

UTAH POWER & LIGHT CO.

IBLA 90-104

Decided August 15, 1990

Appeal from a decision of the Utah State Office, Bureau of Land Management, readjusting coal lease U-024319.

Appeal dismissed in part, decision affirmed.

1. Coal Leases and Permits: Readjustment--Coal Leases and Permits: Royalties--Mineral Leasing Act: Royalties

Effective Feb. 26, 1990, 43 CFR 3473.3-2 requires payment of a royalty of 8 percent of the value of coal removed from an underground mine for all new leases issued under the Mineral Leasing Act of 1920 and for all previously issued leases at the time of the next scheduled readjustment of the lease.

APPEARANCES: Denise A. Dragoo, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Utah Power & Light Company (Utah Power) has appealed the October 27, 1989, decision of the Utah State Office, Bureau of Land Management (BLM), readjusting coal lease U-024319 issued under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1982), for lands within the Manti-LaSal National Forest, Emery County, Utah.

The lease was issued effective May 1, 1960. It was therefore subject to readjustment effective May 1, 1990. 43 CFR 3451.1(a)(1). Notice of the proposed readjustment was sent on April 18, 1988.

In the statement of reasons (SOR) for its appeal, appellant argues the appropriate royalty rate for coal produced by underground mining methods should be 5 percent of value, rather than the 8 percent rate set forth in section 2(a) of the readjusted lease. Utah Power also contends the special stipulations contained in section 15 of the readjusted lease should be removed.

The special stipulations contained in section 15 originated not with BLM, but with the Forest Service (FS), United States Department of Agriculture, which is the agency responsible for management of the surface. As such, the FS may prescribe special stipulations for inclusion in the readjusted lease. 43 CFR 3400.3-1; Coastal States Energy Co., 99 IBLA 342, 345

(1987); Coastal States Energy Co., 94 IBLA 352, 362 (1986). Utah Power appealed the section 15 stipulations to the FS by notice of appeal dated December 8, 1989, and repeated its objections in its SOR before this Board (SOR at 7).

On May 4, 1990, appellant requested to withdraw that portion of its appeal relating to the FS stipulations, stating that on March 30, 1990, it had entered into a settlement agreement with FS. Accordingly, that portion of Utah Power's appeal related to the FS section 15 stipulations is dismissed.

In its May 4, 1990, request Utah Power states it continues to request review of the production royalty rate. It argues that, in accordance with Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987), BLM is required by 43 CFR 3473.3-2(a)(3) (1989) to make a determination whether conditions warrant a rate less than 8 percent. ^{1/} See Utah Power and Light Co., 104 IBLA 284, 285-86 (1988); Utah Power & Light Co., 80 IBLA 180, 182 (1984).

[1] On January 26, 1990, the Department issued a final rule, effective February 26, 1990, revising the regulations at 43 CFR 3473.3-2 to require royalty of 8 percent of the value of coal removed from an underground mine and eliminating the authority of the authorized officer to set a lesser amount, but not less than 5 percent, if conditions warrant. 55 FR 2664 (Jan. 26, 1990). 43 CFR 3473.3-2(a)(2) now provides: "A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine."

In the preamble to the final rulemaking the Department stated that "[t]he 8 percent rule applies only to new leases issued after the effective date of the rule and to those leases whose readjustment anniversary dates occur after the effective date of this rule." 55 FR 2658 (Jan. 26, 1990). 43 CFR 3473.3-2(b) provides: "The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease." 55 FR 2664 (Jan. 26, 1990).

In this case, the readjustment anniversary date was May 1, 1990, i.e., "after the effective date of [the] rule." For that reason, the new regulation controls our disposition of the royalty issue and we must affirm BLM's imposition of a royalty of 8 percent.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

^{1/} This regulation provided:

"A lease shall require payment of a royalty of not less than eight percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than five percent if conditions warrant."

appeal from BLM's October 27, 1989, decision is dismissed in part and that decision is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge