FEDERAL AND INDIAN GAS NON-ARM'S-LENGTH VALUATION RESOURCES

Regulations:

Federal:

30 CFR § 206.152, unprocessed gas
30 CFR § 206.153, processed gas

Indian:

30 CFR § 206.172 (1999), unprocessed gas
30 CFR § 206.173 (1999), processed gas
The Indian gas valuation regulations changed effective January 1, 2000.

Payor Handbook: The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* 08/01/00, discusses valuation of unprocessed gas not sold under an arm's-length contract in Section 4.1.2. Section 4.2.2 discusses valuation of processed gas not sold under an arm's-length contract.

Policy Guidance:

- *Valuation Guidance for Auditing Affiliate Sales of Natural Gas,* December 5, 1996

Case History:

- The valuation guidance mentioned above contains a list of relevant administrative and court decisions issued through 1996.

Other related topics to consider:

- POP (Percentage-of-proceeds) contracts
  - Regulations for valuation under POP contracts were published in the *Federal Register,* Vol. 56, No, 178, pages 46527 – 46531. The preamble to this rule provides good information about why POP contract situations are treated differently than other contract situations.
  - The *Oil and Gas Payor Handbook,* pages 4-56 – 4-67
  - Dear Payor letters of April 16, 1992 and June 25, 1992
  - Indian gas sold under arm's-length POP contracts after the effective date of the new Indian gas rule, January 1, 2000, is now valued and reported as processed gas. The new rule had no effect on the reporting or valuation of non-arm's-length Indian gas sold under POP contracts.
  - Policy paper, August 19, 1994, "*Policy Paper – Retroactive Application of the Percentage-of-Proceeds (POP) Rule*"
  - Policy paper, date uncertain, *"Interpretation – Dual Accounting for Gas Sold Under Percentage-of-Proceeds Contracts [Issue 1995-1]*

- Accounting for comparison (dual accounting)
  - Federal: 30 CFR § 206.155

- Indian: 30 CFR § 206.175 (1999)
- The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* pages 4-90 – 4-102
- Legal decisions:
  - *Pioneer Kettleman,* MMS-89-0232-O&G
  - *Marathon Oil,* MMS-94-0404-O&G

- Major Portion Analysis (applies to Indian properties only)
  - 30 CFR §206.172 (a) (3) (i) and (ii) (1999), unprocessed gas
  - 30 CFR §206.173 (a) (3) (i) and (ii) (1999), processed gas
  - The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* pages 4-103 and 4-105

INDIAN GAS
NON-ARM'S-LENGTH VALUATION
RESOURCES

Regulations: 30 CFR § 206.172 (1999), unprocessed gas
30 CFR § 206.173 (1999), processed gas
The Indian gas valuation regulations changed effective January 1, 2000.

Payor Handbook: The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* 08/01/00, discusses valuation of unprocessed gas not sold under an arm's-length contract in Section 4.1.2. Section 4.2.2 discusses valuation of processed gas not sold under an arm's-length contract.

Policy Guidance:

- Valuation Guidance for Auditing Affiliate Sales of Natural Gas, December 5, 1996

Case History:

- The valuation guidance mentioned above contains a list of relevant administrative and court decisions issued through 1996.

Other related topics to consider:

- POP (Percentage-of-proceeds) contracts
  - Regulations for valuation under POP contracts were published in the *Federal Register,* Vol. 56, No, 178, pages 46527 – 46531. The preamble to this rule provides good information about why POP contract situations are treated differently than other contract situations.
  - MMS Memorandum dated August 19, 1994 and attached policy paper
  - The *Oil and Gas Payor Handbook,* pages 4-56 – 4-67
  - Dear Payor letters of April 16, 1992 and June 25, 1992
  - Indian gas sold under arm's-length POP contracts after the effective date of the new Indian gas rule, January 1, 2000, is now valued and reported as processed gas. The new rule had no effect on the reporting or valuation of non-arm's-length Indian gas sold under POP contracts.

- Accounting for comparison (dual accounting)
  - 30 CFR § 206.175 (1999)
  - The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* pages 4-90 – 4-102

- Major Portion Analysis
  - 30 CFR §206.172 (a) (3) (i) and (ii) (1999), unprocessed gas
  - 30 CFR §206.173 (a) (3) (i) and (ii) (1999), processed gas

- The *Oil and Gas Payor Handbook, Volume III, Product Valuation,* pages 4-103 and 4-105

McPhail, Rochelle

From: Humphries, Nicolette

Sent: Friday, June 27, 2003 4:45 PM

To: 'eric.ruff@ios.doi.gov'; 'hugh.vickery@ios.doi.gov'; Mark Pfeifle; Phipps, Becky; Brown, Bob; Hamilton, Cathy; Francois, Darryl; Donald Hill; -20050724-Shaw, Edward; Triebsch, George; Burton, Johnnie; Maloney, Larry; Querques Denett, Lucy; Herdt, Lyn; Messer, Nancy; LaBelle, Robert; Readinger, Tom; Cruickshank, Walter; Gonzales-Evans, Anita; Oynes, Chris; Jill Martin; Goll, John; Rouse, Mark; Richard Wildermann; Shaffer, Stephen; Robinson, Blossom; Byron Congdon; Fagot, Caryl; Winbush, Debra; Romero, John D; Thornton, Monica; Cacy, Robin

Subject: -Court nixes Interior royalty finding

-Court nixes Interior royalty finding

The Interior Department must base federal natural gas royalty payments on a producer's initial sales price to an affiliate marketer if that marketer also buys gas from other producers, the U.S. Court of Appeals for the District of Columbia ruled today. The case, Fina vs. Interior Secretary Gale Norton, involves a 1993 royalty valuation dispute concerning gas sold twice: initially by producer Fina Oil and Chemical to its marketer Fina Natural Gas Co., and then by FNGC to end users. When Interior valued the gas production based on the contract price of the resale, Fina challenged that ruling, saying it should have been valued based on the lower price of the initial sale. Interior's Board of Land Appeals denied Fina's appeal in June 1999, leading Fina to file suit with the U.S. District Court in Washington, which ruled with Interior. The appeals court overturned that decision. The appeals court found that although controlled by Fina, FNGC is "not a marketing affiliate" under Interior's royalty regulation because it purchases gas from both Fina and others. Though the appeals court had no opinion on whether Interior had the statutory authority to value production based on resale prices, it said Interior may not interpret a regulation "to mean the opposite of its plain language."

Nicolette Humphries
Acting Public Affairs Chief
Minerals Management Service
(202) 208-3985

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Tuesday, July 01, 2003 4:36 PM
To: Vogel, Kenneth
Subject: RE: Fina decision

Yes - for any companies that were as a matter of policy paying on their affiliate's resale price; X——5

-----Original Message-----
From: Vogel, Kenneth
Sent: Tuesday, July 01, 2003 3:36 PM
To: Russo, John; Gibbs Tschudy, Deborah
Subject: Fina decision
Importance: High

Lyn Herdt asked some questions about the Fina decision and the one I could not answer is . X——5
X——5

McPhail, Rochelle

From: Hamilton, Cathy
Sent: Wednesday, July 02, 2003 10:57 AM
To: Messer, Nancy
Cc: Querques Denett, Lucy
Subject: Additional Paragraph on Fina Decision

Nancy, here's our Fina paragraph. We are still working on the TRO - royalty payments one. Will have soon. I was able to catch Walter about this item, and the paragraph below includes his changes. Thx. Cathy

Decision Issued in Fina Appeal Related to Affiliate Resales -- On June 27, 2003, the Court of Appeals for the District of Columbia Circuit decided Fina Oil and Chemical Co. v. Norton (No. 02-5241). MMS had ordered Fina to pay on its affiliate's resale price under the provisions of the 1988 gas valuation rules that required payment of royalties on no less than the gross proceeds accruing to the lessee. The court held that the term lessee was clearly defined in the statute and the regulations and included only the person (the particular corporation) to whom the lease was issued or who was assigned the obligation to pay royalties. In Fina's case this was Fina Oil and Chemical Co. or Petrofina Delaware, inc., but not their affiliate Fina Natural Gas Co. (FNGC), which purchased the gas from the producers (and others) and resold it. Therefore the court found that the proper valuation would be under the benchmarks. This ruling mainly affects federal gas production and Indian oil production not sold at arm's-length.
n.

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Monday, July 07, 2003 10:28 AM
To: Burhop, Shirley
Subject: RE: Fina Decision

This looks good, Shirley. Just a couple of suggestions. You may also want to add a few slides re: the IPAA vs. DeWitt decision that we won regarding marketing costs. Also, on your slides at the end, you may want to add a few slides on the Federal oil rule re: 206.103. Fina does not apply because in the case of sales to affiliates, lessees have the option of valuing their oil based on the affiliate's arm's-length resale price or index in the Calif. and the Rest of the Country and the benchmarks for Rocky Mountain Region.

-----Original Message-----
From: Burhop, Shirley
Sent: Tuesday, July 01, 2003 5:22 PM
To: Gibbs Tschudy, Deborah
Subject: Fina Decision

FYI - I'm working on a PowerPoint presentation to explain this at a to-be-scheduled information sharing meeting, since I've been getting so many questions already.

Though no where near being prime time ready, attached is a preview of where I'm going, starting with the Seagull decision, then Texaco, then Fina.

<< File: FINA DECISION.ppt >>

Barton, Jayne

From: Drake, Randall
Sent: Wednesday, July 16, 2003 12:01 PM
To: Burhop, Shirley
Subject: RE: Fina Decision

Another edit comment: Slide 41, 4th bullet, I believe "no" should be "not".

Randall
Office 303-231-3339
-----Original Message-----
From: Burhop, Shirley
Sent: Tuesday, July 15, 2003 9:30 AM
To: Drake, Randall
Subject: RE: Fina Decision

Here it is. Still a work in progress.

-----Original Message-----
From: Drake, Randall
Sent: Tuesday, July 15, 2003 7:04 AM
To: Burhop, Shirley
Subject: Fina Decision

Shirley,

Last week you said you were working on a PowerPoint presentation on the Fina Decision. I would really appreciate being able to see it. Would you please forward it to me?

Randall
Office 303-231-3339

Gibbs Tschudy, Deborah

From: Querques Denett, Lucy
Sent: Friday, July 18, 2003 1:57 PM
To: Messer, Nancy
Cc: Hamilton, Cathy; Gibbs Tschudy, Deborah
Subject: Status of natural gas reg

Status of new natural gas rule to supercede 1988 rule:

On July 17, 2003, the Director MMS provided guidance and decisions on areas and issues to be addressed in the new proposed natural gas rule. A draft of the proposed rule will be available for review by August 22, 2003. The proposed rule will be published by September 30, 2003 and a final rule January 2004.

McPhail, Rochelle

From: Marlowe, Evelyn
Sent: Tuesday, July 22, 2003 3:40 PM
To: Russo, John; Gibbs Tschudy, Deborah; Vogel, Kenneth
Cc: Hamilton, Cathy
Subject: FINA DECISION

Importance: High

FYI --

This is the paper Geoff Heath, SOL put together for tomorrow's briefing with Patty Morrison.

FINA Decision.max
(197 KB)

This Attachment has been withheld in its entirety.

Thanks,

Evelyn Marlowe
Secretary to the Associate Director
for Minerals Revenue Management
Minerals Management Service
1849 C Street, N.W., Room 4226
MS 4230
Washington, D.C. 20240
(202) 208-3415 (voice)
(202) 501-0247 (fax)
(email) evelyn.marlowe@mms.gov

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, July 24, 2003 9:37 AM
To: Marlowe, Evelyn
Cc: Richards, Ethel; Vogel, Kenneth; Querques Denett, Lucy; Hamilton, Cathy
Subject: RE: (Telecon) Meeting re: Briefing for Patty Morrison on FINA Decision

Evelyn - please call me at 928-871-4108 and ask for Room 201. Thank you.

-----Original Message-----
From: Marlowe, Evelyn
Sent: Tuesday, July 22, 2003 11:51 AM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Childs, Anita; Gailliard, Laverne
Cc: Richards, Ethel; Harvey, Gilda
Subject: (Telecon) Meeting re: Briefing for Patty Morrison on FINA Decision
Importance: High

This meeting is confirmed.

Subject: Briefing for Patty Morrison on FINA Decision
Date: Wednesday, July 23, 2003
Time: 10:00 AM - 11:00 AM (EST)
Location: Room 4212, MIB
Attendees: Director, Deputy Director, Lucy Querques Denett, Cathy Hamilton, Geoff Heath, Ken Vogel and Debbie Gibbs Tschudy

Debbie/Ken -- please provide me with a telephone number for connection for the above meeting. Thanks, Evelyn

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, July 24, 2003 3:28 PM
To: Bayani, Theresa Walsh; Kimball, Lonnie; Green, Carol L; Davidoff, Robert
Subject: FW: FINA Decision

Fyi

Carol - we need to inform STRAC.

-----Original Message-----
From: Querques Denett, Lucy
Sent: Thursday, July 24, 2003 2:52 PM
To: Gibbs Tschudy, Deborah; Russo, John; Vogel, Kenneth; Sant, Donald; Dial, Milton
Cc: Hamilton, Cathy
Subject: FINA Decision

Hi everyone,

I just informed the lawyers of Johnnie's decision that we will adhere to the Court's ruling in FINA. No appeal is to go forward.

Plan you workloads accordingly.

Querques Denett, Lucy

From: Querques Denett, Lucy
Sent: Thursday, July 24, 2003 4:52 PM
To: Gibbs Tschudy, Deborah; Russo, John; Vogel, Kenneth; Sant, Donald; Dial, Milton
Cc: Hamilton, Cathy
Subject: FINA Decision

Hi everyone,

I just informed the lawyers of Johnnie's decision that we will adhere to the Court's ruling in FINA. No appeal is to go forward.

Plan you workloads accordingly.

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Friday, August 08, 2003 8:31 AM
To: Guzy, David; Green, Carol L
Cc: Bayani, Theresa Walsh; Martinez, Mary Ann
Subject: RE: FINA Decision Telecom

Yes, it can.

Carol and Mary Ann - please reschedule the August 14 FINA telecon. I am really booked the week of August 18, so let's try to have it the week of August 25. Thank you.

-----Original Message-----
From: Guzy, David
Sent: Wednesday, August 06, 2003 5:48 PM
To: Gibbs Tschudy, Deborah; Green, Carol L
Cc: Bayani, Theresa Walsh; Martinez, Mary Ann
Subject: FW: FINA Decision Telecom

At the Northern tribes telecon yesterday, Terry Fisher said that he and others from STRAC will be attending an auditor training class on August 13-14 that will conflicts with the below FINA decision telecon. He asked if the telecon could be rescheduled.

-----Original Message-----
From: Martinez, Mary Ann
Sent: Wednesday, August 06, 2003 2:38 PM
To: Guzy, David
Subject: FW: FINA Decision Telecom

-----Original Message-----
From: Green, Carol L
Sent: Thursday, July 31, 2003 12:38 PM
To: Martinez, Mary Ann
Cc: Gibbs Tschudy, Deborah
Subject: FINA Decision Telecom

Mary Ann, please send this message to STRAC

Debbie would like to discuss the FINA Decision and how the decision will affect audits via telecom on August 14, 2003 from 9:30 -11:30. Please mark your calendar. Details on how to phone in to the telecom will be sent later.

Thanks

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, August 14, 2003 8:59 AM
To: Perry, Sheila
Cc: Richards, Ethel; Green, Carol L; Martinez, Mary Ann
Subject: RE: Fina Decision

Ethel and Carol - please send an invite for this meeting to Perry Shirley. Thanks.

-----Original Appointment-----

From: Perry, Sheila
Sent: Thursday, August 14, 2003 8:58 AM
To: Gibbs Tschudy, Deborah
Subject: Declined: Fina Decision
When: Thursday, August 14, 2003 9:30 AM-11:30 AM (GMT-07:00) Mountain Time (US & Canada).
Where: Debbie's office

I was invited to this meeting, should this be Perry Shirley.

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Monday, August 18, 2003 6:29 PM
To: Cobb, Lawrence; Vogel, Kenneth; Lupinski, Susan
Subject: RE: First Draft of Amendments to Federal Gas Valuation Rule

Outstanding job on this. My comments are attached in redline/strikeout - they relate primarily to changes made by OMB on the Federal oil rule. I will forward you the final draft of the Federal oil rule as approved by OMB by separate message. Thank you for your efforts on this.

This Attachment has been withheld in its entirety.

Proposed Gas 'aluation Amendme..

I have also commented in blue on the bulleted items in your email below.

-----Original Message-----
From: Cobb, Lawrence
Sent: Friday, August 08, 2003 10:58 AM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Lupinski, Susan
Subject: First Draft of Amendments to Federal Gas Valuation Rule

Debbie and Ken - We've finished a first draft of the rule language and the preamble for the proposed changes to the Federal gas regs. I need to start (and finish) the ROC and the Threshold Analysis, which will be my next priority. The document was prepared in Word Perfect, so the attached file has some formatting issues that will need to be addressed.

There are a few items you may want to take a closer look at:

Larry
<< File: Proposed Gas Valuation Amendments 08072003 draft.doc >>

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Wednesday, August 20, 2003 2:11 PM
To: Richards, Ethel
Subject: RE: Fina telecon

Ethel - please fax this email to Geoff Heath at 202-208-1505. Thanks.

-----Original Message-----
From: Richards, Ethel
Sent: Monday, August 18, 2003 3:32 PM
To: Bill Husta; Dave Loomis; David Wong; Ellwood Soderlind; George Staigle; Harold St.Goddard; Inge-Lise Goss; J Vintze; Jay Norman; Jim McClain; Joanie Rowland; Karen Anderson; Mark Hudson; Perry Shirley; Rowena Cheromiah; Scott Miller; Stave Dilsaver; Steve Brown; Terence Fisher; Todd Druse; Van Charlton
Cc: Gibbs Tschudy, Deborah; Green, Carol L; Bayani, Theresa Walsh; Burhop, Shirley; Barder, John
Subject: Fina telecon

The above telecon is scheduled for August 27, 2003 at 10am -12:00pm MST. Call in # 1-888-547-6217 passcode 57507.

Ethel Richards
ONCAM
303-231-3302

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, August 21, 2003 8:25 AM
To: Vogel, Kenneth
Subject: RE: Gas benchmarks

Before you start let me ask some of the old RVDer's if they recall any internal documents interpreting the gas valuation benchmarks. I'll get back to you.

-----Original Message-----
From: Vogel, Kenneth
Sent: Wednesday, August 20, 2003 3:11 PM
To: Gibbs Tschudy, Deborah
Subject: Gas benchmarks
Importance: High

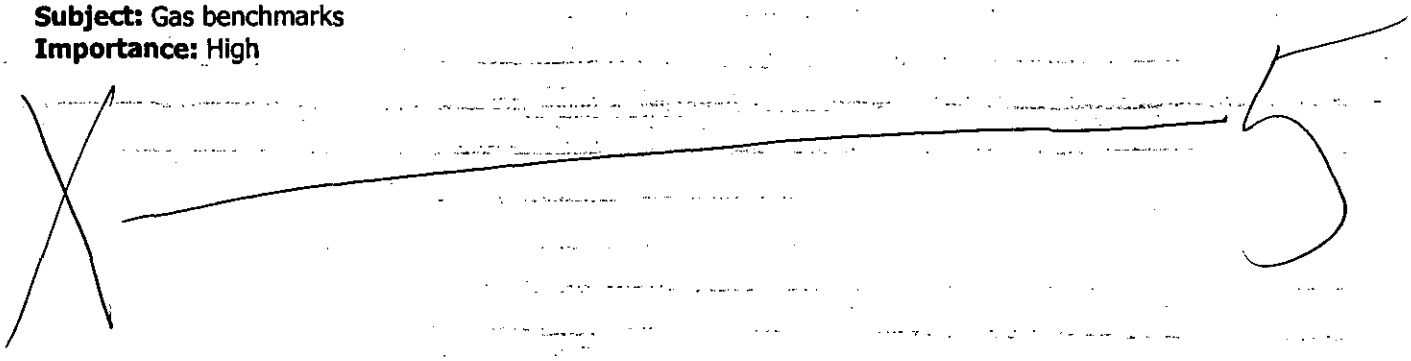
Ken Vogel
303-231-3749

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, August 21, 2003 8:36 AM
To: Cobb, Lawrence; Lupinski, Susan; Barder, John; Bayani, Theresa Walsh; Price, John L
Subject: FW: Gas benchmarks
Importance: High

Do any of you recall any internal or external documents that we may have developed interpreting the 1988 gas valuation benchmarks?

-----Original Message-----
From: Vogel, Kenneth
Sent: Wednesday, August 20, 2003 3:11 PM
To: Gibbs Tschudy, Deborah
Subject: Gas benchmarks
Importance: High



Ken Vogel
303-231-3749

Gibbs Tschudy, Deborah

From: Cobb, Lawrence
Sent: Thursday, August 21, 2003 2:39 PM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Lupinski, Susan
Subject: FW: First Draft of Amendments to Federal Gas Valuation Rule

Debbie - Geoff shared with me his concerns with your comments on the rulemaking:

X 5

Let me or Susan know if you'd like to discuss.

-----Original Message-----
From: Gibbs Tschudy, Deborah
Sent: Monday, August 18, 2003 8:11 PM
To: Cobb, Lawrence; Vogel, Kenneth; Lupinski, Susan
Subject: RE: First Draft of Amendments to Federal Gas Valuation Rule

Outstanding job on this. My comments are attached in redline/strikeout - they relate primarily to changes made by OMB on the Federal oil rule. I will forward you the final draft of the Federal oil rule as approved by OMB by separate message. Thank you for your efforts on this.

Proposed Gas 'aluation Amendme..

This Attachment has been withheld in its entirety.

I have also commented in blue on the bulleted items in your email below.

-----Original Message-----
From: Cobb, Lawrence
Sent: Friday, August 08, 2003 10:58 AM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Lupinski, Susan
Subject: First Draft of Amendments to Federal Gas Valuation Rule

Debbie and Ken - We've finished a first draft of the rule language and the preamble for the proposed changes to the Federal gas regs. I need to start (and finish) the ROC and the Threshold Analysis, which will be my next priority. The document was prepared in Word Perfect, so the attached file has some formatting issues that will need to be addressed.

There are a few items you may want to take a closer look at:

X 5

Hope you find the reading enjoyable and thought-provoking! It was!

Larry
<< File: Proposed Gas Valuation Amendments 08072003 draft.doc >>

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Thursday, August 21, 2003 2:42 PM
To: Cobb, Lawrence; Vogel, Kenneth; Lupinski, Susan
Subject: RE: First Draft of Amendments to Federal Gas Valuation Rule

I'll call and talk to Geoff.

-----Original Message-----
From: Cobb, Lawrence
Sent: Thursday, August 21, 2003 2:39 PM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Lupinski, Susan
Subject: FW: First Draft of Amendments to Federal Gas Valuation Rule

Debbie - Geoff shared with me his concerns with your comments on the rulemaking:

Let me or Susan know if you'd like to discuss.

-----Original Message-----
From: Gibbs Tschudy, Deborah
Sent: Monday, August 18, 2003 8:11 PM
To: Cobb, Lawrence; Vogel, Kenneth; Lupinski, Susan
Subject: RE: First Draft of Amendments to Federal Gas Valuation Rule

Outstanding job on this. My comments are attached in redline/strikeout - they relate primarily to changes made by OMB on the Federal oil rule. I will forward you the final draft of the Federal oil rule as approved by OMB by separate message. Thank you for your efforts on this.

I have also commented in blue on the bulleted items in your email below. << File: Proposed Gas Valuation Amendments 08072003 draft.doc >>

-----Original Message-----
From: Cobb, Lawrence
Sent: Friday, August 08, 2003 10:58 AM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth; Lupinski, Susan
Subject: First Draft of Amendments to Federal Gas Valuation Rule

Debbie and Ken - We've finished a first draft of the rule language and the preamble for the proposed changes to the Federal gas regs. I need to start (and finish) the ROC and the Threshold Analysis, which will be my next priority. The document was prepared in Word Perfect, so the attached file has some formatting issues that will need to be addressed.

There are a few items you may want to take a closer look at:

Hope you find the reading enjoyable and thought-provoking! It was!

Larry
<< File: Proposed Gas Valuation Amendments 08072003 draft.doc >>

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Friday, August 22, 2003 3:26 PM
To: Vogel, Kenneth
Subject: RE: Gas benchmarks

Ken - Larry put a package together containing various documents we have prepared over the years interpreting the benchmarks. When you get done with interviewing (THANK YOU!), drop by and I'll give you what he put together.

-----Original Message-----
From: Vogel, Kenneth
Sent: Wednesday, August 20, 2003 3:11 PM
To: Gibbs Tschudy, Deborah
Subject: Gas benchmarks
Importance: High

Ken Vogel
303-231-3749

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Monday, August 25, 2003 12:08 PM
To: Vogel, Kenneth
Subject: RE: *Gas benchmarks*

I've asked Ethel to scan and email you the materials. There's quite a lot, so it may take some time.

-----Original Message-----
From: Vogel, Kenneth
Sent: Monday, August 25, 2003 8:24 AM
To: Gibbs Tschudy, Deborah
Subject: RE: Gas benchmarks

Can you please send the materials by e-mail (Paperport or Acrobat) Thanks. I am in training the rest of the week (after my meetings Monday in Atlanta).

Ken Vogel
303-231-3749

-----Original Message-----
From: Gibbs Tschudy, Deborah
Sent: Friday, August 22, 2003 3:26 PM
To: Vogel, Kenneth
Subject: RE: Gas benchmarks

Ken - Larry put a package together containing various documents we have prepared over the years interpreting the benchmarks. When you get done with interviewing (THANK YOU!), drop by and I'll give you what he put together.

-----Original Message-----
From: Vogel, Kenneth
Sent: Wednesday, August 20, 2003 3:11 PM
To: Gibbs Tschudy, Deborah
Subject: Gas benchmarks
Importance: High

Ken Vogel
303-231-3749

Barton, Jayne

From: Gibbs Tschudy, Deborah
Sent: Tuesday, August 26, 2003 1:40 PM
To: Burhop, Shirley
Subject: RE: Mobil

No, I don't. I do, however, have a number of documents related to the application of the benchmarks that Ethel just emailed to Ken today. Please have Ethel email those to you as well or you can get the hard copies from her as well.

-----Original Message-----
From: Burhop, Shirley
Sent: Tuesday, August 26, 2003 1:09 PM
To: Gibbs Tschudy, Deborah; Vogel, Kenneth
Subject: FW: Mobil

Do either of you know what this decision is?

-----Original Message-----
From: Lougee, Jack
Sent: Tuesday, August 26, 2003 8:23 AM
To: Burhop, Shirley
Subject: Mobil

Shirley,

Could you look up a Mobile decision regarding Benchmarks and that auditors are required to establish the arm's length BM for the 1st BM.

Thanks

<<...OLE_Obj...>>

Barton, Jayne

From: Richards, Ethel
Sent: Tuesday, August 26, 2003 2:17 PM
To: Burhop, Shirley
Cc: Gibbs Tschudy, Deborah
Subject: Mobil

Attachments: Tuesday, August 26, 2003 (8).max

Tuesday, August 26, 2003 (8).m...

Per Debbie G/T message here are the paperport files.

4.1.2.1 First Valuation Benchmark

4-19

Lessee's gross proceeds if equivalent to gross proceeds under comparable arm's-length contracts

- Comparability
  - -- First, use contracts where sellers and purchasers are not affiliated with lessee
  - -- Second, use contracts where sellers are not affiliated with the lessee but purchasers are
  - -- Price
    Time of execution
    Duration of contract
    Market or markets served
    Terms
    Quality of the gas
    Volume
    Other appropriate factors
- Equivalency is based on the lowest-priced comparable arm's-length contract

- Selected criteria should:
  - -- closely reflect the lessee's circumstances
  - -- be the most relevant factor
- Lessee must notify MMS

4.1.2.2 Second Valuation Benchmark

Other relevant information

- Used when:
  - -- lessee's gross proceeds are not equivalent
  - -- lessee receives no consideration for its gas
- Criteria can include:
  - -- gross proceeds under arm's-length contracts i the field or area
  - -- published prices
  - -- spot prices
  - -- other reliable public sources of price or market information
  - -- information relevant to that particular lease or salability of the lessee's gas

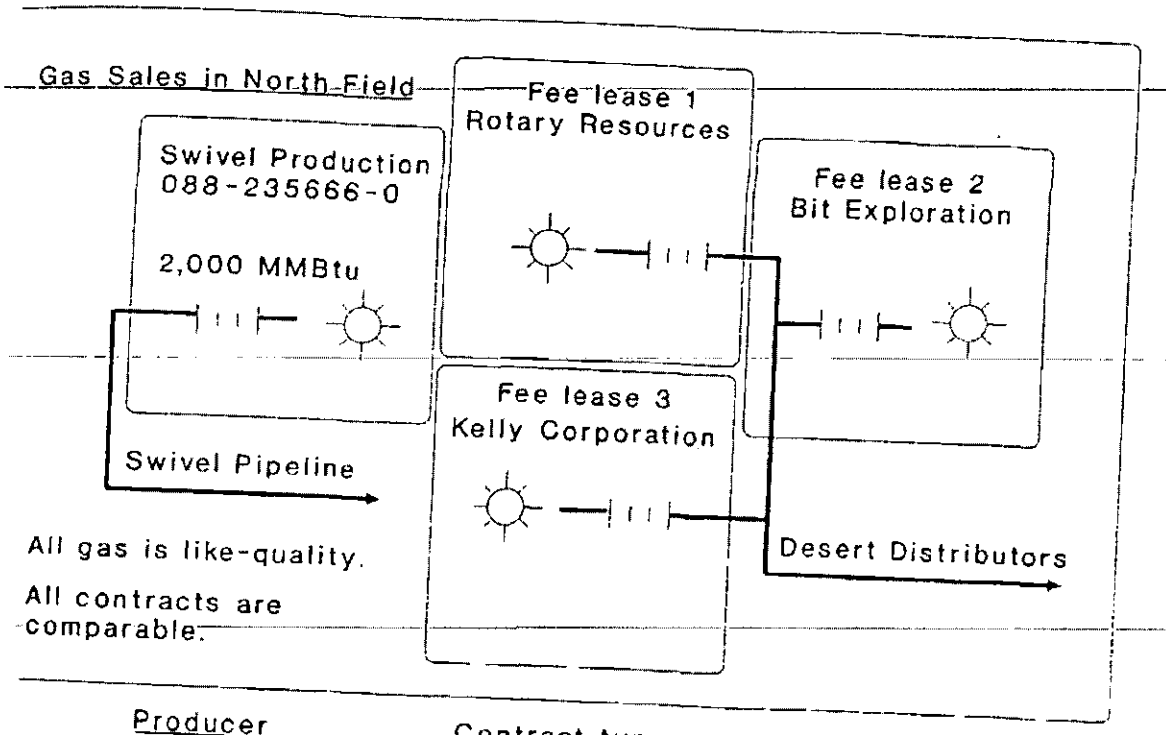
4.1.2.3 Third Valuation Benchmark

Net-back or other reasonable valuation method

- Determined on a case-by-case basis
- Lessee must notify MMS

UNPROCESSED GAS EXAMPLE

Figure 4-13



Producer	Contract type	Price ($/MMBtu)
Swivel Production	non-arm's-length	$1.75
Rotary Resources	arm's-length	1.70
Bit Exploration	arm's-length	1.80
Kelly Corporation	arm's-length	2.00

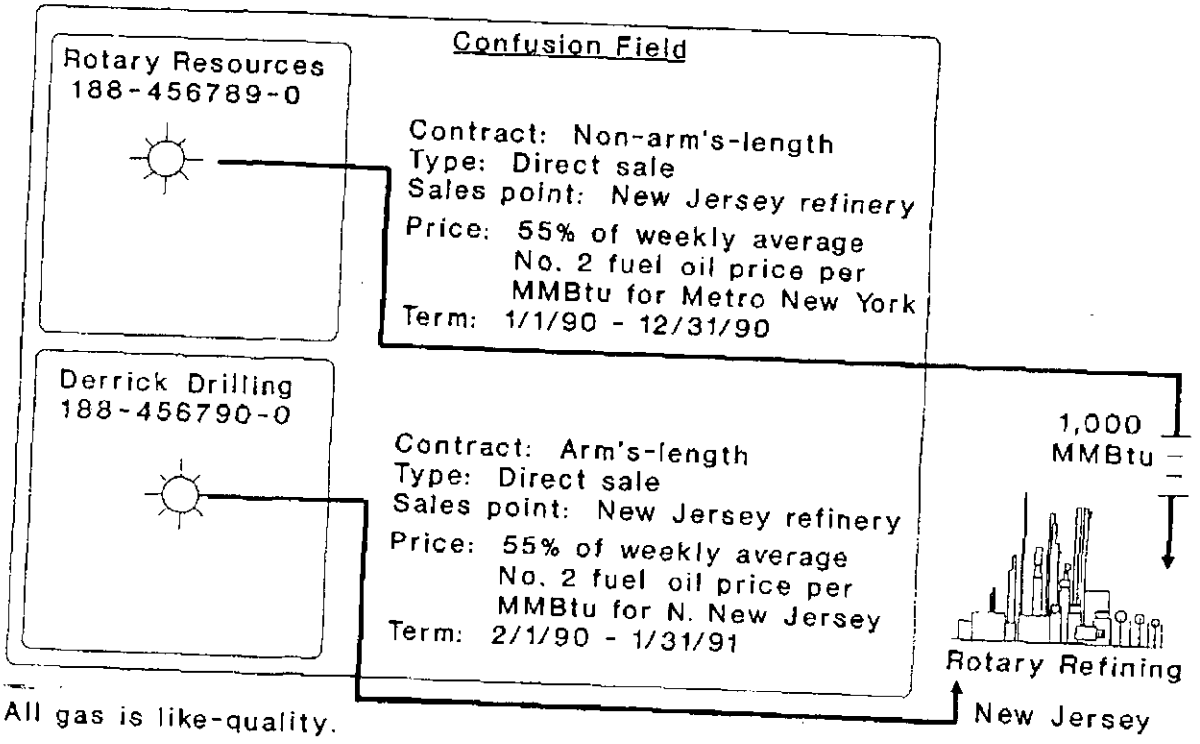
vel Production's price of $1.75/MMBtu is equivalent to prices eived under comparable arm's-length contracts between sellers and chasers not affiliated with Swivel Production.

refore, Swivel Production's gross proceeds based on $1.75/MMBtu is eptable for value under benchmark 1.

e: 2,000 MMBtu x $1.75/MMBtu = $3,500.00

UNPROCESSED GAS EXAMPLE

Figure 4-15



All gas is like-quality.

Rotary Refining purchases all gas from the field at its New Jersey refinery.

Fuel oil prices for Metro New York range from $0.01/gal to $0.02/gal higher than for N. New Jersey (for this example, $0.65/gal = $4.68/MMBtu).

Both contracts are considered comparable because their terms are similar.

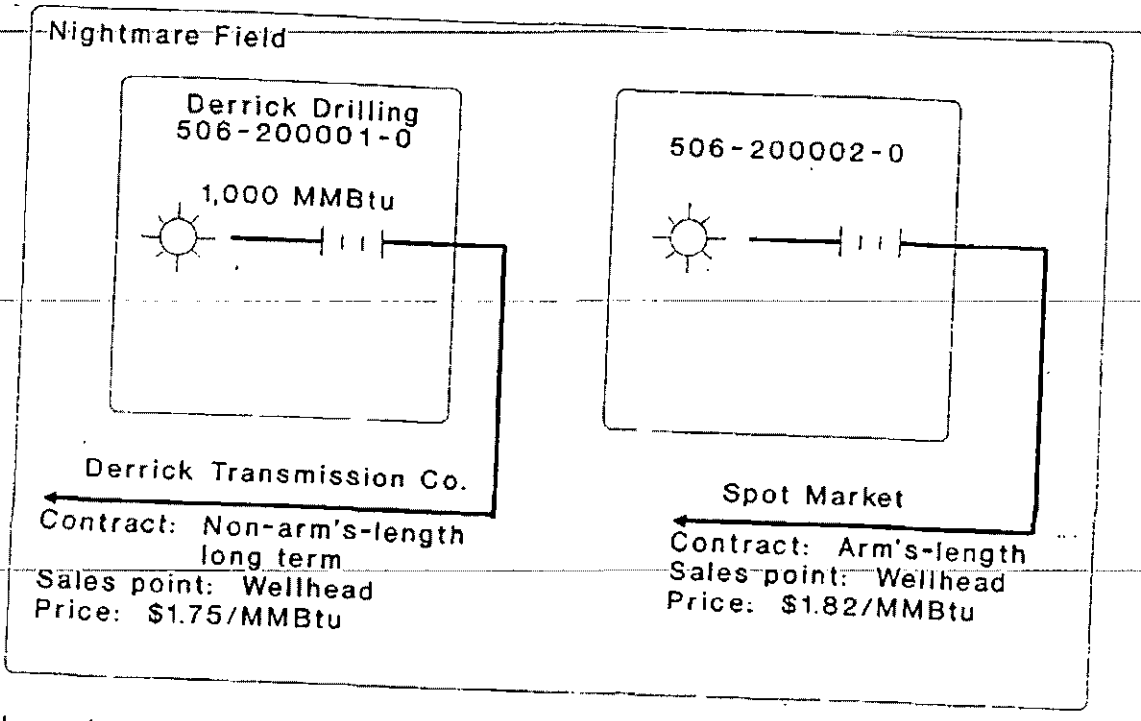
The price under the non-arm's-length contract is equivalent to the price under the comparable arm's-length contract between a seller not affiliated with Rotary Resources and a purchaser affiliated with Rotary Resources.

Value may be based on Rotary Resources' gross proceeds for the period 2/1/90 - 12/31/90 under benchmark 1.

Value: 1,000 MMBtu x 55% x $4.68/MMBtu = $2,574.00

UNPROCESSED GAS EXAMPLE

Figure 4-17



All gas is like quality.

No comparable long-term arm's-length contracts exist in the area.

Derrick Drilling may value its gas from lease 056-200001-0 under benchmark 2 based on the arm's-length spot market price of $1.82/MMBtu.

Value: 1,000 MMBtu x $1.82/MMBtu = $1,820.00

Derrick Drilling must notify MMS that it is using benchmark 2 to determine royalty value.

Draft April 4, 1996

GUIDANCE ON COMPARABILITY FACTORS FOR VALUATION OF NON-ARM'S-LENGTH SALES

BENCHMARK PROCEDURES

Purpose

The purpose of this paper is to provide guidance and clarity to auditors and valuation personnel in utilizing the benchmarks under the current gas valuation regulations.

Background

The regulations at 30 CFR 206.152 and 153 state that when gas is not sold under an arm's-length contract, value will be determined under the benchmark system. In addition, several departmental policy documents give further guidance to auditors and valuation personnel for applying the following benchmarks.

Benchmark 1

The gross proceeds paid under the non-arm's-length contract are acceptable for royalty purposes provided that those gross proceeds are equivalent to the gross proceeds paid under comparable arm's-length contracts for like-quality gas in the same field or area. The regulations state that, in evaluating the comparability criteria, consideration is given to the following factors: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and other such factors as may be appropriate.

The regulations do not place any priority or order on the comparability factors.

Benchmark 2

Value determined by consideration of other relevant information. This information can include gross proceeds under other arm's-length contracts in the field or area, published prices, prices for arm's-length spot sales, other reliable public sources of price or market information, or other information relevant to the particular lease operation or saleablility of the gas.

Benchmark 3

Net-back or other reasonable valuation method.

Policy documents

- The Deputy Assistant Secretary issued memoranda in 1988 that clarified the first benchmark. The gross proceeds received under a non-arm's-length contract are acceptable for royalty purposes if they are within the range of prices paid under comparable arm's-length contracts. And, we should look first to arm's-length contracts between the third parties and purchasers who are affiliated with the lessee.

- An October 14, 1993, Policy Paper titled Sales to Affiliates provides further guidance on application of the non-arm's-length valuation benchmarks.

Audit Preparation Work

First, audit staff will gather information on the company and investigate their valuation methods.

Data Gathered Before the Entrance Conference

- Identify company affiliates

  -- Corporate reports
  -- Annual reports
  -- Company 10-K
  -- Penwell directories
  -- Past audit work

- Identify non-arm's-length lease sales

  -- From prior audit
  -- By researching STATSS/BIS data using both royalty and reference data

Data Requested from Company

- Ask company to identify its affiliates
- Ask company to identify its non-arm's-length lease sales
- Ask company to explain its valuation procedure for its non-arm's-length contracts for unprocessed gas and processed gas

Test for Compliance

- Verify the lessee's stated valuation procedure by reviewing the non-arm's-length contract between the company and its affiliate and/or reviewing any comparable arm's-length contracts used by the company for royalty valuation.

- Get contracts between the affiliate as purchaser and third party sellers in the field or area, if not supplied by lessee under the bullet above.

- Get other arm's-length contracts in the field or area from:

  -- other MMS audit offices
  -- 202/205 STRAC auditors
  -- State or Tribal Agencies
  -- other payors/purchasers (under FOGRMA authority)

Once you have acquired all of the available arm's-length contracts in the field or area, follow the procedures below for applying the benchmarks.

BENCHMARK 1 PROCEDURE

Eight factors[1] are listed under the first benchmark in the gas valuation regulations at 30 CFR §206.152 and 30 CFR § 206.153. Several of these factors naturally operate together and, when grouped, can be used as a series of "filters" to determine which contracts are comparable for establishing value. The factors may be grouped as follows:

- Volume and Quality
- Markets served
- Duration and time of contract
- Price, terms, and other appropriate factors

The first "filter" used is volume and quality. Evaluate each contract and eliminate those not involving sales of equivalent volumes or like-quality production. Next, "filter" the remaining contracts for market(s) served and eliminate any contracts not serving similar market(s). Third, "filter" the contracts for duration and time of sale and eliminate dissimilar contracts. Last, "filter" on price, terms, and other appropriate factors. The remaining contracts become the comparable contracts used to determine value.

Based on the particular circumstances unique to each audit, not all criteria are required. Auditor judgment will prevail.

BENCHMARK 2 PROCEDURE

In the absence of comparable arm's-length contracts, the second benchmark is applied. The second benchmark includes arm's-length gross proceeds in the same or nearby field/area/plant, posted prices, spot prices, other publicly available price or market information, and information particular to the lease operation and saleability of lease products.

---

[1]For the purposes of these instructions, the factors are defined in Attachment 1.

The following alternate procedure is one method of applying the second benchmark. This procedure utilizes prices reported to the AFS/STATSS system. This procedure may aid the auditor in determining if the lessee's non-arm's-length value is reasonable as compared to other transactions reported by other payors in the field or area.

Auditors will use the following three steps for this alternate procedure:

- Determine payors with arm's-length sales in the field or area, such as other payors on the same lease or agreement. Use the AFS reference data (e.g., selling arrangement data) or target the payors with no known affiliate sales.

- Calculate the unit price for the identified arm's-length gas sales.

- Determine if the non-arm's-length price falls within the range of reported AFS arm's-length prices using volume, quality and calculated unit price as "filtering" factors.

  NOTE: Auditors may not be able to fully ensure that these AFS reported prices are arm's-length without more in-depth research, such as verifing the information with the company.

BENCHMARK 3 PROCEDURE

The third benchmark is a netback or any other reasonable method to determine value.

This will be determined on a case-by-case basis.

Attachment 1--Definition of Factors

PRICE: All components of the contract price (transportation factors, marketing fees, etc.).

TIME OF EXECUTION: Effective date of the contract (not the date signed).

DURATION OF CONTRACT: The stated period of time the contract is in effect.

MARKET OR MARKETS SERVED: Based on the point of sale established in the contract, including sales at the wellhead, gas processing plant inlet, mainline interconnect, or LDC or industrial user.

TERMS: Contract factors not related to price, volume, quality, duration, etc. (Example: Percentage-of-proceeds contract vs. conventional contract)

QUALITY (Gas stream components): Includes, but not limited to:

- methane content (mole percent)
- NGL content (Btu content)
- non-hydrocarbon gas content
  - --sulfur dioxide (sour gas)
  - --helium
  - --nitrogen
  - --CO2
- coalbed methane

VOLUME: The delivered volume measured in Mcf as defined in the sales contract.

OTHER FACTORS: Any non-contract factors that are unique to a particular audit situation, auditor judgement, or a cost/benefit analysis.

Proposed Rules

Federal Register
Vol. 56, No. 239
Thursday, December 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. N-91-3359; FR-2753-N-02]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Housing Counseling Program: Announcement of Toll-Free Telephone Number

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the Department's toll-free telephone number by which the public may obtain a list of HUD-approved housing counseling agencies in their area.

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, Director, Single Family Servicing Division, room 9178, 451 Seventh Street, SW., Washington, DC 20410-0500. Telephone: (202) 708-1672. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 15, 1991 (56 FR 58158), the Department published in the **Federal Register** a proposed rule that would codify the procedures and requirements governing the Department's housing counseling program. (To date the housing counseling program has been administered under HUD Housing Counseling Handbook No. 7610.1, Rev. September 1990.) In the preamble to the proposed rule, the Department advised that section 577 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) authorized the Department, to the extent of amounts approved in appropriations acts, to enter into an agreement with a private entity which would operate a toll-free number by which a person could obtain a list of the HUD-approved agencies that serve the area in which the person resides. The Department stated that once the toll-free number is operational, it would be announced by separate notice in the **Federal Register**.

The purpose of this notice is to announce this toll-free number. The number is: 800-733-3238.

Dated: December 5, 1991.

Grady J. Norris,
Assistant General Counsel for Regulations.

[FR Doc. 91-29630 Filed 12-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB29

Amendment of Valuation Benchmarks in Gas Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations governing the valuation of gas produced from Federal and Indian leases. The proposed amendments would modify the first benchmark for valuing unprocessed gas, residue gas, and gas plant products not sold pursuant to an arm's-length contract. The MMS is also proposing to add an additional benchmark to the sections on processed and unprocessed gas. These changes are proposed to make the benchmarks easier for royalty payors to apply in valuing gas production, and to provide more certainty to the process.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Written comments, suggestions, or objections regarding the proposed amendments should be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Scott Ellis and John L. Price of the Royalty Valuation and Standards Division, and Donald T. Sant, Deputy Associate Director for Valuation and Adult, Royalty Management Program, MMS.

I. Background

On January 15, 1988, MMS published new gas valuation regulations in the **Federal Register** (53 FR 1230) that became effective March 1, 1988. Before adopting the final regulations, MMS received comments on a Notice of Proposed Rulemaking published in the **Federal Register** on February 13, 1987 (52 FR 4732), a First Further Notice of Proposed Rulemaking published on August 17, 1987 (52 FR 30776), and a Second Further Notice of Proposed Rulemaking published on October 23, 1987 (52 FR 39792). In addition, public hearings were held on the proposed gas valuation regulations. Comments that were received in response to the **Federal Register** Notices and at the public hearings were considered in the adopted regulations.

The final valuation regulations establish royalty values based on market values determined by the supply/demand interaction through arm's-length transactions. To ensure that the proper royalty value is established in those situations where gas production is not sold pursuant to arm's-length transactions, a benchmark system was developed. The determination of value under the benchmark system is based primarily upon values established under comparable arm's-length transactions occurring in the field or area in question. In the absence of comparable arm's-length transactions, the best available gas sales data relevant to the situation or a net-back procedure is used to establish value. See paragraph (c) of 30 CFR 206.152 and 206.153.

The MMS received numerous comments on whether or not to adopt a benchmark system to value gas production not sold pursuant to arm's-length contracts and what criteria would be used in each benchmark to establish gas value. Industry generally supported the concept of comparing the values under non-arm's-length transactions with values under comparable arm's-length contracts. Industry also supported additional benchmarks that were based upon market-oriented

factors. The additional benchmarks were said to be necessary in instances where comparable arm's-length transactions did not exist. State and Indian commenters generally supported the benchmark system for determining gas value in other-than-arm's-length situations, but preferred to establish value based on the highest price paid in the field.

One State commenter did not believe that the benchmark system was fair to the royalty owner: "It would be unreliable because the standards are vague, subjective, and subject to abuse * * *." One industry commenter partially agreed with this assessment, relating that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Another industry commenter during the rulemaking process suggested that the wording of the benchmark criteria should be amended to avoid ambiguity in the application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the * * * arm's-length contracts of other lessees in the field." The commenter further stated that he understood the intent of the proposed regulations was that the proceeds under the referenced arm's-length contract would be used to set royalties, but the regulation did not expressly so state. The commenter observed: "* * * as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent,' then the next criterion in the hierarchy would apply. This ambiguity should be removed."

In the final regulations, MMS adopted as the first benchmark (paragraph (c)(1) of 30 CFR 206.152 and 206.153) the lessee's gross proceeds received under its non-arm's-length transaction if they are equivalent to the gross proceeds received under comparable arm's-length contracts for like-quality production in the same field or area. The criteria to be considered in defining comparable contracts are also outlined in the above-referenced sections. However, since the adoption of the revised regulations, numerous questions have been raised as to the interpretation of the first benchmark. These questions have generally addressed two issues:

(a) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are numerous comparable arm's-length contracts with a range of proceeds passing between the parties?

(b) How does the lessee, or MMS, determine the acceptability of the lessee's gross proceeds under its non-arm's-length contract when there are no comparable arm's-length contracts for the sale of like-quality production between parties not affiliated with the lessee?

The Department of the Interior also was sued by a group of affiliated producers over, among other things, the final regulations' treatment of valuation under non-arm's-length contracts. *ANR Production Co., et al. v. Hodel*, Civ. No. CV 88-0045 (W.D. La., filed Jan. 14, 1988).

Lessees have discovered that many arm's-length contracts are comparable to their non-arm's-length contracts from the standpoint of time of execution, market served, duration, and volume and quality of gas. However, a range of prices commonly exists for the comparable arm's-length contracts. Lessees are uncertain if MMS will view their gross proceeds under the non-arm's-length contract as acceptable, for royalty valuation purposes, if they are greater than or equal to the gross proceeds paid under at least one comparable arm's-length contract. To illustrate, assume there are 10 arm's-length contracts in the field comparable to the lessee's non-arm's-length contract except that each of the 10 contracts has a different price. Assume further that the non-arm's length contract gross proceeds are equal to the proceeds under the second to the lowest arm's-length contract. The lessees are uncertain whether MMS will accept the non-arm's-length gross proceeds as value.

Since issuance of the regulations, numerous questions have been raised as to how MMS will enforce the first benchmark. The questions have identified the need to further clarify the intentions of MMS in this regard. Therefore, MMS is proposing to modify the benchmark system by clarifying the first benchmark and establishing four benchmarks where there are now only three.

II. Proposed Amendments

The MMS is proposing to amend paragraph (c)(1) of 30 CFR 206.152 and 206.153 and to add an additional benchmark to both sections.

In recognition of the realities of the gas marketplace, it is being proposed that the gross proceeds accruing to a lessee under its non-arm's-length contract would be accepted as value if they are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between parties both of whom are not affiliated with the lessee for similarly-situated production.

Available contracts would mean contracts in the possession of the lessee or MMS. This would not require knowledge of all contracts in the field, or, for processed gas, for a particular plant, but it would require MMS to index and catalogue all contracts in its possession. Limiting the range to arm's-length contracts where both parties are not affiliated with the lessee protects the lessor's interest if a lessee attempts to have the gross proceeds under its non-arm's-length contracts accepted on the basis of an arm's-length contract involving the lessee (or its affiliate) which was entered into for the purpose of creating a low-priced, comparable arm's-length contract. Therefore, under this first benchmark, the gross proceeds accruing to a lessee under its non-arm's-length contract would not be accepted as value if they are less than the gross proceeds derived from or paid under all available comparable arm's-length contracts between parties, both of whom are not affiliated with the lessee, for like-quality production.

The MMS also recognizes, however, that there may be some instances where there are no comparable arm's-length contracts in the field or area, or plant, between parties not affiliated with the lessee. For example, in a field there may be only one pipeline purchaser who happens to be affiliated with 1 of 10 lessees. Even though there would be many arm's-length contracts between that pipeline purchaser and the other nine lessees, the affiliated lessee could not use the proposed first benchmark. Therefore, it is being proposed that a new, second benchmark be added. This benchmark would provide that the lessee's gross proceeds under its non-arm's length contract will determine the value of the production if they are not less than the gross proceeds derived from any available comparable arm's length contract between sellers who are not affiliated with the lessee and purchasers who are affiliated with the lessee for sales or other dispositions of like-quality production in the same field (or plant) or, if necessary to obtain a reasonable sample, from the same area (or nearby plants). The MMS believes that the lessors' interests would be protected in this situation because the sellers under the comparable contracts must be unaffiliated with the lessee. Lessees would be able to use this second benchmark only when the first benchmark cannot be applied; i.e., when there are no comparable contracts

between persons unaffiliated with the lessee. As in the first benchmark being proposed, if the lessee cannot demonstrate that its gross proceeds are not less than the gross proceeds derived from comparable arm's-length contracts identified under this second benchmark, its gross proceeds would not be acceptable as value under this second benchmark.

If neither the proposed first or second benchmark were applicable, then the gas production would be required to be valued under the third benchmark which is not being proposed for change.

The MMS believes that the proposed amendments will provide the lessee with a clarified regulation that reflects the realities of the marketplace. The proposed rule also is consistent with MMS's policy for implementing the first benchmark under the existing regulations. The proposed amendments are not expected to change royalty collections. The MMS specifically would like comments on whether the proposed regulatory language accomplishes the clarification as described in this preamble.

The proposed amendments do not change the requirement in 30 CFR 206.152(a)(3)(i) and 206.153(a)(3)(i) that for any Indian lease which provides that the Secretary of the Interior may consider the highest price paid or offered for a major portion of production in determining value, the value for royalty purposes will be the higher of the major portion value or the value determined under the benchmarks.

III. Requested Comments on Selected Issues

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the location identified in the ADDRESSES section of this preamble. Comments must be received on or before the day specified in the DATES section of this preamble.

Finally, MMS is seeking comments on the proposed factors in evaluating the comparability of arm's-length contracts in paragraph (c)(1) of 30 CFR 206.152 and 206.153. The MMS specifically would like comments on whether these factors provide adequate information for evaluation and whether other factors for comparability should be used in the evaluation.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rule simplifies and clarifies existing regulations, with no change in the administrative requirements or burdens placed upon small business entities. Therefore, the Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

Because this rulemaking clarifies existing regulations, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 28, 1991.

David O'Neal,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (c) of § 206.152 under subpart D (Federal and Indian Gas) is revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contact (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available arm's-length contract between persons not affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or Minerals Management Service (MMS). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) Where no comparable arm's-length contracts exist between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: field or area, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-

length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

3. Paragraph (c) § 206.153 under subpart D is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest prices available comparable arm's-length contract between persons not affiliated with the lessees (the "minimum value"). Available contracts are those contracts in the possession of the lessee or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas and gas plant products;

(2) Where no comparable arm's-length contracts exists at the plant or nearby plant between persons not affiliated with the lessee, the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest priced available comparable arm's-length contract between sellers not affiliated with the lessee and purchasers affiliated with the lessee (the "minimum value"). Available contracts are those contracts in the possession or the lessee of MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: same plant or nearby plants, time of execution, duration, market or markets served, terms, quality of residue gas and gas plant products, volume, and such other factors as may be appropriated to reflect the value of the residue gas and gas plant products;

(3) A value determined by consideration of other information relevant in valuing like-quality gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources or price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(4) A net-back method or any other reasonable method to determine value.

* * * * *

[FR Doc. 91-29732 Filed 12-11-91; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA11-3-5252; FRL-4040-2]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Bay Area Air Quality Management District, San Diego County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD, on November 1, 1989, March 14, 1989, and January 5, 1990, respectively. The California Air Resources Board submitted the revisions from the Bay Area and South Coast Districts to EPA on December 31, 1990, and submitted the revisions from the San Diego District to EPA on April 5, 1991. This notice addresses three revised rules to control emissions of volatile organic compounds (VOCs) from wastewater separators and related operations. EPA has evaluated each revised rule and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) in order to strengthen the SIP. At the same time, EPA is proposing a limited disapproval of these rules because they contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not meet the requirements of part D of the Act.

DATES: Comments must be received on or before January 13, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California & Arizona, Rulemaking Section (A-5-3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123-1095.

South Coast Air Quality Management District, Planning & Rules, P.O. Box 4939, Diamond Bar, CA 91765-0939.

FOR FURTHER INFORMATION CONTACT: Thomas Huetteman, Northern California, Nevada & Hawaii, Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190, FTS: 484-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act that included the Bay Area Air Quality Management District (AQMD), San Diego County Air Pollution Control District (APCD), and South Coast AQMD (43 FR 8964), 40 CFR 81.305. Because it was not possible for these Districts to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone in these Districts to December 31, 1987. Section 172(a)(2). The Bay Area AQMD, San

lessee may be considered. (See section 4.1.2.1 for other factors used in determining comparability.)

The lessee's gross proceeds for residue gas or gas plant products sold under a non-arm's-length contract include all consideration specified previously for arm's-length contracts, except in situations involving transportation factors (see sec. 4.1.2.1).

4.2.2.2 Second Valuation Benchmark: Other Relevant Information

The second valuation benchmark is used if the lessee's gross proceeds are not equivalent to the gross proceeds under comparable arm's-length contracts for the plant or nearby plants, or if no comparable arm's-length contracts exist for the plant or nearby plants (30 CFR 206.153(c)(2)).

Under this benchmark, the lessee must consider other information that is relevant or would be used in valuing like-quality residue gas and gas plant products from the same or nearby gas plants, including:

1. The gross proceeds under arm's-length contracts in the field or area;

2. Published prices for residue gas or gas plant products;

3. Prices under arm's-length spot sales of residue gas or gas plant products;

4. Other reliable public sources of price or market information; and

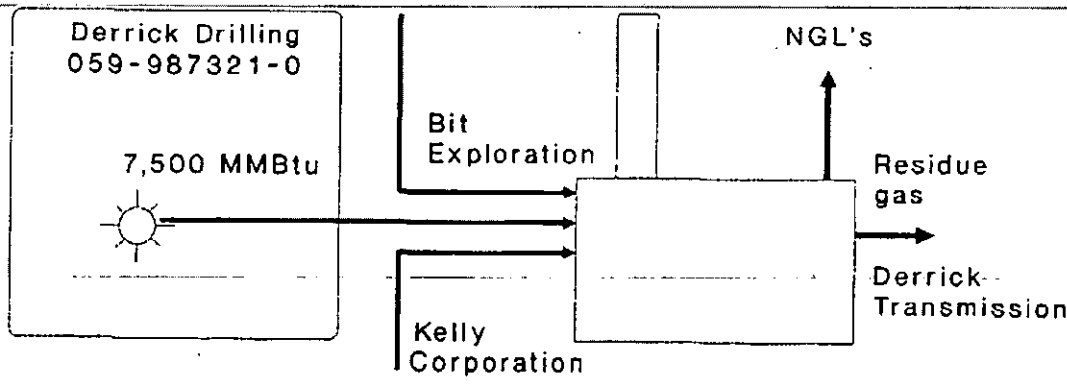
5. Other information relevant to the particular lease operation or the salability of the lessee's residue gas or gas plant products.

As with unprocessed gas valuation, the lessee must select the method that best determines the value of its residue gas or gas plant products. If the lessee's gross proceeds are less than the gross proceeds under comparable arm's-length contracts as required under the first benchmark, the lowest of those arm's-length gross proceeds would be used to establish value. Other factors such as weighted-average prices, contractually reduced prices for transportation, or certain non-arm's-length contract prices may be used in establishing value.

Published prices for residue gas may be found in the same publications listed for unprocessed gas (see sec. 4.1.2.2). Published prices for NGL's may be found in the Oil Buyer's Guide, Platt's Oilgram Price Report, or other industry publications.

The lessee must notify MMS in the same manner as for unprocessed gas if values of residue gas or gas plant products are determined under this benchmark.

Figure 4-33-Valuation of Residue Gas under Benchmark 2 where Lessee's Price Is Not Equivalent to Prices under Comparable Arm's-Length Contracts



Derrick Drilling processes its gas and sells the residue gas to Derrick Transmission under a non-arm's-length contract for $2.00/MMBtu.

Derrick Transmission also purchases all other residue gas from the plant. Derrick Transmission pays $2.10/MMBtu and $2.05/MMBtu to Bit Exploration and Kelly Corporation, respectively, under arm's-length contracts.

All contracts are comparable.

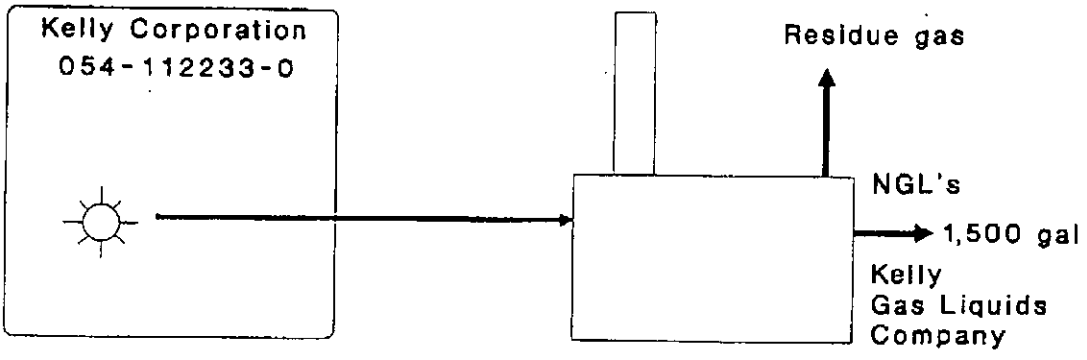
Derrick Drilling's non-arm's-length price is less than the prices paid under comparable arm's-length contracts for residue gas from the plant and therefore is not equivalent.

Derrick Drilling may value its residue gas under benchmark 2 based on the lowest price paid under comparable arm's-length contracts, which is equivalent to $2.05/MMBtu.

Residue gas value: 7,500 MMBtu x $2.05/MMBtu = $15,375.00

Derrick Drilling must notify MMS that it is using this benchmark.

Figure 4-34—Valuation of NGL's under Benchmark 2 where No Comparable Arm's-Length Contracts Exist for the Plant or Nearby Plants



Kelly Corporation sells NGL's to Kelly Gas Liquids Company under a non-arm's-length contract for $0.35/gal.

No sales or purchases of like-quality NGL's under comparable arm's-length contracts exist for the plant or nearby plants.

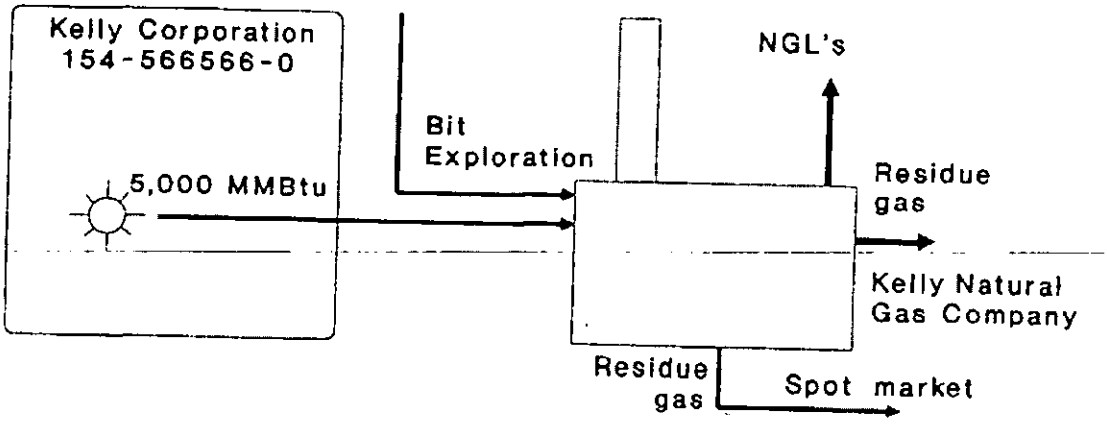
The price published in a national NGL's newsletter for the area is $0.37/gal.

A value of $0.37/gal is acceptable under benchmark 2.

NGL's value: 1,500 gal x $0.37/gal = $555.00

Kelly Corporation must notify MMS that it is using this benchmark.

Figure 4-35—Valuation of Residue Gas under Benchmark 2 where Other Residue Gas From Plant Is Sold under an Arm's-Length Contract



Kelly Corporation sells all of its residue gas to Kelly Natural Gas Company under a non-arm's-length contract for $2.05/MMBtu.

Bit Exploration sells all of its residue gas under an arm's-length spot market contract at a current price of $2.12/MMBtu.

Bit Exploration's arm's-length spot price of $2.12/MMBtu is acceptable for valuing Kelly Corporation's gas under benchmark 2.

Residue gas value: 5,000 MMBtu x $2.12/MMBtu = $10,600.00

Kelly Corporation must notify MMS that it is using this benchmark.