

FRONTIER EXPLORATION, INC.
FRONTIER GEOPHYSICAL CO.

IBLA 88-558

Decided May 9, 1990

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting nationwide oil and gas geophysical exploration bond rider. CO-0232.

Affirmed and remanded.

1. Administrative Procedure: Administrative Review--Appeals: Generally--
Oil and Gas Leases: Bonds--Rules of Practice: Appeals: Generally

When an appellant attempts to remedy the defects which led to a BLM decision rejecting a nationwide oil and gas geophysical exploration bond rider by providing additional information on appeal, the Board may affirm the rejection decision but remand the matter to BLM for adjudication of the acceptability of the rider in light of the additional information.

APPEARANCES: Janet R. Dark, Secretary-Treasurer, Frontier Exploration, Inc., Englewood, Colorado, for appellants; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Frontier Exploration, Inc., and its wholly owned subsidiary, Frontier Geophysical Company (referred to collectively as Frontier) have appealed from a June 13, 1988, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting a rider to their nationwide oil and gas geophysical exploration bond.

On December 22, 1982, Frontier filed a \$50,000 nationwide oil and gas geophysical exploration bond and rider which named both companies as co-principals. On January 28, 1983, BLM accepted this bond and rider, effective the filing date, noting that the applicable regulation, 43 CFR 3104.9(b) (1982), 1/ provided that the bond would constitute coverage for

1/ The current regulations governing oil and gas geophysical exploration bonds are found at 43 CFR Subpart 3154.

all oil and gas exploration operations conducted by the co-principals. On April 8, 1988, Frontier filed another rider to this bond, seeking to add New Frontier Exploration (New Frontier) as an additional co-principal on the bond.

By decision dated June 13, 1988, BLM rejected the rider and returned it to Frontier. BLM stated two reasons for its denial: "1. The rider filed is a reproduced copy of the original [and] 2. The relationship among New Frontier Exploration and Frontier Exploration, Inc. and its subsidiary Frontier Geophysical Co. is not revealed either on the rider or in the accompanying material." BLM explained that "[t]he originally executed rider, impressed with the surety's corporate seal, accompanied by a power of attorney for the surety's agent and information concerning the corporate interrelationship" must be submitted before BLM could accept the rider. On July 7, 1988, Frontier filed an appeal from this decision.

Upon examining the statement of reasons filed by Frontier, it appears that Frontier does not contend that BLM's decision was erroneous. Rather, the statement of reasons and companion documents seem to have been submitted in an attempt to cure the flaws cited by BLM as the basis for rejection. Frontier states that its surety company has re-prepared the bond rider with the surety's corporate seal and a power of attorney for the surety's agent, and that this original rider has been submitted to BLM.

Frontier also provides information concerning its relationship to New Frontier. It explains that New Frontier is a joint venture, that it holds a 70-percent interest in the joint venture and Peak Seismic Services, Inc. (Peak), owns the remaining 30 percent, with expenses and profits of the joint venture distributed on the same 70-percent/30-percent basis. ^{2/} New Frontier is described as a "portable/conventional seismic acquisition company," which acts as Frontier's operator on many of its seismic contracts. Frontier notes that most of its shothole seismic acquisition operations in the Western States are conducted by New Frontier. Frontier offers to submit any additional information required in order to evaluate its appeal.

In its answer, counsel for BLM states that BLM has examined the new rider and the corporate relationship information filed by Frontier and has determined that this rider is still not acceptable for the following reasons:

The power of attorney for the surety's agent was certified as being in force on April 30, 1988. The rider, however, was executed by the surety's agent on June 20, 1988. Had the power of attorney been certified as in force on the date of the rider execution, or within a few days thereafter, it would have been acceptable to the BLM.

^{2/} Frontier enclosed a copy of the joint venture agreement with its appeal.

The corporate relationship information clearly shows that neither Frontier Exploration, Inc., nor Frontier Geophysical Company, the present co-principals on the bond, either wholly own or control New Frontier Exploration, the proposed third co-principal. New Frontier is a joint venture which is managed by an individual who, according to the joint venture agreement, remains manager, in part, for so long as he holds stock in Peak Seismic Services, Inc., a second joint venturer. The [BLM] has no record of Peak currently having a nationwide geophysical exploration bond. Accordingly, the [BLM] has concluded that the joint venture company needs its own bond.

Therefore, BLM asserts that its rejection decision was correct and should be affirmed.

[1] Ordinarily, if an appellant does not affirmatively point out error in the decision appealed from, the Board may dismiss the appeal. See, e.g., Andre C. Capella, 94 IBLA 181 (1986), and cases cited therein. Frontier does not attempt to object to the findings in the BLM decision, and we have no reason for overturning that decision.

The statement of reasons is not a challenge to the basis for BLM's rejection decision. Frontier has responded to BLM's decision by submitting the information initially found lacking. However, this additional information raises new issues which must be analyzed to determine the acceptability of the rider. This Board is an appellate tribunal, and we believe that initial adjudicatory decisions on matters should properly be submitted to and decided by BLM. Edgar W. White, 85 IBLA 161, 163 (1985).

By filing an appeal, rather than resubmitting its bond rider, Frontier divested BLM of jurisdiction over the case, and precluded it from either taking dispositive action or attempting to assist Frontier in its efforts to remedy the defects in the rider. See, e.g., Melvin N. Barry, 97 IBLA 359, 361 (1987), and cases cited therein. On appeal counsel for BLM has represented that BLM would reject the rider if based upon the information filed with this Board, and has stated reasons for doing so. However, this representation is not a formal BLM decision, and this Board does not render advisory opinions. Therefore, we find it appropriate to remand the matter to BLM to allow Frontier the opportunity to refile a rider and supporting documents for formal consideration by BLM. ^{3/} On remand BLM is strongly urged to request and accept additional information which would aid in its resolution of the issues, and Frontier should be free to submit any information it deems appropriate, either in anticipation of such request or response thereto. ^{4/}

^{3/} In many cases similar to this one, when a party submits a document found lacking in some respect, BLM will seek the information necessary to correct the deficiency before issuing a decision rejecting the submittal. An appeal is often avoided when BLM takes this course of action.

^{4/} We note that counsel has admitted that the first reason for rejecting the refiled rider is easily corrected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the case is remanded to BLM.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge