

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

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

DEC 05 2018 PM 02:35

Case No. 16403

**HILCORP'S RESPONSE IN OPPOSITION TO NMSLO'S
MOTION TO STAY APPROVAL OF ORDER**

Hilcorp Energy Company ("Hilcorp") hereby objects to the "unopposed" motion filed by the New Mexico State Land Office ("NMSLO") "to stay the approval of" Commission Order R-10987-A(2). Counsel for the NMSLO did not seek concurrence of this motion from any of the parties to proceeding and therefore has no basis to suggest it is "unopposed." Further, the NMSLO is not a party to this proceeding and therefore cannot seek a stay of the Commission's Order under NMAC 19.15.4.23(B). Finally, the NMSLO has failed to meet the procedural and substantive requirements necessary to request a stay of Commission Order R-10987-A(2).

A. The Motion Is Opposed and The NMSLO Is Not A Party Entitled To Seek A Stay Of The Commission's Order.

The NMSLO has no basis to suggest its motion is "unopposed." The motion fails to reflect that concurrence was sought from any of the parties of record in this proceeding. No concurrence was sought from the attorneys for the applicant, Hilcorp. The suggestion that Commissioners Dunn and Balch "approved the NMSLO's oral motion to stay the order for 30 days at the OCC hearing on December 4, 2018" is incorrect. Rather, the "oral motion" was denied as improper.

Further, only a party can subsequently seek a stay of the Commission's order. *See* NMAC 19.15.4.23(B). The NMSLO is not a party to this proceeding. As the Commission has already found:

A courtesy notice of Hilcorp's Application and the initial Commission hearing in this matter was also provided to the Bureau of Land Management and the New Mexico State Land Office. Under Commission rules and prior precedent, neither agency is entitled to formal notice of this type of proceeding and neither of these agencies chose to appear before the Commission, which contains a representative from the New Mexico State Land Office.

Order R-10987-A(2). *See also* Hilcorp Ex. 6 (last paragraph); 9/13/18 Tr. at p. 56-57. Despite knowledge of the Commission proceeding as early as August, the NMSLO did not seek to intervene as a party separately from its representative on the Commission. *See* NMAC 19.15.4.11. Following argument at the November hearing, the Commission denied the NMSLO's tardy, oral request to intervene, cross examine and present witnesses. Since the NMSLO is not a party to this case, it cannot seek a stay of Commission Order R-10987-A(2).

B. The NMSLO Has Failed To Meet The Procedural and Substantive Requirements For A Stay.

Not only does the movant for a stay have to be a party to the proceeding, but the movant must meet the procedural and substantive requirements set forth in NMAC 19.15.4.23(B):

B. Stays of division or commission orders. *A party* requesting a stay of a division or commission order shall file a motion with the commission clerk and serve *copies of the motion upon the other parties who appeared in the case*, as Subsection A of 19.15.4.10 NMAC provides. *The party shall attach a proposed stay order* to the motion. The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case notice and an opportunity to respond, *if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party*. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

Despite citing this rule as a basis for its motion, the NMSLO fails to follow it. The NMSLO did not serve its motion on Enduring Resources, one of the operators that properly appeared in this case as a party in support of the Application. *See* Order R-10987-A(2) at p. 4, ¶15. The NMSLO did not include a proposed stay order, a fundamental requirement under the governing rule. More importantly, the motion does not even attempt to demonstrate why a stay “is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party.” This defect is not surprising since none of these standards can be demonstrated in this case.¹ The NMSLO’s motion utterly fails to meet the procedural and substantive requirements necessary for the issuance of a stay.

WHEREFORE, Hilcorp Energy Company respectfully requests that the improperly titled “Unopposed Motion To Stay Approval Of Order” filed by non-party NMSLO be denied.

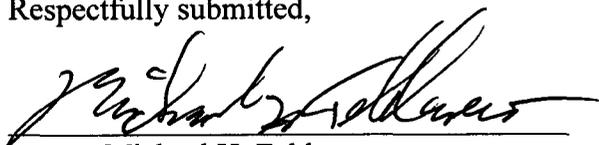
¹ The Commission’s findings supporting the denial of intervention sought by the San Juan Citizens Alliance equally demonstrate why the standard for a stay of the Commission’s Order cannot be met:

21. Hilcorp’s Application raises issues of geology and reservoir engineering that relate solely to the proper management of an underground gas pool to avoid the prevention of underground waste and the protection of correlative rights. The drilling, operation, and production of oil and gas wells and the disposition of oil field wastes are not at issue under this Application.

22. The SJCA has not established a basis to intervene in this proceeding. The potential injuries alleged by the SJCA are outside the zone of interest to be protected by the statutes and rules at issue under Hilcorp’s Application. The SJCA also did not establish that it or its proposed witnesses have the special expertise necessary to contribute substantially to the prevention of underground waste or the protection of correlative rights.

23. The potential injuries and harm alleged by the SJCA are limited to surface-related issues that are not at issue in this proceeding. The fears and concerns raised by the SJCA are addressed by proceedings and rules governing the actual drilling, recompletion, operation, and production of oil and gas wells, and the disposition of oil field wastes. These other regulatory proceedings and rules are not before the Commission under Hilcorp’s Application.

Respectfully submitted,



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CERTIFICATE OF SERVICE

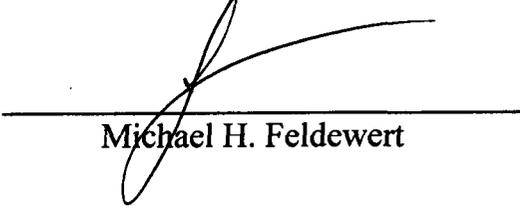
I hereby certify that on December 6, 2018 I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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