

IDAHO POWER COMPANY

IBLA 75-229

Decided April 28, 1975

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting coal lease application W-45560.

Set aside and remanded.

1. Administrative Practice -- Coal Leases and Permits: Applications

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for further consideration.

APPEARANCES: James E. Bruce, President, Idaho Power Company.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Idaho Power Company has appealed from a letter decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 27, 1974, which rejected appellant's competitive coal lease application, W-45560, for lands situated in Sweetwater County, Wyoming. The lease application was rejected on the grounds that appellant did not qualify under the Secretary of the Interior's short-term criteria for coal leasing. Secretarial Order No. 2952, 38 F.R. 4862 (1973). The relevant criteria provide that coal leases may only be issued:

1. When coal is needed now to maintain an existing operation; or

2. When coal is needed as a reserve for production in the near future; \* \* \* \* [1/]

Appellant is a public utility company which provides electric power to portions of Southern Idaho, Western Oregon and Northeast Nevada. Appellant wishes to obtain the subject lease in order to develop coal for use in the generation of electric power for its customers. In its application, appellant submitted plans which indicated that it would be constructing a generating plant in Southern Idaho which would consist of three 500 megawatt coalfired units. Appellant stated that the first unit was scheduled for operation in 1980, the second in 1981, and the third in 1986. The plans included a table setting forth the estimated fuel supply needs for the plant in terms of tons of coal per annum:

<u>Year</u>	<u>Total</u>			<u>Tons Required</u>
	<u>500 MW</u>	<u>500 MW</u>	<u>500 MW</u>	
1980	1,912,500			1,912,500
1	1,642,500	1,912,500		3,555,000
2	1,642,500	1,642,500		3,285,000
3	1,642,500	1,642,500		3,285,000
4	1,642,500	1,642,500		3,285,000
5	1,642,500	1,642,500		3,285,000
6	1,642,500	1,642,500	1,912,500	5,197,500
7	1,642,500	1,642,500	1,642,500	4,927,500

1/ Pursuant to Secretarial Order No. 2952, the BLM issued guidelines set out in Instruction Memorandum No. 73-231, dated June 6, 1973, extended to June 30, 1975, and modified by "change 1" dated November 21, 1973, and "change 2" dated May 17, 1974, which provide, in part:

"Criteria 2 could be met where the applicant holds no Federal leases or permits within the State concerned. The decision would be based upon sufficient indications that the applicant needs coal to satisfy an existing market, and intends to begin development within 3 years. Some factors to consider in analyzing the applicant's needs and intent to get the lease into production are:

- "a. Does the applicant have an interest in or operate an existing coal mine?
- "b. Do the applicant's statements \* \* \* indicate an advanced state of planning for mine development?
- "c. Has the applicant secured the financial and technical resources necessary to equip and develop a producing mine of the stated average daily output \* \* \*?
- "d. Does the applicant have a contract, letter of intent, or other document which substantiates his stated need for coal?

[The remaining years' figures are the same as in 1987.]

In its application, appellant urged that in order to have the first unit available for operation in 1980, it would be imperative that a fuel supply be selected immediately so that necessary equipment for the plant could be ordered and designed to meet the burning requirements of the coal supply. At the time of its application, appellant had no coal supply contracts for the prospective plant.

In its statement of reasons on appeal, appellant has indicated some changes in its plans and fuel supply needs. Appellant alleges that on November 8, 1974, it filed with the Idaho Public Utilities Commission an application for the construction of a 1,000 megawatt plant to be situated in Southern Idaho. The plant would initially consist of two 500 megawatt units, with the first unit scheduled for operation in 1980, and the second in 1981. There are now tentative plans to expand the plant with the addition of two more 500 megawatt units as required to meet additional power demand by the Company's consumers. The third is tentatively planned for 1986, with no date specified for the fourth.

Appellant has indicated that a fuel supply contract was consummated and the Company has now obtained 3.3 million tons of coal per annum for use in the new plant. The Company maintains, however, that over the estimated 35-year life of the "1,000 megawatt plant" annual coal requirements will average approximately 4.2 million tons, thus leaving an annual deficit of 900,000 tons of coal necessary to supply the fuel needs of the new plant.

Appellant states that by securing the coal lease it will be preventing deficiencies in supplies of coal necessary for its generating facilities and that such action is within the criteria announced by the Secretary, "as the coal is needed as a reserve for production in the near future." Appellant also alleges that its preliminary mining plans, and mine cost estimates indicate an advanced state of planning for mine development, and that following required federal and state agency approval, drilling, exploration and development will be commenced within the required three-year period.

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fn. 1 (continued)

"e. Has the applicant identified the market to be supplied and do the transportation facilities exist to supply this market \* \* \*?"

\* \* \* \* \*

"All competitive coal lease applications not meeting either of the 'need' criteria (1 or 2) will be rejected. \* \* \*"

Upon examination of appellant's power plant plans as set forth in its original application to lease, we note that the average coal requirements for the first two units producing 1,000 megawatts does not exceed appellant's 3.3 million ton per annum contract supply. Under the estimates in the application, a 4 million-plus average coal supply is not required until 1986, the time when the plant is tentatively designed to expand to 1,500 megawatts. However, we note some ambiguity in the record since appellant has alleged on appeal that a deficiency would exist for a "1,000 megawatt plant" even with the existence of the present supply contract.

[1] Pursuant to section 2 of the Mineral Leasing Act of 1920, 30 U.S.C. § 201(a) (1970), the Secretary of the Interior has discretionary authority to lease coal deposits on national resource lands. Reliable Coal & Mining Co., 18 IBLA 342 (1975). The Secretary has exercised his discretion by promulgating short-term criteria which provide for the leasing of coal lands pending the development of a comprehensive plan for the orderly development of coal deposits on national resource lands. In the present case, upon further review the BLM may determine that appellant has demonstrated that it possesses the requisite qualifications to meet the Secretary's criteria for coal leasing. Accordingly, based upon appellant's additional statements submitted on appeal and the need to remove ambiguities from the record, the decision of the State Office should be set aside and the case remanded for evaluation of the application in light of the assertions contained in the appeal to the Board. Divide Coal Mining Co., 18 IBLA 246, 248 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is set aside and the case is remanded for further consideration.

Martin Ritvo  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

