IRVIN WALL

IBLA 82-1048 Decided January 3, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer OR 32914.

Affirmed in part; reversed and remanded in part.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

   A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

   Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

3. Oil and Gas Leases: Applications: Generally-Oil and Gas Leases: First-Qualified Applicant

   Where a lease improperly issued to a senior offeror is canceled, the offer of the applicant having next priority is entitled to consideration.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irvin Wall has appealed from the June 15, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting his over-the- counter noncompetitive oil and gas lease offer OR 32914 because it included land leased to senior offerors in leases OR 24993 and OR 25759.

[1] Wall filed oil and gas lease offer OR 32914 on September 15, 1981. His offer described land overlapping with senior offer OR 24993 filed by Tyrex Oil Company (Tyrex) on October 14, 1980, and offer OR 25759 filed by Depco Incorporated (Depco) on January 15, 1981. Wall asserts that Tyrex's offer should have been disallowed because Tyrex failed to initial an attachment indicating other parties in interest as required under Item 5 of the General Instructions on the lease form. We note that the Board has sustained the rejection of simultaneously filed oil and gas lease applications which have not been completed pursuant to the instructions on the form, even for relatively minor defects. 1/ These decisions, however, were based on regulatory language pertinent to simultaneously filed applications requiring that they be "fully executed" or "completed." 2/ The same regulation does not apply to offers filed over-the-counter, and the Department has not required rejection of such offers where failure to complete an item did not violate a statutory or regulatory requirement. One example of this is our decision in Jas. O. Breene, Jr., 39 IBLA 43 (1979). Item 5 on the oil and gas lease offer form requires an applicant to indicate whether or not he is a native-born or naturalized citizen. Breene failed to do so and his offer was rejected for this reason. The Board reversed, noting that even though the offeror had failed to indicated whether he was a native-born or naturalized citizen, his offer still complied with the applicable regulatory requirements. 3/ More recently, this Board has refused to direct the cancellation of leases it issued pursuant to over-the-counter offers which had failed to indicated the county in which the land was located 4/ or which had omitted the meridian in describing land in a state which was governed by only one meridian. 5/ Similarly, we hold that the failure by Tyrex to initial the statement of interest which accompanied its offer is not among the class of defects which warrants cancellation of the lease. The offer itself was signed by the president of Tyrex. Item 6 on the form refers to the attachment, thereby incorporating it by reference and making it effective regardless of whether or not it was initialed.

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1/ E.g. Albert E. Mitchell, 20 IBLA 302 (1975) (affirming rejection of simultaneous drawing entry card where applicant failed to indicate state in which parcel was located).
2/ The offer in Mitchell, supra, was held to be not "fully executed" as required by 43 CFR 3112.2-1 (1975). The current version of this regulation requires that applications be "completed."
3/ It should be noted that under 43 CFR 3111.1-1(e), certain specified defects in over-the-counter offers will not result in loss of priority even though the defects are violations of requirements established by regulation. In the instant case, the defect in Tyrex's offer does not violate any regulatory requirement.
4/ Irvin Wall, 68 IBLA 311 (1982).
5/ Irvin Wall, 68 IBLA 308 (1982).

[2] Thus, Wall has failed to provide a valid reason why Tyrex's offer should have been considered defective. Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, 30 U.S.C. § 226(c) (1976), a junior offer is properly rejected to the extent that it includes land designated in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Irvin Wall, 68 IBLA 243 (1982).

[3] We now turn to Wall's objection to issuance of oil and gas lease OR 25759 to Depco. Depco's offer was filed on January 15, 1981, and a lease was issued on April 21, 1982, effective May 1. Wall alleges that Depco's offer described less than 640 acres and there was adjacent land available at the time the offer was filed. Departmental regulation 43 CFR 3110.1-3(a) provides in pertinent part that "no offer may be made for less than 640 acres except where the offer is accompanied by a showing that the land is around an approved unit or cooperative plan of operation * * * or where the land is surrounded by lands not available for leasing under the act." Wall's argument appears to be correct, since by decision dated April 30, 1982, BLM canceled Depco's lease for this reason. Thus, the State Office erred in rejecting Wall's offer to the extent that it included land in canceled lease OR 25759. The decision appealed from must be reversed to that extent.

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 in part and reversed and remanded in part for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

I wish to separately address the question of Tyrex's failure to comply with the other party-in-interest instructions of the general lease form. While in complete agreement with both the result and rationale of the majority opinion which only involves noncompetitive over-the-counter offers to lease, I would like to indicate my belief that the trend of recent judicial pronouncements, epitomized by cases such as Ahrens v. Andrus, 690 F.2d 805 (10th Cir. 1982), and Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), has clearly undermined past adjudicative practice by the Board as it relates to oil and gas lease applications filed under the simultaneous system.

Thus, in the past, this Board has held that failure to scrupulously fill out every part of the drawing entry card (DEC) 1/ necessitated the rejection of the DEC. The failure to indicate the state where the land to be leased was situated was held to be a fatal defect, even though there was no question that BLM knew where the land was located. See Ray Granat, 25 IBLA 115 (1976). The omission of the zip code for the offeror likewise mandated rejection of the offer. See Beverly J. Steinbeck, 27 IBLA 249 (1976). Where two co-offerors signed the card but only one date was affixed, the Board held the offer must be rejected, even though both signatures were affixed on the same day. Thomas R. Flickinger, 40 IBLA 53 (1979). All of these cases were premised on the requirement of the regulations that the DEC's be "fully executed" and all referred to the Department's obligations to participants in the simultaneous drawing who had been drawn with subsidiary priority as well as the necessity of providing certainty in the adjudication of DEC's. The net result of these cases, however, was neither to safeguard the system from abuse nor to establish a system with clear rules and predictable results.

On the contrary, the Board was slowly pushed to adjudicating ever greater esoterica. When the requirement that an offer indicate the state in which the land was located was altered to a requirement that the state office prefix letters appear with the numbers of the parcel being sought, the Board first affirmed the rejection of a filing made in Wyoming (which had the assigned prefix of "WY") in which the State prefix had been indicated as "WT," even though there was no question that this was a typographical error. Amerada Hess Corp., 34 IBLA 64 (1978). Six weeks later, the Board reversed rejection of an offer when the offeror had spelled out the entire name of the State "Wyoming" on the grounds that the added letters created no confusion and could be treated as "mere surplusage." Clayton Chessman, 34 IBLA 263, 265 (1978).

The Board's technicalist approach in short order generated a flood of protests and appeals by second- and third-priority offerors seeking to disqualify first-priority offerors for such things as signing the offer as "Mrs. Hal McCarthy" when the front of the DEC indicated that the offeror's

1/ An offeror was not required to fill in his or her Social Security number since the notice provided by the card was deemed inadequate under the Privacy Act. Richard Lovatt, 28 IBLA 244 (1976).

name was Geraldine M. McCarthy, even though it was the same individual. See Geraldine M. McCarthy, 37 IBLA 323 (1978). A variation on this same theme subsequently occurred in Robert J. Maddox, 44 IBLA 178 (1979), where the front of the card indicated that the offeror was one "Robert J. Maddox" whereas the card was signed "J. Robert Maddox." While the Board did, in both of these cases, reverse rejections of these offers, I think these cases clearly illustrate the point that the rigidity by which we sought to instill certainty in the simultaneous leasing system had almost the opposite result.

Moreover, I think that these decisions proceeded from an invalid premise. The rights of second and third drawees, as well as all those who participated in the drawing, are important and the Board is obligated to safeguard the integrity of the simultaneous system. Clearly the Department must be able to ascertain with reasonable dispatch the qualifications of any oil and gas lease offeror or applicant, since only the first filed or first-drawn qualified applicant has the right to be awarded any lease, should a lease, indeed, issue. Thus, certain information called for on a card is of crucial importance. Obviously, failure to sign a card is of paramount concern since absent a valid signature there can be no valid application or offer. Similarly, to the extent that information called for by the card relates to establishing the qualifications of the offeror or policing the system to prevent abuses, failure to submit the information must compel rejection of the offer. But, where a requirement for information neither establishes an applicant's qualifications nor advances any other governmental interest, failure to comply should not be invoked against any applicant so as to deprive the individual of a statutory preference right.

The majority in effect, applies such a standard to the noncompetitive over-the-counter leasing system, even though the intervening rights of a subsidiary applicant are involved. I believe the majority is correct. I would hope, however, that the same type of analysis will soon be applied to the simultaneous system as well. I think the end result of such an approach would be a diminution of appeals involving minor technicalities without any lessening of the real protection afforded to other participants in the simultaneous system.

James L. Burski
Administrative Judge