

Editor's note: Appealed -- aff'd, Civ. No. 77-2165 (D.D.C. Nov. 30, 1978)

MITCHELL ENERGY CORPORATION

IBLA 77-356

Decided September 21, 1977

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting first-drawn simultaneous oil and gas lease offer M 36868.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

2. Oil and Gas Leases: Applications: Drawings

A first-drawn simultaneous drawing entry card which is defective because of non-compliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

APPEARANCES: Stephen F. Noser, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Mitchell Energy Corporation has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 20, 1977, rejecting appellant's simultaneous offer to lease M 36868 for parcel No. MT 741.

Appellant's offer was drawn first in the March 1977, simultaneous drawing. The State Office rejected the offer for the stated

reasons that (1) appellant had not filed a power of attorney in that offer for H. M. Newton, Attorney-in-Fact, who signed the offer and (2) appellant had not filed the separate statements required under 43 CFR 3102.6-1(a)(2).

Subsequently, on May 10, 1977, the State Office notified appellant that a power of attorney which had previously been filed with the Geological Survey as of January 26, 1976, would be accepted as filed with the BLM as of that date and as satisfactory compliance with the requirements of 43 CFR 3102.6-1(a)3. The BLM noted, however, that the simultaneous offer M 36868 remained rejected because H. M. Newton had failed to timely furnish a statement as to his individual lack of interest in the offer as required by 43 CFR 3102.6-1(a)(2) and (3).

This cited regulation specifically provides:

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one * * *.

(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations. (Emphasis added.)

In its appeal, Mitchell claims first that the Bureau's notice of May 10, 1977, vitiates its original decision of April 20, 1977, by retroactively accepting the filing of its power of attorney. This argument completely overlooks the fact that the BLM April 20 decision specifically pointed out two separate reasons for rejection of that offer. Although the power of attorney was ultimately found acceptable, appellant still failed to comply with the mandatory requirements of the regulations by providing the necessary separate statement by its attorney-in-fact, Mr. Newton. Contrary to appellant's interpretation, the filing of the acceptable power does not exempt the attorney-in-fact from the necessary act of filing the separate statement as indicated.

Appellant argues next that the BLM has misinterpreted Mr. Newton's position with the company as that of an independent agent. It contends that Newton merely signed in his capacity as attorney-in-fact just as an officer of the company would have signed in that capacity, and company policy precludes the possibility of his taking of any interest in the lease. Therefore, appellant emphasizes that it is superfluous for Newton to execute a separate document setting forth that he takes no interest in the lease.

[1] There is no merit to this line of argument. Irrespective of company policy or what his status or position 1/ within that company, Newton executed the lease specifically designated as "attorney-in-fact." When an oil and gas lease offer is submitted by one who is an "attorney-in-fact," the governing regulations in 43 CFR 3602.6-1(a)(2) and (3), as previously set forth herein, provide mandatory guidelines for the filing of separate statements as to the parties' exact relationship respecting the oil and gas lease offer in question. There is no latitude for discretion in this matter. Failure to follow these guidelines by filing the correct required statements must dictate a rejection of that offer. Southern Union Production Company, 22 IBLA 379, 381 (1975); Southern Union Oil Co. of California, 71 I.D. 287 (1964); Hunsky Oil Co., A-30440 (October 27, 1965).

Appellant also claims confusion in not knowing what section of the regulations it was to comply with, pointing out that the requirements are different if a power of attorney is accepted either under

1/ Only if Newton were an officer of the corporation would he be relieved from filing statements required of agents or attorneys-in-fact. 43 CFR 3102.6-1(a).

43 CFR 3102.6-1(a)(2) or 3102.6-1(a)(3). The requirements may be different, but the requirements under each paragraph are clearly set out. Moreover, one who willingly participates in the oil and gas lease offering system accepts the complexities of the requirements of the oil and gas regulations. When appellant filed its drawing entry card it took notice of the instructions on that card that clearly emphasized "Compliance must also be made with the provisions of 43 CFR 3102." Appellant bears the responsibility of determining the content of its own power of attorney and how that document affects its compliance with the Department's regulations. Appellant cannot, on the one hand, claim the benefits of filing the power of attorney and on the other, claim an exemption from the consequences arising from filing that document.

[2] Appellant states in its appeal that it is the first qualified applicant and as such should be entitled to a lease for parcel No. MT 741. It reasons that if the BLM wishes to require some separate statement from Newton as to his interest in the lease, this should have been a matter between the Bureau and Newton and he should have been allowed a reasonable time to comply with this request. The short answer to this argument is that when the time period for the mandatory filing has elapsed, it is too late for the attorney-in-fact to submit the required statement. Under the simultaneous filing procedure an applicant may not "cure" the defects in his offer by the submission of additional information after the drawing. James D. Caddell, 25 IBLA 274, 276 (1976); Southern Union Production Co., supra at 382; Manhattan Resources, Inc., 22 IBLA 24, 26 (1975), and cases cited. See 43 CFR 3112.5-1.

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.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

