

DYCO PETROLEUM CORP.

IBLA 83-522

Decided May 22, 1984

Appeal from decisions of the Colorado State Office, Bureau of Land Management, increasing rentals for oil and gas leases C-12671 and C-13367.

Reversed and remanded.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Rentals

Where the Minerals Management Service determines part of a noncompetitive oil and gas lease issued in 1971 to be within an undefined known geologic structure, a decision to increase rental to \$2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production, with a general provision for allocation of production but all the lease acreage is outside the participating area. An increase of rental rate is not appropriate for such a lease where the terms of the lease specifically direct that the rental rate remain at \$0.50 per acre.

APPEARANCES: Carroll T. Rouse, vice president, Dyco Petroleum Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Dyco Petroleum Corporation (Dyco) has appealed from decisions of the Colorado State Office, Bureau of Land Management (BLM), dated March 1, 1983, increasing the rentals for Chevron U.S.A., Inc., for oil and gas leases C-12671 and C-13367 to \$2 per acre or fraction thereof because parts of the lands in the leases have been classified within an undefined known geologic structure (KGS). The record shows that appellant's lease C-12671 had originally issued to a predecessor of appellant on July 1, 1971, and lease C-13367 issued on October 1, 1971, also to a predecessor of appellant for a 10-year term for Federal lands in Garfield County, Colorado. These leases were extended indefinitely due to production in the Mesagar Unit to which the leases had been committed.

The record shows that the Director of the Minerals Management Service (MMS), the successor to the Geological Survey, by memorandum of October 19,

1982, reported that based on the discovery of oil and gas in sec. 25, T. 7 S., R. 101 W., sixth principal meridian, Garfield County, Colorado, certain lands within oil and gas leases C-12671 and C-13367 described as SE 1/4 SW 1/4 and S 1/2 SE 1/4 of sec. 24, and NE 1/4 and E 1/2 NW 1/4 of sec. 25, T. 7 S., R. 101 W., sixth principal meridian, Colorado, are within an unnamed, undefined KGS, effective October 19, 1982, and that the lands described are within the Mesagar Unit. Following this notice BLM issued a decision increasing the rental rate.

On appeal, Dyco challenges both the KGS determination and the increased rental rate. Since the determination of the rental rate issue is case dispositive, we do not reach the question whether the land was properly determined to be within a KGS.

[1] As to the increase in rental rate to \$2 per acre, we find that under the terms of the lease the lease rental rate must remain at \$0.50 per acre. BLM states in its decision: "The lessee is notified that the rental rate will be increased to \$2.00 per acre or fraction thereof for all the lands in the lease effective the first lease year after expiration of this 30-day notice, as provided by Sec. 2(d)(b) of the lease terms." (Emphasis added.) Thus, BLM relied on the lease terms in increasing the rental. However, appellant argues the decision is in "direct controversy" with the lease provisions. Both leases in this case provide at section 2(d)(1):

Rentals. To pay the lessor in advance an annual rental at the following rates:

(a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:

(i) For each lease year a rental of 50 cents per acre or fraction of an acre.

(b) If the lands are wholly or partially within the known geologic structure of a producing oil or gas field:

(i) Beginning with the first lease year after 30 days notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased, \$2 per acre or fraction of an acre.

(ii) If this lease is committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in subparagraph (a) of this section shall apply to the acreage not within a participating area. [Emphasis supplied.]

It is clear that although the BLM decisions cited the lease provision as "Sec. 2(b)(d)," the actual section relied on by BLM was section 2(d)(1)(b)(i). However, the records show in this case that the leases are committed to a unit and it appears that the unit includes a well capable of producing oil or gas (appellant states that Initial Dakota Participating

Area "A" was approved May 27, 1980). Further, a map in the record on appeal shows that neither of these leases are in participating area "A." Under these circumstances the lease language itself specifically provides in section 2(d)(1)(b)(ii) that the rental should continue to be as stated in section 2(d)(1)(a) of the lease. That provision establishes the rental at \$0.50 per acre. Both leases also provide, that, in cases of conflict between the lease terms and regulations of the Department the lease provisions shall control. Thus, the agreements state in part 1 of the offer to lease, that regulations of the Secretary are to be given effect only "when not inconsistent with any express and specific provision herein" (Form 3120-3, Eleventh Edition, Sept. 1968).

Regulations at 43 CFR 3103.3-2(b) (1982) provide, in pertinent part:

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the Act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of \$2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the Act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to acreage not within a participating area.

Thus, Subsection (1) of the quoted regulation provides for increasing the rental to \$2 per acre for the lease. That subsection, however, only applies where a lease is not committed to a cooperative or unit plan which includes a well capable of producing oil or gas. Where a lease is committed to a unit which includes a well capable of producing oil or gas, and there is a general provision for allocation of production, subsection (2) of 43 CFR 3103.3-2 is applicable. Subsection (2) provides that the "rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area." Paragraph (a) of 43 CFR 3103.3-2, however, is not applicable to the situation presented on appeal.

Thus, 43 CFR 3103.3-2(a) provides rental shall be payable:

(a) On noncompetitive leases issued on and after February 1, 1977, under section 17 of the Act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days'

notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of \$1 per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

Paragraph (a) governs leases issued on or after February 1, 1977 (the leases in this case were issued in 1971), and sets the rental at \$1 per acre. Other situations also addressed by the regulation are not applicable here. Paragraph (a) of the regulations was added in a 1977 amendment (42 FR 1033) which raised the rental from \$0.50 to \$1 per acre. Prior to that amendment, 43 CFR 3103.3-2(a) (1976) provided that "leases issued on or after September 2, 1960," would bear an annual rental of \$0.50. In 1976, 43 CFR 3103.3-2(b)(2) contained the same language discussed above -- i.e., a reference back to paragraph (a). Thus, the 1977 amendment to paragraph (a) did not address the leases here involved which issued after September 1, 1960 and, before February 1, 1977. As a result of this hiatus in the regulations, there can be no question that the lease provisions control. Because the leases are committed to a unit with a well capable of production, but all the lease acreage is outside the participating area, under the provision of lease section 2(d)(1), the rental for these two leases may not be increased.

Accordingly, 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 and the case is remanded to BLM for action consistent with this decision.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

