



STANDARD ENERGY CORPORATION

185 IBLA 387

Decided June 24, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

STANDARD ENERGY CORPORATION

IBLA 2013-196

Decided June 24, 2015

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring oil and gas lease UTSL-042322 to have terminated, effective January 14, 2013, by cessation of production.

Affirmed as modified.

1. Oil and Gas Leases: Expiration

An oil and gas lease expires by operation of law upon the conclusion of the 2-year extension afforded the lease upon the termination of the unit to which it had been committed where there was no production (paying or otherwise) on the lease on the anniversary date.

2. Oil and Gas Leases: Suspension

An oil and gas lease, once it has expired, cannot retroactively be suspended when the lessee does not file an application for suspension prior to the lease expiration.

APPEARANCES: Dean W. Rowell, President, Standard Energy Corporation, Salt Lake City, Utah, for appellant; Kent Hoffman, Deputy State Director, Bureau of Land Management, Salt Lake City, Utah, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Standard Energy Corporation (SEC) has appealed from an April 11, 2013, decision of the Utah State Office, Bureau of Land Management (BLM), notifying SEC that competitive oil and gas lease UTSL-042322 (Lease) terminated, effective January 14, 2013, because the wells on the Lease were not capable of production in paying quantities. SEC admits that the wells on the Lease are currently incapable of production in paying quantities and further states that its failure to place the wells in producing status within a reasonable time after receiving notice from BLM in January

2013 was in the company's best financial interest. SEC moves this Board to suspend its Lease, in recognition of the current natural gas market conditions.

Because the record shows that the Lease expired in 2004 and SEC did not seek suspension prior to the Lease's expiration, the Lease cannot now be reinstated and suspended. We therefore affirm BLM's decision, as modified.

Factual Background

BLM's predecessor agency, the General Land Office, originally issued the Lease, situated in the E $\frac{1}{2}$ SW $\frac{1}{4}$, sec. 17 and NE $\frac{1}{4}$ NE $\frac{1}{4}$, sec. 18, T. 26 S., R. 70 E., Salt Lake Meridian, Emery County, Utah, effective June 1, 1943.¹ The record shows that the Lease was held by production on September 7, 1953. The Lease was committed to the Last Chance Unit in 1960 and renewal leases were issued effective June 1, 1963, 1973, 1983, and 1993. See Lease Serial Register Pages. On December 9, 2002, prior to the Lease's May 31, 2003, expiration date, BLM terminated the unit agreement because SEC failed to commence drilling requirements within the unit agreement's specified time frame. See Letter from BLM to Lessee, dated Dec. 9, 2002 (stating that the Last Chance Unit Agreement is "hereby declared *invalid ab initio*"). There is no evidence in the record that the Lease ever joined another unit after that date. See Lease Serial Register Pages.

In a January 9, 2013, letter BLM informed SEC that the agency's records showed that the Lease "is currently not capable of production in paying quantities. There are two shut-in wells in this lease, the Federal #1-X and Federal #1-A. Both wells have been in shut-in status since 1953." Letter from BLM to SEC, dated Jan. 9, 2013. BLM notified SEC that the Lease would automatically terminate unless SEC provided, within 60 days, a well reworking or drilling operations proposal to restore production in paying quantities. *Id.*

SEC received the letter on January 14, 2013. In a response dated February 11, 2013, SEC stated:

After careful examination of your letter we have determined that your requirements will require a full-scale feasibility study to determine the best way to proceed to safely re-enter the wells and determine the economic viability of the Last Chance Field.

¹ The Lease was originally issued pursuant to the Mineral Lands Leasing Act, 30 U.S.C. § 223, for an original term of 20 years with the preferential right to renew the lease for successive periods of 10 years.

As the shut-in wells do not presently leak or otherwise present any hazard, and with the current uneconomic wellhead price of gas of about \$1/CUF at the field, in our review we fail to see the rush to “do something” now.

Based on the current and projected price of Natural Gas we have determined that any reworking of the wells will result in an uneconomical project. Please provide plugging instructions.

Letter from SEC to BLM, dated Feb. 11, 2013. Nothing in the record indicates that SEC at any time applied to BLM for a suspension of operations or production.

In an April 11, 2013, decision, BLM notified SEC that the Lease had terminated, effective January 14, 2013, the date SEC received the notice letter. This appeal followed.

Legal Framework

Under the Mineral Leasing Act (MLA) and BLM’s implementing regulations, when a unit agreement terminates or when a lease included in a unit is removed from that unit, the lease continues for the primary term or for 2 years after termination or removal, whichever is longer, “and so long thereafter as oil or gas is produced in paying quantities.” 30 U.S.C. § 226(m) (2012); 43 C.F.R. § 3107.4. This extension allows the lessee to commence drilling on a lease removed from a unit. *See Oronegro, Inc.*, 156 IBLA 170, 175 (2002) (“The legislative intent of 30 U.S.C. § 226(m) was to require that, where a lease was excluded from a unit and not added to another unit, the lease must thereafter be produced, providing an adequate time of 2 years to do so.”). If the lease does not contain a well that is producing in paying quantities by the end of the 2-year time frame, it expires.

The MLA excuses non-production when BLM has suspended operations or production. Section 39 of the MLA, 30 U.S.C. § 209 (2012), authorizes BLM to suspend operations and production under a mineral lease “in the interest of conservation,” thereby extending the term of the lease for the length of the suspension period. *See* 43 C.F.R. § 3103.4-4. A suspension may be granted, however, only where the company submits an application that provides “a full statement of the circumstances that render such relief necessary” prior to the expiration date of the lease. 43 C.F.R. § 3165.1(a), (b). As we stated in *Harvey E. Yates Co.*, 156 IBLA 100, 105 (2001) (internal citations omitted):

Absent a written application for suspension properly filed before the expiration of the lease, the lease expires. Once the lease expires, there is nothing in existence for the Department to suspend. While the

Department has the authority to retroactively approve a suspension of a lease after the expiration date has passed, it can do so only if a suspension application was properly filed before the lease expired.

Discussion

On appeal, SEC requests that this Board grant a “suspension of oil and gas lease UTSL-042323 There are two shut-in gas wells on the lease. The wells do not presently produce, nor leak or otherwise present any hazards, and with current uneconomic wellhead gas prices, in our view we fail to see the rush to ‘do something’ at this time.” Notice of Appeal and Statement of Reasons (SOR) at 1. Because the Lease expired in 2004, 2 years after BLM terminated the Last Chance agreement, however, there is no lease to suspend, and neither BLM nor the Board can provide the relief requested.

[1] A lease in its extended term other than by production automatically expires when no production has occurred on the lease by its expiration date. In this case, once BLM terminated the unit agreement on December 9, 2002, the Lease “continue[d] in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.” 30 U.S.C. § 226(m) (2012); 43 C.F.R. § 3107.4. Thus, unless SEC could establish production in paying quantities prior to the end of the 2-year time frame, the Lease was set to expire on December 9, 2004, 2 years after BLM terminated the unit agreement. The record shows that SEC had not commenced production by the Lease’s expiration date—the wells have been in shut-in status since 1953—and SEC confirms this in its SOR. See SOR at 1. The Lease therefore expired.

Although BLM’s January 9, 2013, letter cites to 43 C.F.R. § 3107.2-2 and explains that SEC’s Lease would terminate upon cessation of production unless the company took appropriate steps to restore production in paying quantities within 60 days, BLM’s reliance on this regulation, which implements the MLA’s provision on termination, 30 U.S.C. § 226(i) (2012), is misplaced. The regulation at 43 C.F.R. § 3107.2-2 applies only where “[a] lease . . . is in its extended term because of production in paying quantities.” Here, however, the Lease was in an extended term by virtue of its inclusion in a unit agreement, not because wells upon it produced hydrocarbons in paying quantities. Consequently, the Lease does not fall within the purview of section 226(i) or 43 C.F.R. § 3107.2-2. Because no production had been established prior to the end of the 2-year time frame, the Lease cannot be “subject to termination because of cessation of production” at the end of its extended lease term; if there is no production, there can be no “cessation of production.” See *Oronegro, Inc.*, 156 IBLA at 175. The Lease expired in 2004, at the end of the 2-year period.

Moreover, because there was no well on the Lease capable of production in paying quantities, BLM was not required in this case to notify SEC of the Lease's expiration and provide the company 60 days within which to return the wells to producing status. See *Atchee CBM, LLC*, 183 IBLA 389, 408 (2013) (where there is no well capable of production, BLM is "not required to provide notice affording appellants 60 days in which to return the well to producing status"). As we explained in *Ridgeway Arizona Oil Corp.*, 181 IBLA 232, 250 (2011) (quoting *Two Bay Petroleum, Inc.* 166 IBLA 329, 344-45) (2005):

When none of the circumstances that could save a lease from termination materialized in the 60 days following cessation of production, the lease terminated by operation of law as of the date production ceased, not 60 days after [Ridgeway] received the notice BLM has chosen to give lessees in these circumstances pursuant to 43 CFR 3107.2-2.

Where a lease is in an extended term because of its inclusion in a unit agreement, as is the case here, we have previously held that BLM is not required to provide 60 days to allow for the resumption of production. *Oronegro, Inc.*, 156 IBLA at 175, 175 n.9 (noting that "the 2-year period is in lieu of the 60-day period, not in addition to it" and that "the extension afforded by section 17(i) of the Mineral Leasing Act and 43 CFR 3107.2-3 is restricted to a lease which has a paying well").

BLM's January 13, 2013, notice and April 11, 2013, decision, therefore, were not required before the Lease could expire.² However, because BLM issued such notice and a subsequent decision, we affirm BLM's determination that the Lease was no longer in effect.

[2] We construe the relief that SEC is seeking--suspension of its expired Lease--as a request for lease reinstatement and subsequent suspension. Lease reinstatement is controlled by section 31 of the MLA, 30 U.S.C. § 188(c) (2012), and is permitted only where a lease terminates automatically by law for failure to pay

² Because BLM, in issuing its Jan. 9, 2013, notice, erroneously indicated that the Lease could be extended if SEC demonstrated there was a well capable of production in paying quantities, BLM could not have been bound by this statement. See 43 C.F.R. § 1810.3(b) (the United States is not bound or estopped by an act of its officers or agents when the effect of such act would be to grant an individual a right not authorized by law).

rental.³ Here, SEC's Lease did not terminate for failure to pay rental—it expired. Thus, it is not subject to reinstatement. Further, even if SEC's Lease could be subject to reinstatement (which it is not), an application for suspension must be filed with BLM, *see* 43 C.F.R. § 3165.1(a), and there is no evidence in the record that demonstrates that SEC filed such an application. *See Mobil Producing Texas and New Mexico, Inc.*, 99 IBLA 5, 8 (1987) (“[I]t is well settled that in order to allow approval of a suspension, an application therefor must be filed prior to expiration of the lease.”). Moreover, the Department has no authority to accept and grant an application for retroactive suspension of operations and production for an expired Federal oil and gas lease. *See Harvey E. Yates Co.*, 156 IBLA at 105 (“Once the lease expires, there is nothing in existence for the Department to suspend.”); *cf. Ron Coleman Mining, Inc.*, 172 IBLA 387, 393 (2007) (“Once a lease expires, there is nothing in existence for BLM to renew.”).

Based on our determination that the Lease at issue expired in 2004 for lack of production 2 years after termination of the unit agreement, and is therefore no longer in effect, we conclude that neither BLM nor the Board has the ability to now reinstate and suspend the Lease.

Conclusion

Section 226(m) of the MLA directs that a lease that has continued beyond its primary term because of inclusion in a unit agreement will expire 2 years after the agreement is terminated, unless production is established in paying quantities or the lessee requests a suspension prior to the lease's expiration. Here, the wells on SEC's Lease have been in shut-in status since 1953 and no production has occurred. The Lease therefore expired by operation of law in 2004, 2 years after BLM terminated the unit agreement, and where SEC did not timely seek suspension. Because the Lease has expired, neither BLM nor this Board can now provide SEC with the relief it seeks.

³ In limited circumstances, the Secretary, through BLM, may reinstate a lease that has terminated by operation of law for failure to pay rent, upon petition by the lessee, e.g., if “such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.” 30 U.S.C. § 188(c) (2012).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
James F. Roberts
Administrative Judge