



FOSSIL ENERGY GROUP, LLC

174 IBLA 309

Decided May 27, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

FOSSIL ENERGY GROUP, LLC

IBLA 2007-269

Decided May 27, 2008

Appeal from a decision of the Supervisory Land Law Examiner, Fluid Mineral Adjudication, Colorado State Office, Bureau of Land Management, denying a request to rescind competitive oil and gas leases and refund payment.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

Departmental regulations governing competitive lease sales provide that a bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. 43 C.F.R. § 3120.5-3(a). Execution of the competitive lease bid form constitutes a binding lease offer.

2. Oil and Gas Leases: Competitive Leases

A BLM decision denying a request made by a high bidder three months after a competitive oil and gas lease sale to refund full payment of bonus bids, first year's rentals and administrative fees submitted to BLM on the day of sale and to rescind leases that have not yet been issued will be upheld where appellant has not demonstrated error.

APPEARANCES: David A. Closson, Esq., Randall J. Feuerstein, Esq., Dufford & Brown, P.C., Denver, Colorado, for appellant; Andrea S. Gelfuso, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Fossil Energy Group, LLC (Fossil or appellant), the successful bidder at a competitive oil and gas lease sale held on May 10, 2007, has appealed from a decision issued by the Supervisory Land Law Examiner, Fluid Minerals Adjudication, Colorado State Office, Bureau of Land Management (BLM), dated August 14, 2007, denying Fossil's request that BLM rescind the leases. For the following reasons, we affirm.¹

Fossil was the high bidder for oil and gas lease parcels COC 70905 (80 acres) and COC 70906 (240 acres), and submitted a check for \$5,540 in full payment for the first year's rental, bonus bid, and administrative fees for the two bids.² Affidavit of Terry Vickery, Manager, Fossil, dated July 28, 2007. Fossil called BLM within days of the sale to confirm the location of the parcels and "discovered that the mistaken bids resulted from an error as to the reading of the township and range coordinates on the legal description of the lease parcels." Statement of Reasons (SOR) at 1. On August 6, 2007, BLM received a letter from counsel for Fossil requesting cancellation of the leases and a return of funds in the amount of \$5,540.³ Letter dated Aug. 3, 2007, from David A. Clossen, to BLM at 1-2. On August 14, 2007, BLM issued its decision denying Fossil's requests.

¹ See 174 IBLA 255 n.1 (deconsolidating docket nos. 2007-249, 2007-262, and 2007-269).

² Under the terms of Departmental regulations governing competitive oil and gas lease sales at 43 C.F.R. § 3120.5-2(b)(1)-(3), Fossil, as a winning bidder, was obligated to pay, before the close of business on the day of the oral auction, an administrative fee, first year's advance rental, and the minimum bonus bid. Under the terms of 43 C.F.R. § 3120.5-2(c), Fossil was required to submit the balance of its respective bonus bids to BLM within 10 working days after the sale. On March 21, 2008, the Board received from BLM copies of the lease sale receipts and lease bids for the two parcels, demonstrating payment submitted by appellant. Fossil paid a \$130 administrative fee for each lease and \$1.50 per acre for the first year's advance rentals (\$120 for COC 70905 and \$360 for COC 70906). The minimum bonus bid for the parcels was \$2 per acre, and Fossil bid \$15 per acre for each of the leases. On the day of sale, Fossil paid the bonus bids in full (\$1,200 for COC 70905 and \$3,600 for COC 70906). Fossil's payments on the day of sale totaled \$1,450 for COC 70905 and \$4,090 for COC 70906.

³ On March 24, 2008, the Board received from BLM copies of the Case Recordation (Live) Serial Register Page, dated 11:37 a.m. 3/24/08, for COC 70905 and COC 70906 indicating that no oil and gas leases have been issued for the two parcels.

Citing the regulations, BLM explained as follows:

Pursuant to the regulations found at 43 C.F.R. § 3120.5-3(a) a bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with 3120.5-2(b) of this title, and [at 43 C.F.R. § 3120.5-3](b) a lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

Decision at 1.

[1, 2] BLM accurately described the binding nature of Fossil's bids and BLM's responsibility under those regulations to issue the leases. *See MX Re-Store, LLC*, 174 IBLA 254, 257-61 (2008). Fossil was not in default on its payment obligations under 43 C.F.R § 3120.5-2 and, therefore, was not the subject of a BLM decision rejecting its bids and declaring its payments forfeited. Attempting to correct its apparent mistake, however, Fossil requested relief from its remaining contractual obligation—to accept the leases.⁴ Nearly 3 months after the sale, Fossil petitioned BLM to rescind the anticipated leases and to refund all the monies it had paid on May 10, 2007.

Appellant has the burden of demonstrating error in BLM's Decision. *See Biodiversity Conservation Alliance*, 174 IBLA 1, 19 (2008). Fossil's requests do not concern improperly issued leases subject to cancellation. 43 C.F.R. § 3108.3(d); *see Boesche v. Udall*, 373 U.S. 472 (1963); *Celeste C. Grynberg*, 169 IBLA 178, 183 (2006); *High Plains Petroleum Corp.*, 125 IBLA 24, 26 (1992). Indeed, Fossil does not allege and the record does not demonstrate that there was any mistake on the part of BLM which might warrant declaring Fossil's bid offers null and void and refunding the money it paid under 43 C.F.R. § 3120.5-2(b) and (c).

⁴ It is unclear from the record why, by the time of Fossil's request, BLM had not yet issued the leases for the subject parcels, since it was required to do so within 60 days of the May 10, 2007, lease sale, by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, 101 Stat. 1330-256 (Dec. 22, 1987) (amending section 17(b) of the Mineral Leasing Act, 30 U.S.C. § 226(b) (2000)).

Instead, BLM provided Fossil and other interested parties appropriate opportunity to correctly identify and consider the parcels offered at the May 10, 2007, competitive oil and gas lease sale. In accordance with the regulations at 43 C.F.R. § 3120.4-1(a), BLM published a Notice of Competitive Lease Sale, which provided a legal description of the township, range, and section number of every parcel available for that lease sale, including COC 70905 and COC 70906. Mar. 9, 2007, Notice of Competitive Lease Sale May 10, 2007, at 9. Fossil does not allege error in those descriptions or in any other administrative matter leading to the May 10, 2007, lease sale.

Fossil made “a legally binding commitment to execute the lease bid form *and accept a lease*, including the obligation to pay the bonus bid, first year’s rental, and administrative fee.” 43 C.F.R. § 3120.5-3(a) (emphasis added.). As the high bidder on COC 70905 and COC 70906, its execution of the competitive lease bid form for each constituted “a binding lease offer, including all terms and conditions applicable thereto.” *Id.*; *MX Re-Store*, 174 IBLA at 261; *Celeste C. Grynberg*, 169 IBLA at 181. Fossil has not shown that it was error for BLM to decline to relieve Fossil from the binding consequences of business decisions it freely but mistakenly made at a properly executed competitive oil and gas lease sale.

Therefore, 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 affirmed.

_____/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/
James F. Roberts
Administrative Judge