

LONETREE ENERGY, INC.

IBLA 91-274

Decided July 20, 1993

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer WYW 123585.

Affirmed.

1. Oil and Gas Leases: Applications: Six-mile Square Rule

BLM properly rejects a noncompetitive oil and gas lease offer which does not comply with the requirements of 43 CFR 3110.3-3(b) that lands in an offer be entirely within an area of 6 miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Six-mile Square Rule

A defect in an noncompetitive oil and gas lease offer may be cured prior to rejection, with priority as of the date of perfection of the offer. However, after BLM has rejected an offer because it violates the 6-mile square rule, no curative submissions will be accepted; a new offer is required to establish priority.

APPEARANCES: Andre J. Wilkie, Vice President, LoneTree Energy, Inc., Denver, Colorado.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

LoneTree Energy, Inc. (LoneTree), has appealed from an April 4, 1991, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offer WYW 123585 because the lands described therein were not within an area of 6-miles square or an area six surveyed sections in length and width, as required by 43 CFR 3110.3-3(b).

LoneTree's offer to lease was filed with BLM on April 1, 1991, for 677.23 acres of lands in two adjacent townships: sec. 6 of T. 33 N., R. 111 W., and secs. 2, 3, and 12 of T. 34 N., R. 111 W., sixth principal meridian, Sublette County, Wyoming.

On appeal, LoneTree admits that it failed to comply with the cited regulation. It complains, however, that while the decision was issued on April 4, 1991, it did not receive actual notice by certified mail until April 8, 1991, after the decision was made available to others by posting in the public room on the date of the decision. It asserts that upon receipt of the decision, it attempted to file new offers for the lands in question, and although it "was successful in obtaining a lease on the Section 6 lands," another party had "filed an offer on certain of the identical lands which we had attempted to lease."

LoneTree argues that it is unfair to announce that its offer was rejected before it was given an opportunity to correct the offer or to file a valid new offer. It contends that this situation is "egregious" because in other similar situations the applicant is allowed to remedy its offer and maintain its priority. Appellant points to 43 CFR 3110.3-3(c), and explains that under that regulation the offeror may cure an offer which exceeds the 10,240 acre limit and preserve its priority. LoneTree argues that as a good faith applicant, it should be able to remedy technical defects such as the one in this case.

[1] The applicable regulation, 43 CFR 3110.3-3(b), provides for a lease offer for public domain lands: "The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions." LoneTree's lease offer clearly violates the regulation, measuring the acceptable area either by miles or by sections. In such circumstances, BLM is required to reject a lease offer as violative of the regulation. Donald J. Kunkle, 94 IBLA 212, 213 (1986), and cases there cited.

[2] A noncompetitive oil and gas lease offer may only be issued to the first-qualified applicant. 30 U.S.C. § 226(c) (1988); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Since appellant's offer did not comply with the regulations, appellant lost priority for consideration as the first-qualified applicant. While the Department has long followed the practice of permitting the offeror to cure deficiencies so that the offeror can earn priority from the date the filing is perfected in conformity with Departmental regulations, Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984), allowing such defective offers to be cured and restored to efficacy by the submission of new material after BLM has adjudicated and properly rejected them is improper, contrary to efficient administration, and contrary to the public interest. Id. at 245, 91 I.D. at 11. Thus, after BLM has rejected an offer which fails to describe lands within the designated area limitation, no curative submissions will be accepted; a new offer is required to establish priority. See Thomas J. Carmody, 94 IBLA 209, 210-11 (1986). Thus, appellant's suggestion that BLM should have allowed it an opportunity to cure prior to public posting of the decision must be rejected. Such an attempt by BLM to resolve a deficiency privately would violate the objective of consistent, uniform administration of the oil and gas program and could lead to charges of favoritism, discrimination, or prejudice.

Moreover, to the extent appellant considers the public posting of its rejection decision prior to its receipt of a copy of that decision to be violative of "fair play and due process," we disagree. Assuming the circumstances described by appellant are correct, we find no fault with the public posting of the decision on the date of issuance. By filing a defective offer, appellant eliminated itself from consideration as the first-qualified applicant. Accordingly, it had no greater right than any member of the public to notice of the availability of the land.

Appellant also refers to the regulatory opportunity, set forth in 43 CFR 3110.3-3(c), to modify an offer which exceeds the acreage limitation and complains that the same opportunity should exist for it under the circumstances of this case. The short answer is that the regulations do not allow modification of an offer that violates the 6-mile square rule. The situations are not analogous.

The regulation referred to by appellant, 43 CFR 3110.3-3(c), provides: "If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost." See 48 FR 33655 (July 22, 1983). ^{1/} The rationale for allowing some flexibility regarding the lease acreage maximum is that the exact acreage included in a description of land is not always readily calculable, and if BLM determines that the offeror has described excess acreage by a de minimus amount, the offeror should have an opportunity to cure prior to rejection. The announcement of that rule by regulation constitutes the Secretary's policy regarding that situation. On the other hand, compliance with the 6-mile square rule is quickly identifiable by reference to the official land plats. See, e.g., Hugh E. Pipkin, 71 I.D. 89 (1964). Therefore, there is no reason to allow an opportunity to cure an offer violating the 6-mile square rule.

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 is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

^{1/} Prior to 1980, the regulations limited an offer to lease to 2,560 acres, subject to a "rule of approximation" to facilitate the selection of irregular sections and lots. See 43 CFR 3110.1-3 and 3100.0-5 (1979).

