

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**APPLICATION OF FAE II OPERATING, LLC FOR  
APPROVAL OF AN ENHANCED OIL RECOVERY  
PROJECT AND TO QUALIFY THE PROJECT FOR  
THE RECOVERED OIL TAX RATE,  
LEA COUNTY, NEW MEXICO**

**CASE NO. 23711**

**APPLICATION OF FAE II OPERATING, LLC FOR  
FOR STATUTORY UNITIZATION,  
LEA COUNTY, NEW MEXICO**

**CASE NO. 23712**

**COG'S PRE-HEARING STATEMENT**

COG Oil & Gas, LLC ("COG"), pursuant to the prehearing order entered in these consolidated matters, submits this pre-hearing statement.

**APPEARANCES**

**AFFECTED PARTY**

COG Operating LLC

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### **COG's STATEMENT OF THE CASE**

F AE seeks to force COG and other working interest owners into a 19,369.77-acre unit in Lea County under the New Mexico Statutory Unitization Act, NMSA 1978, §70-7-1 et. seq. Under prior Cases 22971 & 22972, FAE sought the same relief. After objection by COG and other working interest owners, the Division entered an order instructing:

The approval of the plan for unit operations occurs only after the Division has issued an order providing for unit operations. NMSA 1978, §70-7-8(A). First, an application for statutory unitization must be filed that the Division determines meets the requirements of Section 70-7-5. Then, after notice and hearing, the Division must determine whether the conditions listed in Section 70-7-6 exist and then issue an order that includes all the provisions listed in Section 70-7-7. Only after these steps that define the area and operation of the Unit, including how unit operating costs are allocated to the interest owners and how voting by interest owners is to occur, can the approval of the plan for unit operations occur. None of these steps has occurred in this Case.

See Order on Motion for Determination on Ratification Requirement of Phased Allocation Formula Under the Statutory Unitization Act, entered in Case 22972. Shortly after issuance of this order, FAE dismissed its applications. FAE has now refiled the same applications under these case numbers.

Since these applications seek to force owners into a proposed unit, the notice requirements are the initial topics of careful examination. The applicant must demonstrate that notice has been provided of the application and the hearing in accordance with NMAC 19.15.4.12(A)(1), which requires:

(1) Compulsory pooling and statutory unitization.

(a) The applicant shall give notice to each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed

to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

If notice has been properly provided, then the Section 70-7-6(A) of the Statutory Unitization Act requires that FAE present evidence demonstrating the following conditions:

- (1) that the unitized management, operation and further development of the oil or gas pool or a portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or secondary or tertiary recovery operations, to substantially increase the ultimate recovery of oil and gas from the pool or the unitized portion thereof;
- (2) that one or more of the said unitized methods of operations as applied to such pool or portion thereof is feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered;
- (3) that the estimated additional costs, if any, of conducting such operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit;
- (4) that such unitization and adoption of one or more of such unitized methods of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the pool or portion thereof directly affected;
- (5) that the operator has made a good faith effort to secure voluntary unitization within the pool or portion thereof directly affected; and
- (6) that the participation formula contained in the unitization agreement allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit area on a fair, reasonable and equitable basis.

The Act requires the Division to ultimately find that each of these conditions exist. *See* NMSA 1978, § 70-7-6. If all these conditions exist, then the Division may issue an order that includes all the provisions listed in Section 70-7-7, ensures the “correlative rights [are] protected of all owners of mineral interests in each unitized area,” and is “upon terms and

conditions that are fair, reasonable and equitable.” *See* NMSA 1978, §§ 70-7-1, 70-7-6 and 70-7-7.

A separate component of the Division’s order must also address how production and costs are “allocated to the separately owned tracts in the unit area....” NMSA 1978, § 70-7-7(C). The Division must find that the proposed tract allocation formula “allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit area on a fair, reasonable and equitable basis.” NMSA 1978, § 70-7-6(A)(6). Ultimately, the Division must find that “the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.” NMSA 1978, § 70-7-6(B).

#### **COG’s PROPOSED EVIDENCE**

Since FAE bears the burden of demonstrating to the Division all the conditions for statutory unitization exist and that the proposed allocation formula is fair and reasonable, COG does not anticipate calling witnesses at the hearing. COG may cross-examine the witnesses presented by FAE.

#### **PROCEDURAL MATTERS**

None at this time.

Respectfully submitted,

HOLLAND & HART LLP

By: \_\_\_\_\_

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**ATTORNEYS FOR COG OPERATING LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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State of New Mexico  
Energy, Minerals and Natural Resources  
Oil Conservation Division  
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QUESTIONS  
  
Action 290092

QUESTIONS

Operator: COG PRODUCTION, LLC 600 W. Illinois Ave Midland, TX 79701	OGRID: 217955
	Action Number: 290092
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

Testimony	
Please assist us by provide the following information about your testimony.	
Number of witnesses	Not answered.
Testimony time (in minutes)	Not answered.