

RHARRC ASSOCIATES

IBLA 79-175

Decided October 22, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 33946.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

Oil and gas lease offerors are advised to refer to accompanying attachments on their drawing entry cards. However, where neither the regulations nor the instructions on the drawing entry card require that the card refer to the statements required by 43 CFR 3102.6-1, a noncompetitive oil and gas lease offer cannot be rejected for failure to do so, where such statements were actually submitted with the card.

APPEARANCES: Craig R. Carver, Esq., Head, Moye, Carver and Ray, Denver, Colorado, and James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Rharrc Associates appeals from the December 20, 1978, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its lease offer NM 33946. Appellant's drawing entry card (DEC) was the first drawn offer in the July 12, 1978, drawing for noncompetitive oil and gas leases. The offer was rejected because "[t]here is no indication on the entry card that the required statements accompanied the drawing entry card."

The statements referred to in the decision are those required by 43 CFR 3102.6-1 when an agent or attorney-in-fact signs the DEC for the offeror. Appellant's card was not personally signed; the signature was affixed with a rubber stamp. BLM properly requested from appellant a statement stating all the circumstances under which the imprint was made. See William J. Sparks, 27 IBLA 330 (1976). Appellant responded with information showing that Stewart Capital Corporation has discretionary authority to sign and formulate offers in appellant's name, and had submitted the offer for appellant. This creates an attorney-in-fact relationship between appellant and Stewart and mandates compliance with 43 CFR 3102.6-1. BLM then rejected the offer because the DEC did not indicate in any way that the required statements accompanied the card.

In its statement of reasons for appeal, appellant asserted that the required statements did accompany the DEC. It pointed out that the regulations do not require that the statements concerned here be noted on the card, nor is there space provided on the card for doing so, as there is for the statement of corporate qualifications. Appellant also argues that if the New Mexico Office is affirmed in rejecting the offer, the new rule should only apply prospectively.

On August 28, 1979, we wrote the New Mexico Office seeking clarification of the grounds for rejection and inquiring whether or not appellant submitted the required statement. We received a response from Raul E. Martinez, Chief of the Oil and Gas section of the New Mexico Office, on September 14, 1979, indicating that due to the volume of filings received (up to 70,000 per month), unless the card alerts personnel to an attachment, they do not search for one. Mr. Martinez did locate the statement submitted by appellant in the material filed for the June 1978 filings, and forwarded it to this Board. Appellant has filed a response to this statement asserting basically that the New Mexico Office discriminates against clientele of Stewart Capital Corporation, including appellant, in its procedures.

The DEC states that "compliance must also be made with the provisions of 43 CFR 3102." It provides a space for identifying records wherein the qualifications of a corporation or association to hold a lease have previously been filed. It provides a space for listing other parties in interest. However, nowhere, on the card or in the regulations, is it required that the statements of the agent or attorney-in-fact be referred to on the card itself.

To avoid rejection of an offer, we have held the regulations must be strictly complied with and the DEC fully executed. It is proper to reject cards where the offeror has not complied with these requirements. See WZL Investment Corp., 36 IBLA 355 (1978); Rita D. Vick, 36 IBLA 275 (1978); Richard Wheeler, 34 IBLA 359 (1978). In Harry Reich, 27 IBLA 123 (1976), we rejected an oil and gas lease offer

because the offeror did not make certain required statements in the space provided on the DEC form. We also noted that the card did not refer to an attachment dated nearly 6 months prior to the filing which the appellant asserted adequately made the statements required. Although we pointed out that a DEC should refer to attachments, we did not rule that a card must be rejected merely because there is no reference where the requirements are satisfied. In that case there was a specific place on the form for designating other parties in interest. The offeror failed to do so. The situation here is different. There is no space on the form for an offeror to fill out to meet the requirements for an agency statement. We advise offerors that they should refer to an accompanying attachment as a means of alerting BLM and also as an element of proof should the question arise whether an attachment was actually filed when required. However, in the absence of a requirement in the regulations or instructions that the card refer to an accompanying attorney-in-fact statement, the offer cannot be rejected because there was no reference to an attachment where it is proved that the statement actually accompanied the card when it was filed. Here BLM's statement that the attachment was with the material filed in the particular drawing, together with appellant's assertions, establishes that the attachment was properly filed with the card. Therefore, all else being regular, the lease should issue to appellant.

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 reversed and the case remanded for appropriate action.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

