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RE: Comments on the Office of Natural Resource Revenue's Proposed Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform, Docket No. ONRR-2012-0004 and RIN No. 1012-AA13

To Whom It May Concern:

Energy Capital Economic Development's aim is to support a growing, thriving business sector that provides well paying, secure employment and solid growth for our local, regional and national economy. We support rules that promote business and community growth and help businesses be good stewards of the environment while providing a foundation for community growth and development. It is our view that rules should support business growth and development and not punish for innovation and success. We are grateful for the opportunity to provide comment on this important issue and ask you to consider the negative impact that some of these rules will have on our local and national economy.

Energy Capital ED has some specific concerns with the proposed changes in regards to coal valuation and royalty payment calculations which are outlined as follows:

1. 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 our 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.

2. 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.

3. 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 but gives no basis for reserving to itself such a broad power. The default provision would introduce massive uncertainties to royalty calculations.

4. 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.

5. The Rule Imposes an Unconstitutional Tax on Exports. The background of the Proposed Rule strongly suggests it is targeted directly at exports. The U.S. Constitution specifically prohibits the imposition of duties on goods by reason of exportation to the international country. Since under the Rule, coal that is being exported is valued in a manner that is different than how coal is valued for traditional domestic customers, the incremental royalty on exports amounts to an unconstitutional tax or levy.

In conclusion, Energy Capital Economic Development urges 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 and an index valuation benchmark. 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.

Thank you in advance for your consideration of these comments and for incorporation of these points into any subsequent phases of this proposed rulemaking process. Please feel free to contact me if additional details or explanation of these comments would be helpful in that process.

Yours sincerely,

Phil Christopherson
CEO