

Editor's note: Appealed -- filed, Civ.No. 79-1639 (D.Colo. Dec. 4, 1979), leases reinstated by Private Law 96-71 (Dec. 12, 1980)

FUEL RESOURCES DEVELOPMENT CO.

IBLA 79-169

Decided September 11, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas leases.

Affirmed in part, modified in part.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a breakdown in mailing procedures within the parent company of the lessee, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2) (1977).

APPEARANCES: Fletcher Thomas, Esq., Marsha K. Wightman, Esq., Kelly, Stansfield & O'Donnell, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fuel Resources Development Co. (Fuelco), appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 22, 1978, denying Fuelco's petition for reinstatement of certain oil and gas leases. The leases affected by BLM's decision are the following: ^{1/}

C-9496	C-11597	C-13532
C-9711	C-11599	C-13533
C-11581	C-11600	C-13774
C-11585	C-11621	C-14197
C-11590	C-11622	C-17049
C-11591	C-11630	C-18262
C-11595	C-11631	C-26048

By notice dated November 13, 1978, BLM informed appellant that the above leases had been terminated by operation of law for failure of appellant to make timely payment of the annual rental due no later than 4:00 p.m. on November 1, 1978. Upon receipt of this notice, Fuelco submitted a timely petition for reinstatement of the above leases invoking 30 U.S.C. § 188(c) (1976). By its decision of December 22, 1978, BLM denied the petition. This appeal followed.

The facts, although somewhat involved, are not in dispute. We quote from the BLM decision of December 22, 1978:

On October 10, 1978, the lessee [Fuelco] undertook its normal procedure to transmit the rentals due in this office by November 1. Some confusion over a possible double billing delayed final check preparation for the above and other leases until October 17. The office of the lessee normally most responsible for processing the checks to lessors received the check by October 20. On that date, an employee prepared the cover letter, indicating the amount to be applied to each lease, and processed the envelope for certified mail, attaching the red certified mail sticker and the green return receipt card. She then placed the prepared envelope in a location to be picked up by personnel of Fuelco's parent company, Public Service Company of Colorado (PSC).

Rental payments for the above leases were not received in this office until 12:25 p.m., November 7, 1978 after the

^{1/} The Colorado State Office decision of December 22, 1978, withheld action on lease C-19058 while awaiting a report from Geological Survey as to whether this lease was in production before its expiration date. By a decision of February 28, 1979, the Colorado State Office informed appellant that this lease contained a well capable of production, and hence automatic termination had not occurred.

lessee became aware that a check dated October 17, 1978 designated to pay the annual rentals had not reached this office.

What happened to the envelope containing a check to pay the rental for the above and other leases after the employee placed it for pickup on October 20, 1978 is unclear. The next certain appearance of the envelope is November 7, 1978 when the postmark was applied by PSC and the envelope reached this office at 10:00 a.m. the next day. Had the envelope followed the expected procedure, it would have been picked up by a PSC courier on October 20 or 23. It would have been logged in a certified mail log at PSC's mailroom the same, or at the latest, the next business day. The requisite postage would have been determined and a metered stamp attached and forwarded into the United States Postal Service, presumably arriving in this office the next business day.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2) (1977).

The facts set forth above disclose that the envelope containing the rental payment bore a postmark of November 7, 1978. The rental payment was due on November 1, 1978. Numerous cases decided by this Board hold that the mailing of a rental payment after expiration of the lease anniversary date does not constitute reasonable diligence. Louis Samuel, 8 IBLA 268 (1972); Columbia Gas Transmission Corporation, 13 IBLA 243 (1973). Implicit in our holding here is a finding that Fuelco had not relinquished control to the United States Post Office of the letter containing the rental payment by placing said letter in a location for pickup by a courier employed by its parent company, Public Service Co. of Colorado. The fact that appellant has procedures which normally insure prompt rental payments does not establish that appellant has exercised reasonable diligence in a particular case. Phillips Petroleum Co., 29 IBLA 114, 117 (1977).

Reinstatement may nevertheless be proper if the failure to make timely rental payment is justifiable. Justification has been found where late payment was caused by illness of a friend, C. H. Winters, 34 IBLA 350 (1978); severe winter weather, Genevieve C. Aabye, 33 IBLA 285 (1978); injury to a key employee, David Kirkland, 19 IBLA 305 (1975); or illness of the lessee, Ada Lundgren, 17 IBLA 132 (1974). In Louis Samuel, *supra*, this Board suggested that justification would be also found where natural disasters, such as floods or earthquakes,

caused a lessee to fail to exercise reasonable diligence. None of these causes appear in this case.

Fuelco offers three explanations of how its letter which was ready for mailing on October 20, 1978, could nevertheless have been delayed until November 7, 1978, when it finally reached the U.S. mails:

1. The mail courier may have lost the certified letter in transit from Fuelco to the Public Service Co. mail room.
2. The letter may have become lodged in the large canvas bag used by the courier, which bag may have been out of service until the letter reappeared.
3. The certified letter could have been missorted in the Public Service mail room and gone out in the ordinary mail without postage.

[1] Under any of the above explanations, there appears to be no justification for Fuelco's failure to make timely payment. Each of the explanations proffered reveals inadvertence or negligence of PSC personnel, as found by the State Office below. As this Board said in Louis Samuel, supra at 274, "What is clearly not covered [under the heading of justifiable conduct] are cases of forgetfulness, simple inadvertence or ignorance of the regulations * * *." (Emphasis in original.) Accord, Monturah Co., 10 IBLA 347 (1973).

In Mobil Oil Corp., 35 IBLA 265 (1978), it was contended and effectively shown that checks in payment of Federal oil and gas lease rentals had been placed in the United States mails sufficiently before the due date that timely receipt of payment by the proper BLM office was not unreasonably expected. The checks, however, went astray and were not received by BLM until several weeks after the due date. It was held that the leases terminated as no payment had been made on or before the due date.

In Phillips, supra, it was held that where the company mail system broke down, an event not totally beyond the control of the company, and thus delayed delivery of rental checks to BLM, the late rental payment was not justifiable. The decision stated:

It is well settled that mere inadvertence or negligence of the lessee's agent or employee is not sufficient justification for reinstatement. Serio Exploration Company, 26 IBLA 106 (1976); Samuel J. Testagrossa, 25 IBLA 64 (1976). In addition, the complexities of appellant's business operations do not make its actions justifiable when they would not be so if committed by an individual lessee. See Serio Exploration Company, supra; James Donoghue, 25 IBLA 280 (1976); Monturah Company, 10 IBLA 347 (1973), dismissed without prejudice

sub nom. Pashayan v. Morton, Civil No. F-74-5-Civ., E.D. Cal., April 11, 1974.

In Mono Power Co., 28 IBLA 289 (1976), a rental payment was delayed because of certain confusion engendered by reconstruction of the company's office space. Following the line of cases arising with Monturah Co., supra, it was held:

Here it is alleged that the lessee's own activities operated to place the check beyond the "control" of its own employee who was responsible for it, and that employee "re-located" it after it was past due. Thus, either the lessee corporation or its employee must be at fault, and the failure to make timely payment cannot thus be justified in either instance.

Similarly, in Lone Star Producing Co., 28 IBLA 132 (1976), and Shell Oil Co., 30 IBLA 290 (1977), it was held that employee error which precipitated the late payment was not a justification to excuse the late rental payment and permit reinstatement of the lease.

This Board has held repeatedly that a lessee may not rely upon the bulk and/or complexity of its business organization so as to make "justifiable" an action which would not be held to be justifiable for an individual lessee. Mono Power Co., supra; Serio Exploration Co., 25 IBLA 106 (1976); Columbia Gas Transmission Corp., supra; Monturah Co., supra.

We repeat that we cannot find that there is any justification for the late rental payments by Fuelco in this case.

In light of Fuelco's explanations for the delay in mailing, we see no need for a hearing to determine factual issues. Accordingly, we deny appellant's request for a hearing. A request for a hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision. Cabax Mills, 32 IBLA 225 (1977).

Two of the leases cancelled by operation of law require our special attention. Fuelco asserts on appeal that lease C-11590 is located in the Cathedral Unit. It offers to us a letter from a Fuelco geologist to the U.S. Geological Survey office, Casper, Wyoming, informing that office of the completion of a seven well drilling program for 1978 in the Cathedral Field of Rio Blanco, Colorado. The letter states that "[s]hows were encountered in all wells and production casing was run in all wells."

Actual production on any lease in a unit is constructive production on all other leases in the unit. If lease C-11590 can be deemed to be in production, no automatic termination has occurred. Accordingly, we modify the State office decision of December 22, 1978, and

instruct BLM to take the appropriate steps to determine whether a producing well existed prior to November 1, 1978, on the unit of which lease C-11590 was a part. If so, automatic termination of this lease has not occurred.

Fuelco calls to our attention a possible bookkeeping error with respect to lease C-13533. Receipts in BLM's file indicate that advance rental for this lease may have been paid twice in October 1977. Although the receipts bear the phrase, "Pending future action, a refund may follow," there is no indication in the file that a refund was in fact made. If no refund was made or other corrective action taken, then termination for failure to make a timely rental payment is inappropriate. We remand this case file to BLM for resolution of this bookkeeping problem.

With respect to the following leases, we affirm the decision of the Colorado State Office denying reinstatement:

C-9496	C-11591	C-11600	C-11631	C-17049
C-9711	C-11595	C-11621	C-13532	C-18262
C-11581	C-11597	C-11622	C-13774	C-26048
C-11585	C-11599	C-11630	C-14197	

With respect to leases C-11590 and C-13533, we remand to BLM for action consistent with this opinion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed in part and modified in part.

Douglas E. Henriques
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

The most recent Congressional expression as to a lease terminated because of error by a corporate employee, is Priv. L. No. 94-43, 90 Stat. 2972 (1976), "An Act to provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571" That statute provides that the lease held terminated in Monturah Company, supra, "shall be deemed in full force and effect."

In my opinion, further Board discussion would be appropriate as to those portions of appellant's Statement of Reasons attached hereto as Appendix I. For the reasons set forth therein, I would grant appellant's petition for reinstatement. ^{1/} If reinstatement is not ordered at this time, then the Department should grant the requested hearing. The 21 leases comprise 15,000 acres, and appellant alleges an investment of \$12,000,000 in the vicinity of one area in which some of the leases are located.

Joseph W. Goss
Administrative Judge.

^{1/} See also Ram Petroleums, 37 IBLA 184, 188 (1978) (Dissent), sub judice in Ramoco v. Andrus (Civ. No. C 79-0007 D. Utah) and Ram Petroleums v. Andrus (Civ. No. R 79-0005 D. Nev.).

APPENDIX I

IN THE MATTER OF)
APPEAL OF FUEL RESOURCES)
DEVELOPMENT CO.)
(C9496-21))

STATEMENT OF REASONS
OF APPELLANT

[Excerpts]

* * * * *

Nearly all Fuelco personnel have substantial prior experience in the business of oil and gas exploration, and for several years Fuelco has had at least one well trained employee primarily responsible for the important duties of keeping rentals and royalties on all oil and gas leases on a current basis. Such personnel are backed up by what Fuelco had considered to be as good a system as any other company engaged in the exploration business until the occurrence which gave rise to this appeal. Among other things, this system was structured and normally operated to prepay advance rentals due on Federal leases well ahead of their due dates.

* * * * *

Concerning the specific certified letter No. 123916, which was not received by the Colorado Office until November 8, 1978, a customary form letter of transmittal for oil and gas lease rentals was prepared on October 10, 1978, three weeks before these rentals were due, from various notices of payment due received by Fuelco on BLM form 1371-16. The Fuelco employee directly involved with lease rentals requested the issuance of a check by Fuelco management to pay these rentals. A minor clerical error in duplication of rental payment for one lease resulted in a rental payment check that was in the wrong total amount. However, on October 17, 1978, appellant's corrected check No. 18457 bearing date of October 17, 1978 for \$8,959.50 payable to the Colorado BLM was prepared. On October 20, 1978, Susan Bremner, the Fuelco employee directly involved with lease rentals, prepared certified mail receipt No. 123916, addressed the envelope to the Colorado BLM and, after attaching the return receipt card bearing the same certified mail number, placed the envelope in the central pickup place in Fuelco's office for the courier to deliver to the Public Service mail room in the normal and ordinary course of business. This can be established because letters with certified mail numbers closely prior and subsequent to certified letter No. 123916 were logged into the Public Service mail room on October 20, 1978. In addition, Fuelco checks dated October 17, 1978 with numbers prior and subsequent to check No. 18457 were transmitted, received and negotiated by the payees thereof prior to November 1, 1978. (See Exhibit C and Exhibit G, page 2, filed with Petition for Reinstatement.)

* * * * *

Appellant concluded its Petition for Reinstatement contending that the Colorado Office's receipt of check No. 18457 on November 8, 1978 was not due to a lack of reasonable diligence on its part, since the mishap occurred in spite of a systematic, businesslike routine followed by it in processing advance lease rentals for payment.

* * * * *

ARGUMENT

1. Reasonable Diligence of a Lessee Under the BLM Regulations Can Still be Shown Even Though Evidence is present of a Late Mailing.

43 CFR 3108.2-1(c) (2) is quoted by the Colorado BLM on page 3 of its decision in discussing the question of reasonable diligence: " . . . Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment."

The next sentence of this regulation states that "the authorized officer may require evidence, such as Post Office receipts, at the time of sending or delivery of payments." Neither the language quoted nor any other regulations related to the question of reasonable diligence in this area restrict the application of the reasonable diligence doctrine to use of the United States Post Office. . . .

* * * * *

There is nothing magic about placing a document in the United States mail as opposed to other means of transmission. In David Kirkland, 19 IBLA 305 (1975), cited by Colorado BLM on page 4 of its Decision, the lessee sent his advance rental payment by telegraph. The inadvertent loss of an advance rental payment should not be treated any differently because it happened to be involved in a company mail system rather than the United States Post Office. . . . [T]he mail sacks, canvas bins and sorting trays used by Public Service couriers are the property of the United States Post Office. They are also used by Public Service personnel to collect and sort mail, which is then delivered to or picked up by the Postal Service in its own bags and trays. In addition, substitute empty bags, canvas bins and sorting trays in large quantities are made available to the Company for collection, sorting and delivery of daily mail. These are sometimes picked up by the Company courier and other times delivered to the Company by Post Office personnel. . . .

* * * * *

The case of Elliott and Leon Davis, 26 IBLA 91, is significant because the envelope containing the delay rental check was metered in the lessee's office with a postmark more than 22 days prior to the due date of the advance rental. The rental was due June 1 and when the

envelope was received in the BLM office after that date it bore a June 3, 1975 postmark in addition to the metered marking. The Board of Land Appeals accepted evidence from the lessees that was strikingly similar to that set forth in appellant's petition: Sequential checks establishing date of issue of check well in advance of due date of rental; evidence that other checks bearing the same date as the rental check that were mailed cleared the bank within a short period of time after being placed in mails (Petition for Reinstatement, Exhibit A); other in-office evidence of the normal method of handling advance rental payments establishing diligent routine normal business action on the part of the lessee will prior to the actual due date of the rental in question. On the strength of all this, the lease was reinstated. In analyzing this case, it appears that Fuelco's case is far stronger. In E. and L. Davis, certified mail was not used and the appellant did not have the additional evidence of sequentially numbered certified mail receipts to establish due diligence. . . .

* * * * *

Senate Report No. 2165 dated September 26, 1962 is significant to show legislative intent, even though the remedial amendatory legislation was not passed until 1970. (See Legislative History beginning at page 3236.) This report summarizes the legislative history already gone into with reference to problems subsequent to the enactment of the 1954 amendment to the Mineral Leasing Act of July 29, 1920. . . .

In . . . comment on this Bill which was not passed then, but which was later passed (H.R. 11049), it is stated on page 3238 as follows: "The committee is pleased to note that the Department itself is taking steps to remedy situations brought about by its own unnecessarily restrictive regulations and interpretations of the act."

Between 1952 and 1970, a substantial number of private bills were introduced. Some of those which were enacted are briefly summarized as follows: . . .

* * * * *

Private Law 90-294 involving Elwyn C. Hale where rental payment was nine days late and drilling operations were underway.

Private Law 90-327 involved Phillips Petroleum Company where a lease was reinstated after cancellation by the BLM because of a \$1.00 deficiency in two advance rental payments.

In the 91st Congress, Second Session, a private bill was enacted (See Senate Report No. 91-774), wherein 16 oil and gas leases in Alaska held by Allied Chemical Corp. and affiliates were reinstated, even though the lessee inadvertently sent the advance rentals by third class mail. This private bill is significant because the committee report indicated that those legislators familiar with the Bill believed that reinstatement of the leases would have been covered by

the amendments of 1970 [30 U.S.C. § 188(c)] which, at the time of the enactment of this private bill, had not yet been passed. The following quoted language illustrates this:

The committee recommends prompt enactment of S. 93 absent prior enactment of general legislation which authorizes the Secretary to make equitable reinstatements or prevent termination in such situations as that presented by this bill. Such general legislation has been considered in this and previous Congresses, but has not yet been enacted.

It is also notable that the acting Secretary of the Interior, Russel E. Train, submitted a letter indicating no objection to the passage of the Bill.

It having become obvious that the Bureau of Land Management had been placed in a nondiscretionary "cage" by Congress due to the lack of discretionary authority conferred by the Federal laws with reference to rental payments on leases, and the resultant influx of numerous private bills to correct obvious inequities towards oil and gas lessees, both the House of Representatives and the United States Senate in 1967 attempted to assemble remedial legislation which would eliminate or reduce the necessity for the submission of private bills to the Congress and give the Department of the Interior through the BLM the long overdue prerogative of applying common sense and equitable principles to individual situations involving problems with the processing of advance rentals. The need for the legislation was obvious because of the vast amounts of public lands under the jurisdiction and administrative control of various regional offices of the Bureau of Land Management. . . . In 1970 . . . the need for such discretionary authority in the Interior Department having become even more pressing, the necessary amendments to the Mineral Leasing Act of 1920 were finally passed. The following is a summary of the salient facts which delineate the legislative intent behind this salutary Act which injected into Federal law the right to reinstate oil and gas leases where reasonable diligence and justifiability on the part of a lessee could be shown:

In Senate Report 91-205 of the 91st Congress (May 26, 1969), it was stated, with recommendations for passage of the bill, as follows:

1. No objection to the provisions thereof were received and the Department of the Interior recommended its enactment.
2. The committee believed that the measure would enable the Secretary to do equity and, at the same time, relieve Congress of the necessity of considering private bills to reinstate oil and gas leases. Stated another way, the enacted statute then known as Senate Bill 1193 was "general legislation designed to provide authority to do administratively what hitherto has had to be done through the legislative process."

3. In setting out the grounds of justifiability and reasonable diligence on the part of a lessee as a basis for exercising discretionary authority to reinstate leases where payment is late, the committee summarized its recommendations with the following statement: "There can be no question but that the legislation is needed, both to permit equity to be done to good faith Federal lessees and to relieve Congress with respect to the number of private bills required to accomplish the purpose of this measure on an individual basis."

The Senate report includes the full text of a letter dated May 19, 1969 from Russell E. Train, Under Secretary of the Interior, which, in addition to recommending the enactment of the Bill which was passed, delineates in great detail various situations which had in the past led to the BLM's having to terminate oil and gas leases because of the nondiscretionary situation existing prior to the passage of the 1970 Act, even though the Department had felt in most cases that the leases should have been reinstated.

House of Representatives report of the 91st Congress, Second Session (Report 91-1005), casts further light upon the legislative intent behind the 1970 amendment to the Mineral Leasing Act. Page 3002 of the report sets out four of the most frequent causes of automatic termination of Federal oil and gas leases. Among these is "(3) the full rental payment was submitted, but was not received timely" The report then goes on to say on page 3004: "In most cases brought to the committee's attention, the failure of the lessee to pay the full amount of the rental or to pay timely appears to have been either justifiable or at least not due to lack of reasonable diligence."

We now quote from page 3005 of the report wherein it is stated that: ". . . A small percentage of terminated leases, otherwise deserving, may not be reinstated under this legislation."

Private Law 90-294 involving Elwyn C. Hale was referred to earlier in this Statement of Reasons.

Hale's lease was cancelled in 1965 because, although drilling operations were under way on his lease, his secretary misunderstood his instructions concerning the rental payment and it was not sent in time to meet the deadline. After the private law was passed, the lease was reinstated following administrative proceedings at the BLM wherein it was found that Hale had acted in good faith and the failure to timely pay the rental was not due to a lack of reasonable diligence on his part.

Before leaving the subject of legislative history, it should be noted that the Hale private law is extremely significant concerning the 1970 amendment by Congress in August of 1969. In a letter to the chairman of the House of Interior Committee, dated August 6, 1969, the

Under Secretary of the Interior made reference to it as typical of most cases where the failure of the lessee to pay the full amount of the rental or to pay timely was not due to bad faith. The Under Secretary took the position that Senate Bill 1193 which was passed in 1970, would provide a good general legislative solution and "provide a remedy for all the situations for which private relief legislation had to be enacted in the 90th Congress."

The letter further contains comments on those portions of the Bill that permit reinstatement ". . . where the lessee failed to pay the rental on time, but payment was made within 20 days after the anniversary date and he can show that the failure was either justifiable or not due to a lack of reasonable diligence on his part."

Because of the emphasis placed upon Hale in this particular letter and the subsequent enactment of the statute, it is obvious that Congress was greatly influenced by the situation therein that gave rise to the enactment of the private bill.

It is further significant that prior to the enactment of the 1970 amendments the House Interior and Insular Affairs Committee report on the amendments before they were enacted emphasized that the proposed legislation would enable the Secretary of the Interior to do equity, and, if a lessee seeking reinstatement followed the procedure outlined under the proposed amendments "intentional" mistakes whereby unethical operators could knowingly underpay or submit rentals late and gain additional time while an oil field "play" was developing could be guarded against. (H.R. Report No. 1005, 91st Cong., 2d Sess. (1970).)

A highly logical construction that can be placed upon the foregoing report is that Congress intended equitable relief to be available to a good faith lessee in late payment cases unless the mistake claimed was intentional.

After the enactment of the amendments, the Department of the Interior adopted 43 CFR 3108.2-1(c)(2). Comments were invited prior to this section being finalized and one suggestion that was accepted was the insertion of the word "normally" within the regulation so that, as finally adopted November 3, 1971, it reads: ". . . [R]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." (Underscoring supplied)

The logical construction of the addition of this adverb is to broaden the latitude of the department so as not to preclude the granting of relief in cases such as Hale. Stated another way, it permits the department to exercise equity powers as intended by the Congress.

The federal courts have established that, even in the absence of an equitable relief statute, federal administrative agencies do have equitable powers. In City of Chicago v. Federal Power Commission, 385 Fed.2d 629, it is stated:

It may readily be agreed that a commission does not have the same range as an equity court to summon powers to the call of justice. . . . However, when an agency is exercising powers entrusted to it by Congress, it may have recourse to equitable conceptions in striving for the reasonableness that broadly identifies the ambit of sound discretion. Conceptions of equity are not a special province of the courts but may properly be invoked by administrative agencies seeking to achieve "the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice."

It could probably be successfully argued in this case that this Board has equitable powers without the enactment of the 1970 amendments, but it is not necessary to do so since the Congressional intent, the language of the 1970 amendments and the intent of the Secretary of the Interior in accepting the amendment to the regulation quoted above make it obvious that this Board has broad equitable powers in this case.

* * * * *

As has been noted in the Legislative History portion of this brief, Congress, particularly in the enactment of the 1970 amendment to the Mineral Leasing Act, desired that, through the legislation, equity be done to good faith federal lessees. Appellant's corporate history, therefore, becomes important because, in the writers' view, it is a "good faith federal lessee" and has earned the right to have the broad equitable discretion of the Board of Land Appeals applied to its appeal as intended by Congress in its delegation of such authority to the Department of the Interior.

* * * * *

Appellant would not have been able to establish its enviable record of finding natural gas supplies and augmenting the depleted available reserves of PSC had it not been for its record of proper lease and rental management. During its eight-year existence, there has been no instance until the present case, of any late or missed payment of lease rentals. Admittedly, clerical errors in a minimum of situations have led to misdirection of payments to incorrect payees, but, because of its business procedure of early payment of rentals due on leases, such situations have always been remedied in time. Its business efficiency is further fortified by the fact that Fuelco presently owns working interest in more than 4000 oil and gas leases and is responsible for maintenance, management and rental payments for more than 1000 leases. An estimated 75 percent minimum of these

leases cover federal lands and were issued by the Bureau of Land Management. Surely, this record goes beyond the statutory requirement of "reasonable diligence" and qualifies for extraordinary diligence.

The 21 leases involved in this appeal comprise lands in excess of 15,000 acres. Over half of the leases involved in this appeal are located in areas close to pipelines with strong possibilities of production, promising prospects located near gas wells, either shut-in or hooked to pipelines, present promising prospects due to existing production sufficiently close to warrant exploration, or include lands that, in the opinion of Fuelco's geologist and consultants, warrant the drilling of test wells. The specific leases which fall into one or more of these categories are C-11581, C-11585, C-11591, C-11621, C-11622, C-11630, C-13532, C-13533, C-13774, C-14197, C-17049, C-18262 and C-26048. Several of the leases just referred to were to be developed with the intention of exploring for gas to bolster the gas supply of the Western Slope area of Colorado, particularly the Craig-Steamboat Springs market which is experiencing a substantial growth. Some of the leases are located in the Cathedral area within which the federal unit known as the "Cathedral Unit" was formed by appellant in April, 1978. Seventy wells have been drilled in this area by Fuelco with a 90 percent success ratio. This represents an investment in excess of \$12,000,000. Fuelco's successful drilling program has stimulated other operators to bring in additional greatly needed gas discoveries in this area. Where Fuelco cannot connect these wells to pipelines of Western Slope Gas Company to serve Western Colorado, it has connected these wells with other pipeline companies whose facilities were closer to Fuelco's specific wells. Fuelco's geologist believe that an additional 100 wells can be drilled within this area, which will serve to expand existing pipeline facilities therein to the ultimate benefit of the consuming public.

The present estimated market value for reacquisition of the leases is in excess of \$330,000.00. . . . At least four of the affected leases were programmed for drilling operations this year, an undertaking that would be beneficial not only to the Department of the Interior, but to the public as a whole. Due to this unfortunate occurrence, these drilling operations have had to be curtailed.

Perhaps most serious from appellant's point of view is that a substantial number of these leases were acquired from individuals or small oil and gas developers who relied on Fuelco to keep the rentals current and to develop the lease acreage where geologic and economic factors warranted the same. Many of these assignors reserved overriding royalties, and several of the affected leases contain reassignment requirements. If, therefore, these leases are not reinstated, Fuelco, the retail natural gas customers of PSC and the public at large will unduly suffer because of the potential loss of possibly important natural gas reserves. . . .

The quotation on page 4 of the Colorado BLM Decision appears to the writers to leave the impression that corporate lessees are held to

a higher degree of care than individual lessees where reinstatement of federal oil and gas leases is involved. It was certainly not the intent of the Department of the Interior that this be so. As early as June 5, 1962, then Secretary Udall, in commenting on proposed legislation before the Congress in a letter to the Honorable Clinton P. Anderson, then Chairman of the Senate Committee on Interior and Insular Affairs, stated:

A large integrated producer generally has the advantage of more and better devices and manpower designed to keep it from making errors. Nevertheless, the large integrated producer may fail to pay rental timely, and, if it makes a sufficient showing, equitable considerations should be applicable to its situation. (Underscoring supplied.) (See Senate Report No. 2165, (Sept. 26,

