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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NONSTANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

Case No. 15,363 (*de novo*)
Order No. R-14053
Order No. R-14053-B

MATADOR PRODUCTION COMPANY'SRESPONSE IN OPPOSITION TO MOTION TO DISMISS AND DECLARE RIGHTS AND OBLIGATIONS OF PARTIES IN A POOLING APPLICATION UNDER NMSA 1978 §70-2-17

Matador Production Company ("Matador") submits this response in opposition to the Motion to Dismiss and Declare the Rights and Obligations of Parties filed by Jalapeno Corporation ("Jalapeno").

I. INTRODUCTION.

In this case, Matador sought an order approving a 154.28-acre nonstandard oil spacing and proration unit in the Wolfcamp formation comprised of Lots 1-4 (the W/2W/2) of Section 31, Township 18 South, Range 35 East, NMPM. Matador further sought the pooling of all mineral interests in the Wolfcamp formation (Airstrip-Wolfcamp Pool) underlying the nonstandard spacing and proration unit. The unit is to be dedicated to the Airstrip 31 18 35 RN State Com. Well No. 201H, a horizontal well with a surface location in Lot 4, and a terminus in Lot 1, of Section 31. Jalapeno owns a 2.76% working interest in the nonstandard unit. By contrast, Matador, has the rights to approximately 90% of the working interest in the proposed nonstandard unit and has expended tremendous time and expense to comply with the mandatory

rules and regulations set forth by the Commission. Specifically, Matador has spent considerable resources to "cause the project area to be consolidated by voluntary agreement or, *if applicable, compulsory pooling*" in order to drill a horizontal well that the record will show will best protect the correlative rights of all interest owners and prevent waste. NMAC 19.15.16.15.F.

At the Division level, Jalapeno filed a motion to dismiss, asserting that the Division does not have authority under NMSA 1978 §70-2-17 to enter a forced pooling order for a nonstandard unit comprised of four lots or quarter-quarter sections. That motion was properly denied by Division Order No. R-14053. Jalapeno filed a *de novo* application on Order No. R-14053, which was stayed pending a Division decision on the merits of Matador's application. The stay has been lifted to address the arguments in the current proceedings.

The Division subsequently issued Order No. R-14053-B, granting the relief sought by Matador -- compulsory pooling of a nonstandard unit dedicated to the proposed horizontal well and designating Matador as the operator of the unit. In what Matador believes and will show to be an arbitrary and capricious assessment of the real and significant risk that it will take in drilling the proposed well, the Division departed from standard practice and prescribed that the risk charge against a non-consenting working interest for the unit would be a mere 133%, finding that no credit should be given for the geologic risk involved in the proposed well. Both parties have filed *de novo* applications on Order No. R-14053-B.

Jalapeno has now filed a motion to dismiss with the Commission, seeking a determination on the following issues:

(A) Whether the Commission has the authority to create and force pool interests into nonstandard horizontal well units;

(B) Whether NMAC 19.15.13.8(A), (C), and (D) is invalid for (i) authorizing a 200% risk charge without the need for the applicant to provide evidence supporting the risk charge and (ii) placing the burden on the party opposing the risk charge to justify a lower than standard risk penalty; and

(C) Whether the well costs on which a forced pooling risk charge can be assessed includes the cost to equip the well.

II. ARGUMENT.

Not only does the Commission have the authority to create a nonstandard unit and compulsory pool, but it is required to do so. The legislature granted the Commission the authority, the courts have upheld its authority, and the Commission's own rules and precedent enforce the longstanding practice of creating nonstandard units and compulsory pooling for horizontal wells. Instead, Jalapeno makes an unfounded claim -- one that it should be estopped from rearguing since the arguments have already been addressed and rejected by the Commission -- to thwart horizontal drilling and deprive others of their correlative rights. Jalapeno seeks to solicit a carried interest or a free ride, taking no risk of its own and expending no capital for the proposed well. It seeks to alter the prevailing industry standard of a 200% risk charge and shift yet another burden onto applicants who are doing their best to produce the resources of the state of New Mexico in a prudent manner. Lastly, Jalapeno attempts to exclude the costs of equipping a well for production from the risk charge, so than operators/applicants will not recover their investment for those costs before non-consenting interest owners are allowed to participate in the well. Jalapeno's arguments are unfounded and set a dangerous precedent, and Jalapeno's Motion should be denied and Matador's application should be granted in its entirety.

(A) The Commission Has The Concomitant Authority To Create Nonstandard Units And Force Pool Interests Into Nonstandard Units.

1. The Commission Has Statutory Authority To Form And Compulsory Pool A Nonstandard Well Unit For A Horizontal Well.

The legislature empowered the Commission to both form and compulsory pool nonstandard units. Jalapeno cites *Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310 (S. Ct. 1962)*, for the proposition that the Commission is a creature of statute and its powers are limited to the enabling legislation, and *Marbob Energy Corp. v. Oil Conservation Commission, 146 N.M. 24 (S. Ct. 2009)*, for the argument that the Commission's authority must come from the legislature. Jalapeno wrongly attempts to conflate the distinct, but not mutually exclusive, powers granted by the legislature to the Commission to compulsory pool and form nonstandard units.

NMSA 1978 §70-2-17.C expressly allows for the compulsory pooling of a spacing or proration unit by the Division or Commission. In fact, the statute *requires* the Division or Commission to pool such a unit where all interest owners have not voluntarily joined in the well and evidence is presented that that the proposal will protect correlative rights and prevent waste. The legislature, in NMSA 1978 §70-2-17.A also requires the Commission to, "as far as practicable to do so, afford the owner of *each* property in a pool the opportunity to produce his just and equitable share of the oil and gas." To disallow compulsory pooling where not all interest owners have voluntarily joined would be in direct contradiction to the Legislature's mandatory statutory provision.

The Legislature *has*, in NMSA 1978 §70-2-18.C (adopted in 1969), specifically granted the Division and the Commission the authority to establish nonstandard spacing units. The statute states:

> Nonstandard spacing and proration units may be established by the division and all mineral and leasehold interests in any such nonstandard unit shall share in production from that unit from the date of the *order* establishing such nonstandard unit.
>
> (Emphasis added.)

The statute does not limit this authority to vertical wells, nor does it require rule making.

Thus, the Commission has had (since 1969) the authority to establish nonstandard units. *And*, a nonstandard unit may be created by an adjudicative order of the Commission rather than by a rule or regulation.

The New Mexico legislature empowered the Division with the broad authority to "make and enforce rules, regulations and orders, and do whatever may be necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978 §70-2-11.A. The two primary duties of the Division set forth in the statute are to "prevent waste" and "protect correlative rights." Although the Oil and Gas Act pre-dates the horizontal well environment, it was written to give the Commission the *flexibility* to evolve with time and technological advances. To that end, the Division has validly adopted and interpreted rules regarding nonstandard spacing units, horizontal wells, and compulsory pooling.

The intent of the legislature in adopting NMSA 1978 §70-2-17.C was for a pooling order to be a substitute for a voluntary agreement. Thus, forced pooling is not permissible, but *mandatory*, as an exercise of the Commission's authority to make all necessary rules and orders to carry out the purposes of the Oil and Gas Act.

2. New Mexico Courts Have Confirmed The Commission's Statutory Authority To Create And Force Pool Nonstandard Units.

The New Mexico Supreme Court held, in *Rutter & Wilbanks vs. Oil Conservation Commission, 87 N.M. 286 (1975)*, that the Commission has the authority to create nonstandard spacing units larger than a standard unit for a particular pool *and* to pool all interests in the nonstandard unit. In that case, the Commission established two well units of approximately 408 acres each, for two vertical gas wells normally spaced on 320 acres (an increase of about 30% in the size of a standard unit). All interests in the well units were force pooled into the subject units.

The *Rutter* Court's holding confirms the authority of the Commission to grant Matador's application. *Rutter* approved 408 acre well units for vertical well units, and the order at hand, Order No. R-14053-B, approved a 154.28 acre well unit for a horizontal well unit which will produce from all quarter-quarter sections through the drilling of only one horizontal well. Jalapeno argues that *Rutter* is inapplicable, but it is directly on point, holding that "it would be *absurd* to hold the Commission does not have the authority to pool separately owned tracts within an oversize nonstandard spacing unit." *Rutter* at 15. In fact, the Court specifically cited NMSA 1978 §70-2-11.A, quoted above, to approve of the formation of the nonstandard units.

Jalapeno states that forced pooling is limited to an existing spacing unit, whether 40 acres for oil or 320 acres for gas. Clearly *Rutter* did not involve 320 acre units. Moreover, a 408 acre unit was not "existing." The 408 acre units did not exist until created by the Commission in an adjudicatory proceeding. Thus, even absent a rule or regulation, the Commission has statutory authority to create nonstandard well units and to pool the separately owned tracts within the unit.

Jalapeno also misapplies case law and confuses the present application, comparing pooling a nonstandard unit for horizontal wells with forced unitization for secondary production.

NMSA 1978 §70-7-1 *et seq*. The Statutory Unitization Act is limited to forming unit areas for pressure maintenance, secondary recovery, and tertiary recovery projects. *Santa Fe Exploration Co. v. Oil Conservation Commission, 114 N.M. 103 (S. Ct. 1992)* .The *Santa Fe* case involved unorthodox locations and allowables for two wells drilled into a small pool, and the Commission's order required voluntary agreement among all interest owners in two 160 acre well units before the operators could produce *primary* reserves from the subject wells. However, *Santa Fe* does not support Jalapeno's argument. The court agreed that NMSA 1978 §70-7-1 *et seq*. only applied to secondary production, but stated:

> We read ... Section 70-7-1 merely to say that the Statutory Unitization Act is not applicable to fields in their primary production phase ... Nothing contained in the Statutory Unitization Act ... limits the authority of the Commission to regulate production from a pool under the Oil and Gas Act. The Commission must still protect correlative rights of lease holders in the Pool while preventing waste. The Commission still has broad authority "to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof. NMSA 1978 §70-2-11.A." ... [I]n the instant case the Commission's actions were within its statutory authority. We hold that the circumstances of this case do not implicate the Statutory Unitization Act and that **the Commission's actions in effectively unitizing operation of the Pool were an appropriate exercise of its statutory authority under the Oil and Gas Act**.
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> (Emphasis added.)

Thus, Jalapeno's arguments conflating unitization with compulsory pooling of nonstandard units must fail.

3. The Commission Has Entered Orders And Adopted Regulations Allowing Horizontal Nonstandard Well Units And Compulsory Pooling Of The Units.

The Commission has, through notice and hearing, created rules and set precedent based on the authority granted to it by the Oil and Gas Act to compulsory pool nonstandard units. The principles in *Rutter* were first applied to horizontal well units in Division Order No. R-12682-A, entered on August 8, 2007. The order cited *Rutter* to permit the formation of a nonstandard

spacing unit (comprised of 80 acres) for a horizontal well located in the SW¼NW¼ and NW¼SW¼ of Section 21, Township 15 South, Range 36 East, NMPM, in Lea County. It also pooled all uncommitted interests in the nonstandard unit. The Division and the Commission have followed that precedent for nine years, creating and pooling hundreds, if not more, horizontal nonstandard spacing units.

While well units can be created by rule (the Division's statewide spacing rules), they can also be created by special pool rules (requiring an adjudicatory hearing). In addition, nonstandard units can be created by adjudicatory proceedings under the Division's Adjudication rule, NMAC 19.15.4, which does not limit the type of application which can be filed. See NMAC 19.15.4.9.A(7). Under that provision, the Division has approved many nonstandard units. By Order Nos. R-13736 and R-13747, the Division created 80 acre units for *vertical* wells being drilled in pools spaced on 40 acres, due to geological and engineering reasons. In Order No. R-13939, the Division approved an 80 acre nonstandard unit (in a pool spaced on 80 acres), which included a quarter-quarter section from each of two sections. Again, like in the present application, it was based on geological and engineering justifications for protecting correlative rights and preventing waste. The non-standard units for the *vertical* wells in those orders were not limited to a standard well unit, nor did they exist until the Division created them.

Jalapeno cites Commission Order No. R-13499, entered on January 23, 2012, as support for the proposition that creation and pooling of horizontal nonstandard spacing units is not allowed. That assertion is incorrect. In fact, the Commission rejected the same argument Jalapeno is making here. Jalapeno appeared in Case No. 14744, resulting in Order No. R-13499, which adopted amended horizontal well rules. Jalapeno requested that compulsory pooling be

limited to standard spacing units for vertical wells. The Commission, in Conclusion of Law 79, stated:

> Jalapeno Corporation's proposal to limit compulsory pooling for horizontal wells to spacing units already established for vertical wells, and only and in all circumstances, should not be adopted.

Therefore, the primary Commission case cited by Jalapeno and Yates does not support their position. In addition, Conclusion of Law (78) stated:

> Since the Division has the mandatory duty to compulsory pool a spacing or proration unit upon the appropriate application where the prescribed predicate facts are shown, the Commission lacks the power to limit by rule the Division's authority to pool spacing units or require the consent of particular owners to compulsory pooling.

Thus, the Commission left it to the Division to determine whether to pool nonstandard units. The Division did so in Order Nos. R-12682-A and R-13425-A, among numerous other orders.

Commission Order No. R-13708-A, entered in Case No. 14966 on November 21, 2013, essentially adopted the reasoning in Division Order No. R-12682-A, and approved the creation and pooling of a 240 acre horizontal nonstandard spacing unit (prior Division Orders had applied solely to 80 or 160 acre nonstandard units). The Commission held in Conclusion 5 that:

> The amended horizontal well rules do not restrict the lateral length of a horizontal well that may be drilled, or the size of a nonstandard spacing unit for a horizontal well which may be compulsory pooled.

This order supersedes any contrary language in Order No. R-13499.

Finally, Jalapeno relies on an order that is easily distinguishable from the facts of Matador's case. Commission Order No. R-13228-F, entered in Case Nos. 14418 and 14480 on December 20, 2010, denied the pooling of two 160 acre horizontal well units, "under the facts of this case," namely evidence that each quarter-quarter section would not be equally productive and the proposed unit would therefore impair correlative rights. Jalapeno cannot rely on this order because it is *sui generis*, or "the *only one* of its own kind." **Black's Law Dictionary, 4th**

Rev. Ed. Furthermore, in Matador's case the Division held that each quarter-quarter section in the nonstandard unit *will be* equally productive.[1] The reasoning in Order No. R-13228-F has been superseded by subsequent Commission Order No. R-13708-A, which concluded, as noted above, that "the amended horizontal well rules do *not* restrict the lateral length of a horizontal well that may be drilled, *or the size of a nonstandard spacing unit for a horizontal well which may be compulsory pooled.*" Jalapeno discounts this Order and the Commission's ability to interpret both its own rules and the Oil and Gas Act in adjudicatory proceedings as "ad hoc" in direct conflict with the legislative grant of authority to the Commission. NMSA 1978 §70-2-11. The Commission is not limited to rulemaking and application of its own rules, but instead is also tasked with interpretation and administration of all matters related to oil and gas development to protect correlative rights and prevent waste.

The Commission has also, through rulemaking, addressed the matters at hand. NMAC 19.15.16.15, the special rules for horizontal wells, specifically provides for compulsory pooling of horizontal well units if all interest owners do not voluntarily join in the well. NMAC 19.15.16.15.F. Again, under NMSA 1978 §70-2-18.C and Division regulations, a nonstandard unit may be created by an adjudicatory order, and not just by a rule or regulation.

Jalapeno incorrectly interprets NMAC 19.15.15.11(B)(1), claiming that the regulation only allows nonstandard units that comply with the provisions thereof. However, a close reading of that regulation shows that it applies only to administrative (*i.e.*, non-hearing) applications. As noted above, an operator can apply for a nonstandard unit by an adjudicatory application. Jalapeno also incorrectly cites NMAC 19.15.15.11(B)(1), claiming that the regulation only

[1] Jalapeno asserted at the Division hearing that there was no geological risk in drilling Matador's proposed well, and that the risk charge should be no higher than 20%. Clearly, Jalapeno's own testimony proves that Order No. R-13228-F is inapplicable.

allows nonstandard units with acreage 70% to 130% of the size of a standard unit. That regulation clearly applies only to the authority of a Division district office to administratively approve a nonstandard unit due to acreage variations in the public survey, and thus it is inapplicable.

Jalapeno catalogs the complexity of issues that might be generated by the creation of a nonstandard spacing unit as a reason to require express legislation. The laundry list of potential issues include: ownership, drainage, reservoir inconsistencies, royalty responsibilities, and conflicts in ownership. As the record shows, however, all of these issues are addressed in the current scheme of adjudicatory proceedings and furthermore have been addressed in this specific application. In fact, the records of the Commission demonstrate that the numerous applications for creation of nonstandard spacing units and compulsory pooling are the opposite of "ad hoc" and systematically address and review all aspects of correlative rights and waste as required by the Oil and Gas Act.

4. Jalapeno Should Be Collaterally Estopped From Reasserting That The Division Lacks the Authority To Compulsory Pool And Authorize Horizontal Nonstandard Units in the Same Proceeding.

The collateral estoppel doctrine should preclude Jalapeno from challenging the authority of the Division and the Commission to compulsory pool and authorize nonstandard units in the same proceeding. Jalapeno was (1) a party to the prior proceeding, (2) the present cause of action is different, (3) the issue, namely the authority of the Division, was actually litigated, and (4) the issue was "necessarily determined in the prior litigation."*Shovelin v. Central New Mexico Elec. Co-op., Inc.*, 1993-NMSC 015, 115 N.M. 293, 297, 850 P.2d 996, 1000 (1993).

Jalapeno appeared and presented testimony in Case No. 14744, resulting in Order No. R-13499, which adopted amended horizontal well rules, including the rule that requires operators to consolidate the project area for a horizontal well by either voluntary agreement or compulsory pooling. NMAC 19.15.16.15.F. In conclusion of law No. 72 of the resulting Commission Order R-13499, the Commission found that "a nonstandard spacing unit may be approved and compulsory pooled in the same proceeding." Also, in conclusion of law No. 73, the Commission held that "the Commission and the Division have the power to establish both standard and nonstandard spacing and proration units." The Commission went on to specifically endow the Division with the power to compulsory pool "where the prescribed facts are shown." Conclusion of law No. 78, Order No. R-13499. Jalapeno, as a party of record, could have appealed to the court of appeals in a timely manner following the rules adopted by the Commission. NMSA §70-2-12.2C. Instead, Jalapeno failed to appeal Order R-13499. Thus, Jalapeno should be estopped from re-litigating the issue.

(B) NMAC 19.15.13.8(A), (C), and (D) Are Valid Rules.

NMAC 19.15.13.8(A) authorizes a 200% risk charge and simultaneously grants a party who wishes to oppose this charge the opportunity for notice and hearing whereby it may show by geologic or technical evidence that a lower risk charge is applicable. The rule merely acknowledges that the Commission, in its expert opinion, has decided, well within its rulemaking authority, that unless specifically challenged, the industry standard risk charge of 200% should be instituted against a party that does not wish to participate in a well or appear and present evidence justifying its claim for a lower risk charge. Order No. R-11992, Finding Paragraph 37. While the rule does not specifically require the applicant to put on its own evidence – any applicant who elects not to present evidence of the risk involved in drilling a well would fail to

have a countervailing case against an opponent that presented evidence that the risk was substandard.

NMAC 19.15.13.8(D) places the burden on the party opposing the risk charge to justify a lower risk charge, but does not deprive any party or the Division or Commission from specifically assessing the risk involved in each and every particular application. The burden shifting merely establishes part of the procedure by which the Division or Commission will evaluate the risk charge. It is well within the rulemaking authority of the Division to decide the appropriate methodology and procedure for determination of risk charges. This burden shifting recognizes that if a "well does not produce enough to enable the operator to recover the cost of drilling out of the pooled party's share of production, then the operator is left holding the bag." Transcript, Case 13069, Transcript __ at lines 13-18. Thus, the rules are set up in acknowledgment that it is the operator/applicant that has the most to lose and parties should be encouraged to share in the risk and not be allowed to ride the coattails of the operator.

(C) A Risk Charge On Drilling, Completing And Equipping A Well Is Proper.

NMSA 1978 §70-2-17 provides for a risk charge to be assessed on the cost of drilling and completing a well. The purpose of the risk charge is to allow the operator to recoup the actual costs that it has spent in order to produce a well -- an impossible feat without the equipment for production. The Division recognizes this reality and the risk charge under Order No. R-14053-B is assessed against the costs of drilling, completing, and equipping the proposed well. Jalapeno asserts that a risk charge cannot be assessed against equipping a well. However, common sense and competent authority dictate that the costs of equipping a well should be included in the definition of completion costs.

One commentator has stated that the definition of "completion" has been debated, and it can occur when a well has been drilled and logged at one extreme, and at the other extreme when it has been drilled, cased, perforated, stimulated, tested, and physically connected to a pipeline or outlet -- so that production can be commenced with the turning of a valve or switch. *Derman, "A Practitioner's Review of the 1990 Model Form International Operating Agreement"* [1991] 2 *OGLTR* 46, 47. Case law supports a broad definition of completion: The term was said in *Modern Exploration, Inc. v. Maddison, 708 S.W.2d 872, 92 O.&G.R. 387 (Tex. App.—Corpus Christi 1986, no writ)*, to mean the time production from a well actually began. Without equipping a well, there is no production.

If the term may be uncertain, deference is given to an administrative agency's interpretation of its governing statute. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984). If the statute is not definite, then considerable deference is given to the agency's interpretation of its governing statute. This principle has been adopted in New Mexico. *Alexander v. Anderson (In re Protest of Alexander)*, 126 N.M. 632 (Ct.App. 1999). Thus, NMAC 19.15.13.8, which allows equipping a well as part of completion, is proper and enforceable.

(D) The Division Misconstrued The Methodology Of Risk Calculation

The Division, in Order R-14053-B incorrectly relied on Commission Order R-11992 for the methodology of calculation of the risk charge. The Commission merely found in Order R-11992, as a factual matter, that the Division had developed *guidelines* for "particular classes of cases." Finding Nos. 11 and 13. The guidelines were historical methodologies of the Division that the Commission abandoned as relics with the actual ruling in Order R-1199 -- setting forth the current standard and procedure in NMAC 19.15.13.8. Matador asks that the Commission

vacate the strict methodology found in Order R-14053-B, namely that the *only* factors to be considered when assessing risk are (1) geological, (2) operational, and (3) reservoir, and that each category should be given an equal weight of 66%. Matador instead asks the Commission to allow it to present "all of the factors that might influence the appropriate level of risk" at the hearing on the merits and present a technical case for the allocation and categories of risk that it believes are appropriate to this specific compulsory pooling application. Order No. R-11992, Finding Paragraph 46.

III. Conclusion.

The primary duty of the Commission and the Division is to prevent waste. NMSA 1978 §§70-2-2, 11. Horizontal drilling has been a boon to the oil and gas industry and the state's economy. Although horizontal wells are more expensive than vertical wells, horizontal drilling enables interest owners to increase recovery from a reservoir and thereby prevent waste. Other than re-completions of deeper wells, no vertical Wolfcamp wells are being drilled in New Mexico. If formation and compulsory pooling of horizontal nonstandard spacing units is denied, no one will drill wells to test the Wolfcamp (and several other formations), and reserves will be left in the ground. The effect of agreeing with Jalapeno's arguments would be to inhibit horizontal drilling, cause waste, and impair the correlative rights of other interest owners.

Creation of nonstandard spacing units for the purpose of drilling horizontal wells, and compulsory pooling of interest owners in the unit, are authorized by statute, the New Mexico Supreme Court, Division regulations, and Division and Commission case law. Jalapeno's motion to dismiss has no statutory or legal basis and must be denied. Further, Jalapeno is prevented under the doctrine of collateral estoppel from re-litigating issues that the Commission has already decided.

NMAC 19.15.13.8(A), (C), and (D) are valid rules well within the jurisdiction of the Commission, as is the ability of the Division or Commission to decide that the costs to drill and complete the well are inclusive of the cost to equip it. Matador also asks that the Commission acknowledge and allow for the potential that a determination of risk cannot be narrowly limited to geologic, operational, and reservoir risk and furthermore that it is not always appropriate to give each category equal weight. Matador asks the Commission that it be given the opportunity to present technical justification for a more diverse set of risks and the allocation of the charge thereto, and that the Commission incorporate such a methodology.

WHEREFORE, Matador requests the Commission to enter an order denying Jalapeno's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the following counsel of record this 15th day of August, 2016 via e-mail.

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