

COLORADO INTERSTATE GAS CO.

IBLA 85-548

Decided November 18, 1986

Appeal from a decision of the Rock Springs District Office, Wyoming, Bureau of Land Management, imposing rental charges for a natural gas pipeline compressor station right-of-way. W 70326.

Set aside and remanded.

1. Act of February 25, 1920--Appraisals--Oil and Gas: Pipelines:
Rights-of-Way--Rights-of-Way: Oil and Gas Pipelines

A decision increasing the annual rental fee for a natural gas pipeline compressor station will be set aside and remanded where there is insufficient information to illustrate how BLM arrived at its new annual fair market rental value.

APPEARANCES: Jeffrey L. Huntley, Esq., for Colorado Interstate Gas Company.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Colorado Interstate Gas Company appeals from a decision dated March 22, 1985, by the Rock Springs District Office, Wyoming, Bureau of Land Management (BLM), giving notice that the increased annual rental charge for right-of-way W 70326 (compressor station) would be \$200 per year for the next 5-year period commencing August 22, 1985.

The right-of-way was granted effective August 22, 1980, and an annual rental of \$25 was listed in the grant as being due for the first 5-year period. The file contains a "Schedule # RRS - 84" (the schedule), dated January 30, 1984, which lists the charges to be applied to various types of rights-of-way in the Rawlins and Rock Springs districts. Highlighted in yellow marker on the schedule is the statement: "First User Sites of 5 Acres or Less \$200/Year." The concluding paragraph reads: "The above values are based on market research and analysis, as presented in a report dated and approved December 6, 1982, and an update dated January 30, 1984, which are on file in the State Office Appraisal Branch. These values are approved for the 1984 calendar year." Also in the file is a March 18, 1985, certification by a BLM realty specialist stating that the new rental of \$200 per year "is applicable according to Instruction Memorandum (IM) No. WY-83-105 dated December 10, 1982." Further, according to a March 18,

1985, report of a telephone conversation, the same realty specialist was advised by the Branch of Appraisal, Wyoming State Office, BLM, to use the schedule as a basis for reappraisal of the rental fee rather than submit an appraisal request.

Appellant has filed a statement of reasons generally disputing BLM's appraisal methods and its fair market value determination. Appellant requests a hearing, stating it has had no opportunity to examine BLM's evidence and calculations.

[1] The applicable regulations provide that the rental fee "shall be based upon the fair market value * * * as determined by appraisal." 43 CFR 2803.1-2(a). The following provision, 43 CFR 2803.1-2(b), allows the imposition of an estimated rental fee where no appraisal has yet taken place, provided that after "receipt of an approved fair market value appraisal the advance rental shall be adjusted accordingly." Regulation 43 CFR 2803.1-2(d)(1) calls for reappraisals of fair market value at least once every 5 years.

In the decision appealed from, the only allusion to appraisal is in the caption which reads: "After Reappraisal Rental Determined." It is apparent from the record that the "reappraisal" consisted of the application of the rental rate in the schedule, but the record contains no evidence as to how the rate was calculated. We note also that the record does not contain IM No. WY-83-105, the authority cited in the March 18, 1985, certification. Consequently, we cannot determine whether BLM's application of the schedule conformed to IM WY-83-105. Further, we note the schedule indicates that BLM's adjustment of the rental is based on market data from 1982 as updated January 1984. The record is silent as to why such schedule is applicable to a March 1985 readjustment. In sum, the record herein does not contain sufficient information to determine whether the adjusted rental rate was based upon fair market value as determined by appraisal, as required by 43 CFR 2803.1-2(a). Therefore, BLM's decision must be set aside and the case remanded. On remand, BLM shall issue appellant a new decision illustrating how it arrived at its adjusted rental rate and supplement the file accordingly. In view of our disposition of this appeal, appellant's request for a hearing is denied.

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 set aside and the case is remanded for action consistent with this opinion.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge

