

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

APPLICATION OF HILCORP ENERGY COMPANY
TO AMEND THE WELL DENSITY AND LOCATION
REQUIREMENTS AND ADMINISTRATIVE
EXCEPTIONS OF THE SPECIAL RULES FOR THE
BLANCO-MESAVERDE GAS POOL, RIO ARRIBA
AND SAN JUAN COUNTIES, NEW MEXICO.

Case No. 16403

MOTION TO STRIKE NOTICE OF INTERVENTION

Hilcorp Energy Company (“Hilcorp”) files this motion to strike the Notice of Intervention (the “Notice”) filed by San Juan Citizens Alliance (“San Juan”) to preclude it from being a party to this case and from filing a motion for continuance. For the reasons stated, the Notice is untimely and legally deficient. In support thereof, Hilcorp states:

1. Pursuant to NMAC 19.15.4.11, San Juan filed the Notice in this case on September 6, 2018. The Notice is deficient, for several reasons.

THE NOTICE WAS NOT TIMELY FILED.

2. The Notice was filed on September 6, 2018, together with a Pre-Hearing Statement. **EXHIBIT A.** The Pre-Hearing Statement was required to be filed by September 6, 2018. However, the Notice was required to be filed one day earlier, on September 5th. NMAC 19.15.4.11. **EXHIBIT B.**

3. The Commission is bound by its regulations. Therefore, even if San Juan could establish standing, San Juan did not comply with the time requirements of the regulations, and its Notice must be denied.

SAN JUAN LACKS STANDING TO INTEREVEENE.

4. The Division’s rule governing intervention provides that “a person with standing with respect to the case’s subject matter may intervene by filing a written notice of

intervention[.]” 19.15.4.11.A NMAC (emphasis added). It also provides that the person giving notice of intervention “shall” state “the nature of the intervenor’s interest in the application,” and “the extent to which the intervenor opposes issuance of the order applicant seeks.” NMAC 19.15.4.11.A(3), (4). (emphasis added).

5. San Juan’s Notice is legally deficient and thus fails to meet the Commission’s mandatory requirements necessary to establish the right to intervene and to seek a continuance. *See Marbob Energy Corp. v. New Mexico Oil Conservation Comm’n*, 2009-NMSC-013, ¶ 22, 206 P.3d 135 (“‘shall’ indicates that the provision is mandatory”).

6. The rule requires, as a condition precedent, that a putative intervenor has standing with respect to the case’s subject matter. San Juan has not established this threshold element necessary for intervention.

7. Hilcorp’s application seeks an order to amend the well density requirements and administrative exceptions of the Special Rules and Regulations for the Blanco-Mesaverde Gas Pool in order to increase well density. That is, Hilcorp seeks to change the pool rules to allow up to eight wells per 320 acre gas proration and spacing unit (“GPU”) and up to four wells within either quarter section within a GPU. The subject matter of this case thus relates to the effective and efficient drainage of the Blanco-Mesaverde Gas Pool.

8. San Juan states that it is “an interested party,” but alleges no basis to establish standing with respect to the effective and efficient drainage of the Blanco-Mesaverde Gas Pool. The only stated reason is to minimize the number of wells drilled due to “public health and environmental interests” from disposition of waste under NMSA §§70-2-12.B.22 and 70-2-12.B.23. While Hilcorp denies that health and the environment will be adversely affected by granting its application, that is not the issue in this case.

9. The issue in this case is the Division's statutory authority and obligation to prevent waste of hydrocarbons and protect correlative rights. NMSA 1978 §70-2-11.A. The application thus raises technical down-hole and reservoir drainage issues. San Juan fails to establish how it's interest could possibly relate to Hilcorp's application or implicate the Division's statutory charge to prevent waste and protect correlative rights. In its Pre-hearing Statement and Notice, San Juan raises only surface issues, which have no bearing on the technical reservoir management issues raised in Hilcorp's application

10. Moreover, San Juan does not establish how the interest it seeks to protect -- whatever that may be -- can be redressed by the Commission. See San Juan Agr. Water Users Ass'n v. KNME-TV, 2011-NMSC-011, ¶ 42, 257 P.3d 884 (identifying "redressability" as an element of standing under New Mexico law).

11. Even if San Juan can address that issue, the Commission has already enacted regulations, under its guiding statutes, regarding the waste disposal issues San Juan raises:

- (a) NMAC 19.15.18 (Production Operating Practices).
- (b) NMAC 19.15.19 (Natural Gas Production Operating Practices).
- (c) NMAC 19.15.23 (Off Lease Transport of Oil or Contaminants).
- (d) NMAC 19.15.30 (Remediation).
- (e) NMAC 19.15.34 (Produced Water).
- (f) NMAC 19.15.35 (Waste Disposal).
- (g) NMAC 19.15.36 (Surface Waste Management Facilities).

Those regulations address the provisions of NMSA §§70-2-12.B.22 and 70-2-12.B.23, cited by San Juan as to why it has an interest. Those issues have already been addressed by the Commission and are not part of this application, and thus San Juan has no interest or standing.

12. Having failed to establish this threshold legal element -- a condition precedent to intervention -- San Juan's Notice must be stricken.

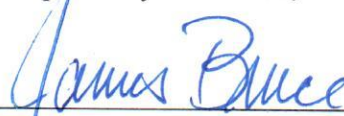
A CONTINUANCE OF THIS MATTER IS IMPROPER.

13. Having failed to establish the right to be a party in the case, San Juan should be precluded from filing a motion for a continuance. See NMAC 19.15.4.10 (defining "parties" to an adjudicatory proceeding). Only "parties" are permitted by Division rule to file a motion for continuance. See NMAC 19.15.4.13.C. Hilcorp should not be required to bear the undue burden and expense of responding to a motion for continuance filed by individuals or entities not a party to the case.

14. Moreover, the primary reason stated for a continuance is failure to comply with the New Mexico Rules Act, NMSA §§14-4-1 *et seq.* This is not a rulemaking case: It is an application for special pool rules under NMAC 19.15.4, which is an adjudicatory proceeding. This distinction was recognized by the Supreme Court in *Uhden v. New Mexico Oil Conservation Comm'n*, 1991-NMSC-089, ¶ 7, 112 N.M. 528. Rulemaking is covered by NMAC 19.15.3.

WHEREFORE, Hilcorp Energy Company respectfully requests that the Notice of Intervention filed by San Juan Citizens Alliance be stricken as legally deficient and for lack of standing. Further, San Juan should be precluded from filing a motion for continuance on the grounds that it has not established the legal requirements necessary to be a party to this case.

Respectfully submitted,



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(505) 982-2043

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Attorney for Hilcorp Energy Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 10th day of September, 2018, via e-mail:

Gabriel Pacyniak
pacyniak@law.unm.edu

Jon Anderson
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Scott Hall
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James Bruce

From: Brancard, Bill, EMNRD, EMNRD <bill.brancard@state.nm.us>

To: jamesbruc <jamesbruc@aol.com>

Subject: FW: Notice of Intervention and Pre-Hearing Statement (Case No. 16403)

Date: Thu, Sep 6, 2018 5:47 pm

Attachments: Pre Hearing Statement (Case No. 16403) with Service.pdf (3251K),
Notice of Intervention (Case No. 16403) with Service.pdf (3615K)

From: Davidson, Florene, EMNRD

Sent: Thursday, September 6, 2018 4:27 PM

To: Riley, Heather, EMNRD <Heather.Riley@state.nm.us>; Balch (balch@prrc.nmt.edu) <balch@prrc.nmt.edu>; Martin, Ed <emartin@slo.state.nm.us>; Brancard, Bill, EMNRD <bill.brancard@state.nm.us>

Subject: FW: Notice of Intervention and Pre-Hearing Statement (Case No. 16403)

From: Anderson, Jon <Jon.Anderson@clinic.law.unm.edu>

Sent: Thursday, September 6, 2018 4:14 PM

To: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>

Cc: Pacyniak, Gabriel <pacyniak@law.unm.edu>

Subject: Notice of Intervention and Pre-Hearing Statement (Case No. 16403)

Ms. Davidson,

Please see attached Notice of Intervention and Pre-Hearing Statement on behalf of the San Juan Citizens Alliance, in reference to OCC Case Number 16403. Included in each document is a Certificate of Service, stating that we have served copies of the documents to the applicant's counsel of record.

Thank you for your time,

Jon Anderson, Clinical Law Student
University of New Mexico School of Law
Natural Resources and Environmental Law Clinic
Working under the supervision of
Gabriel Pacyniak, Supervising Attorney,
In accordance with NMRA 1-094.

1117 Stanford Drive NE
Albuquerque, NM 87131
Phone: 505-277-5265
Fax: 505-277-2371

EXHIBIT

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before the hearing by:

- (1) posting notice on the division's website;
- (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and
- (3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.4.9 NMAC - Rp, 19.15.14.1207 NMAC, 12/1/08]

19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:

- A. The parties to an adjudicatory proceeding shall include:
 - (1) the applicant;
 - (2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and
 - (3) a person who properly intervenes in the case.
- B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.
- C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.
- D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.

[19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/08]

19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

- A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:
 - (1) the intervenor's name;
 - (2) the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;
 - (3) the nature of intervenor's interest in the application; and
 - (4) the extent to which the intervenor opposes issuance of the order applicant seeks.
- B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.
- C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

[19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/08]

19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

- A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that 19.15.4.9 NMAC requires, as follows.
 - (1) Compulsory pooling and statutory unitization.
 - (a) The applicant shall give notice to an 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).
 - (b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, the proposed unit is not larger in size than provided in 19.15.15 NMAC or applicable special pool orders, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:
 - (i) a statement that the applicant expects no opposition including the reasons why;
 - (ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;
 - (iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;
 - (iv) the names of the formations and pools to be pooled;
 - (v) a statement as to whether the pooled unit is for gas or oil production;
 - (vi) written evidence of attempts the applicant made to gain vol

EXHIBIT

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relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

(e) At an interested person's request or upon the division's own initiative, the division shall set a pooling application for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) Affected persons are the following persons owning interests in the adjoining spacing units:

(i) the division-designated operator;

(ii) in the absence of an operator, a lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he files the application; and

(iii) in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application.

(b) In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then affected persons include working interest owners in that spacing unit.

(c) If the proposed location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than special pool orders provide, the applicant shall notify affected persons.

(3) Non-standard proration unit. The applicant shall notify owners of interest in the mineral estate to be excluded from the proration unit in the quarter-quarter section for 40-acre pools or formations, the one-half quarter section for 80-acre pools or formations, the quarter section for 160-acre pools or formations, the half section for 320-acre pools or formations or section for 640-acre pools or formations in which the non-standard unit is located and to such other persons as the division requires.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify surface owners within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send a notice 19.15.4.9 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place; and the means by which protests may be made. When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit, that the applicant or its authorized representative has signed, that the applicant has:

(1) complied with notice provisions of 19.15.4.9 NMAC;

(2) conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and

(3) given notice at that correct address as 19.15.4.9 NMAC requires; in addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening