

MICHIGAN WISCONSIN PIPE LINE CO.

IBLA 74-299

Decided September 27, 1974

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands lease offer C-20525.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally

The requirement that an applicant for a noncompetitive oil and gas lease offer, where the United States owns only a 50 percent mineral interest in the land, accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States is mandatory. Where their statement does not accompany the offer, it must be rejected without priority. But priority will be granted from the time the required statement is filed.

APPEARANCES: Don Bartlett, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Michigan Wisconsin Pipe Line Co. appeals from a decision of April 15, 1974, of the Colorado State Office, Bureau of Land Management, rejecting its acquired lands oil and gas lease offer C-20525 because there was no

accompanying statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States.

Appellant argues that the regulations are extremely prolix and that neither they nor the lease offer form give advice or warning that if the offer is filed for lands where the United States owns a fractional interest, the offer will be rejected unless accompanied by a statement as to ownership of the mineral interest not owned by the United States. Contention is also made that 43 CFR 3130.4-4 is ambiguous on this point.

43 CFR 3130.4-4 states:

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interests not owned by the United States in each tract covered by the offer to lease. (Emphasis added.)

Thus it is crystal clear that the regulatory provision is free from ambiguity, contrary to appellant's assertion.

Moreover, the Special Instructions on the reverse of the lease offer form, under Item 2, contain this language:

In instances where the United States does not own a 100-percent interest in the oil and gas deposits in any particular tract, the offeror should indicate the percentage of Government ownership. In such cases the offeror must also furnish the information required by 43 CFR 3212.3 [now 3130.4-4].

[1] The requirement that an applicant for a noncompetitive oil and gas lease where the United States owns only a fractional mineral interest in the land accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States is mandatory. Where there is no such accompanying statement the offer must be rejected, and the offer gains no priority until such time as the statement is filed. Merwin E. Liss, 67 I.D. 385 (1969); cf. Arthur E. Meinhart, 11 IBLA 139 (1973).

On March 6, 1974, appellant had submitted the offer C-20525. It included a statement only that a 50 percent mineral interest in the land was owned by the United States. On May 14 appellant submitted proof that it held an oil and gas lease on the mineral interest not owned by the United States in the subject lands. Offer C-20525 is entitled to priority of consideration from May 14, 1974.

However, on May 1 and May 4 conflicting lease offers C-20820 and C-20845, respectively, were filed for the land in issue by third parties. Each offer contained the required statement as to the mineral interest not owned by the United States.

The Secretary is without authority to disregard the plain and unambiguous provisions of his own mandatory regulations where the rights of third parties have intervened. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Chapman v. Sheridan-Wyoming Coal Company, 338 U.S. 621 (1950). It follows that appellant's offer was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Frederick Fishman  
Administrative Judge

