

IMPEL ENERGY CORP.

IBLA 81-899

Decided March 18, 1983

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding lease W-0319507 to have terminated.

Set aside and remanded.

1. Oil and Gas Leases: Termination -- Oil and Gas Leases: Well Capable of Production

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

2. Hearings -- Notice: Generally -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Well Capable of Production -- Rules of Practice: Hearings

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for appellants and for Maze Exploration, Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Impel Energy Corporation (Impel) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 2, 1981,

holding oil and gas lease W-0319507 to have terminated. BLM based its decision upon a finding by Geological Survey (GS) that the lease was no longer capable of producing oil and/or gas after June 1979. No approved operations to restore production having been commenced within 60 days thereafter, BLM relied upon 43 CFR 3107.3-1 and held the lease to have terminated effective June 30, 1979.

[1] Regulation 43 CFR 3107.3-1 states:

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

The statutory basis for this regulation is found at 30 U.S.C. § 226(f) (1976). Appellant maintains that this same statute requires reversal of BLM's decision.

Appellant's argument is based upon the following language in 30 U.S.C. § 226(f) (1976):

No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall not be less than sixty days after notice by registered or certified mail, within which to place such well in producing status * * *.

Appellant maintains that a well capable of producing oil or gas in paying quantities does, in fact, exist on lease W-0319507. Appellant identifies this well as the O'Hara 5-24 Federal Well in SE 1/4 NW 1/4 sec. 24, T. 58 N., R. 103 W., Park County, Wyoming. If such a well capable of producing oil or gas in paying quantities exists, 30 U.S.C. § 226(f) (1976) requires that BLM give appellant notice to place this well in producing status within 60 days of the notice. Regulation 43 CFR 3107.3-2 compels this same result.

BLM at no time gave appellant notice to place the O'Hara 5-24 Federal Well in producing status. BLM's inaction in this respect was apparently motivated by its knowledge that the well had suffered a casing collapse. 1/

1/ Appellant's statement of reasons includes a copy of a letter dated Apr. 30, 1981, from GS to appellant stating:

"The records for your O'Hara Federal 5-24 well, Section 24, T. 58 N., R. 103 W., lease W-0319507, have recently been transferred to this office. The records indicate this single well has not produced since June of 1979 (reason: casing collapse). From the record, it is obvious that lease W-0319507 should have terminated 60 days after June, 1979. The pertinent section of the regulations reads as follows:

"43 CFR 3107.3-1: Cessation of production.

"A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter,

Appellant admits that the well suffered "at least a partial casing collapse" in November 1977, but maintains that the well was capable of producing oil or gas in paying quantities both before and after this collapse. It maintains, therefore, that prior to any lease termination it was entitled to notice from BLM to place the well in producing status. 30 U.S.C. § 226(f) (1976).

In June 1979, the lease at issue was in its extended term by reason of production. ^{2/} From November 23, 1976, to November 23, 1978, the lease had enjoyed a 2-year extension by reason of the fact that the Northline unit, of which it was a part, terminated. 43 CFR 3107.5. On October 12, 1978, some 11 months after the casing collapse, GS wrote to Impel "[r]e: Rediscovery and recommencement of production, lease W-0319507, Park County, Wyoming." The brief letter referred to a GS memorandum of September 12, 1978, which "serves as the certification to maintain the subject lease in good standing, as it is being held by production." (Emphasis added.) Appellant maintains that this letter is an acknowledgement by GS that the O'Hara 5-24 Federal Well was capable of production of oil or gas in paying quantities following the casing collapse.

In appellant's view, GS incorrectly assumed that the casing collapse occurred on or about May 1, 1979, and was the cause of the absence of production at the time of lease termination. At no time does it appear from the record that GS made any independent test of the well at issue.

Appellant also asserts that prior to the well being shut-in on November 10, 1978, it underwent a production test which established that even with the collapsed, or partially collapsed, casing, it was capable of production of oil in paying quantities. A report by a consulting engineer retained by appellant estimates that the O'Hara 5-24 Federal Well will produce 50 barrels of oil per day (BOPD) pumping from the presently perforated interval (7,840 to 7,854 feet).

[2] Appellant's allegations are of sufficient merit to require that BLM's decision of July 2, 1981, be set aside and the case file remanded. On remand, BLM should consider appellant's reports and affidavit submitted with its statement of reasons. If BLM determines after review of this data

fn. 1 (continued)

reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.'

"Therefore, we hold that lease W-0319507 will expire May 1, 1981, and will so recommend to the Land Office of the Bureau of Land Management."

^{2/} BLM's decision of July 2, 1981, states: "Oil and gas lease W-0319507 * * * originally issued December 1, 1965, for a period of ten years, and was extended by drilling and by production of a well completed on October 5, 1976." By letter of Jan. 9, 1979, entitled "INCREASE IN RENTAL RATE [,] PRODUCING LEASE," (emphasis in original), BLM informed Impel that all or part of the lease was within the Northline field undefined known geologic structure effective Dec. 13, 1978. The letter further stated that the lease was now held under minimum royalty, but should production cease, annual rent would be due at a rate of \$2 per acre.

that there was no well capable of production of oil or gas in paying quantities as of June 30, 1979, due notice of this determination shall be given. Such notice ^{3/} shall set forth the basis of this determination and advise appellant that it may request a hearing before an Administrative Law Judge on this issue. If a hearing is requested, the case shall be transmitted to the Hearings Division, Office of Hearings and Appeals. - -

At the hearing, if one is held, the burden of going forward with the evidence and the ultimate burden of proof falls on the appellant, who must establish the existence of a well capable of production in paying quantities. We note that a well capable of producing oil and gas in paying quantities must actually be physically capable of such production at the time in question. Future expectations as to the well and present assessments regarding potential for production from the well based on inference drawn from present data are to be distinguished from the present status of the well as one capable of producing in paying quantities. Universal Resources Corp., 31 IBLA 61, 67-68 and note 4 (1977); The Polumbus Corp., 22 IBLA 270, 271-73 (1975).

Actual production is not necessary in order for a well to be considered capable of production in paying quantities. On the other hand, the mere presence of a well will not suffice. John G. Swanson, 66 IBLA 200, 202 (1982); American Resources Management Corp., 40 IBLA 195, 201 (1979). Not only must a well be physically capable of production, Arlyne Lansdale, 16 IBLA 42 (1974), but it must also be capable of producing "in paying quantities," *i.e.*, sufficient quantities to yield a reasonable profit to the lessee over and above the cost of operating the well and of marketing the product. Amoco Production Co., 41 IBLA 348, 351 (1979); The Polumbus Corp., *supra*; Kerr-McGee Oil Industries, 73 I.D. 110 (1966).

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 herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

^{3/} At present, the record title holders of lease W-0319507 are Impel (50 percent) and Coseka Resources (U.S.A.) Limited (50 percent). During the pendency of this appeal, Impel assigned all its right, title, and interest in the lease to Maze Exploration, Inc. (Maze). No action has been taken on this assignment by BLM.

