

ROCKIES ENERGY CORP.

IBLA 82-935

Decided August 24, 1982

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting oil and gas lease application C 35279.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

APPEARANCES: Joseph Kon, President, Rockies Energy Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Rockies Energy Corp. appeals the Colorado State Office, Bureau of Land Management (BLM), decision of May 19, 1982, which rejected oil and gas leases application C 35279, drawn with first priority in the January 1982 simultaneous oil and gas lease filings. The application was rejected because there was no showing of the corporate qualifications of the appellant, as required by 43 CFR 3102.2-5(a), either by reference on the application to the BLM serial number where the evidence had been submitted earlier or by submission of the required information within 15 days after the date of filing of the application.

Appellant states it was informed by BLM that the corporate qualifications were no longer being checked under 43 CFR 3102.2-5(a); that the failure

of the corporation to comply with 43 CFR 3102.2-5(a) is merely procedural and is not a basis for rejection of the application as the deficiency can be corrected at any time; and because the regulation has been or will be changed, the application of the corporation should be accepted.

At the time the application was filed in January 1982, the applicable regulation, 43 CFR 3102.2-5(a) ^{1/}, published in the Federal Register on May 23, 1980, 45 FR 35162, under authority granted by the Act of February 25, 1920, as amended, 30 U.S.C. § 181 (1976), read as follows:

(a) A corporation which seeks to lease shall submit with its offer or application if leasing in accordance with Subpart 3112 of this title, a statement showing:

- (1) The state in in which it is incorporated;
- (2) That it is authorized to hold oil and gas leases;
- (3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing;
- (4) The percentage of voting stock and of all stock owned by aliens; and
- (5) The names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.

[1] An oil and gas lease application filed on behalf of a corporation must be accompanied by the information specified in 43 CFR 3102.2-5(a), including a complete list of corporate officers, identifying those authorized to act for the corporation in Federal oil and gas leasing matters. As has been noted, the purpose of this regulation is to aid in the enforcement of the prohibition against multiple filings. See Adobe Oil & Gas Corp., 63 IBLA 106 (1982). As we noted in Adobe, the purpose of the disclosure "is to determine in what other applications for a particular parcel the corporation may have an interest, by virtue of other filings made by corporate officers." Id. at 109.

The regulations permit corporate offerors to file the required information for reference and to indicate the assigned serial number in lieu of refiling the information with subsequent applications, where the evidence of qualifications has been accepted and where the information on file is current.

^{1/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982). In absence of countervailing public policy reasons or on intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

43 CFR 3102.2-1(c). An oil and gas lease application that is not accompanied by either the required information or a reference by serial number of the BLM file in which the current information can be found is defective and subject to rejection. Hickory Creek Oil Co., 63 IBLA 313 (1982); Samedan Oil Corp., 62 IBLA 228 (1982); Trans-Texas Energy, Inc., 56 IBLA 295 (1981).

Appellant suggests that its deficiency is merely procedural, and the deficiency can be corrected at any time. A simultaneous oil and gas lease application under 43 CFR Subpart 3112, as distinguished from over-the-counter lease offers, cannot be cured by submission of additional information after the drawing. To permit this would infringe upon the rights of the second drawn applicant, who automatically becomes the first-qualified applicant when the first-drawn application is deemed defective. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980). A noncompetitive oil and gas lease for Federal lands may only be issued to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

As appellant did not submit the required corporate information either with the application or within the 15-day period immediately following the filing of application, BLM properly rejected the application.

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 affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

