



ANADARKO PETROLEUM CORPORATION
(ON RECONSIDERATION)

188 IBLA 127

Decided August 3, 2016



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Interior Board of Land Appeals
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ANADARKO PETROLEUM CORPORATION
(ON RECONSIDERATION)

IBLA 2014-168-1

Decided August 3, 2016

Motion for reconsideration of the Board's decision in *Anadarko Petroleum Corp.*, 187 IBLA 77 (2016), affirming an order, regarding an Outer Continental Shelf oil and gas lease, directing the appellant -- a former lessee that assigned its interests in the lease in 1984 -- to perform decommissioning and to immediately undertake maintenance pending completion of decommissioning. OCS-G 04827.

Reconsideration denied.

1. Rules of Practice: Appeals: Reconsideration

The Board may grant reconsideration when the party seeking reconsideration provides information that invalidates the premise upon which the Board based its decision.

2. Rules of Practice: Appeals: Reconsideration

Implicit in the concept of "reconsideration" is the general principle that the Board would be considering an issue we previously addressed. Where (1) the petitioner for reconsideration had a reasonable opportunity to previously present its new legal argument in its original appeal to the Board, yet it chose not to do so, and (2) the petitioner has not provided a valid reason for untimely raising its new legal argument on reconsideration, and (3) the Board's decision was premised on the arguments the petitioner actually raised in its original appeal to the Board, we will deny reconsideration.

APPEARANCES: L. Poe Legette, Esq. and Carey R. Gagnon, Esq., Baker and Hostetler LLP, Denver, Colorado, for Anadarko Petroleum Corp.; Eric Andreas, Esq., U.S. Department of the Interior, Office of the Solicitor, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Anadarko Petroleum Corporation (the petitioner) filed a motion for reconsideration of the Board's decision in *Anadarko Petroleum Corp.*, 187 IBLA 77 (2016).

Summary

The Board may reconsider its decision in “extraordinary circumstances,” including where the party seeking reconsideration has shown that the premise of the Board's decision was not valid. Here, the Board's decision was based on the arguments the petitioner previously raised before the Board. In its motion for reconsideration, the petitioner raises new legal arguments it could have previously raised before the Board, but chose not to do so. In this circumstance, the petitioner does not show that the premise of our previous decision was invalid or that there are any other extraordinary circumstances that warrant reconsideration, and we will deny reconsideration.

Standard of Review for Reconsideration

[1] The Board may reconsider its decision under “extraordinary circumstances.”¹ Under the Board's regulations, extraordinary circumstances that may warrant granting reconsideration include, but are not limited to: (1) error in the Board's interpretation of material facts; (2) recent judicial development; (3) change in Departmental policy; or (4) evidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the Board's decision.² The Board has also exercised its authority to reconsider a decision due to extraordinary circumstances when the petitioner provided information that invalidated the premise upon which the Board based its decision.³ As a general principle, however, the Board will not grant a motion for reconsideration where an appellant simply failed to raise arguments during the original appeal, and provides no satisfactory explanation for why it declined to raise such arguments initially.⁴

¹ 43 C.F.R. § 4.403(b).

² 43 C.F.R. § 4.403(d).

³ *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 365 (2013); *Art Anderson (On Reconsideration)*, 182 IBLA 27, 30 (2012); *Debra Smith (On Reconsideration)*, 180 IBLA 107, 108 (2010); *Ulf T. Teigen (On Reconsideration)*, 159 IBLA 142, 144 (2003).

⁴ See *Kathleen Ness (On Reconsideration)*, 188 IBLA 63, 65 (2016).

We have held that a petitioner fails to establish extraordinary circumstances when it did “not specifically address the rationale for our ruling set forth in our . . . decision.”⁵ And we have held that a petitioner fails to establish extraordinary circumstances when it “does not even acknowledge, much less address, the primary authorities on which our decision was predicated”⁶

The Board’s Decision Affirming BSEE’s Decommissioning Order

On March 7, 2014, the Bureau of Safety and Environmental Enforcement (BSEE) issued an order concerning South Timbalier Block 77 (ST 77), in the Gulf of Mexico’s Outer Continental Shelf (OCS).⁷ The petitioner had acquired its interests in the Lease⁸ in 1981 and assigned its entire interest in the Lease in 1984.⁹ BSEE’s order directed the petitioner, as a former co-lessee under the Lease, to decommission wells, pipelines, platforms, and other facilities, and to immediately undertake maintenance of the facilities and wells on the Lease pending completion of decommissioning.¹⁰

The Board held that, under the terms of the Lease, the current regulations apply to the petitioner, including the current assignment regulation, at least to the extent it concerns decommissioning obligations.¹¹ More specifically, we held that the petitioner is subject to the current decommissioning regulations.¹² We rejected the petitioner’s argument that BSEE’s order was deficient because all the assignees subsequent to the petitioner had not yet failed to perform their obligations (*i.e.*, reverse sequential liability).¹³

Alternatively, we held that even if the Board were to disregard the current regulations, we would conclude that the petitioner must still carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease.¹⁴ The petitioner had argued that the 1984 assignment regulation, which

⁵ *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA at 365 (quoting *Debra Smith (On Reconsideration)*, 180 IBLA at 108)).

⁶ *Id.*

⁷ *Anadarko*, 187 IBLA at 78.

⁸ OCS-G 04827.

⁹ *Anadarko*, 187 IBLA at 79.

¹⁰ *Id.* at 78-79.

¹¹ *Id.* at 85.

¹² *Id.* at 87-90.

¹³ *Id.* at 85, 90-93.

¹⁴ *Id.* at 85.

was in effect at the time the petitioner assigned its interests in the Lease, did not impose what it characterized as “residual contingent decommissioning obligations” on assignors.¹⁵ The Board held that the assignment regulation which was in effect in 1984,¹⁶ when read in conjunction with the Lease (Section 22, which required decommissioning within 1 year after termination of the Lease), did not absolve the petitioner of the decommissioning obligations it accrued under the Lease.¹⁷

*Anadarko’s New Argument, That Decommissioning Obligations
Did Not Accrue Until Performance Was Required, Does Not Constitute
Extraordinary Circumstances Warranting Reconsideration*

For reconsideration, the petitioner presents a wholly new argument: that decommissioning obligations only accrue at the time when performance of the decommissioning obligations is required.¹⁸ In this matter, another party -- ATP Oil & Gas Company (ATP) -- began decommissioning in 2012, which was long after the petitioner assigned its interests in the Lease in 1984.¹⁹ Anadarko cites this fact to establish the date that decommissioning was first required -- 2012. If we were to accept this theory, the petitioner would have never accrued any decommissioning liability because it did not have any interests in the Lease in 2012 (having assigned its interests in 1984, long before 2012), and so it could not be held liable for an obligation it never accrued. This argument, if successful, would render moot the petitioner’s extensive previous arguments to the Board about its assignment eliminating liability, and its alternative argument that BSEE, under the current regulations, could not direct it to carry out decommissioning since not all subsequent assignors had failed to carry out their decommissioning obligations (its reverse sequential liability argument). In our decision, we briefly mentioned another case in which we concluded that a “former lessee’s decommissioning obligations accrued when [the former lessee] acquired its interest in the lease and survived lease termination . . . ,” but only in the context of rejecting the petitioner’s reverse sequential liability argument,²⁰ and the petitioner does not challenge our rationale for ruling against this argument.

In its reply brief, the petitioner has pointed to a few historical instances, from 1978 to 1989, in which the Board considered what appears to have been wholly new

¹⁵ *Id.* at 84.

¹⁶ 30 C.F.R. § 256.62(d)-(e) (1984).

¹⁷ *Anadarko*, 187 IBLA at 85-87.

¹⁸ Motion for Reconsideration at 4-12.

¹⁹ *Anadarko*, 187 IBLA at 82-83.

²⁰ *Id.* at 93 (citing *Fairways Offshore Exploration, Inc.*, 186 IBLA 58, 67-68 (2015)).

arguments on reconsideration, in cases where no new evidence was presented, no new judicial developments had occurred, and no change in Departmental policy had occurred subsequent to the Board's decisions.²¹ The Board's rule and practice concerning reconsideration has evolved since then.²² It is notable and understandable, then, that the petitioner has not found recent Board case law in which we granted reconsideration under those same circumstances. Moreover, our reconsideration rule does not include mandatory language requiring reconsideration even when there are extraordinary circumstances, but instead permissively provides, "The Board *may* reconsider its decision in extraordinary circumstances."²³

[2] Implicit in "reconsideration" is the general principle that the Board would be considering an issue we previously addressed. Here, the petitioner had the opportunity to present the legal argument it is now raising that it could have raised in its extensive, earlier briefing before the Board, yet it chose not to do so. Indeed, the petitioner admits it is raising "additional legal authorities and perspectives -- not presented by either party in initial briefing -- on the Department's established understanding of the meaning of 'accrued' in the [OCS] [L]ease and regulations."²⁴ The Board premised its decision on arguments the petitioner raised before the Board, and therefore we did not consider the performance accrual theory now advanced by the petitioner.²⁵ We thus conclude the petitioner has not demonstrated that the premise upon which the Board based its earlier decision is invalid or that any other extraordinary circumstances exist that warrant reconsideration.

On reconsideration, the Board may consider "[e]vidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in

²¹ Reply Brief at 3 (citing *Joan Chorney (On Reconsideration)*, 109 IBLA 96 (1989)); *id.* at 4 (citing *United States v. James M. Mills (On Reconsideration)*, 94 IBLA 59 (1986)); *id.* at 7 (citing *Amoco Production Co. (On Reconsideration)*, 35 IBLA 43 (1978)).

²² See, e.g., 43 C.F.R. § 4.403 (revised reconsideration rule); *Kathleen Ness (On Reconsideration)*, 188 IBLA at 65-66; *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA at 365.

²³ 43 C.F.R. § 4.403(b) (emphasis added); see also 43 C.F.R. § 4.403(d) ("Extraordinary circumstances that *may* warrant granting reconsideration include") (emphasis added).

²⁴ Motion for Reconsideration at 3.

²⁵ Cf. *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA at 365 (petitioner for reconsideration presented arguments raised in the original appeal to the Board, but the Board denied reconsideration because the petitioner failed to address the primary authorities constituting the premise of the Board's decision).

the decision.”²⁶ In such circumstances, a petitioner must explain why the evidence was not provided to the Board during the course of the original appeal.²⁷ Departmental regulations also recognize extraordinary circumstances in light of “[e]rror in the Board’s interpretation of material facts,” a “[r]ecent judicial development,” or a “[c]hange in Departmental policy.” None of these circumstances are present here.

The petitioner emphasizes the “significance” of the issues it raises and the need to provide the Board with the best advocacy possible.²⁸ As we recently explained, “motions to reconsider are designed to permit relief in extraordinary circumstances; they are not a vehicle to revisit issues already addressed or to advance arguments that could have been raised in prior briefing, but were not.”²⁹ As a general principle, the Board will not grant a motion for reconsideration where an appellant simply failed to raise arguments during the original appeal, and provides no explanation demonstrating extraordinary circumstances for declining to raise them initially.³⁰

We are guided by current Departmental regulations and recent Board precedent in declining to find, in the petitioner’s assertions, the extraordinary circumstances necessary to grant reconsideration for the purposes of considering untimely arguments.

*Anadarko’s New Argument,
About the Board’s Ruling on the Retroactivity of the New Regulations,
Does Not Constitute Extraordinary Circumstances Warranting Reconsideration*

Alternatively, the petitioner challenges the Board’s determination that the new regulations apply on the basis that the statute -- OCSLA³¹ -- does not allow the regulations to apply retroactively.³² The parties already discussed the new regulations in their prior briefing, yet the petitioner failed to previously raise its argument against retroactivity. Moreover, in the Board’s decision, we extensively analyzed the issues of the applicability of the new regulations, citing, in addition to statutory authority, a Federal Circuit court opinion in an OCSLA case, and Board

²⁶ 43 C.F.R. § 4.403(d)(4).

²⁷ 43 C.F.R. § 4.403(e).

²⁸ Motion for Reconsideration at 3.

²⁹ *Kathleen Ness (On Reconsideration)*, 188 IBLA at 65.

³⁰ *Id.* at 66.

³¹ Outer Continental Shelf Lands Act.

³² Motion for Reconsideration at 19-24.

precedent, including a decision pertaining to the OCSLA and concerning the petitioner.³³ Nevertheless, in its motion for reconsideration, petitioner ignores these cited authorities foundational to our decision. Petitioner has not demonstrated that the premise for our decision on this point was in error.³⁴

In sum, the Board premised its decision on the arguments the petitioner presented to the Board on appeal. Anadarko has not provided sufficient justification for the Board to find the extraordinary circumstances necessary to reconsider our decision on the basis of newly-presented arguments or factual or legal error on which our decision was premised.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,³⁵ we deny petitioner's motion for reconsideration.

_____/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/
Amy B. Sosin
Administrative Judge

³³ *Anadarko*, 187 IBLA at 87-88 (citing *Century Exploration New Orleans, LLC v. U.S.*, 745 F.3d 1168, 1176-77 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1175 (2015); *Anadarko*, 183 IBLA 1, 12 (2012); *Nexum Petroleum*, 157 IBLA 286, 300 (2002), *aff'd*, Civ. No. 02-3543 (E.D. La. Mar. 31, 2004), *appeal dismissed*, No. 04-30435 (5th Cir. Dec. 6, 2004)).

³⁴ See *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA at 365 (denying reconsideration where the petitioner failed to rebut the authorities the Board relied upon in its decision).

³⁵ 43 C.F.R. § 4.1.