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Attn: Regulation Identifier Number (RIN) 1012-AA13Submitted via: http://www.regulations.gov
ID: ONRR-2012-0004-0024

Re: Office of Natural Resources Revenue (ONRR) Proposed Rule to Amend Federal and Indian Coal Valuation Regulations, 80 Fed. Reg. 608 (Jan. 6, 2015)

Dear Mr. Southall:

I am commenting on the above referenced proposed rule. This rule would significantly modify the royalty valuation regulations applicable to coal production from leases on federal and Indian lands, respectively.

I support the ONRR's stated goals of simplifying federal and Indian coal valuation and providing a fair return to the public on that production. ONRR's Proposed Rule, however, would have the opposite effect. It would instead result in burdens and regulatory uncertainty far outweighing the purported benefits to ONRR, and the public. I recommend that ONRR set aside the proposed rule, and instead re-propose a rule targeted at truly simplifying reporting and administrative burdens for all parties involved.

I specifically oppose the proposed changes to the royalty valuation standards for coal sold or transferred to a power plant owned by the lessee or its affiliate.. For these "no-sale" situations, ONRR has proposed lessees try to calculate costs using the net-back royalty valuation based on sale of electricity instead of the valuation being based on the value of the coal at the lease. The proposed rule ignores the fact that applicable mineral leasing laws and lease terms entitle the ONRR to only collect a royalty on the value *of coal* at *the lease*. The issues with calculating valuation from sale of electricity and then deducting "applicable" transportation, generation and transmission costs are so overwhelming, that the proposed net-back valuation method will be impossible for producers, ONRR and the State of Wyoming Department of Audit to determine valuations. This method has been discouraged by MMS in the past for oil and other resource valuations, with good reason. It should be rejected today as well.

The current system is the accepted business method for valuing leases, coal and royalties. Long term contracts are based on this method and the proposed changes would negatively impact economic and job growth. The existing benchmarks have worked well for many years, are subject to robust auditing by the government, and lead to a proper value of the coal. It is my view that the netback (or affiliate resale) approach would not be an accurate assessment of the value of the coal, but would be an arbitrary measure. If there are issues with the current system then the issues should be evaluated and changed – not thrown away and replaced with a new and untried system.

Netbacks are the least reliable method of last resort to "Value the Coal at the Mine". ONRR's proposed method to value sales of coal to an affiliate – based on the affiliate resale to a third party, no matter where that resale occurs, less certain deductions – adopts the least reliable method for valuing coal. Both ONRR and the courts have long recognized that the most reliable method looks to comparable arm's-length sales of coal at or near the mine. Affording lessees only one valuation method—a netback method—for determining royalties on coal sold under non-arm's-length contracts will lead to unreliable coal valuations, which do not reflect the true value of the coal "at the mine" as required by the Mineral Leasing Act.

I am concerned that this will lead to royalties being paid on services that are not the true value of the coal. That is not fair to the few coal producers that have these types of sales.

As such, I respectfully request that ONRR abandon net-back concepts from the proposed rule.

When a business experiences the risk of selling coal in distant locations through lower international prices or higher transportation costs, ONRR's "default" rule would allow ONRR to arbitrarily select an "at the mine" comparable sales valuation method that would disregard a logistics business' risk and loss. The Proposed Rule would also allow ONRR to apply the "default" rule to recalculate the transportation allowance for a business if ONRR arbitrarily believes it is "unreasonably high." In short, ONRR seeks to share in the profits created when a transportation business associated with a mine pays off, but if transporting the coal over 1,500 miles away for export becomes unprofitable, ONRR seeks to insulate itself from that risk and will not mitigate losses. ONRR wants to have it both ways by taking what they think is owed but not taking the risk that goes with those distant contracts. The default provision would introduce massive uncertainties to royalty calculations.

Exports need to be encouraged, not discouraged. The request for comments on a possible proposal to cap transportation deductions at 50% of the value of the coal highlights the apparent goal to end or reduce export coal sales. ONRR's Proposed Rule does not include a cap on transportation deductions for its proposed net-back calculation, but ONRR nonetheless specifically requests comments on whether it should cap transportation deductions at 50% of the value of the coal. As ONRR surely knows, transportation costs to reach logistics customers often significantly exceed 50% of the value of the coal and may even be over three times or more of the value of the coal at the mine. That ONRR would even raise the possibility of capping transportation deductions at 50% of the coal value highlights what appears to be ONRR's goal: to impose new royalty rules making logistics customers less economic, thereby reducing the Federal royalty stream.

As such, I respectfully request that ONRR abandon proposal to cap transportation costs at 50% of the value of the coal, and also to eliminate the default rule from the proposed rule.

The rule imposes an unconstitutional tax on exports. The U.S. Constitution specifically prohibits the imposition of duties on goods by reason of exportation to the international country. However, in this Rule exported coal is valued in a manner that is different than how coal is valued for traditional domestic customers, with the incremental royalty on exports amounting to an unconstitutional tax or levy. This must be set aside in the final rule.

I urge ONRR to retain the existing benchmark system. Improvements to the existing benchmark system may include adding to the first benchmark the use of the lessee's comparable arm's-length sales at the same mine, applying an index valuation benchmark, and for the few lessees with no arm's length or comparable index sales, the site specific allowance of cost plus evaluation. ONRR's proposal to impose a netback methodology on affiliate sales of coal to international coal customers, along with a proposed "default" rule, is contrary to the Congressional intent of creating clarity and well-established principles of royalty valuation.

Sincerely,

DAVID GREEN