

IRVIN WALL

IBLA 82-1062

Decided January 20, 1983

Appeal from separate decisions of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer OR 28232 in part and oil and gas lease offer OR 29036 in full.

Affirmed in part; vacated and remanded in part.

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

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: 640-acre Limitation -- Oil and Gas Leases: Lands Subject to

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become

an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

3. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

4. Oil and Gas Leases: Acreage Limitations -- Oil and Gas Leases: Applications: Generally

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of applications, any one of which causes him to exceed the acreage limitations, the entire group must be rejected pursuant to 43 CFR 3101.1-5(c)(3)(ii).

5. Oil and Gas Leases: Acreage Limitations -- Oil and Gas Leases: Applications: 640-acre Limitation

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

6. Oil and Gas Leases: Acreage Limitations -- Oil and Gas Leases: Applications: Generally

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

7. Oil and Gas Leases: Acreage Limitations -- Oil and Gas Leases:
Lands Subject to

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irvin Wall has appealed from separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting in part his over-the-counter noncompetitive oil and gas lease offers OR 28232 in part and OR 29036 in full. The offers were rejected to the extent that they included land leased to senior offerors.

[1] Wall filed oil and gas lease offer OR 29036 on September 19, 1981. ^{1/} His offer described land overlapping with land described in senior offers OR 26411, filed April 17, 1981, by Shell Oil Company (Shell), and OR 27567, filed on June 25, 1981, by J. A. Padon, Jr. Wall contends that Shell's offer is defective because it failed to indicate its qualifications to hold a lease. Wall's assertion is incorrect as Shell's qualifications are referred to on the offer form. Because a noncompetitive oil and gas lease

^{1/} Oil and gas lease offer OR 29036 was originally filed by Wall on Aug. 24, 1981. However, on Sept. 19, 1981, Wall filed an amended offer with the Oregon State Office.

may be issued only to the first-qualified applicant, 30 U.S.C. § 226(c) (1976), a junior offer is properly rejected to the extent that it includes land designated in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Irvin Wall, 68 IBLA 243 (1982).

[2] Wall challenges Padon's offer by asserting that the applicant's qualifications to hold the lease were not stated and that the percentage to be owned by another party in interest was not set forth. These allegations are incorrect. The applicant's qualifications were stated, and an attachment to the offer indicates that the applicant and the other party in interest each had an undivided 50 percent interest. Wall's third assertion against Padon's offer raises a different issue. He asserts that the offer was filed for 162.93 acres which included lots 3 and 4 of sec. 31, T. 5 S., R. 25 E. This is adjacent to lot 4 of sec. 6, T. 6 S., R. 25 E., for which Padon did not apply but which, Wall contends, was available for leasing. If Wall's contention is correct, Padon's offer violates the 640-acre rule, set forth in Departmental regulation 43 CFR 3110.1-3(a), which provides in pertinent part: "No offer may be made for less than 640 acres except where * * * the land is surrounded by lands not available for leasing under the Act." The status plat indicates that when Padon filed his offer, lot 4 of sec. 6 was subject to the senior offer filed by Shell, OR 26411. However, no lease for this land was effective until July 1, 1982. Land included in an offer which has not become an issued lease is still available for filing of another offer until the first lease is signed by an authorized officer of BLM. Helen E. Reid, 39 IBLA 378 (1979). Thus, Wall is correct that oil and gas lease OR 27567 improperly included lots 3 and 4 of sec. 31, T. 5 S., R. 25 E. To

the extent that BLM rejected Wall's offer because of its conflict with Padon's lease, the decision must be vacated.

[3] Wall filed oil and gas lease offer OR 28232 on July 29, 1981, which described land partially overlapping with land described in senior offers OR 26522, filed April 30, 1981, by Shell, and OR 26851, filed May 22, 1981, by Aeon Energy Company (Aeon). Wall gives two reasons why Aeon's offer should have been disqualified. First, he asserts, no qualification to hold the lease was shown or listed on the filing. This appears to be incorrect. Aeon separately executed a statement of its qualifications on the same date that it executed its offer. The second reason Wall gives for holding Aeon's offer to be defective is that the meridian was not indicated on the land description. In Irvin Wall, 68 IBLA 308 (1982), we held that an over-the-counter noncompetitive oil and gas lease offer need not be rejected for failure to indicate the meridian where only one meridian governs the state in which the land is located. We pointed out that Departmental regulation 43 CFR 3101.1-4(a) requires that oil and gas lease offers for surveyed lands must describe the lands by legal subdivision, section, township, and range. We noted that the form also provides a space for "filling" in the applicable meridian, and designation of the meridian clearly is necessary for states such as California which are governed by more than one meridian. However, Oregon is governed by only one meridian, so the designation of the meridian is surplusage.

Wall contends that Shell's application was defective because its qualification to hold a lease was not shown as indicated on the filing nor were the qualifications filed within 15 days after filing.

Wall asserts that the

qualifications were filed in July, 3 months after Shell's offer was filed. Even if Wall's allegations were correct, Shell's offer was complete prior to Wall's offer and has priority over it. However, Shell's offer did refer to its qualifications on file at that time. Wall's assertion is simply incorrect. Nevertheless, Shell's lease must be canceled for another reason: The record in Jerry M. Pritchard, 70 IBLA 154 (1982), of which we take official notice, 2/ demonstrates that when Shell filed offer OR 26522, it exceeded the maximum acreage established by 30 U.S.C. § 184(d) (1976).

On April 30, 1981, Shell filed 54 noncompetitive oil and gas lease offers for certain lands in Oregon, including OR 26522. The Shell offers, numbered OR 26502 through OR 26555, were stamped as being filed at precisely the same moment. Pritchard contended that BLM's rejections of his offers were erroneous where Shell was deemed to be the first-qualified applicant based upon its April 30, 1981, offers. He asserted that Shell's April 30 offers were not in "good standing" because Shell had exceeded the maximum acreage permitted to be held under 43 CFR 3101.1-5. Shell filed a reply, giving reasons why its offers did not cause it to exceed the maximum allowable acreage. However, Pritchard withdrew his appeal and the Board dismissed the case.

Although Wall did not raise the issue of excess acreage, he served Shell with a copy of his notice of appeal, but Shell has entered no appearance. Pritchard's appeal, however, gave Shell specific notice of this issue with respect to each one of the 54 offers, filed on April 30, 1981, including OR 26522. The effect of that notice is not merely confined to those Shell

2/ See 43 CFR 4.24(b).

offers in conflict with Pritchard's, since it was only the combined effect of all of Shell's offers that placed it over the limit. Although Shell did not respond to Wall's appeal, we consider it appropriate to address the contentions Shell made in Pritchard's appeal.

Before BLM rejected his offers, Pritchard, through an agent, inquired of BLM concerning Shell's acreage holdings in Oregon, contending that Shell had exceeded the limit by 4,281.08 acres. BLM's response, dated May 7, 1982, set out which acreage in Shell's offers was charged to Shell's acreage account. BLM took the position that Shell was chargeable for 245,478 acres after the April 30 filing. Excluded from BLM's calculation were offers rejected for nonconformity with 43 CFR 3110.1-3, the "640-acre rule." ^{3/} 43 CFR 3110.1-3 requires that all noncompetitive offers to lease must be for at least 640 acres in the absence of certain exceptions. Inclusion of those offers in Shell's chargeable allotment would result in excess acreage over the allowed maximum at the time Shell submitted the 54 offers on April 30, 1981.

BLM reasoned that "offers filed in violation of the 640-acre rule cannot mature to lease and are not chargeable." Pritchard argued that those offers later rejected as less than 640 acres must be included in the calculations of chargeable acreage while they were pending, and, if Shell exceeded its permissible chargeable limit by its group filing of April 30, every offer in that group must be rejected.

^{3/} BLM listed the following as later rejected under the 640-acre rule: OR 26511, 120 acres; OR 26512, 480 acres; OR 26518, 80 acres; OR 26527, 79.47 acres, a total of 759.47 acres.

In its reply to Pritchard's statement of reasons for appeal, Shell argued that its offers which violated the "640-acre rule" were not chargeable because those offers were null and void.

[4] The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 184(d) (1976), provides that:

No person, association, or corporation * * * shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska.

The corresponding regulation, 43 CFR 3101.1-5, includes acreage in applications and offers for oil and gas leases in the total holdings calculated. 4/

That regulation further provides: "For tracts not subject to the simultaneous filing procedures of Subpart 3112, if [the offeror] files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group [of] applications, offers, options, or interests in options will be rejected." 43 CFR 3101.1-5(c)(3)(ii) (emphasis added). Thus, if any one of the offers on April 30, 1981, caused Shell to exceed the maximum limit for acreage holdings, the entire group should have been rejected. Therefore, to determine whether Shell exceeded the acreage limitation, we must first decide

4/ Inclusion of offers for over-the-counter noncompetitive oil and gas leases in acreage holdings computations is a well established practice of the Department. See Shell Oil Co., A-30575 (Oct. 31, 1966); Solicitor's Opinion, M-36670, 71 I.D. 337 (1964); 2 Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, § 25.7 (Supp. 1980).

whether Shell's acreage account should have been charged for acreage in offers later rejected under 43 CFR 3110.1-3(a), the 640-acre rule.

[5] Departmental regulation 43 CFR 3110.1-3(a) reads in part: "No offer may be made for less than 640 acres except where the offer is accompanied by [certain showings]." Violation of the 640-acre rule results in rejection of the offer and loss of priority. See James M. Chudnow, 65 IBLA 64 (1982); Douglas R. Willson, 52 IBLA 246 (1981). The rule is applied when an offer is adjudicated. All else being regular, BLM must take action to accept the offer if it determines a proper showing has been made under section 3110.1-3(a), or to reject the offer if it determines the showing is insufficient. Thus the acreage of an offer is not the sole criterion against which the rule is applied. BLM must adjudicate such an offer with regard for the exceptions to the rule. ^{5/} See, e.g., Dayton F. Hale, 69 IBLA 167 (1982). Until a determination has been made, an offer is not simply null and void, but must be considered a pending offer.

In computing an offeror's chargeable acreage, it is necessary to include all pending offers filed over-the-counter for noncompetitive oil and gas leases. In one Departmental decision where chargeable acreage was addressed, the amount was calculated, "on the assumption that no additional offers were filed, that no pending offers were rejected." Albert C. Massa (Supp.), 63 I.D. 279, 285 (1956) (emphasis added). An offer is "pending" from its inception until the rendering of a determination. See Black's Law Dictionary,

^{5/} BLM Manual, Vol. VI Minerals, 2.3A (1954) reads: "All lease offers for less than 640 acres, or the equivalent of a section, should be considered under the regulation * * * and if allowable, copies of the serial register should be sent to the Geological Survey for a structural report."

1291 (4th ed. 1968). Such a determination includes rejection, after which the rejected acreage is no longer chargeable.

The Department, at one time, considered all offers for noncompetitive oil and gas leases as chargeable to the holdings amounts. In Melvin A. Brown, 69 I.D. 131 (1962), the Department held that offers filed under the public drawings process were chargeable, even after the drawing had occurred and the offeror was unsuccessful. That decision was reversed in Brown v. Udall, 335 F.2d 706 (D.C. Cir. 1964). The court held that neither the statute nor the regulation justified the chargeability of an unsuccessful simultaneous offer before or after the public drawing.

The Department, however, has continued to hold that a "regular" lease offer, filed on an over-the-counter basis, is chargeable. The rationale for the distinction is that the offeror gains control over the acreage of an over-the-counter offer. Solicitor's Opinion, M-36670, 71 I.D. 337 (1964); Shell Oil Co., A-30575 (Oct. 31, 1966). 43 CFR 3101.1-5(a) reads in part: "No person, association, or corporation shall take hold, own, or control at one time oil and gas leases * * * or offers therefor * * * for more than 246,080 acres in any one State." (Emphasis added.) It is appropriate that land embraced in an offer for a noncompetitive oil and gas lease should be charged against the offeror when the lease is to be issued on a first come, first served basis. Although no lease has been issued, the offeror has a measure of control over the acreage embraced in his offer. By filing his application he has obtained priority and has precluded anyone else from obtaining a lease until there has been some disposition of his own application. Solicitor's Opinion, M-36670, supra at 338. If no limitation were

imposed on the acreage that could be included in offers, any offeror could file for more acreage than he could receive in leases and then pick and choose what acreage he wanted. Melvin A. Brown, supra at 133.

As pending offers, Shell's applications for leases less than 640 acres remained fully chargeable to its holdings until such time as they were rejected under 43 CFR 3110.1-3(a). It is unfortunate that Shell's chargeable holdings were miscalculated. However, Shell, and not BLM, is responsible for the acreage amount for which it submits offers. Shell filed its offers because it believed they had value. Shell cannot argue the genuineness of its applications on the one hand and deny their effectiveness and value on the other. It is unlikely Shell would have refused the leases if BLM had issued them. If Shell had truly considered certain of its applications to be of no avail, it could have refrained from submitting them and avoided a lock on the land pending administrative determination of the offers.

We see no reason why confusion should result. An offeror knows, or certainly should know, how much acreage it applied for. It may at any time withdraw previous offers, but while it maintains any offer, it is chargeable with acreage included therein.

[6] The Department, until January 1959 (Circular 2009, 24 FR 281 (Jan. 13, 1959)), accorded offerors a grace period of 30 days within which to reduce their holdings in leases and lease offers upon a determination that they held excess acreage. 43 CFR 192.3(c) (1954). Because of abuses and administrative inconveniences, the grace period was eliminated. Melvin A. Brown, supra at 133. When Shell filed its offers together, causing it to

exceed the maximum acreage for holdings, BLM was not permitted to afford it an opportunity to reduce its interests to conform to the limitation. BLM was required to reject in its entirety the group of offers which caused the excess. See Edwin G. Gibbs, 68 I.D. 325, 327 (1961). Thus, Shell was not qualified to maintain its offers when Wall or Pritchard filed theirs.

[7] Finally, Shell argued in its reply to Pritchard's statement of reasons that it did not exceed the maximum allowable acreage regardless of the interpretation of the 640-acre rule as applied to the acreage calculations. Shell explained that its offers included 733.02 acres within a National Park or Monument and 3 lots within an Indian Reservation. In addition, there were various offers filed for lands in which Shell claimed that the United States had no title. Shell contended that these several offers were not chargeable to its acreage calculations and when all calculations are made, it did not exceed the acreage limits. As explained, the total acreage in an offer is considered chargeable acreage. The reasons for chargeability of an offer have been expressed above. Those reasons extend to Shell's argument here. Until BLM adjudicates the offers and officially ascertains that the lands are not available and its offers are rejected, Shell is chargeable for the acreage for which it has applied.

According to BLM's conclusions found in its May 7, 1982, letter, Shell was accountable for 245,478 acres in outstanding leases and offers. After adding to that figure the 759.47 acres BLM did not include because of the 640-acre rule, Shell had exceeded the maximum allowable acreage by its group

filing of April 30, 1981. Moreover, this excess is increased by the acreage not charged to Shell by BLM because the land was not available. 6/

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 is affirmed in part, and vacated and remanded in part for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge

6/ It further appears that BLM did not charge Shell for the acreage of certain acquired lands included in the Apr. 30, 1981, filings. If those acquired lands were listed in offers filed pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), the acreage would not be chargeable. However, if the acquired lands were included in the Shell offers filed for public lands under the Mineral Leasing Act of 1920, that acreage would also be chargeable for so long as the offers for such lands remained pending. However, we need not resolve that question in order to decide this appeal.

