BLM Methane Rule At Risk

January 2018

The Bureau of Land Management (BLM), an agency within the Department of the Interior (DOI), administers mineral development on 245 million acres of public land, including onshore federal oil and gas leasing. In November 2016, the BLM finalized a rule titled, "Waste Prevention, Production Subject to Royalties, and Resource Conservation," to limit the practice of venting and flaring natural gas from oil and gas wells on federal lands. The rule replaces one from 1979 that has led to the loss of billions of dollars' worth of federal gas.[1] The rule will reduce the amount of waste by increasing the capture and sale of natural gas from public lands. Federal onshore oil and gas minerals are a public trust resource, and encouraging more responsible development of them will not only prevent waste, but also provide higher returns to taxpayers.

Background

Venting, flaring, and royalty-free uses of oil and natural gas on BLM-administered leases have been governed by the "Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A)," which was issued by the U.S. Geological Survey on December 27, 1979.[2] Since NTL-4A went into effect, technologies and practices for oil and gas production, such as hydraulic fracturing and horizontal drilling techniques, have advanced considerably.

Before the rule was finalized in 2016, no other federal rule covered all potential sources of lost gas. While some states have policies in place to reduce waste of natural gas, no state has established a comprehensive set of requirements addressing all three avenues for waste—flaring, venting, and leaks—and few states have implemented control measures in even one of these areas.

The Problem

The problem of lost gas and the failures of NTL-4A have been well-documented over the last decade. In 2007, the Royalty Policy Committee (a federal advisory committee within DOI) emphasized the need for BLM to strengthen its processes to verify production of gas.[3] In 2010, the Department of the Interior Inspector General recommended that the BLM clarify its requirements for royalty-free use of gas.[4] That same year, the Government Accountability Office found that around 40 percent of natural gas being vented and flared from onshore Federal leases could have been economically captured with the use of available control technologies. The GAO also found that Interior's oversight of the oil and gas program had significant limitations, and – specifically – that its regulations did not address significant sources of lost gas.[5]

In 2011, the GAO added DOI's Management of Federal Oil and Gas Resources to its list of government programs it considered to be at high risk– defined as those programs with "greater

vulnerabilities to fraud, waste, abuse, and mismanagement."[6] It found that: "Interior did not have reasonable assurance that it was collecting its share of revenue from oil and gas produced on federal lands."

That uncertainty is due in no small part to NTL-4A. The rule depends entirely on the subjective judgments made by a BLM Supervisor or Authorized Officer about what is "prudent and proper" or "reasonable" to determine whether gas has been wasted and should incur a royalty. According to a 2016 GAO report, there has been considerable ambiguity regarding what properly constitutes royalty-free, on-site use, and consequently, "substantial variation in how the BLM has interpreted and applied the standard" for approval of flaring.[7]

In that report, the GAO also determined that the NTL-4A's ambiguity has been compounded by the BLM's inconsistent adherence to the protocol established to enforce it. Their audit estimated that 90 percent of the 1,281 venting and flaring requests received by BLM field offices in fiscal year 2014 did not contain the appropriate documentation, yet the BLM approved 70 percent of those requests anyway. Ultimately, the GAO concluded that the DOI "may not have a clear accounting of natural gas emissions, which could limit [its] ability to ensure that lessees pay royalties in the proper amounts and minimize waste of natural gas."[8]

While the BLM's accounting for lost gas remains suspect, the agency has nevertheless acknowledged that the problem has worsened in recent years. From 2009 to 2013, the flaring of natural gas on federal and Indian leases more than doubled. [9] According to industry-reported data acquired by Taxpayers for Common Sense from the Office of Natural Resources Revenue, the large increase in lost gas in the decade 2006-2015 was largely driven by increased flaring from oil wells on federal lands. In an indication of the permissiveness of the NTL-4A, royalty-free flaring from those oil wells increased more than four times as much as overall oil production on federal lands over those years.

That flaring was just part of the overall surge in gas being lost without incurring a royalty. Overall, royalties were not collected on 91 percent of all gas vented or flared from oil and gas production on federal lands from 2006 to 2015.[10]

In gross, the amount of wasted gas has been substantial in both monetary and practical terms. The BLM estimated that the gas lost on BLM-administered leases in 2014 alone had a sales value of $444 million and a royalty value of $56 million.[11] Put another way, the gas lost in 2014 was enough to supply about 1.5 million homes for a year.

Correcting the Outdated NTL-4A

The BLM's 2016 waste prevention rule seeks to remedy many of the NTL-4A's well-documented problems. It contains provisions to curb the waste of natural gas and help ensure taxpayers get a fair return on these public resources. As initially published, the finalized rule required compliance from oil and gas companies by January, 2018, giving industry time to meet its requirements. Regarding its content, among other things, the rule:

- Charges a royalty on gas flared from oil wells, subject to certain conditions.[12]

As noted above, roughly 90 percent of all gas vented or flared on federal lands from 2006 to 2015 was royalty-free, and the largest component of that was gas flared from oil wells. The rule clarifies when to charge royalties for lost gas by replacing the vague guidance of the NTL-4A that resulted in inconsistent application of BLM standards. Specifically, the rule defines certain situations when venting or flaring is considered "unavoidably lost" and therefore does not incur a royalty. In all other cases, the gas is considered "avoidably lost" and should be charged a royalty. Charging a royalty for loss of associated gas creates an incentive to capture and sell this gas, which will reduce waste and increase revenues. The new approach is also expected to significantly reduce the amount of requests for approval to flare without paying royalties that producers have to file.

- Establishes target percentages for the amount of gas producers must capture and sell/month/well.[13]

To reduce the routine and unlimited loss of natural gas allowed by the NTL-4A, the rule sets a percentage of all gas coming from development oil wells that producers must capture per month. To ease compliance, the capture target percentage ramps up over the first few years the rule takes effect, and more significantly, can be averaged over a lease, unit, communitized area, county, or state. Furthermore, the percentage is only applied to gas that exceeds an allowable flaring volume per well per month that can be correspondingly averaged out. Any amount flared in excess of the targets would be considered "avoidably lost" gas as re-defined by the rule and would thereby incur a royalty.

The capture target method of limiting waste was modeled on rules already in place in North Dakota and was designed to be more flexible for producers than the strict flaring caps set forth in the proposed version of the rule.

- Prohibits venting, except in certain situations, like emergencies, during maintenance, or when flaring is infeasible. Requires the replacement of "high bleed" pneumatic controllers with "low bleed" controllers within one year.[14]

Oil and gas producers on federal lands are allowed to use gas on the lease site to operate their equipment, like pumps and compressors, free of charge. Instead of being burned off, the gas is typically vented after its use. Because there is no incentive to replace aging equipment that vents more gas, large quantities of gas are lost during operation, particularly through pneumatic controllers. The rule aims to reduce this waste, in part, by requiring operators to update their equipment.

- Requires use of an instrument-based Leak Detection and Repair (LDAR) program to find and repair leaks at least twice a year.[15]

One of the largest sources of lost, non-combusted natural gas has been leaks from equipment (rather than intentional venting). Similar to requirements to replace old, leaky equipment, the LDAR requirements will allow the BLM to collect data on leaked gas in order to prevent further leakage.

Until the 2016 rule, the BLM did not have any system in place to collect information about gas from BLM-administered leases that was being leaked. The use of LDAR systems will reduce the amount of wasted gas from sources that have previously gone undetected and unaddressed.

- Allows royalty rates to be increased in the future for new competitive onshore oil and gas leases, consistent with the Mineral Leasing Act.[16]

Unlike other resource development plans, outdated rules required the BLM to conduct a formal rulemaking in order to change the royalty rate charged for new oil and gas leases. This change will allow the BLM to consider other royalty rates to better reflect market conditions.

The Methane Rule Is At Risk

Since the BLM Methane Rule was finalized in November 2016, certain oil and gas industry groups, some lawmakers, and the new administration have attempted to halt its implementation. Immediately following the finalization of the rule, a petition for judicial review[17] was filed by oil and gas trade organizations.[18] The states of Montana and Wyoming filed a separate lawsuit just days later, to which the state of North Dakota and other parties subsequently joined. The two lawsuits were combined and are ongoing.[19]

In January 2017, resolutions of disapproval under the Congressional Review Act (CRA) were introduced in both chambers of Congress. The act allows lawmakers to repeal rules issued by the executive branch within 60 legislative days of their finalization and requires only a simple majority in both chambers.[20] If Congress had repealed the methane waste rule through the CRA, it would have severely limited the ability of this or any future Administration to craft any solution to lost gas from BLM-administered leases. The CRA provides that a new rule may not be issued in "substantially the same form" as a disapproved rule unless it is specifically authorized by a subsequent law. Although the CRA was meant to allow Congress to repeal 'midnight regulations'

adopted as an Administration left office, provisions in the BLM's methane waste rule were years in the making, beginning in 2011 with four 'forums' across the US.

In February, the House passed[21] its CRA resolution,[22] but the Senate voted not to advance the measure in May, [23] ending the possibility of repealing the methane rule through the CRA.

In June, the BLM issued a new rule that postponed the compliance dates of key provisions of the methane waste rule.[24] In particular, the agency postponed the compliance dates for the sections of the rule concerning: capture targets for gas; measurement and reporting of vented and flared gas; replacement of high-venting pneumatic controllers, pneumatic diaphragm pumps, and leaky storage vessels; and leak detection and repair. For all those sections, the compliance date had been set as January 18, 2018. In its filing, the BLM cited the outstanding litigation and possible changes it could make to the rule, pending an internal review.

In October, the BLM took the additional step of issuing a proposed rule to delay and suspend certain provisions of the methane waste rule until January 17, 2019.[25] The proposed rule would affect the sections noted above as well those concerning waste-minimization plans and well completions, among others. As justification for its proposed rule, the BLM cited the need to avoid imposing a burden on oil and gas operators. At the time, the agency noted that its internal review of the 2016 rule was ongoing.

On December 7, 2017, the BLM finalized its delay and suspension of certain provisions of the 2016 methane rule.[26] The delay of the methane waste rule's implementation until 2019 means the administration of oil and gas drilling on federal lands would revert to the guidance of the NTL-4A, which has led to the significant loss of public gas resources.[27] The BLM suggested it will use the extra time before core aspects of the rule go into effect to substantially rewrite the rule, or replace it altogether.

Conclusion

Under the guidance of outdated rules, oil and gas companies operating on federal lands have been allowed to vent and flare more than a trillion cubic feet of taxpayer-owned natural gas. Due to poor measurement and verification of gas volumes, the ambiguity of those old rules, and their inconsistent enforcement, producers have not had to pay royalties on nearly all of this lost gas. The methane waste rule finalized in November 2016 would have curtailed the waste of natural gas from federal lands and recovered more royalties for taxpayers. Recent efforts to repeal or prevent the implementation of the methane waste rule threaten to undo the steps it took to better ensure taxpayers get a fair return for public natural gas resources.

[1] https://www.federalregister.gov/documents/2016/11/18/2016-27637/waste-prevention-production-subject-to-royalties-and-resource-conservation
[2] 44 FR 76600
[3] https://www.onrr.gov/laws_R_D/RoyPC/PDFDocs/RPCRMS1207.pdf
[4] https://www.doioig.gov/sites/doioig.gov/files/2010-I-00171.pdf
[5] http://www.gao.gov/products/GAO-11-34
[6] http://www.gao.gov/products/GAO-11-278
[7] http://www.gao.gov/products/GAO-16-607
[8] Ibid.
[9] https://www.regulations.gov/document?D=BLM-2016-0001-0002
[10] http://www.taxpayer.net/library/article/gone-with-the-wind-how-taxpayers-are-losing-from-wasted-gas
[11] https://www.regulations.gov/document?D=BLM-2016-0001-9127
[12] 43 CFR § 3179.4-3179.6
[13] 43 CFR § 3179.7
[14] 43 CFR § 3179.201-3179.203
[15] 43 CFR § 3179.301-3179.305
[16] 43 CFR § 3103.3-1
[17] https://cdn.westernenergyalliance.org/sites/default/files/WesternEnergyAlliance_IPAA_VentingFlaringPetition.pdf
[18] http://www.naturalgasintel.com/articles/108448-blms-natgas-ventingflaring-final-rule-faces-challenge-from-western-energy-alliance-ipaa
[19] See State of Wyoming, et al. V. United States Department of the Interior, et al. in the U.S. District Court of Wyoming, Case No. 2:16-cv-00280-SWS
[20] https://fas.org/sgp/crs/misc/R43992.pdf
[21] http://clerk.house.gov/evs/2017/roll078.xml
[22] https://www.congress.gov/bill/115th-congress/house-joint-resolution/36
[23] https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00125
[24] https://www.federalregister.gov/documents/2017/06/15/2017-12325/waste-prevention-production-subject-to-royalties-and-resource-conservation-postponement-of-certain
[25] https://www.federalregister.gov/documents/2017/10/05/2017-21294/waste-prevention-production-subject-to-royalties-and-resource-conservation-delay-and-suspension-of
[26] https://www.federalregister.gov/documents/2017/12/08/2017-26389/waste-prevention-production-subject-to-royalties-and-resource-conservation-delay-and-suspension-of
[27] See TCS comments on the proposed rule at: http://www.taxpayer.net/library/article/comments-to-the-bureau-of-land-management-on-the-delay-of-the-methane-waste