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May 8, 2015

Armand Southall
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Denver, CO 80225

Attn: Regulation Identifier Number (RIN) 1012-AA13

Re: ExxonMobil Comments on Office of Natural Resources Revenue (ONRR) Proposed Rule to Amend Federal Oil & Gas Valuation Regulations, 80 Fed. Reg. 608 (Jan. 6, 2015)

Submitted via: <http://www.regulations.gov> and U.S. mail

Dear Mr. Southall,

On January 6, 2015, the Office of Natural Resources Revenue ("ONRR") issued a Proposed Rule entitled "Consolidated Federal Oil & Gas Federal & Indian Valuation Reform." The Proposed Rule would change the regulations governing valuation for royalty purposes of oil, gas and coal produced from Federal (onshore and offshore) and Indian leases. The stated purpose behind these changes is flexible valuation methodologies that offer simplicity, certainty, clarity, consistency and lower cost of compliance and enforcement.

Exxon Mobil Corporation ("ExxonMobil") is a major oil and gas producer on federal leases in the United States; in 2013 alone, it paid \$474.5 million in federal royalties. ExxonMobil has long shared the ONRR's commitment to compliance with royalty reporting and payment regulations consistent with their lease obligations and the applicable regulations, guidance, and mineral leasing. In the spirit of this shared commitment, ExxonMobil and the ONRR have a history of working together to ensure that compliance with regulations is achieved in a fair, reasonable and accurate manner. Therefore, ExxonMobil appreciates the opportunity to provide comments to the ONRR on the Proposed Rule, which is complex, far-reaching and does not have the desired effect of providing simplicity, certainty, clarity, consistency or lower compliance costs.

The American Petroleum Institute ("API"), the Independent Petroleum Association of America ("IPAA"), and, separately, the Council of Petroleum Accounts Societies, Inc. ("COPAS") have submitted comments to the ONRR in response to the Proposed Rule. ExxonMobil supports the comments as submitted by API, IPAA, and COPAS. ExxonMobil will comment at this time to only emphasize, clarify and supplement these other comments.

The ONRR has previously agreed that ExxonMobil's extraordinary allowance is fair and reasonable

ExxonMobil's commitment to work with the ONRR towards compliance with fair and reasonable valuation guidelines has been demonstrated many times throughout the ONRR's history. One particularly illustrative example of this cooperative approach to valuation concerns ExxonMobil's LaBarge operations in the State of Wyoming. Over the course of eight years, ExxonMobil and the MMS (ONRR's predecessor) engaged in numerous discussions regarding the fair and reasonable royalty valuation that would be required to allow for the mutually beneficial development and production of gas in the Madison formation in the Sweetwater, Sublette and Lincoln counties of Wyoming. As a result of the discussions between the MMS and ExxonMobil, the Department of Interior ("DOI") recognized that the atypical gas stream produced at LaBarge required a "creative valuation approach" (*Exxon Corp.* 118 IBLA 221 (1991)), including an extraordinary allowance for gas processing.

ExxonMobil's LaBarge operations are a methane recovery project utilizing an integrated plant designed to extract methane from an unusual and complex gas stream. The gas in the Madison reservoir is mainly composed of carbon dioxide (65%), methane (21%), nitrogen (7%), hydrogen sulfide (5%) and helium (0.6%). Separating the impurities from the useful product streams requires significant expertise and capital. LaBarge's Shute Creek facility is one of the largest single-source helium plants in the world, producing about 20 percent of the world's helium. Helium is essential for important industrial processes because of its unique properties, and is considered critical to the national security of the United States. LaBarge is also one of the largest CO₂ capture operations in the world. Most of the produced CO₂ is sold for enhanced oil recovery, helping to extend the productive lives of mature oil fields.

The Interior Board of Land Appeals ("IBLA") and Assistant Secretary of the DOI recognized not only the importance of developing and producing gas within the United States, but also that the valuation of this atypical gas stream called for a "creative approach", instead of an "ill-fitting model." *Exxon Corp.* 118 IBLA 221 (1991). The DOI utilized the flexible regulations to encourage investment and granted ExxonMobil an extraordinary gas processing allowance. The finalization of the valuation methodology resulted from two Assistant Secretary decisions as well as a decision from the IBLA.

The Proposed Rule would reduce the Secretary's discretion and flexibility. Under the Proposed Rule, the ONRR would eliminate not only the current extraordinary gas processing allowances, but also any possibility of future extraordinary gas processing allowances. The granting of the extraordinary gas processing allowance at LaBarge played a significant role in ExxonMobil's continued investment in LaBarge. Disallowing future extraordinary allowances to companies could also reduce the attractiveness of investing in the production of gas in the United States. Removing these allowances not only runs counter to the goal of flexible valuation methodologies, but also acts to deter investment in areas containing unique resources.

In support of its proposal to eliminate extraordinary allowances the ONRR states the following: "Given the age of the plants and improvements in technology, ONRR believes such extraordinary cost allowances no longer reflect current conditions." *Proposed Rule RIN 1012-AA13* pg.627 1206.159. The ONRR has not presented any evidence that processing the complex mixture of gases in the Madison formation is any less challenging or costly today than it was when the allowance was granted. Indeed, the content of the gas in the Madison formation is same today as it was more than 30 years ago. Additionally, the ONRR has not interviewed any ExxonMobil personnel regarding the technology being utilized in the operations at LaBarge. Since the ONRR has failed to present any evidence supporting its contention that conditions have changed, its Proposed Rule is arbitrary, capricious, or otherwise not in accordance with law.

Neither the current or proposed regulations grant allowances for processing methane

Since its inception, the operations at LaBarge have been and continue to be a methane recovery project utilizing an integrated plant designed to extract methane from an unusual and highly toxic gas stream. The current royalty valuation allowances do not allow processing allowances to be applied against the value of residue gas (methane) (30 C.F.R. § 1206.158(c)). The only method for obtaining processing allowances against residue is through the granting of an extraordinary processing allowance. Therefore,

the elimination of the extraordinary allowance would create a competitive disadvantage for ExxonMobil as its ability to recover costs associated with the recovery of methane would be significantly reduced.

In its 1991 decision (*Exxon Corp.* 118 IBLA 221 (1991)), the IBLA indicates that ExxonMobil should be allowed the benefit of an allowance to place methane in marketable condition. The IBLA states that "the Director's reliance upon *California Co. v. Udall* in the instant case for the proposition that appellant is required to place methane in a marketable condition without the benefit of an allowance was error."

In an August 13, 1992 letter to ExxonMobil by David C. O'Neal, the Assistant Secretary of Land and Mineral Management, the DOI decided that the operations at LaBarge were

designed to process an atypical gas stream. . . . As the IBLA correctly observed, the LaBarge gas stream is atypical in a methane recovery project in that only about 21 percent of the feed gas stream is methane and no liquefiable hydrocarbons are present. The March 1, 1988, regulations (53 F.R. 1230, January 15, 1988) specifically included provisions that were written with the full understanding of the nature of the gas from the LaBarge Project. Title 30 CFR 206.158 (d) (1991), providing for an extraordinary allowance, was included, in large part, with the Shute Creek Plant in mind. As evidence of this, MMS stated in the preamble to these regulations (53 F.R. 1240) that it was including "a provision for an extraordinary processing cost allowance for atypical types of gas production operations."

To contend with the physical uniqueness of the LaBarge Project feed gas stream, the Shute Creek Plant design is extremely complex and atypical compared to the typical methane recovery plants. . . . Due to the atypical composition of the LaBarge Project feed gas stream and the complex nature of the Shute Creek Plant, the cost to process the principal recoverable product, methane, is extraordinary compared with traditional methane recovery plants. . . . MMS concludes that the costs of processing at the Shute Creek Plant are extraordinary, unusual, and unconventional by industry standards.

The atypical nature of the feed gas stream and plant operations that were acknowledged by the DOI in 1992 is still present today. The removal of the extraordinary allowance implies that the gas and operations are no longer atypical, which is simply not the case. The ONRR has not presented evidence that the circumstances at LaBarge have changed, nor has the ONRR requested any information from ExxonMobil regarding the typical or atypical nature of the operations. The finalization of the Proposed Rule would prevent industry from recovering the costs associated with current and future atypical oil and gas development.

The Proposed Rule runs counter to the ONRR's stated goals of certainty and consistency

As the ONRR is aware, oil and gas investments are not short term projects. Any given investment or project takes many years to plan as it may have a productive life of several decades. Integral to the planning of the investment (and the continued investment) is the ability to forecast financial terms such as royalties. Over recent decades the ONRR has implemented multiple wide-reaching changes to the royalty valuation regulations. This practice runs counter to the concept of certainty and consistency and prevents companies from accurately forecasting the profitability of an investment and in the face of uncertainty, investments are less likely. The current Proposed Rule is no exception as it will (if enacted) require companies once again to spend money to change their accounting procedures and face uncertainty regarding how long the latest changes would be in effect.

The Advance Notices of Proposed Rulemaking did not provide indication that extraordinary allowances would be eliminated

While the ONRR published Advance Notices of Proposed Rulemaking (ANPR) and conducted workshops, there is no record of extraordinary allowances being considered until the publication of the Proposed Rule on January 6, 2015. Had the ONRR requested comments or feedback on the possible elimination of extraordinary allowances, ExxonMobil would certainly have provided feedback regarding this proposal. In order for this portion of the Proposed Rule to receive attention, discussion and input as the remainder of the rule, ExxonMobil requests (in addition to the reasons stated above) that the rescinding and elimination of extraordinary allowances be withheld from any final rule.

Ample time to implement the proposal should be provided

ExxonMobil (along with API, IPAA, and COPAS) requests that the Proposed Rule be significantly modified and reissued for further public comments. However, should the ONRR not follow this course of action, ExxonMobil would like to take this opportunity to provide comments on considerations regarding the timing of the implementation. Aside from the length of time the ONRR will require to review public comments, ExxonMobil asks that the ONRR allow ample time between the publishing of the final rule and the effective date of said rule. Please consider some of the steps that a company must take in order to implement the rule (as currently proposed):

- Confirm the meaning of the final rule and train employees.
- Evaluate specific impacts of changes to the valuation methodology as it applies to each property. Included in that evaluation is the possibility to utilize the index price option.
- Obtain additional information from 3rd parties that may be required to comply with revised regulations.
- Modify accounting and system processes as appropriate – this includes testing the changes to ensure the changes obtain the desired results.

Based on the number of steps necessary for a company to implement the Proposed Rule, ExxonMobil requests that companies be given at least 1 year to implement the changes from the date of finalization.

Conclusion

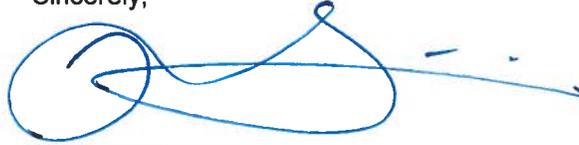
The elimination of the extraordinary processing cost allowance does not provide for greater simplicity, clarity, certainty, consistency and lower compliance costs. Its elimination, as proposed, will result in a significant cost associated with its implementation and its elimination erodes the certainty required to plan long term oil and gas investments in the United States.

The granting of the extraordinary gas processing allowance at LaBarge was purposeful because it appropriately reflected the true costs of processing gas there. The atypical nature of the methane recovery project, as recognized by the DOI in 1992, at LaBarge and Shute Creek has remained unchanged. The ONRR has not provided any evidence to support their assertion that circumstances have changed or that improvements in technology have changed current conditions. Therefore, the ONRR's proposal is arbitrary, capricious and otherwise not in accordance with law.

Extraordinary processing allowances have provided the DOI the flexibility to encourage investment in the production of unique hydrocarbons streams. Rescinding previously issued extraordinary allowances would cast aside the results of good faith discussions between industry and the ONRR. Additionally, eliminating the possibility of future allowances could have the impact of reducing profitable gas development and production in the United States.

Thank you for your time and attention to ExxonMobil's comments on the ONRR's Proposed Rule. ExxonMobil remains committed to complying with fair and reasonable royalty regulations and looks forward to working with the ONRR to achieve its stated goals of simplicity, clarity, certainty, consistency and flexibility. Please do not hesitate to contact Susan Carter at 202-862-0275 or susan.e.carter@exxonmobil.com if you have any questions.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Ross Lanzini
Americas Controllers – Revenue & Royalty
U.S. Division Manager