

VIOLET KERN

IBLA 77-518

Decided December 19, 1977

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer M 37682 (SD) Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

A simultaneous oil and gas lease offer is properly rejected where the applicant fails to provide the exact date the offer was signed by omitting the year.

APPEARANCES: Violet Kern, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Violet Kern has appealed from the July 11, 1977, decision of the Montana State Office, Bureau of Land Management, rejecting her drawing entry card offer for oil and gas lease M 36782 (SD) Acq. The offer was rejected because appellant failed to execute the card fully as required by 43 CFR 3112.2-1(a) in that she did not state the complete date on which the signature was executed. The card was dated "6/21" with the year omitted.

[1] Under the Mineral Leasing Act, the Department may issue an oil and gas lease only to the first qualified applicant. 30 U.S.C. § 226(c) (1970). Because an undated offer filed in the special simultaneous filing procedure provided by 43 CFR 3112 is not "fully executed" as required by regulation, the offer is defective. An unqualified entrant in the special simultaneous filing procedure cannot be allowed to correct her card. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). A properly dated offer indicates the day, month, and year it was signed, which is necessary to fix a certain date the certification is made by the offeror, and

an offer which lacks one of these elements is properly rejected. Cf. Helen E. Ferris, 26 IBLA 382 (1976) (affirming the rejection of an offer on which only the month and year were indicated>)

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.

Joan B. Thompson
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

Only one offer was received in the simultaneous drawing. Had more than one offer been received, no relief could be given to Appellant because fully completed cards are essential to determining priority of noncompetitive offers. Silver Monument Minerals, Inc., 14 IBLA 137, 139 (1974). Where there is no question of priority, the leniency accorded competitive offers could well be invoked. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976) at 1070:

All these cases involved, however, competitive offers where priority was determined by the amount bid rather than the order drawn. In such a situation, the rights of the second highest bidder are not infringed if the top bidder is given additional time to file a corporate qualifying statement. In noncompetitive bidding, though, the only difference between the entries is the order in which they are drawn. The applications are considered to have been simultaneously made. Giving an unqualified first-drawn entrant additional time to file does infringe on the rights of the second-drawn qualified offer. This distinction between noncompetitive and competitive offers is a valid one and justifies the difference in treatment accorded the classes by the Secretary. [Emphasis added.]

Decisions cited in the majority opinion do not discuss why it is not possible, in the discretion of the Department, to apply 43 CFR 1821.2-2(g) in instances where only one offeror is involved. In that manner, a correction of the simultaneous entry card could be deemed to be timely filed. Martin M. Sheets, 32 IBLA 7, 10 (1977) (dissent). Nevertheless, following the Board decision in Sheets, I am constrained to concur herein.

Joseph W. Goss
Administrative Judge

