

EL PASO NATURAL GAS COMPANY

IBLA 71-37, etc.

Decided March 1, 1971

Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed when it is withdrawn.

Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed, the decision appealed from vacated, and the case remanded to the Bureau of Land Management when the instruction giving rise to the decision below has been revoked, and the cause for appeal has thus been removed.

IBLA 71-37, etc. 1/ :

W 23402 etc. 1/

EL PASO NATURAL GAS COMPANY

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: Stipulations required in
: natural gas pipeline
: right-of-way grants
:
:
: Decisions vacated, appeals
: dismissed, cases remanded

DECISION

El Paso Natural Gas Company has appealed to the Board of Land Appeals from decisions 1/ by the Bureau of Land Management land office in New Mexico, which required the company to accept, as a condition precedent to granting of natural gas pipeline rights-of-way, a special stipulation requiring modification of each right-of-way without cost to the United States where land affected by the right-of-way is needed for construction of any Federally-supported program or project, and from decisions by the Bureau's land offices in Arizona, Colorado and Wyoming, which included the special stipulation in grants made to the company for natural gas pipeline rights-of-way pursuant to 30 U.S.C. § 185 (1964). Imposition of the special stipulation by the land offices was in accordance with Bureau of Land Management Instruction Memorandum 70-223, dated July 7, 1970.

Pursuant to an opinion by the Assistant Solicitor, Branch of Lands, that the stipulation required by the Instruction Memorandum was deficient in a number of respects, the Director, Bureau of Land Management, has revoked Instruction Memorandum 70-223 and has ordered the Bureau's land offices, as applicable, to delete the subject stipulation from grants for utility rights-of-way heretofore made or to revoke the requirement that the stipulation be accepted as a condition precedent to granting of the utility right-of-way, and in lieu thereof to set forth the full text of 43 CFR 2801.1-5(m), 35 F.R. 9635, in the document granting the utility right-of-way.

1/ See Appendix A for a listing of IBLA docket numbers, BLM serial numbers, dates of land office decisions and action taken in each decision.

On the information that the Bureau had taken such actions, El Paso Natural Gas Company has withdrawn its appeals IBLA 71-37, 71-38, 71-50, 71-58, 71-59, 71-70, 71-74, 71-77, 71-85 and 71-91.

In addition to the appeals specifically withdrawn by El Paso, the records of this office show that El Paso has pending before the Board other appeals docketed as IBLA 71-115, 71-124, 71-144 and 71-179, each having been taken because of the stipulation required by the Instruction Memorandum 70-223. It is proper to dismiss these appeals at this time, as revocation of the Instruction Memorandum has rendered the appeals moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decisions below are vacated, the appeals are dismissed, and the cases are remanded to the Bureau of Land Management for further appropriate action.

Newton Frishberg, Chairman

We concur:

Martin Ritvo, Member

Francis E. Mayhue, Member.

APPENDIX A

<u>Docket</u>	<u>BLM</u>	<u>Land office</u>	<u>Action taken</u>
	<u>Serial No.</u>	<u>decision date</u>	
71-37	W 23402	Aug. 13, 1970	Right-of-way granted, stipulation included
	W 23403	Aug. 13, 1970	"
	W 23785	Aug. 13, 1970	"
	W 23786	Aug. 13, 1970	"
71-38	NM 10846	Aug. 20, 1970	Stipulation required
	NM 11373	Aug. 20, 1970	"
	NM 11374	Aug. 18, 1970	"
	NM 11375	Aug. 19, 1970	"
	NM 11855	Aug. 17, 1970	"
	NM 11858	Aug. 17, 1970	"
	NM 11859	Aug. 11, 1970	"
	NM 11860	Aug. 11, 1970	"
	NM 11861	Aug. 17, 1970	"
	NM 11862	Aug. 11, 1970	"
	NM 11863	Aug. 17, 1970	"
	NM 11884	Aug. 11, 1970	"
	NM 11885	Aug. 11, 1970	"
	NM 11886	Aug. 11, 1970	"
	NM 11887	Aug. 11, 1970	"
	NM 11888	Aug. 17, 1970	"
	NM 11889	Aug. 11, 1970	"
	NM 11890	Aug. 17, 1970	"
	NM 11891	Aug. 17, 1970	"
	NM 11892	Aug. 17, 1970	"
	NM 11893	Aug. 17, 1970	"
	NM 11894	Aug. 17, 1970	"
	NM 11895	Aug. 17, 1970	"
	NM 11896	Aug. 17, 1970	"
	NM 11903	Aug. 17, 1970	"
	NM 11906	Aug. 17, 1970	"
	NM 11907	Aug. 17, 1970	"
	NM 11908	Aug. 17, 1970	"
	NM 11909	Aug. 17, 1970	"
	NM 11910	Aug. 17, 1970	"
	NM 11911	Aug. 17, 1970	"
	NM 12042	Aug. 25, 1970	"
	NM 12043	Aug. 25, 1970	"
	NM 12135	Aug. 25, 1970	"

<u>Docket</u>	<u>BLM Serial No.</u>	<u>Land office decision date</u>	<u>Action taken</u>
71-38	NM 12138	Aug. 17, 1970	Stipulation required
	NM 12139	Aug. 25, 1970	"
	NM 12203	Aug. 27, 1970	"
71-50	NM 12136	Sept. 11, 1970	"
	NM 12153 **	Sept. 15, 1970	"
	NM 12204 **	Sept. 11, 1970	"
71-58	NM 12345	Sept. 18, 1970	"
	NM 12346	Sept. 18, 1970	"
	NM 12347	Sept. 18, 1970	"
	NM 12470	Sept. 22, 1970	"
	NM 12471	Sept. 22, 1970	"
71-59	Phx 083253	Sept. 10, 1970	Right-of-way granted, stipulation included
	Phx 086067	Sept. 10, 1970	"
71-70	A 3174	Sept. 25, 1970	"
	A 5326	Sept. 21, 1970	"
71-74	NM 12482	Oct. 2, 1970	Stipulation required
	NM 12483	Oct. 6, 1970	"
71-77	Ariz 03870	Sept. 29, 1970	Right-of-way granted, stipulation included
	Ariz 011116	Sept. 29, 1970	"
	Phx 086056	Sept. 29, 1970	"
71-85	NM 12481 **	Oct. 27, 1970	Stipulation required
	NM 12591	Oct. 21, 1970	"
	NM 12592	Oct. 19, 1970	"
71-91	A 3616	Oct. 22, 1970	Right-of-way granted, stipulation included

** These applications were for water pipeline facilities, and were not within the purview of BLM Instruction Memo 70-223. It was error for the land office to call upon El Paso Natural Gas Company for the special stipulation in these cases.

APPENDIX A (Contd)

IBLA	BLM	Land office	
<u>Docket</u>	<u>Serial No.</u>	<u>decision date</u>	<u>Action taken</u>
71-115	W 25892	Oct. 20, 1970	Right-of-way granted stipulation included
	W 25893	Oct. 20, 1970	"
71-124	A 4500	Nov. 13, 1970	"
71-144	A 4287	Dec. 9, 1970	"
71-179	C 11293	Jan. 5, 1971	"

