

UTAH POWER AND LIGHT CO.

IBLA 87-118

Decided September 14, 1988

Appeal from a decision of the Utah State Office, Bureau of Land Management, overruling objections to the readjustment of coal lease U-1358.

Affirmed in part; modified and remanded in part.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

The Federal Coal Leasing Amendments Act, 30 U.S.C. || 201-209 (1982), governs the terms and conditions the Department may impose upon readjustment of leases issued prior to that Act.

2. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

When a coal lessee conducting underground coal operations objects to a provision in a readjusted coal lease establishing a royalty of 8 percent for coal removed by underground methods and argues that conditions warrant the imposition of a royalty rate of 5 percent, the case will be remanded to BLM to allow the lessee the opportunity to establish that conditions warrant a royalty rate of less than 8 percent.

3. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

A BLM decision to increase the amount of bonding required for a coal lease will be affirmed when the increase is consistent with regulatory purposes.

APPEARANCES: Ralph L. Jerman, Esq., Salt Lake City, Utah, for Utah Power and Light Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Utah Power and Light Company (Utah Power) appeals from a decision of the Bureau of Land Management (BLM), dated September 30, 1986, overruling appellant's objections to the readjustment of coal lease U-1358.

On August 1, 1967, coal lease U-1358 was issued to Sentry Royalty Company, a predecessor-in-interest to appellant. At the time the lease was

issued, section 7 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. | 181 (1964), provided that at the end of each 20-year period succeeding the date of the lease the Secretary should readjust the terms and conditions of the lease.

Section 7 of the MLA was amended by section 6(a) of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. | 207(a) (1982), to provide that rentals and royalties and other terms and conditions of the lease are subject to readjustment at the end of the 20-year primary term and at the end of each 10-year period thereafter if the lease is extended.

Section 3(d) of the original lease provides pertinently:

Readjustment of terms. The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.

[1] Utah Power argues that FCLAA applies prospectively and that it does not apply to this lease because this lease was issued before FCLAA was enacted. The Board has consistently held that BLM has the authority to readjust Federal coal leases and that the FCLAA applies to leases issued prior to enactment of FCLAA. *E.g.*, Coastal States Energy Co., 99 IBLA 342, 344 (1987); Ark Land Co., 97 IBLA 241, 243 (1987). The courts have affirmed the Department's position. FMC Wyoming Corp. v. Hodel, 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 772 (1988); Coastal States v. Hodel, 816 F.2d 502 (10th Cir. 1987). We find BLM timely readjusted coal lease U-1358, and that it had the authority to do so in this case.

Under the original lease, the lessee was required to pay a royalty of 15 cents per ton for all coal mined by underground mining methods. The terms of the proposed readjusted lease provide for a royalty payment of 8 percent of the value of the coal removed from an underground mine. Coal removal on this lease is accomplished by underground mining methods. Utah Power asserts that BLM has not provided an explanation to support the royalty rate which was set at 8 percent of the value of coal product, and it has, therefore, acted arbitrarily and capriciously.

Utah Power also argues that difficult mining conditions, particularly in the Hiawatha Seam which is located in coal lease U-1358, warrant a statutorily allowed reduction to 5 percent. In its statement of reasons, appellant describes the difficult mining conditions it encountered in mining the Hiawatha seam, a circumstance previously considered by this Board's opinion in Utah Power & Light Co., 80 IBLA 180 (1984).

[2] Departmental regulation 43 CFR 3473.3-2(a)(3) provides that a lessee shall pay at least 8 percent of the value of coal removed from an underground mine "except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." The Tenth Circuit Court of Appeals in Coastal States v. Hodel, *supra*, found it

was error to fix the readjusted royalty rate automatically at 8 percent for all coal mined by underground methods, because this approach "completely ignores the ensuing proviso in the same regulation that a lesser amount, but not less than 5%, may be set, 'if conditions warrant.'" 816 F.2d at 507.

In light of the holding in Coastal States v. Hodel, we conclude that it is appropriate to remand this case to BLM for an initial determination of whether the conditions, as appellant describes, warrant a royalty rate of less than 8 percent. Kaiser Coal Corp., 103 IBLA 312 (1988). This is consistent with our holding in Utah Power & Light Co., *supra*, which required that there be an initial determination whether difficult mining conditions in the Hiawatha seam warranted a royalty rate of less than 8 percent. *Id.* at 183.

[3] Next, we consider appellant's contention that BLM's increase of the lease bond from \$75,000 to \$100,000 is unreasonable and arbitrary. Utah Power states that a \$200,000 statewide bond covered the lease at a time of substantial production. According to Utah Power, in March of 1986 BLM required a \$75,000 bond for coal lease U-1358. Six months later, accordingly to Utah Power, BLM required a "one-third increase in the bond amount," to \$100,000 (SOR at 8). Utah Power notes that the proposed increase in the bond occurs at a time when there is little coal production.

Utah Power also argues that in setting the coal lease bond amount, BLM failed to follow MMS guidelines. Utah Power states:

In response to appellant's contentions, BLM relies upon the guidelines published on April 23, 1980. Appellant suggests that either those guidelines were not followed in March or they were not followed in September because nothing has occurred which would warrant a further increase in such a short period of time. BLM says in its decision that (1) it would be reluctant to set a bond amount in conflict with promulgated guidelines and (2) that the increase would appear to be due to the increased rental and royalty at readjustment. In answer, appellant points out that in March the royalty was still fifteen cents per ton. Thus, either there was no reason for imposition of the \$75,000 lease bond then or [BLM] then realized that readjustment was imminent and thus took that into consideration. In either case, there is nothing new to warrant a further substantial (one-third) increase.

(SOR at 8-9).

As we stated in Coastal States Energy Co., 81 IBLA 171, 175 (1984), neither the statute nor Departmental regulations provide a specific formula for computing the amount of a bond. However, Departmental regulation 43 CFR 3400.0-5, which defines the term "lease bond," sets out the purpose of posting a bond. It provides,

"Lease bond" means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all

aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or exploration plan.
[Emphasis added.]

43 CFR 3400.0-5. Appellant has not shown that the \$100,000 bond is not necessary to fulfill the purposes set out in the regulation. See Coastal States, supra at 175 (1984). Accordingly, we affirm the decision to set Utah Power's bond at \$100,000, concluding that BLM properly established an appropriate bond.

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 affirmed in part, modified, and remanded in part.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge