

E & H INVESTMENTS, INC.

IBLA 74-314

Decided March 7, 1975

Appeal from a decision of Nevada State Office, Bureau of Land Management, rejecting application for noncompetitive lease of geothermal resources, N 8239.

Affirmed as modified.

1. Geothermal Leases: Applications: Generally

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or a reference by serial number to a record in which such statement previously had been filed.

APPEARANCES: Richard C. Minor, Esq., Milton Wichner and Associates, Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

E & H Investments, Inc., appeals from Nevada State Office, Bureau of Land Management, decision dated April 23, 1974, which rejected application N 8239 for a noncompetitive lease of geothermal resources in sec. 32, T. 32 N., R. 33 E., and NW 1/4 sec. 4, T. 31 N., R. 33 E., M.D.M., Nevada, because the lands were in a known geothermal resources area (KGRA) pursuant to 43 CFR 3200.0-5(k)(3). The decision pointed out these further deficiencies in the application: not all available land in sec. 4, T. 31 N., R. 33 E., had been applied for (43 CFR 3210.2-1(c)); no sole party in interest statement was given (43 CFR 3202.2-5); and no showing was made of corporate qualifications (43 CFR 3202.2-1(b)); as well as ambiguity between the name of the applicant and the signature.

E & H explains the ambiguity of names as a mere typographical error, and argues that the fractional section applied for could be

deleted without prejudice to the application, and that rejection of the application because of the assumed KGRA is discriminatory and arbitrary and does not comply with the Administrative Procedure Act. The appellant did not discuss its failure to submit the showing of its corporate qualifications.

The pertinent regulation provides:

§ 3202.2 Statements required to be submitted.

§ 3202.2-1 General.

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(b) If the applicant is an association or corporation the application must be accompanied by: (1) A statement showing that it is authorized to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the association or corporation; (3) a statement setting forth the State in which it was incorporated or formed and the names and addresses of all members or stockholders holding more than 10 percent of the association or corporation; and (4) a statement from each person owning or controlling more than 10 percent of the association or corporation setting forth his citizenship and his holdings.

The Department's oil and gas leasing regulations, which served as a model for the geothermal resources leasing regulations, at 43 CFR 3102.4-1, require similar statements to accompany oil and gas lease offers. The Department has consistently held that this regulation is mandatory and that an oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications of a corporate applicant nor makes reference to a serial number of record in which such statement had previously been filed. See, e.g., Bradley Producing Corp., 15 IBLA 147 (1974); Texas American Corp., 14 IBLA 217 (1974); American Mineral Petroleum Corp., 10 IBLA 185 (1973); Read & Stevens, Inc., 9 IBLA 67 (1973).

An application that does not satisfy a mandatory requirement of the Department's regulations must be rejected whether or not the regulation specifically provides for such action. Union Oil Company of California, 71 I.D. 287 (1964); Celia R. Kammerman, 66 I.D. 256 (1959).

[1] So in this case, where the applicant corporation failed to comply with the mandatory requirement in regulation 43 CFR 3202.2-1, in failing to submit the necessary statements as to its

corporate qualifications to hold a lease for geothermal resources, its application must be rejected. The Bureau of Land Management decision is modified to reflect this deficiency as the cause for rejection.

Having made this disposition of the case, it is unnecessary for us to comment on or to discuss the other reasons set out in the BLM decision.

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 as modified.

Douglas E. Henriques  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

