

UNITED STATES FUEL CO.

IBLA 87-507

Decided June 27, 1989

Appeal from a decision of the Utah State Office, Bureau of Land Management, requiring submission of increased bond for coal lease. U-51923.

Affirmed.

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

BLM properly increases the bond for a coal lease in accordance with appropriate Departmental guidelines where the lease goes from a nonproducing to a producing status, regardless of whether such production constitutes full development of the leased land.

APPEARANCES: Errol M. Gardiner, Vice President and General Manager, United States Fuel Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The United States Fuel Company (USFC) has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated April 29, 1987, requiring submission of an increased bond in the amount of \$15,000 with respect to coal lease U-51923, in the absence of which the lease might be held for cancellation.

On September 14, 1982, USFC filed an application for an emergency coal lease, seeking authorization to mine the Federal coal in 160 acres of land situated in the NW[^] sec. 20, T. 15 S., R. 8 E., Salt Lake Meridian, Carbon County, Utah, in conjunction with its adjacent underground mining operations known as the King No. 4 mine. In its application, USFC asserted that the coal constituted an "isolated tract of coal" which would otherwise be bypassed in the course of USFC's mining operations. Maps attached to USFC's application indicate that the NW[^] sec. 20 is bounded on the west by land owned in fee simple by USFC, which land encompasses the King No. 4 mine. USFC further stated in its application that it proposed removing the coal by means of "entries" which were "expected to be driven [from the west] to the boundary of the lease tract by August 1983," such that the "[p]roduction of coal from the subject lands could occur as early as August 1984." USFC estimated coal reserves underlying the NW[^] sec. 20 at 2.9 million tons located in three seams, viz., the Hiawatha, A, and B seams averaging 7, 8, and 5 feet, respectively, stating that "[n]o allowance is made for burnt coal which probably exists on protruding points."

In a November 24, 1982, memorandum, the District Mining Supervisor, Minerals Management Service (MMS), reported to the State Director, Utah, BLM, the results of a geologic report prepared at the request of BLM:

The applied for land occupies an isolated peninsula adjacent to the King No. 4 mining operation of [USFC]. Coal on this land can only be mined by [USFC] from an extension of its existing operation which has been producing coal for at least 2 years before the date of the application. If the coal deposit is not mined by [USFC] it will be bypassed in the reasonable[y] foreseeable future. If the tract is leased to the company, mining would commence within 3 years of lease issuance as a part of the sequencing of the King No. 4 underground mine development. It is estimated that the applied for land could contain as much as 1.7 million tons of recoverable coal in three minable beds. This tonnage does not consider a potential for burned coal along the outcrop.

By memorandum dated February 4, 1983, the Chief, Minerals Section, Utah, BLM, requested the District Mining Supervisor to provide "lease bond recommendations." The Minerals Manager, Central Region, MMS, responded by memorandum dated February 22, 1983, stating that: "For this lease, a \$5,000 bond is recommended until that time when mining actually commences on the tract and a determination of production royalties can be made. The adequacy of the bond shall be reviewed and adjusted where necessary."

Subsequently, on April 18, 1985, BLM formally offered the NW[^] sec. 20 in an emergency coal lease sale. By decision dated May 1, 1985, BLM notified USFC that it was the high bidder for coal lease U-51923 and required submission of executed lease forms, the first year's rental, a lease bond in the amount of \$5,000, and other documents within 30 days of receipt of the decision. On May 24, 1985, USFC submitted the required documents, including a personal bond in the amount of \$5,000, which bond was secured by a U.S. Treasury note with a maturity date of May 15, 1986.

By decision dated September 5, 1985, BLM accepted the bond effective as of the date of filing and issued coal lease U-51923 effective October 1, 1985, pursuant to the Mineral Leasing Act, as amended, 30 U.S.C. || 181-287 (1982). Section 3 of the lease provides that: "Lessee shall maintain in the proper office a lease bond in the amount of \$5,000. The authorized officer may require an increase in this amount when additional coverage is determined appropriate."

On June 2, 1986, USFC submitted a substitute personal bond in the amount of \$5,000, which bond was also secured by a U.S. Treasury note with a maturity date of May 31, 1987. By decision dated June 5, 1986, BLM accepted the substitute bond effective as of the date of filing.

Thereafter, by memorandum dated November 26, 1986, the Acting District Manager, Moab District, Utah, BLM, notified the State Director of the results of the "semi-annual update for bonding recommendations" for the Price River Resource Area, Moab District, coal leases, including the subject lease. The Acting District Manager grouped the leases in five classes as

follows: Class 1 - Producing leases with readjustments under protest or appeal, or in court; Class 2 - Any leases with deferred bonus payments due; Class 3 - Coal leases not covered by lease specific bonds; Class 4 - All other producing leases; and Class 5 - All other leases. The subject lease was placed in the last category. In addition, with respect to each lease, the memorandum indicated the existing bond and the recommended bond. For the subject lease, the existing bond was \$5,000 and the recommended bond was "OK," presumably indicating that no adjustment was necessary.

By memorandum dated April 23, 1987, the District Manager, Moab District, notified the State Director that "[c]oal lease U-51923 is a newly producing lease and therefore requires an increase of bond." The District Manager stated that the recommended bond was \$15,000.

In its April 1987 decision, BLM required the submission of an increased bond in the amount of \$15,000 with respect to coal lease U-51923, noting that this amount had been the recommendation of the Moab District Office. BLM further provided that USFC would have "a period of thirty days in which to submit adequate bonding for coal lease U-51923 or to appeal." The decision did not indicate whether the 30-day period was to run from the date of the decision or the date of receipt of the decision by USFC. However, it is clear that BLM intended that the 30-day period run concurrently with the 30-day period for filing an appeal. Thus, we conclude that BLM intended that USFC would have, in accordance with 43 CFR 4.411(a), 30 days from the date of service of the April 1987 BLM decision to submit the increased bond. USFC did not submit the increased bond, but filed a timely appeal on May 20, 1987.

In its statement of reasons (SOR) for appeal, appellant admits that it is currently producing from the subject lease, but contends that the increase in the bond is premature and the amount of the bond is too high. BLM has not filed an answer to appellant's SOR.

[1] At the outset, as we noted in Coastal States Energy Co., 81 IBLA 171, 175 (1984), neither the statute nor Departmental regulations provide a specific formula for establishing the amount of a bond in the case of a coal lease. However, it is clear that a lease bond is generally intended "to assure payment of all obligations under a lease * * * 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," as set forth in 43 CFR 3400.0-5. See Utah Power and Light Co., 104 IBLA 284, 286 (1988). In order to fulfill the objective of this regulation, the Department has over the years promulgated various guidelines for establishing bond amounts. See Coastal States Energy Co., *supra* at 175. At the time of the April 1987 BLM decision increasing the amount of the bond with respect to coal lease U-51923 from \$5,000 to \$15,000, the amount was governed by Instruction Memorandum (IM) No. 86-145.

The April 1987 BLM decision does not explain the basis for the decision to increase the bond amount for coal lease U-51923 from \$5,000 to \$15,000. However, the District Manager's April 1987 memorandum attributes

the increase to the fact that the lease is a newly producing lease. Moreover, IM No. 86-145 provides in attached "Coal and Solid Mineral Bonding Procedures," at page 3, that, in the case of producing leases: "For royalty payments made monthly, the amount of bond shall be sufficient to cover 3 months of estimated royalty, plus 1 year's rent rounded up to the next even \$1,000."

As noted above, appellant does not deny that the lease was producing at the time of the April 1987 BLM decision or that it is still producing. Rather, appellant contends that the bond increase is premature where current production by the 14 East section, which production encompasses only the coal underlying the northwest corner of the leased land, has not defined and will not define the true extent of reserves. Appellant explains that such production is not intended to develop the lease, but rather is intended only to "parallel an igneous dike and facilitate mining by keeping the dike in a barrier pillar," and that the "15 East section is projected to enter the lease and more fully develop the [lease] at a later date." Along with its SOR, appellant submits a map of its current and proposed mining operations, which confirms that the coal underlying the leased land would be developed primarily by the 15 East section, with production from the 14 East section confined to a small area in the northwest corner of the leased land.

Appellant's argument ignores the fact that, although appellant will not know the full extent of coal which can be produced from the leased land until it undertakes full-scale development, appellant has incurred and will continue to incur immediate obligations by reason of its current production and that, in order to assure the performance of those obligations, BLM must now, in accordance with 43 CFR 3400.0-5, hold an adequate bond. Principal among these obligations is the obligation to pay royalty on the production of coal currently being extracted from the leased land, which is assessed at the rate of 8 percent of the value of the coal produced and is payable the final day of the month succeeding the month of production. Accordingly, when the subject lease is currently a producing lease, regardless of whether the leased land is currently subject to full-scale development, we cannot conclude that the bond increase is premature. As MMS presaged in its February 1983 memorandum, the \$5,000 bond was to remain in effect "until that time when mining actually commences on the tract and a determination of production royalties can be made."

Appellant next contends that the amount of the increased bond is too high where it is "doubtful that 1,745,000 tons of recoverable reserves can be mined." Appellant explains that, while the B seam is 5.4 feet thick in the northwest corner of the leased land, it is only 4.8 feet thick just to the west of the leased land, less than the 5-foot thickness required for an economically-minable seam. Appellant also notes that the Hiawatha seam "appears to split up into several thin beds" and that the rock interval between the A and Hiawatha seams "appears to diminish to a thickness too small to allow mining of both seams." Finally, appellant points out that: "The reserve estimate does not account for the possibility of burned coal which is common on protruding ridges. Outcrop investigations have shown that all of the coal outcrops are burned on the east side of the ridge."

Even accepting that the amount of recoverable coal reserves estimated by MMS is not accurate, we are not persuaded that the amount of the bond is too high. Appellant's argument presumes that bond amounts are established on the basis of the total amount of coal which will ultimately be recovered from leased land. That is simply not the case. Rather, bond amounts are set in amounts sufficient to assure the performance of certain obligations which arise under a lease. In the case of production from leased land, the principal obligation which arises as a result of production is the obligation to pay royalty on coal produced from the land. So long as that production continues, BLM must hold a bond adequate to assure the performance of that obligation, thus ensuring that the United States receives accrued production royalties should the lessee fail to make the required payments, regardless of whether less coal may ultimately be recovered from the leased land than originally anticipated. That is the situation here.

Moreover, appellant has not demonstrated that the amount of the bond was otherwise not established commensurate with the guidelines set forth in IM No. 86-145. The burden to establish error in the establishment of the bond amount rests with appellant. Dallas Oil Co., 93 IBLA 218, 220 (1986). Appellant has not satisfied that burden. See Coastal States Energy Co., *supra* at 175.

Accordingly, we conclude that BLM properly increased the bond with respect to coal lease U-51923 from \$5,000 to \$15,000. Cf. Pardee Petroleum Corp., 98 IBLA 20, 22-24 (1987) (oil and gas lease bond).

Therefore, 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.

John H. Kelly
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge