

INTERIOR BOARD OF LAND APPEALS

C. C. Co.

132 IBLA 210 (April 4, 1995)

Title page added by:
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Appeal from a decision of the Deputy State Director, Mineral Resources, Utah State Office, Bureau of Land Management, affirming a decision of the Moab District Manager, finding that gas vented at well 11-1A on oil and gas lease U-16965 was avoidably lost.

Affirmed.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Royalties

A State Director's review decision upholding a BLM determination that gas vented on a Federal oil and gas lease without prior authorization was avoidably lost, resulting in compensation being due to the United States Government, will be affirmed where the lessee fails to demonstrate by a preponderance of the evidence that the basis for the decision is wrong.

APPEARANCES: Dean H. Christensen, Manager, C. C. Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The C. C. Company (CCCo.), appellant herein, has appealed from a decision of the Deputy State Director, Mineral Resources, Utah State Office, Bureau of Land Management (BLM), dated March 16, 1990, affirming a decision of the Moab District Manager, BLM, finding that 30,095 MCF of gas vented from well 11-1A between April 1980 and February 1988 was avoidably lost resulting in compensation due the United States. Appellant is the operator of Federal oil and gas lease U-16965 in sec. 11, T. 21 S., R. 23 E., Salt Lake Meridian, Grand County, Utah. This lease contains several wells, including the Adak No. 11-1A well in dispute here.

By letter dated September 29, 1987, the Moab District Office notified appellant that lease U-16965 had been randomly selected for a Production Verification Inspection (PVI) and requested the submission of specified documents to verify volumes of oil and gas production. On November 10, 1987, BLM wrote to appellant and advised that the PVI revealed noncompliance with 43 CFR 3160 related to unapproved venting on the lease, and further that gas disposition had not been correctly reported under 43 CFR 3162.4-3. Appellant was directed to submit amended Monthly Reports of Operations (MRO) for June 1975 through December 1987 showing the total of

all gas produced whether sold, vented or used on the lease. Additionally, appellant was directed to submit an application requesting approval for venting gas on the lease pursuant to "Notice To Lessees and Operators of On Shore Federal and Indian Oil and Gas Leases" (NTL 4-A). Appellant filed the request for venting approval on January 22, 1988. On February 24, 1988, BLM notified appellant that because of an unstable gas market through the Cisco Gathering System, NTL-4A approval was granted for well 11-1A. By letter dated April 1, 1988, BLM advised appellant that, consistent with the policy and direction identified in Instruction Memorandum (IM) No. 87-652, it was in the process of making a determination as to whether the gas vented prior to NTL-4A approval was avoidably or unavoidably lost. To assist BLM in making its determination, appellant was requested to submit data to "justify that it was uneconomic as of April 1, 1980, to capture the gas from this well." On July 3, 1989, BLM requested appellant to submit a detailed monthly breakdown of operation costs for the wells, potential gas prices, and actual oil prices received from production for its review in connection with the determination of whether gas vented from the well was avoidably or unavoidably lost.

BLM issued a decision on October 30, 1989, finding "that the gas vented without approval from this well between April 1980 and February 1988 was avoidably lost. We have determined that the volume of avoidably lost gas was 29,183 MCFG." BLM explained that the determination was based on economic and engineering analysis which indicated that it would have been economically and technically feasible to have captured and marketed the associated gas from this well. BLM enclosed a copy of the data and its analysis. Appellant requested State Director review (SDR). By decision dated December 1, 1989 (SDR-I), the Deputy State Director remanded the decision to the Moab District Office concluding that a decision based on corrected gas-oil ratio (GOR) data was never made available to CCCo., leaving the issue unresolved, and that a final economic determination could not be made because "there exists no determination that the gas operation would have paid out in five years." The District Manager was directed to "formally determine if gas escaping was more than simple vapor loss" and instructed that he "must also evaluate the economic situation" for the three criteria for requiring gas conservation from an old field per Division Manual Chapter 644.5 guidelines.

On January 29, 1990, the District Manager issued a second decision. Therein, he stated:

[O]ur final determination that the gas vented without approval from the 11-1A well, between April 1980 and February 1988, was avoidably lost gas and the volume has been determined to be 30,834 MCFG. Our determination is based on economic and engineering analysis directed by WO IM 87-652, CDM 644.5, and NTL-4A, which analysis indicated it would have been economically and technically feasible to have captured and marketed the gas from this well.

BLM noted that as a result of the determination, compensation was due the United States Government, and that the matter would be referred to the Minerals Management Service at a future date for billing. Appellant sought State Director review of the BLM decision.

On March 16, 1990, the Deputy State Director issued his decision, which is the subject of this appeal (SDR-II). A copy of the data used and the analysis was attached to the decision. The SDR-II concluded that BLM properly determined that at least one reasonable scenario was available to CCCo. to have economically captured and utilized the gas, and that therefore, avoidable loss of 30,824 MCFG occurred.

The Deputy State Director, in affirming the BLM decision thoroughly examined all of appellant's challenges and provided a complete and rational basis to support his findings. The decision states in part:

CCCo.'s contention is that the well produces a fluid which is a combination of oil and gas, and that gas lost was unavoidable due to vapors escaping from the storage tank in an evaporative manner. While we agree that petroleum fluids can be a mixture of both liquid and gaseous phases depending upon pressure, temperature and its composition, we disagree that all gas loss can be attributable to the natural weathering process occurring in the storage tank. Rather that the gas is being released simply because the storage tank is the first low pressure (atmospheric) vessel it reaches. Currently, the well produces directly into the storage tanks, bypassing the separation vessel on location. Product Verification Inspections and numerous field inspections involving District, State and Washington office personnel have all revealed this fact. * * *

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CCCo. contends that it was not economic to have captured the gas on April 1, 1980. In a July 3, 1989, letter, Moab District Office requested that CCCo. provide, within 60 days, economic justification as to why the lost gas was not captured. CCCo.'s response outlined specific oil operational costs but not any associated with gas. This forced Moab District Office to assume gas operational costs, and through inquiries to three equipment suppliers, determined what a gas compressor rental would be. Throughout this entire process, CCCo. has contested practically all of Moab District Office's assumptions, yet, not once did CCCo. provide any different values which could be substantiated. CCCo. does argue that Moab District Office did not use all the operational costs which are acceptable to the Internal Revenue Service (IRS). The BLM does not operate under the same regulatory or policy system as the IRS; however, our policy is to allow reasonable administrative costs, not to exceed 10 percent of other total operational costs. Therefore, a 10 percent administrative cost has been added to Moab District Office's operational costs, along with an allowance of \$400/mo. for fuel costs

associated with the compressor and the economic analysis, attachment No. 1, was performed by this office.

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It should be pointed out that there are no initial investment costs associated with Moab District Office's analysis. The pipeline already exists on location and the compressor costs, as a rental, show up in the gas operational expenses. CCCo. contends that although the pipeline was in place, it was only operational for 21.9 percent of the time. A review of MRO's for the time period indicate the 7-11 well, a gas well also located on lease U-16965 sold gas approximately 50 percent of the time. Also reviewed were first purchaser records indicating that from the records available, the gas gathering system operated about 90 percent of the time. Our finding is that because the pipeline existed as of April 1, 1980, a means of gas sales was immediately available for CCCo. to have utilized. CCCo. also contends that if the compressor was purchased at an investment of \$35,000 (which has been verified as an acceptable price), the gas operations never reaches payout, and becomes burdensome to the oil economics. This statement was verified and the economic analysis is attached (attachment No. 2). Regardless of the question of compressor rental versus purchase, the Moab District Manager properly determined that least one reasonable scenario was available to CCCo. to have economically captured and utilized the gas, and, therefore, determined that avoidable loss of 30,824 MCFG occurred.

On appeal, appellant contends that the "Basic issue of the current venting decision (failure to apply for NTL-4 approval) still rests with the fact and determination of economics and if in reality deliberate and intentional venting took place" (Submission dated July 27, 1990, at 3.) Appellant argues that any gas lost was due to evaporation and such gas is by definition unavoidably lost, that it was not economical to have a compressor and attempt to save minimal gas available, and that appellant met the criteria in IM No. 87-652. Appellant states that no well inspection reports for the period corroborate the contention that venting or flaring occurred, and no inspector ever noted in the file that venting or flaring was occurring. Throughout the proceedings, appellant has objected to the assumptions made by BLM, the data, methodology, and analysis used to form the basis of the final BLM determination. In its submissions on appeal, appellant summarizes its opinions, arguing that its interpretation of the data, facts, and assumptions rather than those of BLM, is correct.

[1] BLM has the authority to collect royalty for the unapproved venting of natural gas. The applicable regulation, 43 CFR 3162.1(a), requires compliance "with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders, NTL's; and with other orders and instructions of the authorized officer." (Emphasis added.) NTL-4A is

specifically directed to the calculation of royalties or compensation for oil and gas lost by an operator. Economically recoverable oil well gas may not be vented or flared unless that activity is approved in writing by an authorized officer. Venting or flaring of such gas without prior authorization, approval, ratification, or acceptance is deemed to be avoidably lost. When produced gas is avoidably lost, the compensation due the United States is computed on the basis of the royalty value of the gas avoidably lost or the allocated portion thereof attributable to the lease. See Mobil Exploration & Producing U.S., 119 IBLA 76, 98 I.D. 207 (1991).

The "NTL-4A Review" which formed the basis for the BLM determination dated January 22, 1990, was prepared by BLM Petroleum Engineer, Dale H. Manchester. The review evaluated reported production from monthly reports of operations for the well and CCCo.'s letter of August 31, 1989; oil and gas production test to derive GOR decline; prices of oil and gas from MMS and CCCo.; distance to a gas gathering pipeline and physical nature of that pipeline; compressor requirements to produce gas into the gathering system, and cost involved; and operational cost for the 11-1A well factoring in cost of the 7-11 well as part of the field of operations with regard to economics. Manchester concluded: "After considering all the data presented for this review and applying the data to an economic analysis ... per W.O. IM-87-652 and CDM 644.5, the gas vented/flared has been determined to be avoidably lost."

The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. Amoco Production Co., 129 IBLA 186, 202, 101 I.D. 47 (1994). On appeal, CCCo. has not provided any evidence to establish that the decision of the Deputy State Director is in error. While appellant continues to dispute the basic determination that venting occurred, and that the gas vented was avoidably lost, it is not enough to opine a different interpretation or result. Where, as here, BLM has thoroughly examined the issues of venting and the economics to make a determination, appellant must demonstrate by a preponderance of the evidence that BLM erred in collecting the underlying data or in reaching its conclusion. Jerome P. McHugh, 113 IBLA 341, 347 (1990). The SDR-II identified two critical issues involved in BLM's review: "1) was avoidable loss occurring and, 2) was it economic to have beneficially used the gas?" The Deputy State Director considered in great detail the merits of appellant's challenge to the District Manager's decision. Based on his analysis of the evidence and the opposing positions he was persuaded to uphold the decision of the District Manager. No offer of proof has been made on appeal to establish that the decision affirming the District Manager's decision is wrong. An appellant challenging a decision has the burden of demonstrating error by a preponderance of the evidence. Animal Protection Institute of America, 118 IBLA 63, 76 (1991). With respect to the two critical issues identified in the SDR-II, appellant has failed to meet its burden.

Finally, we find no merit to appellant's complaints that it was singled out wrongly, victimized, discriminated against, or harassed when

it was randomly selected for the PVI. As we stated in C.C.Co., 116 IBLA 384, 387 (1990),

Congress, in the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701 through 1757 (1988), generally directed that the Department take steps to ensure enforcement of requirements to pay royalties and other payments due and owing on oil and gas produced from Federal leases. While BLM evidently did select appellant's wells for inspection from among many in the area, there is nothing in the record indicating that it did so other than as part of a random spot check, as it indicated in its September 29, 1987, letter. In the absence of evidence of improper motivation in selecting which operators are to be inspected, we perceive nothing discriminatory in BLM's selection of appellant for a verification inspection.

Under governing law, BLM has authority to demand accurate data from Federal lessees related to production from a lease. It is not uncommon for BLM to order monthly reports of operations, which must disclose accurately all operations conducted on each well during each month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands. 43 CFR 3162.4-3. Indeed, it is BLM's responsibility to ensure that accurate reports have been filed and to demand correction of any inaccurate reports.

Any additional arguments advanced by appellant not specifically addressed herein have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Deputy State Director, Mineral Resources, Utah State Office, Bureau of Land Management, is affirmed.

Gail M. Frazier
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge