



EP ENERGY E&P COMPANY, L.P.

188 IBLA 156

Decided August 12, 2016



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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EP ENERGY E&P COMPANY, L.P.

IBLA 2014-83

Decided August 12, 2016

Appeal from a letter-order of the Regional Director, Gulf of Mexico OCS Region, Bureau of Safety and Environmental Enforcement, requiring the decommissioning of all wells, pipelines, platforms, and other facilities associated with an Outer Continental Shelf oil and gas lease. OCS-G 21058.

Affirmed.

1. Oil and Gas Leases: Decommissioning;  
Outer Continental Shelf Lands Act: Oil and Gas Leases:  
Decommissioning

Where an Outer Continental Shelf oil and gas lease has terminated, by operation of law, upon the cessation of production following its initial term, BSEE properly requires the former lessee to decommission all wells, pipelines, platforms, and other facilities associated with the lease, including those that existed at the time of issuance of the lease. The former lessee's liability is not diminished by the fact that the former owners of operating rights are also jointly and severally liable for satisfying the decommissioning obligation under the regulations. Nor is the former lessee's obligation to decommission diminished by its transfer of all operating rights or even cessation of all oil and gas leasing activity in the Outer Continental Shelf. There are no regulatory exceptions for such circumstances barring BSEE's enforcement.

APPEARANCES: David H. Quigley, Esq. and Paul E. Gutermann, Esq., Washington, D.C., for appellant; Eric Andreas, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

## OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

EP Energy E&P Company, L.P. (formerly, El Paso Production GOM, Inc.) (EP Energy) has appealed from a November 13, 2013, Letter-Order of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service (MMS), predecessor to the Bureau of Safety and Environmental Enforcement (BSEE), requiring it, as the “former [ ]lessee” of Outer Continental Shelf (OCS) oil and gas lease OCS-G 21058 (Lease), to fully decommission “all wells, pipelines, platforms, and other facilities” associated with the Lease. Letter-Order at 1. The Lease encompasses all of Block 557, West Cameron Area, South Addition, in the Gulf of Mexico (Gulf), off the coast of Louisiana.<sup>1</sup>

At issue is whether BSEE properly allocated responsibility for decommissioning the Lease to EP Energy. EP Energy asserts that BSEE erred in holding it responsible for decommissioning because BSEE must look initially or exclusively to the operating rights owners, who are co-responsible with EP Energy, because they are the parties directly responsible for operating the wells or other offshore facilities under the Lease. As discussed below, we find no legal support for this proposition. The applicable regulations place joint and several responsibility on the lessee and others. Here, EP Energy was the lessee, indeed, the sole lessee during the entire Lease term. Therefore, irrespective of the responsibilities of other parties, the regulations clearly place the post-lease termination responsibility for decommissioning Platform C and Well C001, two facilities established under a previous lease, upon EP Energy--the lessee of the Lease, and BSEE did not err in holding EP Energy so responsible. Finding that EP Energy has failed to establish any error of fact or law in the Letter-Order, we affirm that decision.

*I. Background on the Lease and Letter-Order**A. The Lease*

The Lease was issued effective May 1, 1999, to Sonat Exploration GOM, Inc. (Sonat), for a term of 5 years, and so long thereafter as oil or gas was produced in paying quantities or drilling or well reworking operations were conducted, pursuant to

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<sup>1</sup> References herein to BSEE include BSEE and MMS, as appropriate.

the Outer Continental Shelf Lands Act (OCSLA).<sup>2</sup> Sonat changed its name to El Paso Production GOM, Inc., effective October 25, 1999. At the time of lease issuance, the Lease encompassed an existing platform (C) and two wells drilled from the platform (C001 and C003). Well C003 is not mentioned in the Regional Director's November 2013 Letter-Order, and is not at issue in this appeal. EP Energy reports that Platform C was installed under a previous lease, OCS-G 05347, on January 1, 1986, and that Well C001 was spudded on February 21, 1985, reaching a true vertical depth (TVD) on May 9, 1985.<sup>3</sup> It began oil and/or gas production in September 1990.<sup>4</sup>

ATP Oil and Gas Corporation (ATP) had been the designated operator of the Lease, as to the NE1/4 of Block 557, West Cameron Area, South Addition, since March 10, 2006, when it succeeded Millennium Offshore Group, Inc. (Millennium). Under Departmental regulations, an *operator* is designated by the lessee to control and manage operations on the leased area, as distinguished from an *owner of operating rights*, who holds an interest in a lease, obtained from the lessee, entitling it to explore for, develop, and produce the leased substances.<sup>5</sup> During the life of the Lease, a portion of the operating rights under the Lease were held, with the Department's approval, by one or more parties.<sup>6</sup> The assignment of operating rights to each of the wells necessarily carried with it the corresponding right to use Platform C. The operating rights at issue encompassed the NE1/4 of Block 557, West Cameron Area, South Addition, from the surface down to 100 feet below the stratigraphic equivalent of the base of the Lentic 4 Sand, as encountered at a depth of 14,250 feet Measured Depth (MD) (14,050 feet TVD) on the Induction-SFL Log for the Enron Oil & Gas Company OCS-G 5347 Well No. C-3, Sidetrack No. 1 in West Cameron Block 557 (hereinafter, NE1/4 Block 557 Lentic 4 Sand). By the time of the July 30, 2006, termination of the Lease, the operating rights in the NE1/4 Block 557 Lentic 4 Sand

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<sup>2</sup> 43 U.S.C. §§ 1331-1356a (2012); see Serial Register Page (SRP), OCS-G 21058, dated Apr. 1, 2014; Lease Chronological History (Notice of Appeal/Petition for Stay (NA/Petition), Exhibit (Ex. 2)); Statement of Reasons for Appeal (SOR), Ex. 3.

<sup>3</sup> See Answer at 1; SOR at 4; Reply to Response to Petition for Stay (Reply to Response) at 2-3; Borehole/Completions, Lease OCS-G 21058, dated Apr. 1, 2014; Specified Well Completions Report, dated Jan. 7, 2014 (SOR, Ex. 13), at 2, 3.

<sup>4</sup> *Id.*

<sup>5</sup> See 30 C.F.R. § 250.105 (“*Operating rights*”); 30 C.F.R. § 250.108 (1999) (*Designation of operator*); Surreply in Support of Answer (Surreply) at 3; Designation of Operator (ATP by Millennium), dated Mar. 10, 2006 (SOR, Ex. 9); Assignment of Operating Rights and Bill of Sale, dated Mar. 10, 2006 (SOR, Ex. 8), at 1.

<sup>6</sup> See SOR at 2-3; SOR, Exs. 5, 6, 8, 9, 10, 11.

were held by the ATP (56.21249%), Millennium (36.72501%), and Devon Energy Production Co., L.P. (Devon) (7.06250%).<sup>7</sup> The Lease terminated, by operation of law, on July 30, 2006.<sup>8</sup>

### B. *The Letter-Order*

On November 13, 2013, the Regional Director issued the Letter-Order, requiring EP Energy to fully decommission all wells, pipelines, platforms, and other facilities associated with the Lease “by November 15, 2014.”<sup>9</sup> The Letter-Order stated BSEE had not taken action to require the decommissioning of the Lease sooner, since the Department afforded the operator (ATP), “shortly after” termination, a “right-of-use and easement” (OCS-G-30006) that allowed it to use Platform C “to process off-lease production [from Lease OCS-G 05346, West Cameron Block 557, Well No. B004, and produce Lease OCS-G 05391, East Cameron Block 299, Well Nos. C007 and C010],” pursuant to 30 C.F.R. §§ 550.160-550.166 (formerly, 30 C.F.R. §§ 250.160-250.166 (2006)).<sup>10</sup>

The Letter-Order explained that ATP, the “current lessee,” had been authorized, by a June 20, 2013, order of the U.S. Bankruptcy Court for the Southern District of Texas, in *In re: ATP Oil & Gas Corporation*, No. 4:12-bk-36187 (Bankr. S.D. Tex.), “to abandon or relinquish its obligations relating to the” Lease, and ATP had later notified BSEE, by letter dated July 8, 2013, that, effective immediately, it would no longer perform any decommissioning activities related to the Lease, thereby leaving EP Energy, as the “former co-lessee,” with all of the decommissioning obligations that it had accrued, under 30 C.F.R. § 250.1702.<sup>11</sup> Contrary to record evidence, the Letter-Order refers to EP Energy as the “former co-lessee” of the Lease, and ATP as the “current lessee,” although EP Energy was the sole lessee throughout the life of the Lease, and ATP was the Lease operator and a holder of operating rights.<sup>12</sup>

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<sup>7</sup> See *id.* at 4.

<sup>8</sup> See Letter to BSEE from ATP, dated Sept. 12, 2006 (attached to Reply to Response), at 1.

<sup>9</sup> Letter-Order at 1.

<sup>10</sup> Answer at 4; see *id.* at 4-5; Lease, § 22, at 4 (“[T]he Lessee may, with the approval of the [Department], continue to maintain devices, works, and structures on the leased area for drilling or producing on other leases”); Letter to ATP from MMS, dated Dec. 8, 2006 (Part of Ex. 16 attached to SOR), at 1.

<sup>11</sup> *Id.*

<sup>12</sup> See Order, IBLA 2014-83 (July 11, 2014) (citing Answer at 3).

The Letter-Order required EP Energy to undertake “the safe and orderly winding down of all functions associated with all facilities and infrastructure *for which you are responsible* from the date of this notice until decommissioning is complete.”<sup>13</sup> It specifically demanded that EP Energy initiate steps leading to the decommissioning of the Lease, in accordance with 30 C.F.R. Part 250: (1) immediately maintain all offshore facilities pending the completion of decommissioning, including securing all shut-in wells; (2) promptly submit a decommissioning schedule; (3) expeditiously submit an Application for Permit to Modify (APM) for the permanent abandonment of Well C001, under 30 C.F.R. § 250.1712; and (4) expeditiously submit a decommissioning application for Platform C, under 30 C.F.R. § 250.1727.<sup>14</sup>

## *II. Arguments of the Parties on Appeal*

EP Energy timely appealed, petitioning for a stay of the effect of the Regional Director’s November 2013 Letter-Order, requiring it to initiate efforts to decommission all wells, pipelines, platforms, and other facilities associated with the Lease, during the pendency of the appeal. In addition to its NA/Petition, EP Energy has filed an SOR in support of its appeal, as well as a Reply, responding to BSEE’s Answer. Finally, BSEE has filed a Surreply to EP Energy’s Reply.

Pursuant to 30 C.F.R. § 290.7, BSEE’s Letter-Order was immediately effective, and remained in effect during the pendency of the appeal, expressly obviating the automatic stay afforded by 43 C.F.R. § 4.21(a). Nevertheless, under the Department’s rule at 30 C.F.R. § 290.7(c), the Board was authorized to adjudicate EP Energy’s petition for stay under 43 C.F.R. § 4.21(b), and did so. By Order dated July 11, 2014, the Board denied EP Energy’s petition to stay the effect of the Letter-Order.<sup>15</sup>

On appeal, EP Energy does not deny that it was the holder of the 100-percent record title interest in the Lease, from its May 1, 1999, issuance, until its July 30, 2006, termination. Nor does it dispute that the facilities at issue existed on the Lease when it acquired record title interest in the Lease; that the Lease terminated on July 30, 2006; that Well C001 has not been permanently plugged and abandoned; that Platform C remains; and that the Lease has not otherwise been fully decommissioned, in accordance with 43 C.F.R. Part 250, Subpart Q.

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<sup>13</sup> Letter-Order at 1 (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> Order, IBLA 2014-83 (July 11, 2014).

Acknowledging responsibility, EP Energy asserts that BSEE's Letter-Order also "should have included, if not been directed solely to, Millennium and Devon," which, along with ATP, were the current operating rights owners at the time of termination of the Lease.<sup>16</sup> EP Energy considers the operating rights owners "co-responsible" parties, who are "jointly and severally responsible for meeting decommissioning obligations,"<sup>17</sup> under 30 C.F.R. § 250.1702, and contends that BSEE can and should call upon any of them "to fulfill its decommissioning demands," instead of El Paso, since El Paso transferred "operational control" of the relevant portion of the Lease on December 18, 2003, and held no such control during the remainder of the Lease term.<sup>18</sup> EP Energy states that, "[w]hile ATP is currently in bankruptcy, Devon is a major operator in the Gulf of Mexico and in a substantially better position to address the[] decommissioning issues than EP Energy."<sup>19</sup> It notes that BSEE issued a "similar 'order to decommission'" to Devon on January 24, 2014.<sup>20</sup> Devon filed an appeal, docketed as IBLA 2014-154, from that order. That appeal is in a suspended status before the Board. BSEE states that "Millennium is no longer an extant company," and we have no information indicating that BSEE issued such an order to Millennium.<sup>21</sup> El Paso states that it currently has no operating rights interest in Well C001 or Platform C, and no longer has any presence in the Gulf, and that, therefore, it would be unable to implement the November 2013 Letter-Order.<sup>22</sup>

In its SOR, EP Energy asserts that "[t]he structure and intent of the relevant OCSLA regulations is to require decommissioning by the *then-current owner [of operating rights] or operator at the time of lease termination,*" since the regulations, as well as the Lease, require all wells be plugged and abandoned and all platforms and

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<sup>16</sup> NA/Petition at 3; *see id.* at 4; SOR at 4; Reply to Answer at 5-6 ("BSEE should look first to any designated operator at the time of lease termination to perform the decommissioning obligations. . . . If, and only if, no operator is able to perform the obligations should BSEE look to EP Energy.").

<sup>17</sup> *Id.* at 2-3 (citing *Nippon Oil Exploration U.S.A. Ltd. v. Murphy Exploration & Production Co.—USA (Nippon)*, 2011 U.S. Dist. LEXIS 63445 (E.D. La. June 15, 2011)); *see* SOR at 4-5 (citing *In re Tri-Union Development Corp. (Tri-Union)*, 314 B.R. 611, 616 (Bankr. S.D. Tex. 2004)), 4.

<sup>18</sup> *Id.* at 2-4.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Reply to Response at 3; *see* SRP, OCS-G 21058, at 2; Ex. 14 (attached to SOR).

<sup>21</sup> Answer at 4 n.22.

<sup>22</sup> NA/Petition at 2 (quoting *Tri-Union* at 616), 4.

other facilities removed within one year of lease termination.<sup>23</sup> It concludes that, by one year following Lease termination, BSEE should have required ATP, Millennium, and Devon to undertake decommissioning, and, having failed to do so, BSEE now should “focus its enforcement resources on parties *other than EP Energy*.”<sup>24</sup>

BSEE points to the regulatory language of 30 C.F.R. § 250.700(b) (1999), which placed joint and several responsibility for decommissioning on “all lessees and owners of operating rights under the lease at the time the [decommissioning] obligation accrues, and [on]. . . *each future lessee* or owner of operating rights, until the obligation is satisfied[.]”<sup>25</sup> BSEE states that, “[i]f the regulations aren’t clear enough, the designation of Operator form that El Paso signed transferring operating rights to Millennium states this: ‘It is understood that this designation of operator does not relieve the lessee of responsibility for compliance with the terms of the lease, laws, and regulations applicable to the area.’”<sup>26</sup>

### III. Discussion

#### A. *BSEE Properly Applies the Plain Language of the Regulations to Hold the Record Title Owner of the Lease Liable for Decommissioning Facilities in Existence at the Time of Issuance of the Lease*

[1] We are concerned here only with whether BSEE properly directed EP Energy to decommission the Lease. As discussed below, we determine that, irrespective of the responsibilities of other parties, the Lease and applicable regulations clearly place on EP Energy the responsibility to ensure that all wells associated with its offshore lease are properly plugged and abandoned, the platform is removed, and the lease is otherwise appropriately decommissioned.

Under section 2 of the Lease, the United States, through the Department, granted the lessee “the exclusive right and privilege to drill for, develop, and produce oil and gas resources” in approximately 5,000 acres of submerged land in the OCS, and required that, within one year after termination of the Lease, “the Lessee shall remove

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<sup>23</sup> *Id.* at 5 (emphasis added).

<sup>24</sup> *Id.* (emphasis added); *see id.* at 5 n.9.

<sup>25</sup> 30 C.F.R. § 250.700(b) (1999) (emphasis added); *see* BSEE Response at 2.

<sup>26</sup> BSEE Response at 2.

all devices, works, and structures from the premises no longer subject to the lease,” in accordance with applicable regulations.<sup>27</sup>

The regulation at 30 C.F.R. § 250.700(b) (1999), in effect at the time of Lease issuance, provided:

(b) Lessees must plug and abandon all well bores, remove all platforms or other facilities, and clear the ocean of all obstructions to other users. This obligation:

(1) Accrues to the lessee when the well is drilled, the platform or other facility is installed, or the obstruction is created; and

(2) Is the joint and several responsibility of all lessees and owners of operating rights under the lease at the time the obligation accrues, and of each future lessee or owner of operating rights, until the obligation is satisfied under the requirements of . . . [30 C.F.R.] [P]art [250].

The regulations, revised in 2002, now similarly provide, at 30 C.F.R. § 250.1702, that a lessee or operating rights owner “accrue[s] decommissioning obligations” when it, *inter alia*, drills a well, installs a platform, pipeline, or other facility, or “[when a party is] or become[s] a lessee or the owner of operating rights of a lease on which there is a well that has not been permanently plugged according to . . . [30 C.F.R. Part 250,] [S]ubpart [Q], a platform, a lease term pipeline, or other facility, or an obstruction.” The regulation places the obligation on “[y]ou,” which, for purposes of Subpart Q, refers “to lessees and owners of operating rights, as to facilities installed under the authority of a lease[.]”<sup>28</sup>

It is clear then that under the express language of the regulations in effect at the time of issuance of the Lease, and the regulations currently in effect, BSEE properly holds the record title owner of the Lease, which in this case is EP Energy, liable for fulfilling the decommissioning of all wells, pipelines, platforms, and other facilities that were in existence at the time of issuance of the Lease, and that such liability persists

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<sup>27</sup> Lease, § 22, at 4 (“[T]he Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease.”); see 30 C.F.R. §§ 250.1703, 250.1710, and 250.1725(a); 30 C.F.R. §§ 250.700(a) and (b) (1999); 43 U.S.C. § 1337(b) (2006).

<sup>28</sup> 30 C.F.R. § 250.1701(c); see 65 Fed. Reg. 41892 (July 7, 2000) (Proposed Rule); 67 Fed. Reg. 35398 (May 17, 2002) (Final Rule); 76 Fed. Reg. 64462 (Oct. 18, 2011) (Reorganization).

even after termination of the Lease, until the decommissioning obligation is fully satisfied.<sup>29</sup> The former lessee's liability is not diminished by the fact that the former owners of operating rights are also jointly and severally liable for satisfying the decommissioning obligation under the regulations.

*B. BSEE is not Required to Seek Fulfillment of Decommissioning Responsibilities from Owners of Operating Rights*

EP Energy asserts that BSEE must seek satisfaction of the decommissioning obligation from the parties who were owners of operating rights at the time of termination of the lease, referring to the “structure and intent of the relevant OCSLA regulations[.]”<sup>30</sup> However, EP Energy points to no evidence in support of this theory. Its unsupported assertion is inadequate to support a theory at odds with the plain language of the regulations. We conclude that BSEE properly sought to compel the former lessee to decommission the Lease, regardless of the separate responsibility of the operating rights owners.

*C. EP Energy's Assertion of Lack of Authority to Perform Decommissioning does not Render a Lessee's Regulatory Requirement Inapplicable*

In new arguments raised in response to BSEE's Answer, EP Energy also argues that, as the lessee, it has “no right to perform decommissioning,” since the right reposes only in the operating rights owners.<sup>31</sup> In support, it cites regulations defining “[r]ecord title” and “[o]perating right,” adopted by the Bureau of Land Management for onshore oil and gas leasing and related activity, and a case involving an onshore coal-fired power plant.<sup>32</sup> The authorities EP Energy cite relate only to onshore

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<sup>29</sup> Cf. *Anadarko Petroleum Corp.*, 187 IBLA 77, 79, 85-87 (2016) (former lessee remains liable, under 30 C.F.R. § 256.62 (1984) (formerly, 43 C.F.R. § 3319.1 (1981)), for decommissioning wells, platforms, and other facilities created under its lease, even after it divested its record title interest in the lease and the lease terminated, where liability accrued while it held its record title interest in the lease); *Fairways Offshore Exploration, Inc.*, 186 IBLA 58, 63-66 (2015) (former lessee remains liable, under 30 C.F.R. § 250.700 (1998), for decommissioning wells, platforms, and other facilities created under its lease, even after termination of the lease, where liability accrued when it acquired its record title interest in the lease).

<sup>30</sup> SOR at 5.

<sup>31</sup> Reply to Answer at 4 n.1.

<sup>32</sup> *Id.* (citing 43 C.F.R. § 3100.0-5; *State of New Jersey v. Reliant Energy Mid-Atlantic Power Holdings, LLC*, 2009 U.S. Dist. LEXIS 91617 (E.D. Pa. 2009)).

operations and, therefore, they provide no authority for the proposition EP Energy proffers with respect to offshore oil and gas leasing and related activity.

EP Energy fails to establish, by argument or supporting evidence, that EP Energy's transfer of operating rights somehow divests the lessee of the right to decommission its offshore lease, or, ultimately, bars the regulatory provision of joint and several responsibility for decommissioning the lease from being imposed on the lessee and operating rights owners alike. The former lessee's obligation to decommission is not diminished by its transfer of all operating rights or even cessation of all oil and gas leasing activity in the Outer Continental Shelf. There are no regulatory exceptions for such circumstances barring BSEE's enforcement.

*D. BSEE's Authority to Enforce Liability for Offshore Decommissioning is not Conditioned on Impossibility of Apportionment*

EP Energy also more recently argues that joint and several liability does not apply at all in the present case since such liability only arises where it is impossible to reasonably apportion a single harm, which was caused by two or more independent parties, between the parties.<sup>33</sup> Noting that the question of apportionment is an "intensely factual" matter, EP Energy states that BSEE identified no facts demonstrating that the harm caused by failing to decommission the Lease could not be apportioned.<sup>34</sup> Rather, it asserts that this harm can be apportioned between the operating rights owners, according to their respective percentage interests in such rights, and thus must be apportioned.<sup>35</sup>

In *Burlington Northern*, the Supreme Court determined the applicable statutory authority did not provide for joint and several liability in every case, and thus decided the matter must be resolved under the common law of joint and several liability.<sup>36</sup> Here, the applicable regulatory authority provides for joint and several liability.

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<sup>33</sup> See Reply to Answer at 2-3 (citing, e.g., *Burlington Northern and Santa Fe Railway Co. v. United States*, 556 U.S. 599, 614 (2009)).

<sup>34</sup> *Id.* at 3 (quoting *United States v. Alcan Aluminum Corp.*, 964 F.2d 252, 269 (3d Cir. 1992)).

<sup>35</sup> See *id.* at 3-4.

<sup>36</sup> See 556 U.S. at 613-15; see also *United States v. Alcan Aluminum Corp.*, 964 F.2d at 268 ("[The applicable statute] does not specifically provide for joint and several liability in a case involving multiple defendants. Further, both the House and Senate deleted provisions imposing joint and several liability from their respective versions of the statute before its enactment. . . . Other courts have agreed that Congress' deletion  
(Continued...)

*E. BSEE's Authority to Enforce Liability for Offshore Decommissioning is Not Limited by Chronology of Ownership of Operating Rights*

Finally, EP Energy argues that BSEE's policy guidance with respect to decommissioning requires it to look first to the assignees, not assignors, of operating rights.<sup>37</sup> It refers to an October 6, 1993, Notice to Lessees and Operators of Federal Oil and Gas Leases (NTL),<sup>38</sup> which states, that "[BSEE] looks first to the designated operator to perform [decommissioning] obligations [normally followed by the lessee(s), should the operator be unable to perform, and, finally, prior lessee(s)]," noting that, although the NTL was rescinded in 1997, "a report approved [for publication] by BSEE in November 2010" "reaffirms the decommissioning responsibility hierarchy."<sup>39</sup>

As a factual matter, BSEE's policy preference for assigning decommissioning responsibility between an operator and lessee, expressed in the NTL, was abandoned prior to issuance of the Lease, although it currently serves as policy guidance applicable to offshore wind energy. As we have often held, a policy pronouncement does not have the force and effect of law.<sup>40</sup> Therefore, a policy, even if applicable to the circumstances, which this is not, cannot undermine the effect of applicable regulations, which impose joint and several responsibility on the lessee and operating rights owners under the Lease. Nevertheless, we note that the NTL recognized that, even when acting first, the operator was performing "the lessee's obligations to plug and abandon wells, remove platforms and other facilities, and clear the seafloor of obstructions,"<sup>41</sup> and further, that BSEE indicates it adhered to the same order suggested by the NTL, since the designated "operator" (ATP) was "unable to perform," thereby rendering the lessee (EP Energy) secondarily liable, under the NTL.<sup>42</sup>

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(...Continued)

of joint and several liability from the final version of the statute signalled its intent to have the courts determine, in accordance with traditional common law principles, whether such liability is proper under the circumstances.").

<sup>37</sup> See Reply to Answer at 4-6.

<sup>38</sup> OCS (NTL) 93-2N at 2(Liability of Assignors, Assignees, and Colessees for Plugging of Wells and Removal of Property on Termination of an OCS Oil and Gas Lease) (Ex. 2 attached to Reply to Answer).

<sup>39</sup> *Id.* at 5 (citing "Offshore Wind Energy Installation and Decommissioning Cost Estimation in the U.S. [OCS]" (Excerpt attached as Ex. 3 to Reply to Answer).

<sup>40</sup> See, e.g., *Center for Native Ecosystems*, 182 IBLA 37, 53 (2012).

<sup>41</sup> NTL 93-2N at 2, emphasis added.

<sup>42</sup> See Surreply at 3.

Therefore, we conclude that, since EP Energy has failed to carry its burden to establish any error of fact or law in the Regional Director's November 2013 Letter-Order, requiring EP Energy to fully decommission all wells, pipelines, platforms, and other facilities associated with OCS oil and gas lease OCS-G 21058, the Letter-Order is properly affirmed. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>43</sup> the decision appealed from is affirmed.

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/s/  
Christina S. Kalavritinos  
Administrative Judge

I concur:

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

<sup>43</sup> 43 C.F.R. § 4.1.