

NORTHWEST CENTRAL PIPELINE CORP.

IBLA 86-171, 86-172,
86-173

Decided May 21, 1987

Appeals from decisions of the Divide Resource Area Manager, Bureau of Land Management, fixing the rental for rights-of-way W-67248, W-67646, and W-67905.

Affirmed.

1. Appraisals -- Rights-of-Way: Act of February 25, 1920 --
Rights-of-Way: Appraisals

A BLM decision fixing the annual rental for a linear right-of-way issued pursuant to the Mineral Leasing Act, 30 U.S.C. § 185 (1982), in an amount equal to the original rental or last uncontested fee is properly affirmed where the right-of-way was originally issued in 1979 and its rental has become subject to adjustment pursuant to 43 CFR 2803.1-2(d). Said rental in the amount of the original rental or last uncontested fee is applicable, pursuant to Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (1984), during an interim period while BLM prepares new regulations establishing an approved method for appraising linear rights-of-way.

APPEARANCES: J.D. Steelman, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Northwest Central Pipeline Corporation (Northwest Central) has appealed from three decisions of the Divide Resource Area Manager, Bureau of Land Management (BLM), dated October 7, 1985, fixing the rental for natural gas pipeline rights-of-way issued to appellant pursuant to section 28 of the Mineral Leasing Act of 1920, as amended, 43 U.S.C. § 185 (1982). In each decision, the rental fixed by BLM was an adjustment of a previous rental charge that had been computed without regard to the going rate or an estimated rental.

BLM issued the instant decisions after receiving from appellant rental in the amount of \$ 25 for each right-of-way. These \$ 25 payments were accompanied by cover letters to BLM, each dated September 25, 1985, explaining

that such payments were in accordance with Instruction Memorandum (IM) 84-490 (Nov. 28, 1984). BLM found these amounts to be partial payments and responded by issuing the three decisions on appeal, fixing the rentals at \$ 65 for right-of-way W-67248, \$ 80 for W-67646, and \$ 115 for W-67905.

In its statement of reasons, Northwest Central contends that IM 84-490, Change 1, directs BLM to charge a minimum rental of \$ 25 for a 5-year period until such time as new regulations are issued setting forth an approved appraisal method for determining the fair market value of a linear right-of-way. In support of this argument, appellant cites its prior appeals ^{1/} before the Board that were set aside and remanded with instructions to BLM to charge interim rental fees in accordance with Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (1984).

[1] A careful reading of IM 84-490, Change 1, and Northwest Pipeline Corp. (On Reconsideration) reveals that appellant's reliance on these authorities is misplaced. In Northwest Pipeline Corp. (On Reconsideration), the Board directed BLM to refrain from appraising new rights-of-way based on the going rate. ^{2/} Estimated rentals, we held, should be charged for new rights-of-way during an interim period while BLM prepared regulations establishing a method to appraise the fair market value of linear rights-of-way. Although estimated rentals as low as \$ 25 for a 5-year period could be charged during this interim period, the Board stated that no reason exists why this estimate must be used in all cases.

As for "old" rights-of-way, i.e., those rights-of-way issued previously which must be reappraised under 43 CFR 2803.1-2(d), Northwest Pipeline (On Reconsideration) held that BLM should charge "the original rental fee or last uncontested fee." Id. at 211.

In IM 84-490, Change 1, all applicants for new rights-of-way during the interim period were to be charged the minimum rental of \$ 25 for 5 years. Rentals for existing rights-of-way subject to readjustment were to be continued during the interim period at the original rental fee or last uncontested rental fee. The rights-of-way on appeal are "old" rights-of-way, having been issued in October 1979. BLM, therefore, is directed by both case law and IM 84-490, Change 1, to continue charging the rental that appellant has previously paid. The record shows that the decisions on appeal achieve this result. ^{3/}

^{1/} These appeals focused on rights of way W-65472, W-62287, and W-68894 and were docketed as IBLA 83-254, 83-333, and 84-30. The Board's order of Oct. 30, 1984, set aside and remanded these appeals.

^{2/} In Northwest Pipeline Corp., 65 IBLA 245, 249 (1982), "going rate" was defined as "the amount in cash paid by an entity, usually a utility or pipeline company, on a per rod, per pole or per line mile basis to a landowner for the right to place a pipeline, road or other encumbrance on his land."

^{3/} The rental fixed by BLM for right-of-way W-67248 is actually less than the previous rental and reflects the fact that appellant relinquished part of this right-of-way.

As provided by case law and IM 84-490, Change 1, the rentals charged in the decisions on appeal are subject to review and revision after new regulations are issued establishing an approved appraisal method. 4/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Divide Resource Area Manager are affirmed.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness Bruce R. Harris
Administrative Judge

Administrative Judge

4/ On Sept. 5, 1986, BLM published proposed regulations in the Federal Register establishing a rental schedule for most linear rights-of-way. 51 FR 31886.