

COTTON PETROLEUM CORP.

IBLA 78-122; IBLA 78-142

Decided December 13, 1978

Appeals from separate decisions of the Wyoming and Montana State Offices, Bureau of Land Management, rejecting oil and gas lease offers W 61796 and M 39079.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings

Even though a power of attorney has been filed with the State Office of the Bureau of Land Management and reference to this was included on a simultaneously filed oil and gas lease drawing entry card, the regulations require that the attorney-in-fact or agent file two additional statements along with the card: first, a statement that his authority is still in effect as required by 43 CFR 3102.6-1(a)(1), and second, a statement by the attorney-in-fact or agent about his agreement with the offeror and any interest in the lease pursuant to 43 CFR 3102.6-1(a)(2).

2. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: First Qualified Applicant

A noncompetitive oil and gas lease may only be issued to the first qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first qualified applicant.

APPEARANCES: B. J. Henson, Land Administrator, Cotton Petroleum Corp., for appellant; L. W. "Jim" Weber, Esq., Bellevue, Nevada, for Diane M. Loughran  
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OPINION BY ADMINISTRATIVE JUDGE GOSS

Cotton Petroleum Corp. has appealed from separate decisions of the Wyoming and Montana State Offices, Bureau of Land Management (BLM), rejecting oil and gas lease offers W 61796 and M 39079. The appeals are related and are consolidated. In both cases appellant's drawing entry cards were the first drawn for the parcels applied for. Each of the offers was filed by Philip M. Keeley who acted pursuant to a power of attorney which was on file at the BLM State Offices. Each offer referred to the appropriate file number, but was not accompanied by the statements required under 43 CFR 3102.6-1.

[1] When an attorney-in-fact or agent files an offer on behalf of a principal, Departmental regulation 43 CFR 3102.6-1 requires several statements to accompany the drawing entry card:

§ 3102.6-1 Statements.

(a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1) or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4-1) evidence of the authority of the attorney-in-fact or agent to sign the offer and lease [is required] if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority, is still in effect will be accepted.

(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

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1/ Diane M. Loughran is the second drawn offeror for oil and gas lease W 61796.

verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(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 representatives [sic] 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.]

Appellant contends that the filing of the power of attorney with the State Offices and the references to the documents on the drawing entry cards obviates the need to file other statements under this regulation. The regulation, however, is clear. Even though a power of attorney has been filed with the State Office and referred to on a drawing entry card, the attorney-in-fact or agent must file two additional statements under the regulation. Under 43 CFR 3102.6-1(a)(1), he must file with the card a statement that the power of attorney is still in effect. Energy Reserves Group, Inc., 36 IBLA 57 (1978). Under 43 CFR 3102.6-1(a)(2), the attorney-in-fact must file with the card a statement regarding any possible interest in the offer. Southern Union Production Company, 22 IBLA 379 (1975); Union Oil

Company of California, 71 I.D. 287 (1964), aff'd Union Oil Company of California v. Udall, Civil No. 2595-64 (D. D.C. 1965). Under 43 CFR 3102.6-1(a)(3), filing of the power of attorney and the use of the reference number only obviates the need for the offeror to file a statement in addition to that of the agent under 43 CFR 3102.6-1(a)(2). Southern Union Production Company, supra; Union Oil Company of California, supra. The fact that appellant has not made the filings in other instances does not alter the requirement of the regulation. Appellant also avers that the statements could not be attached to the drawing entry card; however, this allegation is not correct.

[2] A noncompetitive oil and gas lease may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976). An offer signed by an attorney-in-fact or agent which is not accompanied by the statements required by regulation cannot be considered to have been submitted by a qualified applicant. Energy Reserves Group, Inc., supra; Union Production Company, supra; Union Oil Company of California, supra; see Ballard E. Spencer Trust Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Joseph W. Goss  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

