

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER RULEMAKING HEARING
ON THE APPLICATION OF NEW MEXICO OIL
CONSERVATION DIVISION TO
AMEND 19.15.5 NMAC.

CASE NO. 20895

Larry Marker
Petitioner

**PETITION FOR COMMISSION TO HOLD IN ABEYANCE
A FINAL ORDER**

Larry Marker (Petitioner) and party to the hearing files this Petition requesting the New Mexico Oil Conservation Commission (Commission) hold in abeyance the final order on the adoption of the regulations proposed in this matter in consideration of these procedural and legal issues.

Issue No. 1.

1-The commission was unable to hear and consider the totality of the testimony and evidence proposed.

2-The IPANM had properly proposed as part of the prehearing statement a table of violation specific fines for consideration in the rulemaking hearing held Jan 2nd 2020.

3-The IPANM had properly notified the Commission of two witnesses presenting testimony in support of the IPANM's proposals.

4-The IPANM did prior to the date of the hearing notify the Commission that one of the witnesses was ill and would not be available to testify.

5-The Commission did during the hearing request more information related to the violation specific fines.

6-The Commission was informed that the witness "ill with the flu" was responsible for the research, construction and testimony related to that portion of the IPANM evidence.

7-Each of the Commissioners expressed a desire for more details and information on the violation specific fines.

8-The rules of administrative procedure NMAC 19.15.3.12, A. (2) (g) (h) provides the Commission the opportunity to hold the record open for further submittals and arguments.

9-The Commission by rule had the option to hold the record open and reschedule a hearing until IPANM witness was able to provide her testimony.

10-The Commission chose to disregard the lack of evidence, information and testimony even after clearly and specifically expressing a need for more information on that subject.

11-The witness and her testimony were obviously a critical element of this process unknown is the complete affects this information should or could have had on the proceedings.

Issue No. 2.

12-Petitioner is filing this Petition requesting the Commission hold in abeyance a final order pending final disposition of pending District Court Case No. D-504-CV-2019-0038.

13-Petitioner cites *Article IV Section 34 of the Constitution of the State of New Mexico*. “No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.”

14-Section 34 also applies to administrative agencies see, *Pineda v. Grande Drilling Corp.*, 1991-NMCA-004, 111 N.M. 536, 807 P.2d 234.

15-Section 34 limits ability of legislature to enact legislation that affects pending litigation. *State v. Stanford*, 2004-NMCA-071, 136 N.M. 14, 94 P.3d 14.

16-The Oil Conservation Commission is bound by law to postpone the enactment of any regulations until the final disposition of Case No. D-504-CV-2019-00338.

17-Established law clearly states *that "No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case."* please See *Hillelson v. Republic Ins. Co.*, 96 N.M. 36, 627 P.2d 878 (1981)

Issue No. 3.

18-The proposed penalties will also directly affect the subject matter of Case No. A-1-CA-37860 pending in the Court of Appeals.

19-The Commission stated that a large number of Notices of Violations were recently issued.

20- A large portion of those were for violations for non-compliance of financial assurance.

21-Any penalties assessed or sanctions implemented for violations of financial assurance will be issued on regulations that are the subject of a pending appeal.

22-No known procedural mechanism exists to repeal sanctions or refund penalties should the petitioner prevail in the Court of appeals.

23-The enactment of regulations directly affecting the rules of financial assurance are clearly a violation of *Article IV Section 34 of the Constitution of the State of New Mexico*. “*No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.*”

24-Section 34 also applies to administrative agencies see, *Pineda v. Grande Drilling Corp.*, 1991-NMCA-004, 111 N.M. 536, 807 P.2d 234.

25-The Oil Conservation Commission is bound by law to postpone the enactment of any regulations until the final disposition of Case No.A-1-CA-37860.

26-Established law clearly states that “*No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.*” please See *Hillelson v. Republic Ins. Co.*, 96 N.M. 36, 627 P.2d 878 (1981)

Additional issues.

27- Petitioner has not addressed in this petition potential violations of due process, division of powers and various other legal issues within the proposed regulations.

Conclusion

Petitioner submits this petition without the benefit of a written transcript. Petitioner reserves the right to file a rehearing should a final order be issued. This petition is filed in an attempt to convince the Commission to issue sua sponta an order holding in abeyance a final order on this matter pending an opportunity to consider the totality of evidence and the final disposition of litigation effected by these proposed regulations.

Respectfully submitted

Larry Marker

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January 13th 2020