STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSIONS
RULES ON FINANCIAL ASSURANCE
PLUGGING AND ABANDONMENT OF
WELLS 19.15.8.9 NMAC
Subsection C part 1and 2
Subsection D part 1

CASE No. 16078
ORDER NO. R-14834-B

APPLICATION FOR REHEARING

APPLICANT
Larry Marker (pro se)

Pursuant to Oil Conservation Commission Statute 70-2-25. I am submitting this application for Rehearing of the decision of the Commission on Case # 16078, Order # R-14834-B Amendments to the Commission's rules on financial assurance and plugging and abandonment of wells. Particular of specified Part and paragraph as noted in text of this application.

1 SUBJECT-SINGLE WELL FINANCIAL ASSURANCE
PROPOSED RULE EXCERPT:
Referencing 19.15.9.9 Part C paragraph (2) Part D paragraph (1)
Commission approved a $25,000.00 plus $2 per foot on both active and temporarily abandoned single wells.

2 To apply the same base formula of calculation to all wells regardless of the wells value and depth is Arbitrary. I will use the example of a well in the Seven Rivers formation east of Artesia that is 480 feet deep and produces 1 barrel of oil per day. The current formula requires a bond of $5,480.00 with the proposed formula this well will have a financial assurance of $25,960.00. This is a clear violation of any form of fiscal common sense.

3 The single well financial assurance for single active wells could easily be construed as targeting and bias. Serving no purpose other than to prevent future entrepreneurial ventures as well as preventing potential selling of existing assets by existing operators.

4 The application of the same level of financial assurance for single wells active and wells temporarily abandoned is not reasonable and would also support the notion of bias as to discourage future entrepreneurial ventures.

5 The OCD did not in the hearing demonstrate a complete effort to investigate the consequences of arbitrarily applying the same formula of calculation to all single wells. Obviously ignoring the depth, status or any other aspects of vast differences of individual wells in all of the different areas of the state.

6 The OCD did not provide an adequate representation of the shallow wells less than 2000ft in their plugging cost calculations.

7 The OCD testified that the cost to plug a well for the OCD is higher than the cost to plug a well for an independent operator. Then the OCC testified that this fact is justification to force the operator to provide additional financial assurance.

SUBJECT-BLANKET FINANCIAL ASSURANCE ACTIVE WELLS.

8 The commission approved these ratios of blanket financial assurance. 19.15.8.9 Part C paragraph (2) A blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled acquired, or operated in this state the principal on the bond.
(a)$50,000 for one to 10 wells
(b)$75,000 for 11 to 50 wells
(c)$125,000 for 51 to 100 wells
(d)$250,000 for more than 100 wells.

9 The logic of 4 tiers of financial assurance applied to thousands of wells of varying depths, condition, structure, age, formation, status, type, location and amount of production would seem arbitrary to any reasonable level of scrutiny.

10 The tiers of assurance as proposed and the single well assurance proposed increases combine to prohibit growth of existing business and prevent starting new business.

11 The tiers of assurance as proposed by the IPANM would increase the level of assurance as directed by statute to the $250,000. While considering the new and also growing smaller operators (1 to 10) that will move from single well bonds to blanket bonds.

12 The rules as written will substantially increase the cost of financial assurance on at least 300 of the 515 active operators.

13 The claim made by the OCD and accepted by the OCC that "over 50% of the operators would not be subject to a bond greater than is currently required" is completely incorrect and is misleading.

GENERAL ISSUES RELAVENT.

14 The violation of the rules of administrative procedure during the hearing process do substantiate and should mandate a rehearing as requested.

15 The original hearing began July 19th the commission began deliberations after OCD testimony and public comments. Then on July 20th in violation of Rule 19.15.3.13 NMAC part b and 19.15.3.9 NMAC the Commission recalled and allowed the OCD to provide testimony and evidence after deliberations had begun

16 The commission did not allow for public comment prior to the conclusion of the hearing on July 20th violating Rule 19.15.3.12 part 2 paragraph f

17 The transcript of the hearing clearly demonstrates the testimony the OCD witness was allowed to present far exceeded the scope of the clarification of information requested by the Commission during the previous days hearing and is a violation of procedural rules.

18 The commission did as per rule publish a notice of hearing in Alb. Journal. The proper and correct meaning of the word "published" is that the notice must be inserted for the required time in a newspaper that will make the matter thereof a public matter or known to the people in the place affected. STATE EX REL. SUN CO. V. VIGIL, 1965-NMSC-012, 74, N.M.766, 398 P.2d 987.

19 The issue present is that the proper newspaper to publish the notice, would be a newspaper within the region of the State that has the majority of oil and gas activity and operators affected.

20 The OCD testified that our current financial assurance requirements are grossly inadequate compared to other states. The OCC did agree and the OCD stated that other States have similar compliance issues. The logical conclusion would be that if the States that have larger assurance requirements still have the same compliance issues as we do clearly indicates that an increase in assurance does not solve the problem.

21 The OCD is using a strictly mathematical approach to demonstrate potential liability. Assuming that is proper and we extrapolate from the 5.9 compliance list (the basis of the States liability according to the OCD) we find 949 inactive wells under state jurisdiction. Using the OCD provided plugging cost data the assumed

liability to the state would be about $30 million dollars. The OCD testified to currently having about $30 million dollars in financial assurance bonds. From a strictly mathematical approach the current level of assurance would appear to be sufficient.

22 The OCD provided no evidence that implementing the proposed increases in financial assurance will in any practical way solve any existing issue and will likely create more compliance issues.

23 The OCD provided no evidence of considering the adverse effects or financial impact of these proposed amendments for the operators affected. To implement a 500% increase in financial assurance requirements with no apparent consideration of the economic impact on the operators is arbitrary and capricious.

24 The OCD did not demonstrate effort to determine the number of operators potentially forced out of compliance or ultimately out of business by these new rules.

25 The OCC provided no evidence of the conclusions of the "Small business regulatory advisory commission or even complying with the "Small Business regulatory relief act" {14-4A-1 through 14-4A-6 NMSA 1978}.

26 The increase of financial assurance as proposed will dramatically reduce the value of the marginal wells to the point of making them worthless. To increase the cost of regulation to this extreme is nothing short of regulatory taking and will be pursued as a tortious act.

27 The OCD testified that the bonds of larger operators are not actually redeemed. This information needs to be quantified by presenting the evidence of how many bonds of small to medium operators were redeemed.

28 The OCD illogically claims the State is exposed to more liability from the small to medium sized operators (stripper well operators) offering only the 5.9 inactive well list to substantiate this claimed unequitable liability.

29 A review of the "list of wells plugged" exhibit 6. Clearly shows that the overwhelming majority of the wells the OCD plugged were wells that belonged to larger sized operators not the small to medium operators as erroneously claimed.

30 A review of that same list shows also the overwhelming majority of wells plugged by the OCD belonged to non-resident out of state large operators.

31 The out of state operator issue was completely ignored or avoided by the OCD and the OCC.

32 The OCC accepted the claim that the small to medium operators were the biggest liability to the State while ignoring the OCD provided evidence that clearly shows that the State has in fact been exposed to more liability by large out of State operators.

33 The OCC dismissed the fiscal reality that financial resources, cash, credit, assets pledged and premium costs that are committed to financial assurance will reduce the amount of already limited financial resources available to the operator to grow or even operate his business.

34 A fact specific analysis reveals that the OCC did not ask for or receive enough evidence to make a competent decision on this subject.

35 A basic review of the limited evidence provided by the OCD and considered sufficient by the OCC indicates a predetermined outcome regardless of industry submissions and opinion.

36 The commission conclusion of evidence substantial to support these proposed rule changes is premature and a rehearing is warranted.

TO CONCLUDE, Myself and independent operators consulted and affected respectfully request the OCC consider the submissions of this application and grant a rehearing as requested.

Respectfully submitted

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