

CHEVRON U.S.A., INC.
AND
PITTSBURGH & MIDWAY COAL MINING CO.

IBLA 94-656

Decided June 6, 1997

Appeal from a Decision of the Utah State Office, Bureau of Land Management, readjusting the terms and conditions of Coal Lease No. ALES-12284.

Vacated and remanded.

1. Coal Leases and Permits: Leases–Coal Leases and Permits: Readjustment–Mineral Leasing Act: Generally

The regulation set out at 43 C.F.R. § 3451.1(c)(2) provides that the failure to send the decision transmitting the readjusted lease terms within the period set out in the notice of intent to readjust the lease shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department. When BLM fails to transmit the readjusted lease terms within the period it specified in the notice of intent to readjust and the record reflects no unusual circumstances which could be termed "beyond the control of the Department," that failure constitutes a waiver of the right to readjust the lease terms.

APPEARANCES: John H. Miller, Esq., for Chevron U.S.A., Inc., and Pittsburgh & Midway Coal Mining Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Chevron U.S.A., Inc. (Chevron) has appealed a May 27, 1994, Decision by the Deputy State Director, Eastern States Office, Bureau of Land Management (BLM), readjusting the terms and conditions of Coal Lease ALES-12284. ^{1/}

^{1/} Chevron's appeal was brought on its own behalf and on behalf of Pittsburgh & Midway Coal Mining Company (Pittsburgh & Midway), a wholly owned subsidiary of Chevron.

Coal Lease ALES-12284 was issued to Republic Steel Corporation, effective June 1, 1974, pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1994). In 1981, an undivided 50-percent interest in the lease was assigned to Gulf Oil Corporation, and the assignment was approved by BLM on June 28, 1982. After merger, Republic Steel's name was changed to LTV Steel Corporation in 1985. In 1986, Gulf Oil Corporation's name was changed to Chevron U.S.A., Inc., and LTV Steel Corporation's interest was assigned to Chevron. This assignment was approved by BLM in 1988. The mine on the lease is operated by Pittsburgh & Midway, a wholly owned subsidiary of Chevron.

On September 30, 1992, the Deputy State Director, Operations, for BLM's Eastern States Office gave Pittsburgh & Midway notice of BLM's intent to readjust the terms and conditions of Coal Lease ALES-12284. The September 30, 1992, Notice stated: "A decision containing the readjusted terms and conditions of the subject lease will be forwarded to you on or before April 1, 1994. The readjusted lease terms will become effective on [June 1, 1994] the 20-year anniversary date."

On November 13, 1992, the State Director, Eastern States Office, advised the Assistant Director, Minerals Management Service, that, after review of the case for Coal Lease ALES-12284, the State Director found that "the standard lease terms, developed pursuant to the Federal Coal Leasing Amendments of 1976, should be sufficient and no special terms or conditions are indicated."

In a memorandum of a telephone conversation, dated May 27, 1994, a BLM employee reported:

I was called by John Miller, Senior Land Agent of [Pittsburgh & Midway]. He wanted to know if we were going to send the follow-up to our notice to them regarding the readjustments to this coal lease. I told him that I was not sure it had been sent yet. Mr. Miller said that he was not sure if his company was going to object to the readjustment. I checked the file and found that the decision had been sent today, May 27. I called back Mr. Miller and left a message on his answering service that the decision had been sent out to his company regarding the readjustment of the lease.

(May 27, 1994, Telephone Confirmation.)

On June 3, 1994, Chevron received the Notice of Readjusted Lease, dated May 27, 1994. Three days later BLM received a letter from Chevron, dated May 31, 1994. It is apparent that this letter and BLM's June 3 notice crossed in the mail. In its letter Chevron stated, in pertinent part:

Chevron U.S.A. Inc. did not receive the decision transmitting the readjusted terms and conditions for this lease, and pursuant to 43 C.F.R. § 3451.1(c)(2) the BLM has waived its right to readjust

the lease for the next 20-year period during the continuance of the lease. Therefore, the lease continues under the original terms and conditions.

On June 20, 1994, Chevron filed a Notice of Appeal with BLM. In its Notice of Appeal, Chevron stated that its appeal was "premised on the fact that the BLM readjustment of the subject coal lease was untimely according to applicable statutes and regulations." In its Statement of Reasons, Chevron expands upon this argument, stating that 43 C.F.R. § 3451.1 requires that, in any notification that a lease will be readjusted, BLM will prescribe when the decision transmitting the readjusted lease terms will be sent to the Lessee and that failure to send the decision transmitting the readjusted lease terms in the specified period constitutes a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

Chevron concludes that "BLM waived its right to readjust the lease by failing to send the decision transmitting the readjusted lease terms to the Lessee within the period specified in the notice dated September 30, 1992."

The BLM has not filed an answer, and there is nothing in the file that would explain why the readjusted lease terms were not sent to Chevron on or before April 1, 1994.

[1] Coal Lease ALES-12284 was issued effective June 1, 1974. The statutory authority to readjust the lease effective June 1, 1994, stems from section 207 of the Federal Coal Leasing Amendments Act of August 4, 1976 (FCLAA), 30 U.S.C. §§ 201, 209 (1994), and 43 C.F.R. § 3451.1(a), which provides in part: "(1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each ten-year period thereafter."

There is no question that BLM's notice of its intent to readjust Coal Lease ALES-12284 was given in a timely manner. The regulation found at 43 C.F.R. § 3451.1(c)(1) provides that notice must be given prior to the expiration of the current 20-year period. The lease was issued effective June 1, 1974, and the 20-year term was to expire on June 1, 1994. On September 30, 1992, BLM gave Pittsburgh & Midway notice of its intent to readjust the terms and conditions of the lease.

The issue in this case is whether BLM met the requirements of 43 C.F.R. § 3451.1(c)(2). Chevron contends that when BLM failed to meet the time limits set out in its September 30, 1992, notice, BLM waived its right to readjust the lease. We agree. The regulation provides:

In any notification that the lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as

soon as possible after notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

43 C.F.R. § 3451.1(c)(2) (emphasis added).

The regulation gives BLM 2 years from the date of the initial notification to transmit the details of the readjusted lease terms to the lessee. The regulation also gives BLM the ability to shorten this period by specifying and setting an earlier date in the notice of intent to readjust the lease. In this case, BLM chose to use a shorter period, and the notice it sent to Pittsburgh & Midway specifically stated that "[a] decision containing the readjusted terms and conditions of the subject lease will be forwarded to you on or before April 1, 1994. The readjusted lease terms will become effective on the 20-year anniversary date." (Sept. 30, 1992, Notice.)

In Kaiser Steel Corp., 76 IBLA 387 (1983), the Board examined a case very similar to the one now before us. When considering the effect of setting a time period less than 2 years, we stated:

Once a time limit is set by BLM in its notice, readjustment terms must be communicated to the lessee within that period, absent a delay caused by events beyond the Department's control. Thus, 43 CFR 3451.2(a) clearly sets forth: "If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, within the time specified in the notice that the lease shall be readjusted, notify the lessee of the proposed readjusted lease terms." (Emphasis added.)

When BLM did not transmit the readjusted lease terms to appellant within its own "specified period," it failed to comply with the requirement of the regulations and waived its right to readjust the lease. The fact that BLM might have originally set a period of up to 2 years is irrelevant.

Kaiser Steel Corp., *supra*, at 393. It is well established that a duly promulgated regulation has the force and effect of law, is binding on the Department, and may not be waived. Apache Corp., 127 IBLA 125 (1993); Joseph J.C. Paine, 83 IBLA 145 (1984); Chugach Natives, Inc., 80 IBLA 89 (1984); Sierra Club, Alaska Chapter, 79 IBLA 112 (1984). See also Vitarelli v. Seaton, 359 U.S. 535 (1959); Accardi v. Shaughnessy, 347 U.S. 260 (1954); Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621 (1950). The BLM elected to use a shorter timetable and must accept the consequences of its choice. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

The record reflects no unusual circumstances which could be termed "beyond the control of the Department" that may have caused the delay of the transmittal of the readjusted lease terms. The State Director's memorandum in the case file indicates that BLM had determined the language to be used in the readjusted lease as early as November 1992. We also find no evidence that BLM had interim correspondence with Chevron or its predecessors-in-interest concerning the reasons for its inability to meet its own deadline. The BLM's Decision readjusting Coal Lease ALES-12284 must be vacated. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is vacated and the case file is remanded to BLM.

R.W. Mullen
Administrative Judge

I concur.

T. Britt Price
Administrative Judge

2/ Notwithstanding our finding, we note that coal leases issued prior to the enactment of FCLAA, whose 20-year readjustment period expires after Aug. 4, 1976, are automatically converted to a 10-year readjustment interval, in accordance with the intent of Congress in passing § 6 of FCLAA. See Chevron U.S.A., Inc., 108 IBLA 96 (1989), and the discussion therein. Therefore, Coal Lease ALES-12284 will be subject to readjustment in 2004.

