

STATE OF NEW MEXICO

DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES

OIL CONSERVATION DIVISION

IN THE MATTER OF THE REHEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
FOR THE PURPOSE OF CONSIDERING:

PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL  
ASSURANCE AND PLUGGING AND  
ABANDONMENT OF WELLS, 19.14.2.19.15.8  
and 19.15.25 NMAC: CASE NO. 16078

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

NOVEMBER 15, 2018

SANTA FE, NEW MEXICO

BEFORE: HEATHER RILEY, COMMISSION CHAIR  
ED MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
WILLIAM BRANCARD, ESQ., LEGAL COUNSEL

This matter came for rehearing before the New Mexico Oil Conservation Commission on Thursday, November 15, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Santa Fe, New Mexico.

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ALSO PRESENT: Ms. Florene Davidson

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1 (Time noted 9:11 a.m.)

2 COMMISSION CHAIR RILEY: All right. That  
3 brings us to Item No. 5, which is: Rehearing of Case No.  
4 16078, a Rulemaking in the Matter of Proposed Amendments  
5 to the Commission Rules on Financial Assurance in Plugging  
6 and Abandonment of Wells, 1915.2, 1915.8 and 1915.24 NMAC.

7 So if we can please identify the parties  
8 here, and counsel for the parties. Starting with you, Mr.  
9 Brooks.

10 MR. BROOKS: Madam Chair, members of the  
11 Commission, I'm David Brooks of the Energy, Minerals, and  
12 Natural Resources Department, Assistant General Counsel  
13 appearing for the Oil Conservation Commission.

14 MR. LARSON: Madam Chair, Commissioners,  
15 Gary Larson of the Santa Fe office of Hinkle, Shanor for  
16 the Independent Petroleum Association of New Mexico.

17 MR. MARKER: Larry Marker just here, got  
18 from Roswell, representing smaller guys that either  
19 couldn't be here or don't really know how to speak up in a  
20 meeting like this.

21 COMMISSION CHAIR RILEY: Thank you,  
22 Mr. Marker.

23 MR. BROOKS: I have one witness that needs  
24 to be sworn.

25 COMMISSION CHAIR RILEY: Okay.

1 MR. LARSON: I do not have any witnesses.

2 COMMISSION CHAIR RILEY: You don't have any  
3 witnesses?

4 Mr. Marker?

5 MR. MARKER: I just asked for two in my  
6 prehearing statement. That would be me and Mrs. Marks.  
7 If she's not here, that's fine. I can -- what I would  
8 hope to do today -- well, go ahead. I'll get off for now.

9 MR. BRANCARD: Please explain what you  
10 would like to do. I think that's what the Commission  
11 wants. The Commission wants to know who wants to present  
12 what today.

13 MR. MARTIN: That works. Okay.

14 MR. BRANCARD: So that's the opportunity  
15 right now for you to say that.

16 MR. MARKER: Okay. I realize that we were  
17 granted a rehearing and it was limited in scope to the  
18 federal -- to counting the federal wells for the state  
19 financial assurance.

20 Since then the OCD has changed their  
21 amending of the rules to say that the only time the  
22 federal wells would count in the state financial assurance  
23 is if there was no bonding on the federal wells. And  
24 that's fine, and I said in my prehearing statement, that  
25 that's great, and I agree with that and that makes sense.

1                   As you know, since our last hearing, our  
2 original hearing, I've stressed in a lot of different  
3 ways -- I filed a couple of applications for rehearing,  
4 filed the first one too early. I've sent letters off.  
5 I've done everything in my power to express to the  
6 Commission that I don't think we've gotten enough  
7 information, and we haven't given this subject enough  
8 consideration.

9                   And I can't stress enough how important  
10 this is to a lot of the smaller guys. And I know the  
11 small operators aren't the most popular people on the  
12 planet, I understand that, and it's going to get even  
13 worse considering what we've got coming down the road in  
14 the State of New Mexico and the political environment  
15 we're going to be operating in. And I don't want to seem  
16 hardheaded, and I don't want to seem like I don't  
17 understand compromise and that I don't want to get along,  
18 but I'm serious when I say there is several guys that are  
19 going to go out of business.

20                   We're talking about people with -- we're  
21 talking about men that have worked their entire lives.  
22 And what they have may not seem like a lot -- the last  
23 three years we've taken a beating in the oil and gas  
24 industry. We've taken a serious beating, and what these  
25 guys have, it may not seem like a lot to most of the

1 world, but it's all they've got.

2                   And I really think if I've got to come up  
3 here and make a fool of myself and be a pain in  
4 everybody's rear to represent these guys and represent  
5 myself -- I'm not going to lie to you. This is going to  
6 hurt me severely.

7                   You know, three months ago West Texas  
8 Intermediate crude was 68 bucks. That sounds pretty  
9 great. I was getting \$46 a barrel because of the discount  
10 we're having to take because there was so much oil coming  
11 out of Southern New Mexico.

12                   We haven't pulled out of the mess yet.

13                   And I understand that we have to protect  
14 the environment and we have to protect the public. There  
15 is not a single stripper weller out there that is not  
16 concerned with the environment. We live out there. We go  
17 out there. We love it out there. We want it to be as  
18 clean as we possibly can. I picked up wells that sane  
19 people wouldn't pick up that needed to be cleaned up and  
20 stuff, because I am probably a glutton for punishment.

21                   Anyway, I kind of got off the rails there a  
22 little bit, because I tend to do that when I get nervous.  
23 Because I'm not real comfortable in this setting at all.  
24 I do not belong here, but it's important enough that I  
25 need to come up here, and I would be embarrassed if I knew

1 that it was this important and I didn't come up here and  
2 at least stand up. Only a coward would do that, and I  
3 can't see myself doing that.

4 What I would like to be able to do today is  
5 in my opening statement I would like to read -- excuse me,  
6 I would like to read part of my prehearing statement.  
7 That will kind of settle things down.

8 I believe that we violated some rules, and  
9 as I had a discussion just a few minutes ago, I don't want  
10 anybody to take this personal. I don't take any of it  
11 personal, other than the fact that I see a whole lot of  
12 guys that are going to be out of business and that are  
13 going to be severely damaged.

14 I would like to be able to present my case  
15 as far as why I don't think we have enough information to  
16 make judgments on rules that are this vital to people's  
17 futures. Like I said, this -- you know, you could look at  
18 the number of wells I got, and things actually look pretty  
19 good, but when you consider the fact that everything I've  
20 ever worked for my entire life is wrapped up in those  
21 wells...

22 I've got my struggles with the BLM, and  
23 I've had my struggles with regulatory agencies, there is  
24 no doubt, but I can promise you, as far as being an outlaw  
25 and just running amok, I don't know any operators out

1 there that are left like that.

2 I appreciate you guys having me up here,  
3 and I realize -- and, believe me, I understand and I  
4 appreciate the fact that in reality I was not a party per  
5 statute or per rule, I was not a party to the original  
6 hearing so you had every right in the world not to grant a  
7 rehearing. But apparently I brought up enough items that  
8 there was enough discrepancy in the rules and the statutes  
9 that allowed us to get a rehearing on the federal wells.  
10 And I'm thankful for that. That makes a significant  
11 difference.

12 Anyway, I'll shut up but I would like to be  
13 able to present to you -- it's not going to take very  
14 long -- because after we leave here -- after we leave  
15 here, dependent upon what we decide today and what your  
16 final ruling is, my next step is I gotta go to the Court  
17 of Appeals. And I would -- I would really, really, really  
18 prefer to be on my pulling unit pulling a well so I can  
19 get a pump changed out so I can actually make some crude  
20 oil. This is not where I belong. None of us -- you see  
21 several more guys here today. We do not belong here.

22 Getting these guys out of the oil fields is  
23 tough. When you see these guys in town and they're  
24 cleaned up and looking pretty and everything, it's a major  
25 deal.

1                   And I know -- I just don't believe that we  
2 have enough information and that we've looked at the full  
3 effects of this rule. I honestly believe that.

4                   I'll shut up now.

5                   COMMISSION CHAIR RILEY: Thank you, Mr.  
6 Marker.

7                   MR. BROOKS: I request my witness be sworn,  
8 please.

9                   (Whereupon Daniel Sanchez was duly sworn.)

10                  MR. BROOKS: I would like to make an  
11 extremely brief opening statement, Madam Chair.

12                  COMMISSION CHAIR RILEY: Please.

13                  MR. BROOKS: Madam Chairman, Honorable  
14 Commissioners, the Commission has previously considered  
15 this rule, and they have approved portions of what was  
16 proposed originally by the Division. The Commission  
17 entered an Order after their deliberations that directed  
18 the Division to propose some changes to remove the federal  
19 wells from the accounting for the number of wells that  
20 determines the amount of bonding.

21                  We did that, and that will be presented to  
22 you in this case.

23                  The rehearing, as we understand the  
24 Commission's Order, has been expressly limited to those  
25 issues, and no other portion of the rule is before us at

1 this proceeding.

2 So we ask that you consider the amendments  
3 proposed by the Division pursuant to the Commission's  
4 express direction. Thank you.

5 COMMISSION CHAIR RILEY: Thank you.

6 MR. BROOKS: If I could, I will call Daniel  
7 Sanchez.

8 DANIEL SANCHEZ,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q. Good morning, Mr. Sanchez.

13 A. Good morning.

14 Q. Would you state your name for the record,  
15 please.

16 A. Daniel Sanchez.

17 Q. And by whom are you employed?

18 A. The Oil Conservation Division of the New Mexico  
19 Energy, Minerals and Natural Resource Department.

20 Q. And what is your capacity here?

21 A. I am the compliance and enforcement manager for  
22 the OCD.

23 Q. And in that capacity do you have a lot to do  
24 with financial assurance?

25 A. Somewhat, yes.

1 Q. And since that was being -- that was formerly  
2 being handled by the Deputy Director, Ms. uh --

3 A. Marks.

4 Q. -- Marks.

5 And she left the Commission -- left the  
6 Division since the last hearing in this case; is that  
7 correct?

8 A. That is correct.

9 Q. Have you reviewed the proposals that are being  
10 made in this case?

11 A. Yes, I have.

12 (Note: Exhibit 1 marked.)

13 Q. I wanted to draw your attention to what has been  
14 marked as OCD Exhibit 1. Is that the changes to the rule  
15 that the Division has now proposed?

16 A. Yes, it is.

17 Q. And OCD Exhibit 1 includes only Section 8, or  
18 part 8 of the 19.15.8, but does it include both the  
19 originally proposed and the additionally proposed  
20 amendment by the OCD?

21 A. Yes.

22 (Note: Exhibit 2 marked.)

23 Q. I ask you to look at Exhibit No. 2, what has  
24 been marked as OCD Exhibit No. 2.

25 Is that a comparison of the original and

1 the new versions of -- of the versions previously approved  
2 by the Commission and the version now proposed?

3 A. Yes, it is.

4 (Note: Exhibit 3 marked.)

5 Q. I ask you to look at OCD Exhibit 3. Is that a  
6 Certificate of Compliance with the Notice Requirements,  
7 executed by Florene Davidson?

8 A. Yes, it is.

9 Q. I ask you to look at Exhibit No. 4 -- Exhibits  
10 Nos. 4 and 5. Now, 5, Madam Chairman and Commissioners,  
11 Exhibit 5 is not part of what we had designated. It  
12 simply is a legal document, so I will have it copied for  
13 you at a recess. They are in the copy stack back on the  
14 table, but it's...

15 Are Exhibits 4 and 5 copies of federal  
16 regulations that impose financial assurance requirements?

17 A. Yes, they are.

18 MR. BROOKS: Thank you. I didn't get Exhibit 5  
19 until today, so that's the reason why we do not have it  
20 ready at this moment.

21 Q. Mr. Sanchez, could you summarize what the new  
22 proposals do.

23 A. In part A of 15.8.9. it includes the language --  
24 I'll just read the whole part. I'll read all of Part A,  
25 Applicability.

1                   (Reading) An operator who has drilled or  
2                   acquired, is drilling or proposes to drill or acquire  
3                   an oil, gas, or injection or other services well  
4                   within this state shall furnish a financial assurance  
5                   acceptable to the Division in accordance with  
6                   19.15.8.9 NMAC, and in the form of an irrevocable  
7                   letter of credit, plugging insurance policy or cash  
8                   or surety bond running to the State of New Mexico  
9                   conditioned that the well be plugged and abandoned  
10                  and the location restored and remediated in  
11                  compliance with commission rules unless the well is  
12                  covered by federally required financial assurance.

13                  **Q.    Okay.  And are the other provisions there**  
14                  **expressly tied to subsection 2, subsection A?**

15                  A.    Yes, they are.  Subsection C considers active  
16                  wells, and it reads.  (Reading) An operator shall provide  
17                  financial assurance for wells that are covered by  
18                  subsection A, which includes the language on the federal  
19                  bonding.

20                                 And that is the section which gives the  
21                  tiered amounts for bonding, the new requirements for  
22                  bonding for 1 to 10, 11 to 50, 51 to 100, and more than  
23                  100 wells, which would exclude, with that language, any  
24                  federal wells that are already bonded.

25                  **Q.    Does this proposed rule accomplish the purpose**

1 that the Commission has directed the Division to propose  
2 rules for; that is, to exclude federally bonded wells from  
3 all the computations that are involved in determining the  
4 amount of the state bonds required to own a well?

5 A. I believe it does.

6 Q. Is there anything else you want to tell the  
7 Commission about this proposal?

8 A. Just that subsection D also includes that  
9 language: An operator shall provide financial assurance  
10 for wells that are covered by subsection A.

11 So again in section D it's covered, as  
12 well.

13 MR. BROOKS: Very well. At this time I'm  
14 going to tender Exhibits 1 through 4. Because I have not  
15 furnished copies of Exhibit 5 to everyone, I will reserve  
16 the right to tender that when I have the copies for  
17 distribution.

18 COMMISSION CHAIR RILEY: Okay. Do we have any  
19 objections to the exhibits?

20 MR. LARSON: No objection.

21 MR. MARKER: No, ma'am.

22 COMMISSION CHAIR RILEY: All right. Exhibits 1  
23 through 4 are accepted into the record.

24 (Note: OCD Exhibits 1-4 admitted.)

25 MR. BROOKS: Pass the witness.

CROSS EXAMINATION

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BY MR. LARSON:

**Q. Good morning, Mr. Sanchez.**

A. Good morning.

**Q. I'll direct your attention to 19.15.8.9 C. I guess that's Exhibit A, and I'm going to ask you to consider a hypothetical situation.**

**If we look at subparagraph (b), the tiered amount for an operator of 50 wells is \$75,000; is that correct?**

A. Yes, sir.

**Q. And if an operator had 50 state and fee wells and one federal well, under the original rule that would kick the operator into the \$125,000 category; is that right?**

A. Could you repeat that?

**Q. Sure. If an operator has 50 state and fee wells and one federal well, for a total of 51 wells, that would put them into the \$125,000 tier; is that correct?**

A. No. My understanding of the rule is it would keep it in the \$75,000. The one federal well would not be counted towards those other wells since they are already covered by another financial assurance.

**Q. And that's the effect of the new rule.**

A. Yes.

1 Q. What I was addressing was the original.

2 A. The original. Oh.

3 Q. The original amount.

4 A. Yes, then it would have at that point.

5 Q. And if they had a \$25,000 blanket federal bond,  
6 they would be paying \$100,000 for an OCD blanket; is that  
7 correct?

8 A. Yes.

9 Q. But the amendment as proposed by Mr. Brooks  
10 eliminates that, so that the operator with 51 wells,  
11 including one federal well, would stay in the \$75,000.

12 A. That's correct.

13 MR. LARSON: That's all I have. Thank you.

14 COMMISSION CHAIR RILEY: Mr. Marker.

15 MR. MARKER: No, ma'am. I typically avoid  
16 talking to Daniel. The only time I get to talk to him is  
17 when I'm in trouble, and I'm good right now, so...

18 We'll just let that go at that.

19 COMMISSION CHAIR RILEY: Okay.

20 MR. LARSON: I thought you said it wasn't  
21 personal. All right.

22 MR. MARKER: I know when to be quiet.

23 COMMISSION CHAIR RILEY: Commissioners?

24 Dr. Balch, do you want to go first?

25 COMMISSIONER BALCH: It's pretty

1 straightforward. I don't have any questions.

2 MR. MARTIN: Nor do I.

3 COMMISSION CHAIR RILEY: I don't have any  
4 questions.

5 How about you?

6 MR. BRANCARD: I don't have any questions.

7 COMMISSION CHAIR RILEY: Do you have any  
8 redirect?

9 MR. BROOKS: I have none.

10 MR. BRANCARD: Madam Chair, one question.

11 CROSS EXAMINATION

12 BY MR. BRANCARD:

13 Q. You didn't address that we also have Section 14,  
14 the effective dates.

15 A. Oh, yeah.

16 Q. So the Commission has to fill in those dates  
17 when this rule will become effective?

18 A. Yes, that's correct.

19 Q. Is there any proposal from the Division about  
20 when these regulations would -- you prefer to have them  
21 kick in?

22 A. I didn't consider that when I was reviewing  
23 this.

24 COMMISSIONER BALCH: What is a possible  
25 timeline? Because we need to get this filed, right?

1                   MR. BRANCARD: We will need to get the rule  
2 filed, but the rule would then define when the rule  
3 becomes effective.

4                   COMMISSIONER BALCH: But you can't make it  
5 effective before the rule is finalized in the public  
6 record, right?

7                   MR. BRANCARD: No. But the idea here was  
8 that the rule becomes effective for any new wells on the  
9 effective date of the rule, but then for existing wells  
10 the original proposal had a delayed effective date. So  
11 the Commission needs to sort of fill in that date of when  
12 that date would be.

13                   COMMISSION CHAIR RILEY: We had done. It  
14 was either three months or four months. I think we landed  
15 on three months.

16                   MR. MARKER: We started out at three, but  
17 then Christmas got in the way so we decided to go with  
18 four, but now we are going to be past Christmas.

19                   COMMISSIONER BALCH: Three months past the  
20 end of the effective day of the rule?

21                   MR. BROOKS: The Division did not make a  
22 recommendation on that. We thought it appropriate to  
23 leave it to the Commission since the Commission had  
24 already considered the matter of the delay of effective  
25 date.

1                   COMMISSIONER BALCH: Three months. Is that  
2 enough?

3                   MR. MARKER: Three months, yes, sir. That  
4 was the original, and then we even had a comment there,  
5 where somebody said, "Merry Christmas," and you guys said,  
6 "No, let's go January 24th."

7                   And we bumped all that back, so that month  
8 is unnecessary now.

9                   MR. BRANCARD: I haven't figured out the  
10 exact date for the effective date. I mean, I think given  
11 the rehearing period, given -- you have to figure out when  
12 to get the Order done on this, and given the rehearing  
13 period, I can't see it being effective any earlier than I  
14 think the last publication of the Register, which is  
15 December 27th.

16                   COMMISSIONER BALCH: So that would be March  
17 27th?

18                   MR. BRANCARD: Yeah. So if you just say  
19 three months from the effective date. So whenever the  
20 filing gets done -- when you file the rules, the person  
21 filing the rules will know what the dates are at that  
22 time, and so they can fill in those dates.

23                   MR. MARKER: And that will be after your  
24 final decision or your -- what's the exact word? Your  
25 final ruling, your final decision on all of the rules, on

1 all the rules that we're...

2 MR. BRANCARD: The way I envision this is  
3 if the Commission wants to try to get this done before the  
4 end of the year, if the Commission decides to accept this  
5 proposal -- well, you have to make a decision one way or  
6 the other today on the language for the federal wells --  
7 that I would need to draft a new Order that you can  
8 possibly delegate to the Chair to sign. Once that Order's  
9 in effect, that triggers the rehearing period of 20 days.  
10 Then if there is a rehearing request filed, possibly then  
11 that would be another 10 days.

12 MR. MARKER: I don't see that anybody would  
13 be filing a rehearing on that. Everybody that I know  
14 of -- everybody known to me is in agreement on the way  
15 they have adjusted the federal well.

16 MR. BRANCARD: Well, let me just offer this  
17 to you, Mr. Marker, right now.

18 This is a limited rehearing --

19 MR. MARKER: It is.

20 MR. BRANCARD: -- and you understand that.

21 MR. MARKER: Yes.

22 MR. BRANCARD: But when the Commission  
23 files the Order on this case, it will be the Order on the  
24 entire rule.

25 MR. MARKER: Yes, sir.

1                   MR. BRANCARD: Okay? So at that point if  
2 you have issues with the rest of the rule, it would be  
3 appropriate for you to ask for rehearing at that point.

4                   MR. MARKER: Okay.

5                   MR. BRANCARD: Okay. So the rehearing is  
6 not just on this portion, because the rest of the rule  
7 hasn't been filed yet. What we are going to file is the  
8 entire rule. Okay?

9                   So the rehearing would be on any issue in  
10 the rule that got changed. Just so you're aware of that.

11                   MR. MARKER: Okay.

12                   MR. BRANCARD: So that puts us into, fairly  
13 into late December, and we would have -- I don't know if  
14 we would be able to meet the deadline in order to get into  
15 the December 27th publication or not. If not, it would be  
16 early January for publication.

17                   COMMISSION CHAIR RILEY: If we were to put  
18 this on the December 13th docket for review and final  
19 signature by the group, would it then push it to next  
20 year?

21                   MR. BRANCARD: Yes.

22                   COMMISSIONER BALCH: We need 30 days from  
23 whatever the Final Order is.

24                   MR. BRANCARD: Right. Because if you put  
25 the Order on your next agenda, then the Order won't be

1 signed until, say, that date, which means the rehearing  
2 period will extend into January.

3 MR. MARKER: Again, from where I'm at, and  
4 anybody known to me, I'm not going to be filing any more  
5 rehearings on anything. I'm hoping -- actually, I'm  
6 hoping today to convince you to adjust your blankets and  
7 your single-well bonds, which, you know, that remains to  
8 be seen.

9 But my next step isn't actually a  
10 rehearing, anyway. I need to go probably to the Court of  
11 Appeals, and I have to wait for your Final Ruling before I  
12 can do that.

13 So as far as I know, anybody known to me  
14 that's involved, nobody is going to be filing any more  
15 rehearings. I would believe that we've exhausted all of  
16 the administrative procedures that I could possibly  
17 exhaust. I mean, I even threw a couple of things out  
18 there just hoping that they would stick, but as far as I  
19 know there's no room for any more rehearings to be filed  
20 anyway. Whatever decision we have is what we have, and  
21 then we're left to deal with that.

22 So the effective date, to me, is -- the  
23 quicker we make a final decision, the quicker that we can  
24 decide -- when I say "we" it's not just me, it's guys that  
25 I see and work with. You know, other stripper wellers.

1 You know, typically we're talking on the phone, you know,  
2 driving down the road, filming up our windows and stuff.  
3 Everything I say is just a culmination, a cleaned-up  
4 culmination of what these guys are feeling and seeing.

5 So our rehearing process, I honestly  
6 believe after this is done, administratively I've done  
7 everything that I could possibly do, so an effective date  
8 of the end of December would be fantastic, and then I  
9 could get on to -- a final decision to me would be more  
10 critical, and the only thing I really have an issue with  
11 is blanket bonds and the single-well bonds.

12 The federal, the way you worded the federal  
13 deal is perfect. It makes sense. It still tells people  
14 you got to have -- you have to have bonding on federal  
15 wells, we're not going to let you skate there, but if you  
16 have the federal bonds, that's fine.

17 That's very similar to how it is now. Very  
18 similar. And it's a practical way to handle that  
19 situation. If a guy just has federal wells and he doesn't  
20 have a federal bond, then he needs to be bonded.

21 COMMISSION CHAIR RILEY: Go ahead. I think  
22 the effective date, I think we can say, is three months.  
23 I mean, that makes sense, and that's the question we have  
24 in front of us right now.

25 MR. BRANCARD: You can discuss this in

1 deliberation once everybody is done here, but I just  
2 wanted to make sure we had a position on that effective  
3 date, because it's just left blank in the proposal at this  
4 point.

5 COMMISSION CHAIR RILEY: Thank you.

6 Mr. Brooks?

7 MR. BROOKS: Yes.

8 Mr. Brancard, just to clarify the record,  
9 what you were saying about the rehearing, the rehearing  
10 that has been granted and that we are here on today, it is  
11 my understanding is limited to the issues raised in the  
12 Order granting this rehearing, which was limited to the  
13 federal well issue. Is that correct?

14 MR. BRANCARD: That's what the Notice for  
15 this hearing focused on, yes.

16 MR. BROOKS: However, if the Commission  
17 issues an Order either adopting or rejecting the proposed  
18 rule, that will adopt or reject the rule in its entirety.  
19 Correct?

20 MR. BRANCARD: The Order for the rehearing  
21 suspended the Order that had already been approved. Okay?  
22 My proposal to the Commission is if they go ahead with  
23 this rule change today, is to basically replace that Order  
24 with a new Order for the entire rulemaking.

25 MR. BROOKS: Okay. And then any party

1 wishing to file a motion for rehearing from that Order  
2 will be able to, or will have the right to raise any issue  
3 they want to in that motion for rehearing.

4 MR. BRANCARD: That's correct.

5 MR. BROOKS: Whether it relates to the  
6 subject matter of this hearing or the subject matter of  
7 the prior hearing.

8 MR. BRANCARD: That's correct.

9 MR. BROOKS: Thank you.

10 MR. MARKER: I understand that that puts  
11 everything on the same timeline and the same level, that  
12 we don't have a couple of rules over here that we've ruled  
13 on. I understand that. That does simplify things. I see  
14 your point.

15 MR. BRANCARD: I'm going way beyond what I  
16 need to here, but just for procedure in terms of appeals,  
17 unlike an adjudicatory case in front of the Commission  
18 where you have to file a rehearing in order to appeal the  
19 case to the courts, you do not have to file a rehearing of  
20 a rulemaking in order to file an appeal.

21 MR. MARKER: With the court.

22 MR. BRANCARD: Right.

23 MR. MARKER: Okay.

24 MR. BRANCARD: It is delayed -- I mean the  
25 filing of the rule is delayed to allow for the rehearing

1 period, but a rehearing is not mandatory in order to file  
2 an appeal.

3 MR. MARKER: The only thing that's  
4 mandatory is a Final Ruling from the Commission.

5 MR. BRANCARD: A Final Order from the  
6 Commission, wait for the rehearing period, and then the  
7 rule gets filed with the records center. That triggers  
8 the appeal period, when it gets filed.

9 MR. MARKER: Very good.

10 MR. BRANCARD: And everybody who  
11 participated in the matter will receive notice of the  
12 filing of the rule. That's required.

13 MR. MARKER: Okay.

14 COMMISSION CHAIR RILEY: I believe we are  
15 done with this witness, don't you think?

16 MR. BRANCARD: I think so.

17 COMMISSION CHAIR RILEY: Everybody's had  
18 their opportunity to question him. So, Mr. Sanchez, you  
19 are excused.

20 MR. BROOKS: I have no further witnesses.  
21 I can go and get the copies of Exhibit 5 and present them  
22 to the Commission at this time or wait until after a  
23 recess, depending on the pleasure of the Commission.

24 COMMISSION CHAIR RILEY: And Exhibit 5 was  
25 the federal FA requirement?

1                   MR. BROOKS: It is a portion of them.  
2     There are two bonding requirements that apply. One is  
3     under the FLPMA, the Federal Land Policy Management Act,  
4     and I am assuming would apply if the well is on a federal  
5     lease, but -- the surface location is on a federal lease  
6     but the completed interval of the well is not, which, as  
7     you know, given the horizontal well drilling that's going  
8     on, that could happen.

9                   That is what Exhibit 5 is about. Exhibit 4  
10    is the bonding required for federal wells, for wells on  
11    federal leases under the -- pursuant to the authority of  
12    the Mineral Leasing Act.

13                  COMMISSION CHAIR RILEY: And we have  
14    Exhibit 4, so it's 5 you needed to get to us?

15                  MR. BROOKS: You have Exhibit 4.

16                  MR. BRANCARD: So you have to run upstairs,  
17    Mr. Brooks. If you have the citation for that federal  
18    rule, I think that's really all we need for the record.

19                  MR. BROOKS: I do.

20                  Well, that's true, because you can refer to  
21    it. You don't have to have a copy in front of you.

22                  That's 43 Code of Federal Regulations  
23    2805.20.

24                  MR. BRANCARD: Okay. That should be fine  
25    for the record.

1 MR. BROOKS: Thank you. With that the  
2 Division rests.

3 COMMISSION CHAIR RILEY: Thank you, Mr.  
4 Brooks.

5 Mr. Larson?

6 MR. LARSON: Briefly.

7 IPANM fully supports the amendment proposed  
8 by Mr. Brooks. The rule as written initially had a  
9 conflict between paragraph A and paragraph D. Paragraph A  
10 does not include federal wells, Paragraph D, as written,  
11 does. So I think it covers that discrepancy between those  
12 two paragraphs.

13 I think there was -- in regard to the tiers  
14 for the blanket bonds, there was an unintended consequence  
15 of, as Mr. Sanchez testified, of basically creating a  
16 fifth tier at \$100,000 in the situation that he addressed,  
17 and we believe that it also covers that unintended  
18 consequence for creating a fifth tier of bonding.

19 So, in sum, we fully support the adoption  
20 of the amendment.

21 COMMISSION CHAIR RILEY: Okay. Thank you.

22 Mr. Marker.

23 MR. MARKER: Yes, ma'am.

24 As far as the financial, the federal wells  
25 and the state, it's great what we have. That works out

1 well. That is what we were after in the beginning, and  
2 we've come to a pretty good, what I would say, a  
3 compromise. If they don't have financial assurance on  
4 federal wells then you're going to have get it.

5 I'm still left with -- I'm a little out of  
6 balance wondering where we are at on the other items.

7 And I realize that this is a limited --  
8 this hearing is of limited scope, but, as you well know by  
9 now, I'm kind of hard headed and a bit scrappy. I'm not  
10 willing to give up our position on what you call tiers,  
11 what I would call ratios, and then I would also ask that  
12 we readdress the massive single-well bond. That's a  
13 killer all by itself.

14 Depending upon how we go in that direction.

15 MR. BROOKS: Madam Chair, Honorable  
16 Commissioners, the Division would object to any discussion  
17 of the amounts of the bonds required as outside the scope  
18 of this rehearing.

19 MR. BRANCARD: Madam Chairman, I think it's  
20 fine people make a general statement about their positions  
21 in rulemaking.

22 Mr. Marker, I think you have a choice: You  
23 can either just simply present a statement, as you are  
24 now, or you can sort of present yourself as a witness and  
25 provide more detail. But it sounds like the detail you

1 want to provide is what you provided at the last hearing  
2 about your concerns about the tiering and the single-well  
3 bond.

4 MR. MARKER: Yes.

5 MR. BRANCARD: You provided a fair amount  
6 of detail. I think the Commission actually took that very  
7 seriously in deliberations.

8 MR. MARKER: I have some other items that  
9 were brought up. I later found out that we brought a  
10 witness back the next day. I wasn't given -- actually, I  
11 wasn't given the opportunity to address some of those  
12 items in my rehearing request, because I didn't see it in  
13 the file. Actually, it wasn't in the file until after I  
14 had already filed the second application for rehearing,  
15 the one being too early so I had to refile.

16 That was my main purpose for today, was to  
17 fully address all of the issues that were brought forth.

18 I found some discrepancies in the statutes.  
19 You know, we are referring to the requirement of the  
20 \$50,000 requirement of a minimum bond. That's actually  
21 not what the statute says. You know, I've got a copy of  
22 the statute here.

23 And again, at some point we are just going  
24 to -- you know, I just need to decide is this just the end  
25 of my administrative deal and do I need to move forward.

1 I don't want this to continue on any more than it has to,  
2 because at this point there's several of us that are  
3 basically, in our businesses we're just stuck. You know,  
4 if we had to go get more bonding money, we wouldn't be  
5 able to, because the banks that are familiar with the  
6 situation are saying: You guys don't even know what your  
7 bonds need to be.

8 I can't buy wells, I can't sell wells, I  
9 really can't do anything with these massive...

10 With the bond regulations being changed  
11 like they are, it's created a lot of tension in the  
12 industry. Most of us, our businesses as far as  
13 buying/selling/trading and swapping, we just stopped.  
14 There's nobody looking to buy, because nobody knows  
15 exactly what direction we're going.

16 And that has created some problems.

17 So part of me wants to get this deal done  
18 and say, you know, "This is what we have, this is what we  
19 have to live with," but the other part of me says, "We  
20 can't just throw people over the cliff," which I'm honest  
21 when I tell you, and some of these guys would back me up,  
22 these new bonding regulations, or these new bond amounts  
23 will be throwing some people over the cliff.

24 I don't know if that's a statement or  
25 whatever. We can -- you know I'm here to do -- this is

1 the Commission's rehearing, and I'm privileged to be here.  
2 I'm glad to be a part of the rehearing process; I'm glad  
3 to be a part of the rulemaking process. I wish I would  
4 have understood the process a little earlier, and so do a  
5 lot of these guys. You know, we don't understand how  
6 things are advertised as far as when hearings are and  
7 stuff. We don't see them in our papers. Actually, most  
8 of us don't read the papers, but the ones that do. You  
9 know, we're not in Albuquerque. We don't see those  
10 papers, we don't see the notices. I just stumbled onto  
11 this accidentally the first time, and by the time I  
12 stumbled onto it I was too late to be an official party to  
13 the last hearing. But, as I say, you did grant me the  
14 ability to speak at the last hearing.

15 I realize the OCD objects, you know, to the  
16 Commission hearing or looking at these regulations and the  
17 IPANM proposal, and then my proposal of the single-well  
18 bond.

19 \$25,000 and \$2 a foot is massive bond for  
20 an 800-foot well. That's a huge single-well bond. And to  
21 be honest with you, that devalues -- if we put these in  
22 effect like they are right now, the way they are written  
23 right now, I can promise you any well that makes less than  
24 a barrel a day is now worthless, which is 99 percent or  
25 more of the wells that I have, and most of these other

1 guys.

2                   If I've got a well that I brought for  
3 \$15,000 a couple of years ago and it cost me six grand to  
4 bond it, now it's going to cost me 27 grand to bond it,  
5 who could I sell that well to? What do I do with it?  
6 It's only going to make a barrel a day.

7                   I realize that doesn't seem like a lot of  
8 money, but if a guy gets enough single-barrel wells, he's  
9 making a living. He can make a good living. But when you  
10 start throwing this kind of cost of regulation, it's  
11 commercially impracticable.

12                   I understand, you know, there's -- and it's  
13 been brought up, and I did bring up, there are other ways  
14 to get bonds, but any money that we put into bonding is  
15 money that we can't put into our property, and the money  
16 that's actually spent in, you know, interest fees,  
17 premiums, whatever, that money should -- instead of going  
18 to buy some insurance guy a Lamborghini, that money should  
19 actually be going into plugging that well.

20                   The only people that will benefit from this  
21 type of increase in financial assurance are going to be  
22 the insurance companies and the bankers. There's not a  
23 single person in this room, unless of course there's an  
24 insurance guy or a banker in here, that will benefit at  
25 all from these rules.

1           Ms. Marks said, and I believe she did, she  
2 put a lot of effort and a lot of work into this, but I  
3 believe her foundational argument of applying the 5.9 list  
4 to what the State was risking was flawed to begin with.

5           Ms. Marks said that she contacted other  
6 states -- and I said this in my prehearing statement. She  
7 contacted other states, and New Mexico, the word was --  
8 our bond policies were "grossly inadequate," the amounts  
9 of our blanket bonds.

10           Okay. When you're plugging a lot of wells,  
11 that may be true. But then she went on in later testimony  
12 and said that other wells, and you had mentioned also in  
13 the transcript, that other states had the same issues with  
14 the smaller operators that we have. When I say "we" I  
15 mean the State of New Mexico.

16           Well, if other states already have bigger  
17 bonds and they have the same problems that we have, I  
18 don't know that increasing the bonds is going to solve the  
19 problem. It just makes us have bigger bonds like  
20 everybody else, with the same problem, when everybody has  
21 those problems.

22           So nobody addressed how do these bonds --  
23 and you brought that up in the transcript, you brought  
24 that up: How does this solve the problem?

25           It does not solve the problem. It does

1 nothing to solve the problem of keeping the smaller  
2 operators in compliance -- which has been an issue, we  
3 would agree, keeping the smaller operators in compliance.

4 I found some rules as far as different ways  
5 that -- you know, just plugging around on the computer,  
6 looking at rules trying to figure out what we're going to  
7 do, how we're going to handle these bonds. You know, the  
8 little coop that we've put together, we've got some ideas,  
9 we got some ideas when we were up here, and moving forward  
10 we're trying to figure this stuff out. But, you know, I'm  
11 looking over here: New Mexico Statutes, Chapter 19,  
12 Public Lands, Article 10, lease of Oil and Gas, there's a  
13 rule there. It says:

14 (Reading) If, after Notice of Public  
15 Hearing the Commission finds that, because a severe  
16 reduction in the price of oil, beneficiaries of state  
17 trust land are ultimately better served if oil wells  
18 are allowed to be temporarily shut in rather than  
19 introduced, he may promulgate -- and I believe I said  
20 that correctly -- promulgate a regulation which  
21 allows such wells to be shut in.

22 Do these new bonding rules apply to that?  
23 Instead of paying \$320 a year to shut that well in --  
24 which it's a maximum of two years that you can apply. I  
25 did not know that rule existed, and that questions our 5.9

1 list. Are any of the wells on the 5.9 list subject to  
2 that rule?

3                   It's -- I don't believe we have enough  
4 information, like I said -- and I hate to keep whipping a  
5 dead horse. I don't believe we have enough information to  
6 properly adjust our bonding just yet.

7                   I don't know that the bond thing will ever  
8 work properly. It hasn't worked anyplace else.

9                   You guys are probably more familiar with  
10 the mines, the way the mines do it, to where if you have a  
11 mine you make sure you have enough money put away to  
12 plug -- to abandon that mine and do the remediation.  
13 However you plug a mine, I don't know.

14                   We've talked about this amongst ourselves.  
15 Maybe we need to go to a situation where we keep a bond in  
16 place, a specific bond, but out of our production some  
17 money goes to plugging that well where eventually it's  
18 gonna get plugged.

19                   That would solve the problem with these big  
20 deep wells, that these -- I call them the big boys. The  
21 larger companies. They're running around Southern New  
22 Mexico, they're drilling up wells and everything's  
23 fantastic and the state's getting a lot money, and that's  
24 great. It's killing us, though, as far as getting our  
25 crude out because all the pipelines are full. But here in

1 a few years, five or seven years, those wells are going to  
2 be done. They're going to be done, and they're going to  
3 be making 4,000 barrels of water and a barrel of oil, and  
4 we are going to be sitting here looking at that mess.

5 Well, if we address it differently now  
6 with, you know, a percentage of the production goes to  
7 what I would call a bond bank -- there's other words. A  
8 bond bank. The state has that money in place and it would  
9 just be a better system.

10 But that's down the road and has nothing to  
11 do with this. It's just an idea, and it's just to let you  
12 know we know there is a problem.

13 There's wells we drive by that haven't  
14 pumped in 30 years, and we seen them.

15 There's also wells that we drive by, or  
16 leases that we drive by at one time we tried to buy that  
17 lease. We ran around trying to borrow money and we got  
18 commitments and got all this, and by the time we got it  
19 bought, some company from Texas bought it, operated it for  
20 six months, and then left. Pulled all the pump jacks --  
21 pulled the pump jacks, the tube and the rods out of the  
22 hole, and left, and we're sitting here wondering: Well,  
23 that ain't cool.

24 And it's not fair. But it happens.

25 In our -- in the hearings I've learned

1 that -- and I honestly believe that there seems to be a  
2 certain bias against the smaller operators. Well, when  
3 I'm awake at night, which is a lot, I'm thinking: Where  
4 would that bias have come from?

5 Well, honestly, unless we've come from in  
6 the field and tried to participate in the rulemaking  
7 process and explained to you what we are actually up  
8 against and what we're doing...

9 I'm not complaining about the way I make a  
10 living. I love the way I make a living. It's a fantastic  
11 life. It's a tough life. But the bias I believe that I  
12 have seen probably comes -- and ignorance isn't the proper  
13 word, but is probably because you haven't been exposed to  
14 enough stripper weller guys. It's possible you never even  
15 met any of them. Like I said, it's kind of tough to get  
16 them out of the field.

17 But to make my point, we can't -- I  
18 honestly will always believe that we are as concerned  
19 about the inactives and wells that need to be plugged as  
20 the Commission is. I promise you we are. And we are  
21 getting as many of them plugged as we possibly can.  
22 There's a guy sitting in the room here, I don't know how  
23 many wells he's plugged in the past two months, but it's  
24 been a bunch.

25 We know it's an issue and we know it's a

1 problem.

2 Daniel does a good job with -- you know,  
3 there was a time when I first started I didn't have any  
4 state wells, all I had was federal wells. Well, I picked  
5 up few state wells. I get a call from Daniel, "Hey,  
6 where's your state bond?"

7 The compliance -- I don't understand where  
8 the compliance issue was -- the 5.9 compliance list, I  
9 don't understand why that was the full basis of this  
10 decision. You know, I'm looking at the well list. You  
11 can't tell me that EOG, with however many thousands of  
12 wells they have, don't have an inactive well somewhere.

13 I don't understand how the list is made,  
14 what wells does that apply to. I really think we have a  
15 flawed basis for how we made these decisions.

16 I could go on for hours on this but we  
17 probably only have a limited time. What I'm asking is,  
18 I'm asking the Commission to reconsider, and it's already  
19 been objected by the Division, to take another look at the  
20 IPANM's proposal -- and they didn't ask me to say this or  
21 anything else -- and then we need to do something  
22 different on the single wells.

23 I understand a 4,000-foot well probably  
24 costs -- I have been convinced a 4,000-foot well could  
25 cost \$30,000 to plug, and it probably does. I've talked

1 to 15 or 20 different people that have plugged them. I've  
2 talked to guys that do plug them. We agree a 4- or  
3 5,000-foot well may cost that much to plug. But a lot  
4 these guys, and me, out of the 58 state wells I have, or  
5 whatever, 45 of them are less than 1,000-foot deep. A  
6 single-well bond on that would be horrendous.

7           The problem I have with the single-well  
8 bond -- granted I'm going to have a blanket bond, and I  
9 have a blanket bond, but what about the old boy that wants  
10 to get into the business and wants to pick up a couple of  
11 wells just east of Roswell or north of Artesia? We're  
12 limiting the future of the industry severely by bonding  
13 those guys out of business.

14           I really don't know what else to say. I  
15 don't know how to further express -- you know, being of  
16 limited education, I am struggling with this, but I will  
17 tell you straight up: This is a wreck. We are headed for  
18 a wreck.

19           Some of these guys may want to stand up  
20 later and agree with me. And if they don't stand up, I  
21 understand. It's not easy to sit in front of these people  
22 and talk. It's uncomfortable. Then when you read the  
23 transcript it's even worse, because you think I sound like  
24 a hick in person, you ought to read the transcript. It's  
25 really bad.

1                   Anyway, that's all I got to say.

2                   COMMISSION CHAIR RILEY: Thank you,  
3                   Mr. Marker.

4                   Mr. Brancard.

5                   MR. BRANCARD: Two things. Three things.  
6                   I cringe when I read the transcripts, too.

7                   MR. MARKER: You probably sound like a  
8                   Yankee.

9                   MR. BRANCARD: At question, Mr. Marker, as  
10                  I said earlier here, is the effective date of the rule.  
11                  And you just raised the point that at this point it's  
12                  difficult to get any increased bonding because you're not  
13                  aware of what the final rule is going to be.

14                  MR. MARKER: Yes, sir.

15                  MR. BRANCARD: But once the final rule is  
16                  in place, what -- I mean, is three months a reasonable  
17                  time for yourself and others to get new bonding in place,  
18                  or do you think additional time is necessary?

19                  MR. MARKER: It depends on the amount. You  
20                  know, the amount of the bonds. You know, what are we  
21                  looking at?

22                  Three weeks ago we were saying: Well,  
23                  pipelines are going to be opened up soon. We get through  
24                  this winter, we'll be okay.

25                  Well, then crude dropped to 56 bucks a

1 barrel.

2                   So you take -- this month we're taking an  
3 \$8.50 -- \$8 or \$9 discounted deal, we're taking a hit. My  
4 Roswell stuff I'm taking probably a \$12 hit.

5                   That sounds bad, but three months ago it  
6 was a \$22 hit.

7                   And the banks that would lend us money or  
8 loan us money, actually Lexon in this case, the bonding  
9 agency that the most of us deal with -- actually I don't  
10 know of another, there probably isn't one -- I haven't  
11 been able to convince them to bond anything. It depends  
12 on the amount of bond and the circumstances that surround.

13                   I mean, we get into a lot of -- we get into  
14 a lot of just straight-up business stuff when you're  
15 looking at bonds. If you go to get a Line of Credit, the  
16 line of credit still has to be collateralized, so whatever  
17 you have to -- whatever you use to collateralize your line  
18 of credit, that might have been money you were going to  
19 borrow because Plains didn't pick your oil up last month  
20 and you got six loads sitting, or you were looking to bond  
21 more wells, or repairing the wells that you had.

22                   I believe -- we need to get something  
23 solid, whatever it is. You know, the ugly truth is better  
24 than a pretty lie, but the unknown is always scarier than  
25 facts. We would all be better served if we would say,

1 "Okay, this is the rule, this is what we're going to do,"  
2 and then we can decide, or I can decide if I go to the  
3 Courts of Appeals or whatever on the blanket.

4 And, honestly, we are looking at a  
5 regulatory takings case. We're looking at that kind of a  
6 mess.

7 If a guy's put everything he's ever had  
8 into 30 half-a-barrel-a-day wells, and all of a sudden --  
9 you know, let's say he's 60 years old, whatever, 65 --  
10 actually, in this case, probably 90 years old trying to  
11 retire as a stripper weller. He goes to sell his wells,  
12 they're absolutely worthless. The amount of regulation  
13 has made that property completely worthless. What does he  
14 do?

15 I'm not whining, believe me. I understand.  
16 We all knew this was a bear when we got into it. But the  
17 bear over here that came out of left field when the  
18 reg- -- we deal with this on the federal side constantly,  
19 it's just they do it different. The feds build a  
20 regulation wall one brick at a time, and eventually  
21 they'll get us wiped out, I promise you. The state came  
22 in with one big-old boulder.

23 I'm not saying across the board -- well,  
24 across the board down the road these rules will affect  
25 everybody. The big guys won't be able to sell their wells

1 because there's no smaller guys left to sell to.

2 When I say "smaller," I mean 100 wells or  
3 less. That would be considered small.

4 The EOGs and COGs and all that, we all  
5 sitting in this room, we know when they get finished with  
6 all that, they're gone. And if there's nobody else,  
7 there's nobody else.

8 There's our problem.

9 To answer your question, and I do tend to  
10 wander off -- you've had conversations with me before.  
11 That's what happens when you have conversations with my  
12 attention deficit disorder.

13 But to answer your question, my most honest  
14 answer is: Whatever we do, we just need to go ahead and  
15 do it. If the Division is going to say we're going to  
16 complain -- or that's not the proper...

17 If the Division is going to say, "We're  
18 going to object to amending the rules now," I can  
19 understand that. Whatever rule we make, we need to make  
20 that rule, and then whatever I have to do, I just simply  
21 have to do. The time to -- 90 days would be as fair as  
22 120 or...

23 Wouldn't you agree? (Note: Looking  
24 towards audience.)

25 It is what it is. We got -- this isn't the

1 only fight we've got coming up. It's going to get ugly.

2 We do need to make a solid -- we need to  
3 get somewhere solid, and if it's a rule we don't like and  
4 can't live with, you know there's hearings, there's the  
5 Court of Appeals, there's regulatory takings cases. We  
6 can all decide then.

7 We are doing some things with the coop that  
8 we honestly believe if we can get it accomplished, we  
9 believe will solve the problem. For now.

10 Well, it's -- we just need a decision to be  
11 made. However we make it, whatever it is, it just needs  
12 to be a decision. I need to get that Final Order, that  
13 Final Decision, and we go from there.

14 But as far as filing rehearings and stuff  
15 like that, I'm honestly done with the whole administrative  
16 thing.

17 And I know you guys got to wrap some stuff  
18 up. I don't know how many of you get called back. I  
19 don't know how that works. I've actually never even  
20 considered how all that works, never even cared. Probably  
21 should have. Now I wished I would have, but...

22 AUDIENCE MEMBER: Can I say something?

23 MR. BRANCARD: We will have a period for  
24 public comment.

25 MR. MARKER: Stripper weller.

1 MR. BRANCARD: Mr. Marker has, in his  
2 prehearing statement and other statements to us, made note  
3 of how the process in the last hearing was conducted and  
4 whether the Commission complied with its rules. Okay.

5 I mean, the problem we have is in our rules  
6 we have sort of two competing provisions once the  
7 testimony is done. Okay?

8 MR. MARKER: Prior to deliberations and  
9 post deliberations.

10 MR. BRANCARD: Right. Exactly, Mr. Marker.  
11 Thank you.

12 The one we tend to rely on here is -- it's  
13 19.15.3.12.a(2)g which allows: At the close of the  
14 hearing the Commission will determine whether it wants any  
15 additional submittals to the Commission.

16 And that is what happened on the 19th at  
17 the meeting. You-all called back an OCD witness, and Dr.  
18 Balch had some specific documentations and specific tables  
19 you wanted to see developed that would allow the  
20 Commission to analyze the Division's proposal, IPANM's  
21 proposal and other proposals, and look at them sort of  
22 side by side to see what the effects are on different  
23 wells, to see what the cumulative effects were. And you  
24 needed more information, so you did that.

25 The problem, as Mr. Marker pointed out, is

1 the Commission used the phrase "We are in deliberation,"  
2 which you weren't really in final deliberation but you  
3 were discussing amongst yourselves.

4 So there's a separate provision in the  
5 rules that says once you're in deliberation if you want  
6 additional information you have to go back out to the  
7 entire public notice process.

8 So the Commission was relying, without  
9 saying it, on the first rule that allows you to ask for  
10 more additional written submittals, which you did on the  
11 19th. Mr. Marker says there was no notice to people, but  
12 clearly when the OCD witness was brought back the  
13 commissioners asked for additional information, and that  
14 was what was delivered on the 20th before you went into  
15 final deliberation.

16 And there was a provision for questioning  
17 the witness that next day. IPANM actually did ask  
18 questions of the witness when they reappeared about the  
19 documents that they submitted.

20 So that's just to address this issue that  
21 Mr. Marker has alluded to about procedural problems with  
22 the last hearing.

23 MR. MARKER: My main contention there is I  
24 understood that additional information was needed, but  
25 it's my opinion that the complete testimony, the fact that

1 she was -- and I'm not picking on her individually. The  
2 fact that the OCD allowed her to really retestify the  
3 whole thing -- it went well beyond. It went well beyond  
4 just providing the additional information. Even new  
5 information was brought up.

6 That was my issue. We didn't have a chance  
7 to look at it, go through it, and either call other states  
8 ourselves, in order to...

9 We didn't have the opportunity.

10 And I know the rules of evidence don't  
11 apply to this. I understand that. But just from a basic  
12 standpoint, to be able to make a full, competent decision,  
13 we need information from both parties or both sides. Not  
14 that they are adversarial, it's just both sides.

15 It's just like sitting here. I'm talking,  
16 but you have to explain to them what I said, because you  
17 communicate better with them than I do. That's just the  
18 way things are. I understand that.

19 But that was my problem with post  
20 deliberation and pre deliberation. The testimony the next  
21 day went beyond just providing technical information. It  
22 went all the way to actually sitting here and testifying.

23 There was also no time for public comment.

24 As far as Gary getting to speak, the  
25 reality is, and I'm not being disrespectful, a lawyer is a

1 hired gun. You know, he's only able to go however far he  
2 was told to go. We all left the day before to get back to  
3 work and whatever. We kind of leave him hanging with it,  
4 you know. You know, Winchester asked me about, you know,  
5 "How did you get into the BLM bond review deal?" Well,  
6 it's a change of operator thing or whatever.

7                   You know, we gave him a little bit of  
8 information on that, but as far as being able to actually  
9 take the gloves off, or whatever, and provide any input,  
10 he's pretty limited because he is a hired gun and there  
11 was nobody here to give him any further instruction. So  
12 he probably did all he could based on what he was told  
13 prior.

14                   A lawyer is a hired gun, and he is bound,  
15 for lack of a better term, he's tied up to that, I would  
16 think.

17                   That was my problem with the testimony the  
18 next day. It went beyond normal just providing facts and  
19 figures.

20                   MR. BRANCARD: And I would tentatively  
21 agree on one issue with that with Mr. Marker, and that was  
22 the issue that this hearing is all about, is that the  
23 Division at that point on the second day did propose  
24 additional language on the federal rules in an attempt to  
25 cure that problem. So that's what this hearing is

1 designed to sort of overcome that issue. That was sort of  
2 brought up late in the process and wasn't really fully  
3 vetted, and so by having this hearing we are sort of  
4 hearing that issue on the federal rules.

5 At some point, Madam Chair, if you want to  
6 have public comment?

7 COMMISSION CHAIR RILEY: Do we have anybody  
8 that signed up for public comment?

9 AUDIENCE MEMBER: I can't hear.

10 COMMISSION CHAIR RILEY: Do we have anybody  
11 that signed up for public comment?

12 MR. FOLTON: I have.

13 MR. MARKER: I'll grab the list.

14 COMMISSION CHAIR RILEY: Could you please  
15 state your name for the record.

16 MR. FOLTON: Louis Folton.

17 COMMISSION CHAIR RILEY: Thank you.

18 MR. FOLTON: You know, you are going from  
19 one thing on the bonding to the other. I agree \$50,000  
20 has been that way for 30 years, probably does need to go  
21 up. Why can't we go up to \$100,000 statewide plugging  
22 bond, leave an inactive well at 5,000, and go to \$2 a  
23 foot. I mean, it's baby steps but you're not going to  
24 bankrupt anybody, either.

25 And, by the way, I have plugged 12 wells

1 since the 1st of September.

2 COMMISSION CHAIR RILEY: Thank you.

3 MR. MARKER: Can I give this to Ms.

4 Davidson?

5 COMMISSION CHAIR RILEY: Uhm --

6 MR. MARKER: Do you want me to put it back  
7 out here so somebody could read it?

8 COMMISSION CHAIR RILEY: A couple of them  
9 are a little bit tough.

10 MR. MARKER: It looks a little rough to me,  
11 too.

12 COMMISSION CHAIR RILEY: There has been a  
13 request for a break, so why don't we plan on a 15-minute  
14 break and come back here at 25 after, and then we'll  
15 proceed with public comment.

16 (Note: In recess from 10:10 a.m. to 10:25 a.m.)

17 COMMISSION CHAIR RILEY: On the record,  
18 please.

19 So I'm going to work through this list and  
20 if I mess up somebody's name...

21 It looks like we have Buddy DeLong.

22 MR. DeLONG: Yes.

23 COMMISSION CHAIR RILEY: Okay.

24 MR. DeLONG: I want to just -- at the last  
25 meeting there was some talk about the surety companies,

1 and in reality there's really only the two surety  
2 companies left that applies, which will be Lexon and RLI.

3 I have had extensive talks with RLI, and  
4 they are actually considering withdrawing from New  
5 Mexico's bond market, not necessarily because of this  
6 current administration but the prior administration really  
7 took compliance and confiscation from a measurable level  
8 to just...

9 It looks as though they just said they have  
10 seen that there's probably no future in the New Mexico  
11 bond market, so the sureties are really on their way out.  
12 The only means for the guys that are going to be left will  
13 be either through cash, letter of credit and such.

14 As Mr. Marker said, that letter of credit  
15 is going to have to be collateralized. It's going to  
16 neutralize any funds probably that you can put towards  
17 your operations.

18 I have just elected to withdraw from the  
19 State of New Mexico, and I'm going to divest. I'm going  
20 to move to Texas, because in the same conversation with  
21 RLI Insurance, the criteria that they are going to require  
22 in New Mexico is extensive. It's negligible in Texas.  
23 And so you can just about -- you can get a plug-in bond in  
24 the State of Texas as easy as you can call Geico and get  
25 auto insurance.

1                   So I think that's the future. That's the  
2 future that I'm going. So I'm going to withdraw  
3 voluntarily, but I'm here today to support those guys here  
4 that just can't leave. You know, they've been in this  
5 business for so long. The rules have overtaken the  
6 reality. These guys have had these leases forever. It's  
7 not like the rules change so we just change our careers.  
8 You know, there is a lot invested in the things.

9                   And, God Bless them, I wish them well, but  
10 I'll be waiting for them whenever they come to Texas.

11                   That's all I got.

12                   COMMISSION CHAIR RILEY: Thank you.

13                   I'm struggling on the next one. Is it Ti?

14                   (Note: Pause.)

15                   MR. MARKER: Okay. That one's going to be  
16 me. You've got Hiram.

17                   I've said enough.

18                   COMMISSION CHAIR RILEY: Hiram. Would you  
19 please state your name for the record.

20                   MR. HUDSON: Hiram Hudson.

21                   COMMISSION CHAIR RILEY: Okay.

22                   MR. HUDSON: I'm from Roswell. I never  
23 knew anything about y'all were having meetings or  
24 proposing new rules until Mr. Marker explained it to me.

25                   I was just wondering: On something that

1 affects a lot of people at the opposite ends of the state  
2 from Santa Fe and Albuquerque, I'm wondering why it wasn't  
3 published in like the Hobbs Sun or the Carlsbad Argus or  
4 the Daily Record, Farmington. There's a lot of areas  
5 where it seems to me that all the people that are directly  
6 affected, the people that have the small leases, they're  
7 all 100 miles away from Albuquerque, at least, Santa Fe.

8           And I notice in your Rule 19.15.3.8  
9 Rulemaking initiation, under Subsection C it says whenever  
10 the Commission is given an application that they can  
11 go and -- in addition to the procedures in 19.15.3,  
12 including hearing officer public notice, you could  
13 actually initiate additional public notice.

14           It seems to me like that would be more  
15 impartial to the people that would be directly affected by  
16 this rule. So y'all could, before you have another  
17 hearing on the rules, or whatever, you could initiate  
18 public notice in those areas of the state.

19           There's a lot of the small operators. I  
20 was in the oil fields for quite a few years, and there's a  
21 lot of those guys, a lot of drilling activity in Lea  
22 County, Chavez County, Eddy County and Farmington. I'm  
23 not sure what that county is. If those guys, if they got  
24 notice I'm sure y'all would -- you would probably have  
25 this room so packed. They would explain in graphic

1 detail. They could testify about what it's going to do to  
2 their businesses.

3 It seems like that would be more rational  
4 rulemaking. Because I noticed in the rule -- I just got a  
5 copy of this rule, and it does give y'all the express  
6 authority to do additional public notice.

7 COMMISSION CHAIR RILEY: Okay.

8 MR. HUDSON: So for the next, y'all might  
9 think about that.

10 That's all I have to say.

11 COMMISSION CHAIR RILEY: Thank you.

12 Rory?

13 MR. McMINN: Thank you, Madam Chair,  
14 Commissioners. I'm Rory McMinn. I was, uh -- I testified  
15 or I was a -- I guess I testified on the July 19th  
16 meeting. And I want the Commission to know that I'm a  
17 board member of IPANM. I'm also a member of the  
18 Independent Petroleum Producers Cooperative.

19 And IPANM, if the Commission decides that  
20 they wish to have, in addition to the discussion in  
21 regards to the federal well count being included or not  
22 included, which is what this hearing is about, if you wish  
23 to discuss the other two points in regards to tiers or in  
24 regards to the single-well plugging bond amount, IPANM is  
25 prepared today to enter into that discussion with you and

1 hopefully work out an agreement so that everybody is  
2 happy.

3                   One of those or both makes no difference.  
4 If you are here simply for the BLM, then that's what why  
5 we are here to participate.

6                   And I think I'm the only board member from  
7 IPANM that's present.

8                   Last time that I was here I testified that  
9 in my opinion there was a bias in regards to the OCD in  
10 regards to specifically a small operator. Mr. Brooks came  
11 back in and made a statement that the Division was  
12 definitely not biased.

13                   So somewhere in between there's truth.  
14 Mr. Brooks spoke his truth and I spoke my truth, but  
15 you-all are here as a Commission and you-all determine  
16 what is or is not true. But I will tell you from the  
17 independent operators' perspective the Division is biased.  
18 And that bias goes along the lines of some of the issues  
19 that we deal with.

20                   When you all come into a meeting and you  
21 make the statement, in so many words or less, that one of  
22 the problems that you have in changing what's being  
23 proposed is if it took more time on personnel within the  
24 department to manage that particular effort, you couldn't  
25 do it because you don't have the personnel, that's not our

1 problem as an independent operator. You're the regulator,  
2 you're funded by the state, and that is not an excuse, as  
3 far as we're concerned, that you-all don't have the  
4 personnel to deal with it.

5 So that's one of the issues that Mr. Marker  
6 did not bring up, but that's one of the issues that we as  
7 independent operators deal with when we deal with the OCD.  
8 You throw us all in a bucket, and we are not all part of  
9 that bucket.

10 So that needs to be stated and that goes to  
11 the bias that I stated before, Mr. Brooks and  
12 Commissioners, and it's a fact whether you wish to deny it  
13 or not.

14 Thank you.

15 COMMISSION CHAIR RILEY: Thank you.

16 Darrel Finney.

17 MR. FINNEY: Darrel Finney, Finney Oil  
18 Company.

19 I already said what I was worried or  
20 concerned about is how can we -- who would sign off on  
21 this Order? The paper we could get it to read it in.  
22 That's my concern.

23 COMMISSION CHAIR RILEY: Thank you.

24 Jackie Brewer.

25 MR. BREWER: My deal is, you know, we're

1 all independent and it's going to be a great hardship on  
2 all of us. And some of us, we may fall out because of it,  
3 may not have the money to get a bond, you know, if you  
4 increase. We look at -- you know, this is our retirement,  
5 too. If we go try to get a job, you know if we have to  
6 give up everything, some of us will be 80 years old.  
7 There will be no retirement for us. But this is our  
8 retirement.

9                   And that's all I got to say. You're  
10 putting a real hardship on us. Thank you.

11                   COMMISSION CHAIR RILEY: Okay. That's  
12 everybody that's signed up.

13                   MR. BRANCARD: Anyone else?

14                   MS. FOLTON: Can I say something?

15                   COMMISSION CHAIR RILEY: Yes, please.

16                   MS. FOLTON: My name is Judy Folton. My  
17 husband has been in the oil business since he was eight  
18 years old with his dad.

19                   He works that oil field. Y'all don't go  
20 out there every day like he does. Every day, whether it's  
21 raining, whether it's cold, whether it's sweltering hot,  
22 these men go out there and they work. And they work hard.  
23 You look at their hands, they're callused, their  
24 fingernails are dirty, and -- I'm sorry, I get really  
25 emotional.

1 COMMISSION CHAIR RILEY: It's okay.

2 MR. MARKER: You're going to make me cry.

3 MS. FOLTON: Their whole lives. My husband  
4 is 65 years old. He can't go somewhere else and get a  
5 job. This is what he's done his whole life, and you're  
6 going to make it where we can't operate when you put these  
7 kinds of fines or bonds on us.

8 It's not fair. How would you like it if  
9 they came in and told you, "Okay, you have to -- you have  
10 to have these bonds so that you can go to work every day  
11 and do what you love, and do what you've known all your  
12 life." That's not fair. It's not fair.

13 That's all I have to say about it.

14 COMMISSION CHAIR RILEY: Thank you.

15 Mr. Brancard, are we done with the public  
16 comment at this point?

17 MR. BRANCARD: Yes.

18 COMMISSION CHAIR RILEY: Is there any  
19 business that we need to take care of before...

20 MR. BRANCARD: No, unless the parties have  
21 closing statements.

22 MR. BROOKS: I think that's not necessary,  
23 Honorable Commissioners. We waive closing statements.

24 MR. LARSON: I have nothing further.

25 COMMISSION CHAIR RILEY: Mr. Marker?

1 MR. MARKER: I don't know I can say  
2 anything else. I think Ms. Folton pretty well said it all  
3 and explained why it doesn't bother me to be such a pain  
4 in y'all's rear. And I understand that this probably is  
5 more, has been worse than most rules.

6 So whatever happens, you know -- and then  
7 again, to quote the Commission, we are a scrappy bunch,  
8 we'll figure something out, but I'm telling you we're  
9 going to lose some people. It's -- and y'all -- you know  
10 better than anybody, we got -- we're looking at a long  
11 fight now. This is a problem now, but we got to get this  
12 one solved, because we've got another one. Our coop is  
13 going to help. Our coop has helped a lot already, but it  
14 may be a case of too little too late. You know.

15 So we will fight to the bitter end, and  
16 it'll be a bitter end, there's no doubt.

17 I'm a little -- I don't know that word -- I  
18 don't understand the OCD's opinion that they would object  
19 to the Commission looking at the rules again, or to  
20 looking at these amendments. I don't understand that  
21 position. I know personally guys at the OCD, and they are  
22 typically a pretty fair bunch. I know that's kind of  
23 strange for me to say, but typically.

24 But as far as the bias, the culture, the  
25 culture maybe as a whole, maybe that personal can't come

1 out. I don't have any idea.

2 Without knowing what more to say, I'm just  
3 going to say, you know, whatever happens, happens. We'll  
4 just have to deal with it then. I honestly feel like I  
5 put 110 percent effort on behalf of these guys. These  
6 guys have put a lot of effort in.

7 I was talking to guys yesterday that tell  
8 me they had no idea that these rules were changing.

9 I said, "Where have you been? Under a  
10 rock?"

11 "Well, yeah."

12 You know. It's -- I do wish that I had  
13 known more about the rulemaking process earlier. I could  
14 have gotten involved earlier, maybe could have done more  
15 good than this. I believe we put every effort into trying  
16 to convince the Commission, and at this point it just is  
17 what it is. At some point you got to say, "Well, let's  
18 wrap this stuff up and move to the next one."

19 So whatever that is, I'll just leave that  
20 up to you guys. We will decide what to do next.

21 You know, we can't give up. We have --  
22 we've no option. You know, we can't do the Davy Crockett  
23 thing, you know, "Y'all go to heck, I'm going to Texas."

24 You know, Buddy is able to.

25 Davy Crockett actually did say that, and

1 then he goes and gets killed at The Alamo. Bad move.

2 But we can't do that. So whatever it is,  
3 it is, and we will deal with it however we have to.

4 We are not taking it personal. We tend to  
5 get upset, there's no doubt. You know, Ms. Folton has  
6 witnessed Mr. Folton. He's had his struggles with  
7 regulatory agencies, too, and probably more with the BLM  
8 than the OCD. As have I. We kind of go back and forth.  
9 I always tell him, "You better not quit, because you quit  
10 they will have a target just on me."

11 But I met these guys -- you know, I've only  
12 been in this business six years, and prior to meeting  
13 these guys it didn't matter what job I was on or whatever  
14 I was doing, I was the hardest worker on the job. Hands  
15 down. Nobody could argue that point. Whether I worked on  
16 the drilling rig, construction sites, whatever. Up until  
17 I met these guys, I was the hardest-working guy there.  
18 Then I meet these guys. I'm barely average compared to  
19 these guys. These guys do work that hard and they put  
20 that much into it.

21 Our stuff may not look that impressive. To  
22 us it looks fantastic, but to most of the rest of the  
23 world maybe it doesn't look that impressive. But, like I  
24 said, it's all we have.

25 It's -- a good friend of mine, and he was

1 actually going to be here today but he must have got hung  
2 up. He's been an operator for 40-some-odd years. He  
3 doesn't want to rock the boat. He said, "I'm not even  
4 going to sign in but I'll go to support you, just with my  
5 friends."

6 He told me one time, "Lead, he said" -- we  
7 were talking about buying/selling leases and stuff because  
8 I've done a lot of that. He said, "Lead, in the oil  
9 business you're not selling leases, you're not selling  
10 production, you're selling people's dreams."

11 The type of people that are in this  
12 business, that's the type of people they are. These are  
13 our dreams. These are what we aspire to be.

14 That may not sound impressive to some  
15 people, but to me it's awesome, it's amazing, that a guy  
16 would drop everything to risk owning a bunch of stupid  
17 stripper wells. And I bought into the dream hook, line  
18 and sinker, and I'll fight it to the bitter end.

19 These guys know that I'm not, you know, the  
20 most educated guy on the planet. I do struggle  
21 communicating. I have to clean my language up when I come  
22 here. I'm kind of proud I haven't said really any bad  
23 words at all. I'm really shocked at that.

24 I am not qualified to be the one up here  
25 representing these guys, but at this point I'm all they

1 got. We don't have the money for lawyers. Whatever  
2 fights we've had in the past few years have pretty well  
3 drained us of lawyer money.

4                   And with that, that's my closing statement.  
5 Whatever happens happens. I would dearly love for the  
6 Commission to be able to say, "Hey, guys, we like the  
7 IPANM's proposal of this, what do you think we need to do  
8 on the single-well bonds? Let's do some give and take  
9 here."

10                   You guys see some things that we don't see,  
11 and we see things that you don't see, which is why we have  
12 hearings. We bring our experiences in life and our  
13 experiences out in the field to this room, you guys bring  
14 your experiences in life in the political realm, what you  
15 can and can't do.

16                   I'm sure there's things -- I heard mention  
17 earlier of a political bite in this. You see things that  
18 I don't see, you see things I don't comprehend; on the  
19 other hand, I see things that you don't see and you don't  
20 comprehend. Which is why we have hearings and we all come  
21 together and we make a rule that everybody can live with.

22                   You guys say, "Okay, we can satisfy the  
23 people that are breathing down our necks." Because we  
24 understand you probably have people breathing down your  
25 necks.

1                   Most of us are the type of guys like me --  
2    and I know this is funny, I actually got into this  
3    business to fly under the radar. I wanted to be left  
4    alone. I wanted to be -- my nickname is Lead, most people  
5    call me Lead. I wanted to be "Lead who?"

6                   Unfortunately it hasn't worked out.

7                   And that's the problem we have, is we're  
8    not going to come up here and we're not going to tell you  
9    what we think and how we feel. Sometimes we get a little  
10   too emotional about it, because it's everything.

11                  I see Mr. Folton. I know he lays awake  
12   every night worrying how he's going to pay some God-awful  
13   fine. Actually, I struggle with that myself. I see his  
14   struggles, I know his struggles. We all help each other  
15   out. It's kind of like a...

16                  But whatever we end up with, we end up  
17   with. Like what I said, I would like to see the IPANM's  
18   proposal. You guys change the tiers to what these guys  
19   propose, we look a little bit closer at the single-well  
20   bonds.

21                  This guy will get upset but that's okay.  
22   He don't take it personal. But that's just the way things  
23   go.

24                  You know, that's all I got to say, because  
25   I think I've pretty well done all I can. We got to go --

1 we got to do something different.

2 COMMISSION CHAIR RILEY: Thank you,  
3 Mr. Marker.

4 MR. MARKER: Yes, ma'am. Thank you.

5 COMMISSION CHAIR RILEY: So at this point?

6 MR. BRANCARD: What's the pleasure of the  
7 Commission?

8 MR. MARKER: Do you-all want us to leave  
9 and y'all talk about it?

10 COMMISSIONER BALCH: It's a public  
11 rulemaking. We get to talk about it in front of you.

12 MR. MARKER: What if we just leave?

13 COMMISSIONER. BALCH: Well, you are free to  
14 leave.

15 MR. MARKER: We all might just go home.

16 MR. BRANCARD: What we have before the  
17 Commission is the proposal of the Division to make further  
18 amendments to their rule proposals to deal with the issue  
19 of federal wells and whether they are counted or not, and  
20 whether they require financial assurance.

21 Much of that is -- not necessarily changing  
22 the intent of the rule but certainly clarifying and making  
23 clear exactly what the rule covers and doesn't cover,  
24 given the impact of the tiering and what is covered in the  
25 well count for the tiering.

1                   So that's the proposal before the  
2 Commission. Any other actions, if you want to reopen  
3 parts of the rule, I think at this point you would have to  
4 again renotice the hearing, and we would likely go into  
5 the next year.

6                   COMMISSION CHAIR RILEY: I think the  
7 appropriate step at this time is to make a decision on  
8 this proposal by the OCD. And I don't think rehearing on  
9 the other is appropriate.

10                  COMMISSIONER BALCH: Let me put it in the  
11 context of this rulemaking was imposed on us by the  
12 Legislature, and we have to follow their guidance. We  
13 have a little bit of leeway. I think that that's what we  
14 discussed primarily in the previous hearing was how to  
15 best fit those.

16                  I think pushing it forward doesn't really  
17 change that. The next step for people that don't agree  
18 with it would be the appeal process.

19                  As far as the proposed language for the  
20 federal, I think that, at least from my point of view, the  
21 intent originally was to avoid double jeopardy, double  
22 bonding, and this fixes that problem.

23                  COMMISSIONER MARTIN: I agree with  
24 Commissioner Balch, and believe that we might all be  
25 better off crafting a rule or deciding on a rule at this

1 point that we can finalize, and let these guys get on with  
2 what they are trying to do.

3 MR. BRANCARD: So is there a motion to move  
4 ahead with this rule proposal?

5 COMMISSIONER BALCH: I'm pretty comfortable  
6 with the new language. It didn't sound like there was any  
7 opposition to it, and it fixes the problem. So I would  
8 accept the language the way it's been written by OCD.

9 COMMISSIONER MARTIN: I second.

10 COMMISSION CHAIR RILEY: So can I get an  
11 approval saying aye from each of the commissioners for the  
12 record?

13 COMMISSIONER BALCH: Aye.

14 COMMISSIONER MARTIN: Aye.

15 COMMISSION CHAIR RILEY: Aye.

16 MR. BRANCARD: Okay. One more matter,  
17 which is the blanks on the effective date.

18 So I think the intent in 8.14 was that once  
19 the rule becomes effective it becomes effective for any  
20 new wells. Anybody wanting to drill a new well, they have  
21 to comply with this rule, but for people with existing  
22 wells, the idea as discussed by Mr. Sanchez was that there  
23 be a delay. The Commission discussed this at the last  
24 rulemaking. So that's sort of the second effective date  
25 in Rule 8.14.

1                   So the question is, if that's the way the  
2 Commission wants to go, how long of a delay on enacting  
3 the rule for existing wells?

4                   MR. MARKER:   Ninety would be good for us.

5                   COMMISSIONER BALCH:   Ninety days.

6                   COMMISSIONER MARTIN:   That's fine with me.

7                   MR. BRANCARD:   Three months?

8                   COMMISSION CHAIR RILEY:   Three months.

9                   MR. BRANCARD:   Okay.

10                  COMMISSIONER BALCH:   You've got February  
11 28th in there, so 90 days might give you an extra day.

12                  MR. MARKER:   We'll take anything at this  
13 point.  That's how my guys make a living, one inch in the  
14 tank at a time.

15                  MR. BRANCARD:   Three months or 90 days,  
16 whichever's longer.  How about that?

17                  MR. LARSON:   Is it a leap year?

18                  COMMISSIONER BALCH:   No, it's not.  They  
19 are on an even year; I can't remember which one.

20                  MR. MARKER:   I do have some questions on  
21 the appeal process when we get done, if you will.

22                  MR. BRANCARD:   So do we have a motion to  
23 accept that?

24                  COMMISSIONER MARTINEZ:   So moved.

25                  COMMISSIONER BALCH:   And seconded.

1                   COMMISSION CHAIR RILEY: The motion is  
2 approved.

3                   MR. BRANCARD: So the next question is  
4 drafting of the Order. As I suggested, my preference  
5 would be to simply come up with a new Order that replaces  
6 the prior Order. Obviously a lot of what was in the  
7 existing Order can be retained, and I need to discuss this  
8 whole rehearing process here, testimony here, and discuss  
9 the decision about the federal language in there.

10                   So I can get that done in a week or so, but  
11 I don't know whether you want to delegate this to the  
12 Chair to avoid a problem with meeting in the end of the  
13 year or not.

14                   COMMISSIONER MARTINEZ: I'm okay either  
15 way.

16                   COMMISSIONER BALCH: I guess -- I mean, if  
17 it's all right to sign a rulemaking Order that way, then  
18 that's fine.

19                   MR. BRANCARD: I will send the Proposed  
20 Order out to each of the Commissioners. Okay? If you all  
21 feel like you need to discuss this at the next meeting,  
22 you can do so. If not, then the Chair would have the  
23 authority to sign the Order.

24                   We did that, I think, with the last --

25                   COMMISSIONER MARTIN: Correct.

1 MR. BRANCARD: -- revisions to the  
2 horizontal drilling rule.

3 COMMISSION CHAIR RILEY: We did, but those  
4 were smaller changes.

5 MR. BRANCARD: Right. And so this is a  
6 little bigger, so then it's up to the Commission how you  
7 want to handle this.

8 COMMISSIONER BALCH: So for that discussion  
9 do we have to have a noticed -- we have to a noticed  
10 meeting, it can't be ad hoc.

11 MR. BRANCARD: No, you could have a special  
12 meeting. You could have a special meeting.

13 COMMISSIONER BALCH: And what is the  
14 noticing requirements for that?

15 MR. BRANCARD: Forty-eight hours, Florene?  
16 What is the special meeting?

17 MS. DAVIDSON: I think it's 72.

18 MR. BRANCARD: Seventy-two?

19 COMMISSIONER BALCH: The question is: When  
20 would we have it?

21 MR. BRANCARD: You could do it  
22 telephonically, too, if you don't want...

23 COMMISSIONER BALCH So what I would propose  
24 is we review your Order, and if we feel like there needs  
25 to be a special meeting, we figure out how we can meet in

1 the 48-hour time period or by phone.

2 COMMISSIONER MARTIN: I'm okay with that.

3 COMMISSIONER BALCH: Other than that, I'm  
4 comfortable with delegating the signing to Chair Riley.

5 COMMISSIONER MARTIN: As am I. I think we  
6 all understand the concepts involved, and are pretty much  
7 on the same page.

8 MR. BRANCARD: Okay. I think that covers  
9 it for this.

10 COMMISSION CHAIR RILEY: All right. The  
11 next item on our agenda is Other Business. Do we have  
12 other business?

13 MR. BRANCARD: No. You know, we still have  
14 a whole number of appeals in the courts right now, but  
15 really no movement on any of these cases.

16 One of our judges is going away, lost an  
17 election, so maybe we will get some action there.

18 And we have the Jalapeno appeal to the  
19 Court of Appeals, where we are still waiting for the Court  
20 to, what is known as, calendar the case. They have the  
21 issues that Jalapeno provided. The Court then has to  
22 review those issues and decide which briefing calendar the  
23 case goes on. It's basically do they try to decide it  
24 really quickly or do they allow the parties to do lengthy  
25 briefing on the case.

1                   So that could be any day that we get a  
2 decision from the Court about that, and that would then  
3 trigger probably having to draft briefs in that case.

4                   That's what is out there.

5                   Other Business? I think Florene mentioned  
6 we had two cases scheduled for December. One is the  
7 rehearing in the Alpha Delaware case?

8                   MS. DAVIDSON: I wasn't even counting that  
9 one. Salt Creek, that was continued, I believe. And then  
10 we have a new, I think it's a compulsory pooling case.

11                   MR. BRANCARD: Is that that  
12 Ascent/Centennial case?

13                   MS. DAVIDSON: Right. But seven cases  
14 involved.

15                   MR. BRANCARD: Where we have two people at  
16 the end of a horizontal unit, each wanting to be the first  
17 one to drill.

18                   So I think that's it, then.

19                   COMMISSIONER BALCH: Ample time after the  
20 next meeting to continue if we have all those cases  
21 actually show up. We have all next week, right?

22                   MR. BRANCARD: And we have Monday, of  
23 course.

24                   COMMISSIONER MARTIN: Yes.

25                   COMMISSION CHAIR RILEY: Yes.

1                   MR. BRANCARD: For the Hilcorp hearing. I  
2 think you should probably expect that to be close to a  
3 full day.

4                   COMMISSIONER MARTIN: Probably.

5                   COMMISSION CHAIR RILEY: I would imagine.  
6 Do I have a motion to adjourn the meeting?

7                   COMMISSIONER MARTIN: So moved.

8                   COMMISSIONER BALCH: And seconded.

9                   COMMISSION CHAIR RILEY: All right. The  
10 meeting is adjourned. Thank you, everybody, for coming in  
11 and taking your time to talk with us.

12                   (Note: Time noted 10:54 a.m.)

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1 STATE OF NEW MEXICO )  
2 : SS  
3 COUNTY OF TAOS )  
4

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6 I, MARY THERESE MACFARLANE, New Mexico Reporter  
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