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September 23, 2013

Ms. Rhea Suh  
Assistant Secretary - Policy, Management and Budget  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Re: *Comments on Direct Final Rule to Amend ONRR's Service of Official Correspondence, RIN 1012-AA14*

Dear Assistant Secretary Suh,

On August 23, 2013, the Office of Natural Resources Revenue ("ONRR") issued a "Direct-Final" Rule entitled *Amendments to ONRR's Service of Official Correspondence (RIN 1012-AA14)* (hereinafter "Rule"). The Rule amends the Service of Official Correspondence regulations "to allow ONRR to serve official correspondence using any electronic method of delivery that provides for a receipt of delivery, or, if there is no receipt, the date otherwise documented." 78 Fed. Reg. 52431. Devon Energy Corporation ("Devon"), along with the American Petroleum Institute ("API"), believes the Rule to be a substantive rule change that was implemented without any opportunity for notice and public comment. ONRR should withdraw the Rule and instead publish a notice of proposed rulemaking.

Devon is a leading independent oil and natural gas exploration and production company. Devon's operations are focused onshore in the United States and Canada. The company's portfolio of oil and gas properties provides stable, environmentally responsible production and a platform for future growth. Many of Devon's resources are located on federally-owned and administered lands, encompassing approximately 900,000 net acres. As a result, Devon stands to be profoundly affected by the Rule.

Devon adopts and incorporates by references the comments of API, of which Devon is a member. The Rule is a major substantive change to 30 C.F.R. § 1218.540 regarding the means by which ONRR transmits official correspondence. The Administrative Procedure Act, 5 U.S.C. § 553, requires that ONRR first provide notice and opportunity for public comment before adopting any change to the methods of serving official correspondence. ONRR adopted the Rule without any notice or opportunity for public comment. As a result, there is no administrative record demonstrating that electronic service is adequate to meet legal standards for actual notice. ONRR should have published a notice of proposed rulemaking rather than issuing the August 23 Rule.

Devon's specific concerns echo those of API: the Rule makes electronic forms of delivery such as email notifications or "any electronic method of delivery that provides for a receipt of delivery" an official and legal form of correspondence. The Rule adds a constructive service section that states that ONRR will consider correspondence sent electronically as officially served on the recipient seven days from the date that ONRR makes a "reasonable effort" to send the document electronically, regardless of whether the document was actually received by the company or whether ONRR has any confirmation that it was received.

Under the ONRR regulatory regime, the date that a lessee/royalty payor receives official correspondence has major legal significance. For example, many ONRR communications, such as royalty payment orders, demand prompt action upon receipt with threatened penalties for delay. A payor's

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failure to comply with an order or other official communication from ONRR could subject the recipient to civil penalties under 30 U.S.C. § 1719 and 30 C.F.R. part 1241.

ONRR regulations provide that ONRR orders must be appealed “within 30 days from service of the order.” 30 C.F.R. § 1290.105(a). If a Notice of Appeal is not timely filed, “the ONRR Director will not consider the Notice of Appeal and the case will be closed.” Thus, it is critically important that a company receive actual notice - not merely constructive notice -- in order to preserve or pursue its legally appeal protected rights.

Devon also questions ONRR’s reliance on MessageWay for electronic notice, which API has discussed thoroughly in its comments.

The above issues merely represent the initial questions, and this letter is not exhaustive. Devon strongly encourages ONRR to withdraw the Rule and, if the agency seeks to change its official service of process method, then it should follow the Administrative Procedure Act.

Sincerely,

A handwritten signature in black ink that reads "Debbie Kelly". The signature is written in a cursive, flowing style.

Debbie Kelly  
Senior Manager, Revenue Accounting

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