

NUCORP ENERGY, INC.

IBLA 82-424

Decided May 23, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 35411 (Acq).

Reversed.

1. Accounts: Payments -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

APPEARANCES: Jim C. Jordan, vice president, Nucorp Energy, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Nucorp Energy, Inc., from a decision of the Montana State Office, Bureau of Land Management (BLM), dated December 12, 1981, denying its petition for reinstatement of oil and gas lease M 35411. The basis of the BLM decision was that no rental payment was tendered within 20 days of the anniversary date of the lease when the rental payment was due. Thus, BLM found that the lease was not eligible for reinstatement pursuant to the terms of 30 U.S.C. § 188(c) (1976).

Noncompetitive oil and gas lease M 35411 was issued effective December 1, 1976, to Sherwyn M. and Nancy B. Woods whose drawing entry card was drawn with first priority in the Montana simultaneous filing program. Effective July 1, 1981, the lease in its entirety was assigned to Nucorp Energy, Inc., appellant herein.

The record discloses that appellant submitted a check to BLM dated November 16, 1981, prior to the anniversary date of the lease, December 1, 1981, as payment for annual rental of oil and gas lease M 35411. This check,

however, identified oil and gas lease "M-34511" as the lease to which the payment was to be applied. This check, received by BLM on November 23, 1981, was returned to appellant with a notice dated November 30, 1981, indicating that lease M 34511, had expired by operation of law on July 31, 1981.

On December 23, 1981, 22 days after the anniversary date of the lease, appellant filed a petition for reinstatement of the lease which was denied by BLM leading to the subject appeal. Appellant acknowledges on appeal that the rental check was misidentified on its face as a result of the transposition of two digits in the lease number. However, appellant asserts that the check was accompanied by a copy of the courtesy notice of rental payment due, which BLM routinely sends to lessees in advance of the anniversary date. This notice correctly identified the serial number of appellant's lease as M 35411. For this reason, appellant contends the lease should be reinstated.

[1] An oil and gas lease on which there is no well capable of production of oil or gas in paying quantities terminates automatically by operation of law upon the failure of the lessee to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit the payment to the proper lease account. Pyro Energy Corp., 69 IBLA 327 (1982); Pacific Transmission Supply Co., 35 IBLA 297, 299 (1978). In the latter case the Board held that lessee met this responsibility by timely filing a letter specifying the lease account to which payment should be applied, thus overcoming its failure to include an identification number on the payment check.

In the Pyro Energy Corp. case, supra, the wrong lease number was affixed by lessee to the rental check and, hence, no rental payment was credited to the lease account by the anniversary date of the lease and the lease was held to have terminated. The appeal before us is distinguished from the Pyro case by the fact that the rental payment was accompanied by the BLM billing notice which properly identified the lease serial number. This billing notice also showed that the remitter (appellant) was the lessee of M 35411 and that the amount of rent due for M 35411 was the same amount for which the check was written. Under the circumstances, we find that the ambiguity created by transposition of the digits in the lease number on the face of the check was resolved and BLM erred in treating the payment as having been made for a lease which had expired and refusing to accept payment. Where appellant demonstrates that the rental payment was timely received and that BLM failed to apply the payment to the lease account indicated under the circumstances, the lease is properly held not to have terminated. See Pacific Transmission Supply Co., supra. Accordingly, on remand BLM should reinstate the lease subject to the condition of payment of the rental by appellant within 30 days of notice from BLM to pay.

We note that the record before the Board is silent as to whether rental for the subsequent lease year from December 1, 1982, to November 30, 1983, was paid on or before the December 1, 1982, anniversary date. Failure to timely pay or tender would be an independent cause of termination of the lease in the absence of a well capable of production or a suspension of the lease.

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 reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

