

BEARD OIL CO.

IBLA 86-1452, 87-745

Decided November 7, 1988

Consolidated appeals from decisions of the Eastern States Office, Bureau of Land Management, rejecting over-the-counter oil and gas lease offers.

Affirmed.

1. Administrative Procedure: Decisions -- Appeals: Generally -- Rules of Practice: Generally -- Rules of Practice: Appeals: Service on Adverse Party -- Words and Phrases

"Adverse Party." An "adverse party" to a case is one who will be disadvantaged if the agency decision is appealed and if the appellant prevails. A party who is determined by BLM to have priority for two oil and gas leases over another party will be disadvantaged if the latter prevails on an appeal to the Board of Land Appeals and should be named as an "adverse party" in the decision rejecting the latter's offers.

2. Applications and Entries: Filing -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease

When BLM decides to issue a noncompetitive oil and gas lease, it is required to issue the lease to the person first making application for the lease if that person is qualified to hold a lease. Priority of an offer received over-the-counter shall be determined as of the time and date the offer is filed in the proper BLM office. Section 1274.14 of the BLM Manual sets out binding Bureau policy on how to date and time stamp documents, including over-the-counter lease offers received through the U.S. Postal Service or commercial delivery service, and BLM decisions affording priority on the basis of this policy will be affirmed.

3. Applications and Entries: Filing -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease

Under the BLM Manual, any over-the-counter oil and gas lease offer received through the U.S. Postal Service shall be time and date stamped as of the time and date of receipt, with the sole exception that any offer received in the first scheduled receipt of mail during the business day is properly date and time stamped as of the posted beginning hour for the day. In the absence of proof that an offer was in fact received by BLM in the first scheduled receipt of mail, BLM's action to time and date stamp the offer as of the time it was received will not be disturbed.

4. Applications and Entries: Filing -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease

Under the BLM Manual, any over-the-counter oil and gas lease offer received through a commercial delivery source shall be time and date stamped as of the time and date it is actually received.

APPEARANCES: John R. Brown, Assistant Vice President, Beard Oil Company; Jason R. Warran, Esq., Washington, D.C., for Wilfred Plomis, Intervenor/Respondent; Kenneth G. Lee, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

These are consolidated appeals from two separate decisions of the Eastern States Office, Bureau of Land Management (BLM), rejecting over-the-counter oil and gas lease offers filed by Beard Oil Company (Beard) because the lands described in Beard's offers had been leased to Wilfred Plomis, whose offers were ruled to have been filed prior to those of Beard. Beard appeals, contending that its applications should have been considered as being simultaneously filed with those of Plomis and a drawing held to determine priority.

Plomis' oil and gas lease offer ES 34880 was filed with BLM in person, and the date stamp indicates that it was received at 7:30 a.m., May 6, 1985. Beard transmitted oil and gas lease offer ES 34883 to BLM through the U.S. Postal Service, and it was stamped as having been received at 3:27 p.m. on May 6, 1985. By decision dated June 6, 1986, BLM rejected Beard's offer, after having issued a lease to Plomis. Beard's appeal from this decision was docketed as IBLA 86-1452.

On September 24, 1985, Plomis' oil and gas lease offer ES 35401 was filed with BLM in person and was date stamped at 7:30 a.m. Beard's offer ES 35404 was delivered to BLM by Federal Express and was stamped in at 9:54 a.m., also on September 24, 1985. By decision dated July 10, 1987, BLM rejected Beard's offer, after having issued a lease to Plomis. Beard's appeal from this decision was docketed as IBLA 87-745.

[1] As an initial matter, we note that BLM's decisions rejecting Beard's offers, from which these appeals arose, should have named Plomis as an "adverse party" pursuant to 43 CFR 4.413. An "adverse party" to an appeal is one who will be disadvantaged if the appellant prevails before the Board. Clearly, Plomis was an adverse party in Beard's appeals, since Plomis might well lose his leases if Beard were to prevail in its argument that its offers should be considered to have been simultaneously filed with Plomis' offers.

Under 43 CFR 4.413, an appellant is required to serve a copy of his notice of appeal and of any statement of reasons on each "adverse party" named in BLM's decision. The purpose of this requirement is to allow the adverse party the opportunity to defend the correctness of BLM's decision by filing an answer, as provided by 43 CFR 4.414.

Since BLM failed to name him as an adverse party, Plomis was compelled to petition this Board to be allowed to intervene in these appeals as a respondent. This petition was granted, and Plomis has filed his answer. It would not be necessary for an adverse party to take this step if BLM properly discharges its duty of identifying adverse parties in its decisions.

[2] When BLM decided to issue a noncompetitive oil and gas lease, BLM was required under 30 U.S.C. § 226(c) (1982) to issue the lease to "the person first making application for the lease who is qualified to hold a lease." This provision for public domain leases was made applicable to acquired land leases under 30 U.S.C. § 352 (1982). Departmental regulation 43 CFR 3111.1-1(b) makes the following provision for determining the priority of over-the-counter offers:

Priority of an offer received over-the-counter shall be determined as of the time and date the offer is filed in the proper BLM office. Offers to lease which are received in the same mail or over-the-counter at the same time, or during the period established by an opening order or a similar notice shall be considered as having been filed simultaneously.

See also 43 CFR 1821.2-3(a).

Section 1274.14 of the BLM Manual sets out Bureau policy on how to determine the time of filing of documents (including oil and gas lease applications) received through the U.S. Postal Service or commercial delivery service:

[Sec. 1274.14] Filings by Mail or Delivery Services. Filings received through the U.S. Postal Service or commercial delivery services are treated equally with window filings. Times of normal mail receipt are posted on the public bulletin board.

A. Scheduled Mail Receipt. The first scheduled receipt of mail during the business day is date and time stamped as of the posted beginning hour for the day. Scheduled receipt of mail after the posted hours are date and time-stamped as of the posted beginning hour on the next business day.

B. Unscheduled Deliveries. Any unscheduled deliveries by the U.S. Postal Service or a commercial delivery source are stamped with the actual date and time of receipt. The entire delivery is stamped with the same time and date.

These provisions, while admittedly expanding the filing provisions in the regulations, are not contrary to the regulatory procedures. Further, they provide a reasonable mechanism for dealing with the administrative problem of establishing the time of filing of documents sent by mail.

We recognize that the BLM Manual, like BLM Instruction Memoranda, is not promulgated with the procedural protections provided for regulations and therefore does not have full force and effect of law. United States v. Kaycee Bentonite, 64 IBLA 183, 214 (1982); see Schweiker v. Hansen, 450 U.S. 785, 789 (1981). Nevertheless, BLM employees are obliged to follow the terms and instructions of its manual. Further, where BLM adopts agency-wide procedures that are reasonable and consistent with the law, the Board will not hesitate to follow those procedures and to require their enforcement. See Margaret A. Ruggiero, 34 IBLA 171 (1978).

[3] We read section 1274.14 of the BLM Manual to provide that any offer received through the U.S. Postal Service shall be time and date stamped as of the date and time it is actually received, with the sole exception that any offer received in the first scheduled receipt of mail during a business day is properly date and time stamped as of the posted beginning hour for that day.

As noted above, Beard transmitted oil and gas lease offer ES 34883 to BLM through the U.S. Postal Service, and it was stamped as having been received at 3:27 p.m. on May 6, 1985. BLM indicates that scheduled mail delivery for the Eastern States Office is between 10 a.m. and 11 a.m. daily, and that there may be an unscheduled mail delivery in the afternoon. BLM states that Beard's offer arrived in an afternoon unscheduled delivery, and Beard has not alleged otherwise. In the absence of proof that the offer was in fact received by BLM in the first scheduled receipt of mail, we hold that BLM properly date and time stamped lease offer ES 34883 as of the date and time it was actually received, rather than as of the posted beginning hour for the day.

Plomis' offer (ES 34880) was filed at 7:30 a.m., prior to Beard's, and BLM therefore properly issued the lease to Plomis.

[4] We also read this provision cited above to provide that any received through a commercial delivery source shall be time and date stamped as of the time of receipt. This is because commercial delivery services cannot be said to have a regularly scheduled daily delivery, as they deliver documents on an as-needed basis only.

As noted above, Beard's offer (ES 35404) was delivered to BLM by Federal Express, a commercial delivery source, and was properly date and time stamped at 9:54 a.m. on September 24, 1985. Plomis' competing offer (ES 35401) was filed at 7:30 a.m., and BLM properly issued the lease to Plomis.

Beard notes that the oil and gas interests in the lands sought reverted to Federal ownership on May 6 and September 24, 1985, the dates it filed its offers. It complains that BLM's decisions granting priority to offers filed in person when its offices opened deny "equal opportunity for priority to out-of-state offerors competing with land office locals." As noted by Plomis in his answer, although a different policy might indeed make it more convenient for offerors who are located in other parts of the country to compete for priority at a particular BLM office, the absence of such policy in no way precludes competition on an equal footing. This BLM policy only requires the out-of-town offerors to decide if their interest in leasing is sufficient to send an employee or retain a local representative to file their offer.

Beard further states that it had been informed by an officer of BLM, "after carefully questioning on our part, that all offers received in the regular mail, by Express Mail, or Federal Express would be assigned a 7:30 a.m. priority." Beard relates this incident to demonstrate that there was some confusion within BLM, but correctly recognizes that such advice could not confer any rights under the law. 43 CFR 1810.3(c).

Finally, Beard points to an order by the Director of the Eastern States Office in November of 1985 that all filings received on a particular day be treated as simultaneously filed, without regard to the mode of delivery. Although such policy would appear to violate the BLM Manual provision discussed above, we do not need to address its legality in this decision, since the policy was not in effect when Beard submitted its offers, and since the instant decisions were not based on it.

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.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

