

MONO POWER CO.

IBLA 77-563

Decided September 28, 1978

Appeal from decision of Utah State Office, Bureau of Land Management, refusing to accept a geothermal resources rider to a nationwide oil and gas lease bond.

Affirmed.

1. Geothermal Leases: Bonds—Oil and Gas Leases: Bonds

A regulation which provides that coverage of nationwide oil and gas bond in force at the effective date of the regulation may be expanded by a rider to include geothermal resources leases does not permit a replacement nationwide oil and gas bond executed after the effective date of the regulation to be so modified to include geothermal resources operations.

APPEARANCES: B. J. Perry, Vice President, Mono Power Co.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mono Power Co. has appealed from a decision of the Utah State Office, Bureau of Land Management, which refused to accept a geothermal resources rider to appellant's nationwide oil and gas bond, dated April 12, 1977, and required appellant to provide separate bond coverage for its geothermal operations.

The State Office based its refusal to accept the rider on a Bureau policy of refusing to extend nationwide or statewide oil and gas lease bonds to include geothermal resources in order to avoid "dilution" of overall bond coverage. The applicability of this policy in the present case is called into question by appellant since the nationwide bond (and rider) at issue here was submitted as a replacement for an identical prior bond which had been accepted by

BLM on April 12, 1972, with a geothermal rider added May 14, 1976. Appellant tendered the new bond and rider at the expiration date of the original nationwide bond. ^{1/}

The regulation, 43 CFR 3206.8, which governs this situation, reads as follows:

Section 3206.8 Applicability of provisions to existing bonds.

The provisions of these regulations may be made applicable to any oil and gas nationwide or statewide bond in force at the effective date of these regulations by filing in the proper BLM office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of these regulations. [Emphasis added.]

Appellant, at the time of issuance of this regulation December 21, 1973, (38 FR 35082), was covered by a nationwide oil and gas bond. Thereafter, by a supplemental rider, accepted by BLM on May 14, 1976, coverage was extended to appellant's geothermal resources operations.

Although the geothermal rider to the new nationwide bond is, in effect, the same rider as was attached to the old bond, and at first blush appears to be only a substitution of no moment, the Secretary is bound by his own regulations. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Whether the instant situation was contemplated in the formulation of the regulation is not known. The plain language of the regulation does not extend the use of a rider to include geothermal resources leases within the coverage of any nationwide or statewide oil and gas lease bond placed in force after the date of the regulation. The nationwide oil and gas lease bond dated April 12, 1977, is prevented from use of a rider to include coverage of geothermal resources, as this bond has been filed pursuant to 43 CFR 3104.3(b), and may not be expanded under 43 CFR 3206.8 because it was filed after the date of the latter regulation.

^{1/} The original bond was written by Employers Commercial Union Insurance Company; the replacement was written by Seaboard Surety Company.

Accordingly, 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.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

