

METRO ENERGY, INC.

IBLA 81-17

Decided February 19, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 47505 through M 47515.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

When over-the-counter applications for 11 oil and gas leases show that the offeror is not the sole party in interest, 11 separate statements meeting the requirements of 43 CFR 3102.7 must be filed not later than 15 days after the filing of the lease offers. If only 10 statements are submitted and none is individually identified with a corresponding serial number, all 11 offers must be rejected.

2. Applications and Entries: Generally--Evidence:
Presumptions--Evidence: Sufficiency--Oil and Gas Leases:
Applications: Filing--Oil and Gas Leases: Applications: Sole Party in
Interest

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

3. Applications and Entries: Generally--Estoppel--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Sole Party in Interest

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

4. Oil and Gas Leases: Applications: Sole Party in Interest

Oil and gas lease offers are properly rejected when required statements as to other parties in interest are not timely submitted. Under 43 CFR 3111.1-1(e), such a defect is not curable, even with respect to over-the-counter leases. Nevertheless, offers may be reinstated and allowed to earn priority from the time of the filing of the missing statement, or when an applicant withdraws a sufficient number of offers so that there are enough statements to cover the offers that remain active.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Metro Energy, Inc., has appealed from the September 9, 1980, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting 11 over-the-counter oil and gas lease offers, M 47505 through M 47515, for the stated reason that each offer indicated a separate party in interest but only 10 copies of the required interest statement were submitted. The decision further explained:

Each offer to lease oil and gas is adjudicated separately on the basis of the material contained in the individual file that comprises the record of that case, and for that reason each offer must be accompanied by a statement of interest.

We cannot arbitrarily decide which of the 11 offers is lacking an interest statement; therefore, all offers must be rejected.

[1] When over-the-counter applications for 11 oil and gas lease offers show that the offeror is not the sole party in interest, 11 separate statements must be signed by the parties in interest and by the offeror, setting forth the nature and extent of the interests of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. These statements, one for each offer, must be furnished no later than 15 days after the offers were filed. 43 CFR 3102.7. If only 10 statements are received and none indicates which of the 11 offers it was intended to accompany, BLM may properly reject all 11 offers because it may not arbitrarily select the offers which should be connected with the statements. See Thomas Connell, 7 IBLA 328 (1972).

Appellant's first contention is that BLM actually received 12 copies of the interest statements for the 11 offers, date-stamped and returned one copy as requested by appellant to provide evidence of receipt, and misplaced another, leaving only 10 statements for 11 offers. Appellant's statement of reasons includes an affidavit by Sandra J. Kinney, a secretary who prepared the statements of interest for filing, which states that she personally typed a cover letter identifying the 11 offers by lease number and that she personally included in an envelope one original copy of the cover letter, 11 interest statements, and a Xerox copy of the cover letter with the twelfth copy of the interest statement which BLM was directed to stamp and return for the purpose of documenting receipt by the Montana State Office.

[2] This Board has previously considered the problem of alleged misplacement by BLM of documents submitted by an offeror. E.g., Charles J. Babington, 36 IBLA 107 (1978); W. J. Langley, 32 IBLA 18 (1977); David F. Owen, 31 IBLA 24 (1977). The issue in those cases, involving simultaneous filings, was whether appellants had tendered fractional interest declarations along with drawing entry card offers for acquired lands leases. There the Board held that uncorroborated statements were insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

Appellant contends that by returning a copy of the interest statement, BLM had thereby shown receipt of at least 11 interest statements for the lease files. Specifically, appellant argues:

Without any doubt whatsoever, the BLM personnel received and counted out eleven interest statements for inclusion in the eleven affected case files. To do otherwise would be an arbitrary and capricious action by BLM personnel, because it would expose the oil and gas lease offers to rejection for failure to file sufficient interest statements. The cover letter contained a secondary request of obvious lesser importance: "Please time-date stamp one copy of this letter and one copy of the interest statement and return it to us for our files to show receipt by your office in a timely manner." (Emphasis added). Appellant emphasizes the fact that the request in the letter to return a copy of the interest statement was to "show receipt" of the statements in a "timely manner". Appellant contends that returning a copy of the interest statement could only mean that the BLM had thereby shown receipt of at least eleven interest statements for the lease files. It will be pointed out more fully below that Appellant, in fact, relied on receipt of a copy of the letter and interest statement as an administrative affirmation of timely and proper filings. For BLM personnel to send back a completed copy of the interest statement to Appellant without first making sure that a sufficient number of copies were on hand for the files is clearly an arbitrary treatment of Appellant's lease offers. It can only be concluded that either twelve copies of the interest statement were received by the Montana State Office, [sic] or that the office was arbitrary and capricious in sending Appellant a completed interest statement without first counting or attending to the filing of the eleven interest statements.

By returning the one date-stamped copy, the BLM became the factor, wittingly or unwittingly, in imperiling the Appellant. It was the BLM's acts of commission which created the situation.

Statement of Reasons, 3-4.

[3] Appellant's argument mistakenly assumes that BLM had counted the statements or at least was obliged to do so before stamping a copy as evidence of receipt. The isolated facts of this case do not show why BLM would be unreasonably burdened if it were required to screen such submissions. Yet, upon considering the volume of filings received by BLM, one can immediately grasp that it would be unreasonable to

require BLM employees to screen filings to insure that all required materials are there before stamping a copy of a document as evidence of receipt. It becomes equally clear that by date-stamping such a document, BLM in no way affirms the correctness of the recitals contained therein as to the number of documents submitted. It follows that BLM was not required to retain that additional copy contrary to appellant's instruction in order to make the filing complete. One recent decision illustrates the impracticability of such a requirement. In Federal Energy Corp., 51 IBLA 144 (1980), the appellant had filed 8,757 drawing entry cards on behalf of its clients but submitted a check for \$87,560 as a single remittance to cover filing fees for all of those offers. This amount was \$10 less than the filing fee required for all of those offers. Appellant contended that one of the 8,757 cards was defective, and that if BLM had eliminated this card, the filing fee would have been complete. This argument was rejected because the rule advocated by appellant would place an impossible burden on BLM. Id. at 146.

Appellant correctly observes that eleven statements were in fact sent: the 10 copies intended to be filed with the lease offers, plus the one copy which was to be date-stamped and returned to appellant. Its argument that this eleventh copy must be considered "filed" because it was date-stamped, however, is untenable. Even if the document is date-stamped by the BLM office, it is not considered a filing if it is to be returned to appellant as evidence of receipt of other materials with which it was included. It must be submitted for the purpose of being included in BLM records. Thus, although 11 statements were received, only 10 were filed.

[4] Appellant finally contends that BLM should have given it an opportunity to cure any filing defects rather than reject the offer outright. This argument is overcome, however, by reference to 43 CFR 3111.1-1(d), which requires BLM to reject over-the-counter offers except where there is one of the specifically listed curable defects set forth in subsection (e). Failure to submit timely a statement by parties in interest is not among the enumerated defects. Nevertheless, appellant correctly notes that this Board has held that an offer which has been rejected for failure to file such statements may be reinstated when the required filing is made, and the offer will earn priority as of the time the required filing is made. E.g., Thomas Connell, supra. Although no additional statement has yet been filed, appellant withdrew 6 offers in their entirety. ^{1/} These withdrawals, if effective, leave a sufficient number of statements to cover the active offers.

^{1/} On December 22, 1980, appellant filed a withdrawal of offers M47505 through M47510. Offers M47511 and M47515 were partially withdrawn.

Thus, those offers may be considered to be cured and earn priority as of December 22, 1980, when the withdrawal of the other offers was filed with BLM. Although BLM's decision was correct when rendered, the filing of the withdrawals necessitates remanding this case.

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 set aside and remanded for further action consistent with this opinion.

Anne Poindexter Lewis

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

