

taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Lease means a geothermal lease issued under authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), unless the context indicates otherwise.

Lessee means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility. This also includes any affiliate of the lessee that utilizes the geothermal resource to generate electricity, in a direct utilization process, or to recover byproducts, or any affiliate that transports lease production.

Like-quality lease products means lease products that have similar chemical, physical, and legal characteristics.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field.

Minimum royalty means the minimum amount of annual royalty as specified in the lease or in applicable leasing regulations that the lessee must pay after commencement of geothermal production in commercial quantities.

No sales means the utilization or disposal of geothermal resources without the benefit of a sale.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Plant tailgate electricity means the amount of electricity in kilowatthours generated by the powerplant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the powerplant and returned to the lease for lease operations. Plant tailgate electricity should be measured at, or

calculated for, the high voltage side of the transformer in the plant switchyard.

Point of utilization means the powerplant or direct utilization facility in which the geothermal resource (steam or hot water) is utilized.

Reasonable alternative fuel means a conventional fuel (such as coal, oil, gas, or wood) that would normally be used as a source of heat in direct utilization operations.

Secretary means the Secretary of the Department of the Interior or any person duly authorized to exercise the powers vested in that office.

Selling arrangement means the individually contracted arrangements under which sales or dispositions of geothermal resources are made, including sales or dispositions of byproducts and electricity sales where the lessee generates electricity from lease geothermal production.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding 1 year.

Wheeling means the transmission of electricity from a powerplant to the point of delivery.

§ 206.352 Valuation standards for electrical generation.

(a) The value of geothermal resources produced from leases subject to this subpart and used to generate electricity shall be determined pursuant to this section.

(b)(1)(i) The value of geothermal resources that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to the seller for the geothermal resource. If the contract does not reflect the total consideration, MMS may require that the

geothermal resource sold pursuant to that contract be valued in accordance with paragraph (d) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require the geothermal resource to be valued pursuant to paragraph (d) of this section, and notification provided to MMS in accordance with paragraph (e)(3) of this section. If MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) The MMS may require a lessee to certify that the provisions in its arm's-length contract include all of the consideration to be paid by the buyer, either directly or indirectly, for the geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract shall be determined in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-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 for sales of geothermal resources to the lessee-affiliate's same powerplant (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value" under available comparable arm's-length contracts, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of significant quantities of geothermal resources to

the same powerplant. Available contracts will mean contracts in the possession of the lessee, the lessee's affiliate, or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Time of execution, duration, terms, quality of the geothermal resource, volume, dedication to the same powerplant, and other factors that may be appropriate to reflect the value of the resource;

(ii) The value determined by the geothermal netback procedure. Under the geothermal netback procedure, the lessee's reasonable actual costs for the generation and transmission of electricity shall be deducted from the lessee's gross proceeds received for the sale of electricity to determine the value of the geothermal resource. Transmission deductions shall be determined pursuant to §206.353 of this part. Generating deductions shall be determined pursuant to §206.354 of this part; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Value determinations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(d)(1) The value of geothermal resources subject to this section that are not subject to a sales transaction ("no sales" geothermal resources) but are instead utilized directly by the lessee in its own powerplant for the generation and sale of electricity shall be determined in accordance with the first applicable of the following paragraphs:

(i) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same powerplant. In evaluating the acceptability of arm's-length contracts, the following factors shall be considered: Time of execution, duration, terms, volume, quality of resource, and such other factors as may be appropriate to reflect the value of the resource;

(ii) The value determined by the geothermal netback procedure. Under the geothermal netback procedure, the lessee's reasonable actual costs for the

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generation and transmission of electricity shall be deducted from the lessee's gross proceeds received for the sale of electricity to determine the value of the geothermal resource. Transmission deductions shall be determined pursuant to §206.353 of this part. Generating deductions shall be determined pursuant to §206.354 of this part; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Value determinations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(e)(1) Pursuant to subpart H of 30 CFR part 212, the lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) or (d) of this section. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS representatives or to other authorized persons any and all contracts for the sale or other disposition of the lease production; contracts for the sale, generation, and/or transmission of electricity attributable to lease production; and any arm's-length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) or (d) of this section. The notification shall be by letter to the MMS Associate Director for Minerals Revenue Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS-2014 using a valuation method author-

ized by paragraph (c) or (d) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee where geothermal resources are directly sold.

(i) The lessee is required to place geothermal resources in marketable condition and to deliver geothermal resources to the powerplant at no cost to the Federal lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the geothermal resource in marketable condition or deliver it to the powerplant.

(j) Value shall be based on the highest price a prudent lessee can receive

through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to the contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a re-determination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulations of the Department, 43 CFR part 2.

§ 206.353 Determination of transmission deductions.

(a) Where the value of geothermal energy is determined by the geothermal netback procedure pursuant to paragraphs (c)(1)(ii) and (d)(1)(ii) of § 206.352 of this subpart, a transmission deduction shall be subtracted from the les-

see's gross proceeds received for the sale of electricity to determine the plant tailgate value of the electricity. The transmission deduction consists of either or both of two components:

(1) Transmission line costs as determined pursuant to paragraph (b) of this section, and

(2) Wheeling costs if the electricity is transmitted across a third-party's transmission line under an arm's-length wheeling agreement. Transmission deductions are subject to the limitation prescribed in paragraph (c) of this section.

(b)(1) Transmission-line costs shall be based on the lessee's actual costs associated with the construction and operation of a transmission line for the purpose of transmitting electricity attributable and allocable to the lessee's powerplant utilizing Federal geothermal resources. The monthly transmission line cost component of the transmission deduction is determined by multiplying the annual transmission line cost rate (in dollars per kilowatthour) by the amount of electricity delivered for the reporting month. The transmission line cost rate shall be redetermined annually at the beginning of the same month of the year in which the transmission line was placed into service, the same month of the year in which the powerplant was placed into service, or, at the lessee's option, at a time concurrent with the beginning of the lessee's annual corporate accounting period; *Provided*, however, the period selected must coincide with the same period chosen for the generating deduction pursuant to § 206.354(b)(1). After a deduction period is chosen, the lessee may not later elect to use a different deduction period without MMS approval.

(2) Allowable transmission-line costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the transmission line multiplied by a rate of return in accordance