register, MMS reviewed the industry applications submitted in the past 6 years requesting extraordinary processing cost allowances. This review revealed that MMS has received nine requests for extraordinary cost allowances involving five gas processing plants. Most of the requests involved gas processing situations where processing costs were high due to the removal of hydrogen sulfide (H₂S). The MMS determined that gas with a high sulfur content (sour gas) is present throughout various locations around the continental United States as well as offshore. The H₂S from many of these areas is further refined to elemental sulfur and sold. The MMS concluded that production of sour gas is not extraordinary, unusual, or unconventional within the United States, either onshore or offshore.

(d) Approval Granted for Extraordinary Processing Allowances

Since the effective date of the gas valuation regulations (March 1, 1988), MMS has granted one extraordinary processing cost allowance for the LaBarge Project in Wyoming. As the Interior Board of Land Appeals (IBLA 86-626) observed, the LaBarge gas stream is atypical in a methane recovery project because only about 22 percent of the feed gas stream is methane and no liquefiable hydrocarbons are present. The MMS recognized the nature of gas from projects such as LaBarge and indicated in the preamble to the March 1, 1988, gas valuation regulations (53 FR 1240) that extraordinary cost allowances be granted for processing such atypical gas streams.

To contend with the unusual composition of the LaBarge Project feed gas stream, the plant design is complex when compared to typical methane recovery plants. Due to the atypical composition of the LaBarge Project feed gas stream and the complex nature of the plant, the cost to process the principal product, methane, is extraordinary compared with traditional methane recovery plants,

MMS Intent

After a review of the comments, as well as the requests for extraordinary

cost allowances, MMS has decided to retain the current extraordinary cost provisions at 30 CFR 206.158 (d)(2)(i) and not further define the criteria for assessing when a project qualifies for an extraordinary cost allowance. This decision will enable lessees to continue applying for an allowance on a case-by-case basis for advanced processing technologies.

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James W. Shaw,

Associate Director for Royalty Management

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