

LEECO, INC., Appellant
TENNESSEE VALLEY AUTHORITY, Respondent

IBLA 75-518

Decided January 6, 1976

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting acquired lands competitive coal lease application ES 14350.

Affirmed as modified.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency

Where the agency or federal instrumentality involved denies its consent to favorable consideration of an application under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), the application must be rejected.

2. Mineral Leasing Act for Acquired Lands: Lands Subject to

Lands or mineral interests acquired by purchase by the Tennessee Valley Authority for the development of mineral resources are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

APPEARANCES: A. Douglas Reece, Esq., for appellant; Robert H. Marquis, Esq., Beauchamp Brogan, Esq., and William A. Clark, III, Esq., for respondent.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision of the Eastern States Office, Bureau of Land Management, dated April 10, 1975, rejecting appellant's competitive acquired lands coal lease application ES 14350. The application was rejected because the Tennessee Valley Authority (TVA) had withheld its consent.

Appellant's application embraces lands located in eastern Kentucky. TVA purchased the mineral rights in 1961, and the surface was subsequently acquired by the United States and now constitutes a portion of the Daniel Boone National Forest.

[1] A letter from TVA dated February 13, 1975, states in applicable portion as follows:

TVA has reviewed the U.S. Geological Survey recommendation that TVA-owned coal rights on Tracts 3094 Aa and 3094 Ad in eastern Kentucky be offered for competitive coal leasing in a manner comparable to the offering to lease on three adjacent tracts controlled by the U.S. Forest Service on January 9, 1975.

TVA acquired these coal reserves in 1961 to assure a long-range supply of coal for its coal-fired electric generating plants. This continues to be our policy and, therefore, we are not leasing any reserves that can be depleted as an independent mining operation to coal companies who are not mining coal for TVA.

We have examined the coal reserves on the two TVA tracts under consideration and have determined that they each contain sufficient low-sulfur reserves to support a small underground mine common to the eastern Kentucky coalfield, and adequate coal outcrop to gain access to this coal. Therefore, TVA does not feel it is in its best interest to offer these tracts for competitive leasing.

It is patent from that letter and TVA's brief that TVA objects to favorable consideration of the case at bar.

Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), provides in applicable portion that:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * *.

Thus it is clear that consent of the administering agency is a sine qua non for approval of such an application. The California Company, A-30287 (March 25, 1969); William W. Ogden, A-29976 (March 25, 1969); Thomas B. Cole, A-30444 (December 6, 1965); Duncan Miller, A-29582 (August 2, 1963); Duncan Miller, A-27378 (October 15, 1956). It follows that the decision below properly rejected the application. However, as discussed below, there is another reason compelling the rejection of the application.

[2] Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), specifically excludes from its ambit "lands [which] have been acquired by the United States for the development of the mineral deposits." The letter of February 13, 1975, states: "TVA acquired these coal reserves in 1961 to assure a long-range supply of coal for its coal-fired electric generating plants." Thus it is clear that the lands were acquired "for the development of mineral deposits" and are therefore not subject to leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970). Applications filed under that Act for lands excepted from the authority granted by that Act must be rejected. J. W. McTiernan, 14 IBLA 369 (1974); Mobil Oil Corp., 10 IBLA 7 (1973); Roy G. Barton, 9 IBLA 50 (1973); Elgin A. McKenna, 74 I.D. 133, 137 (1967), aff'd, McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting appellant's application is affirmed as modified for the reasons stated above.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

