

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

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

Case No. 16403

HILCORP'S RESPONSE IN OPPOSITION TO SJCA'S MOTION FOR REHEARING

Hilcorp Energy Company ("Hilcorp") hereby responds in opposition to the San Juan Citizens Alliance's ("SJCA") Motion for Rehearing ("Motion"). For the reasons stated below, the Motion should be denied.

ARGUMENT

I. Only a "Party of Record" May Request A Rehearing; SJCA is Not a Party, So its Motion Must Be Denied.

Under the Commission's rules and the Oil and Gas Act, only "a party of record" adversely affected by an order may file a request for rehearing. 19.15.4.25 NMAC; *see also* NMSA 1978, § 70-2-25(A). Here, the Commission has already twice denied the SJCA status in this proceeding as a party with standing and, in its discretion, the right to participate as an intervenor—once at the September 13 hearing and again at the November 19 hearing. *See* Mot. at 3. Despite lacking "party" status necessary to request a rehearing, the SJCA fails to demonstrate a right to a rehearing where the governing law expressly limits applications for rehearing to "a party of record."

Having been denied the right to participate as a party for lack of standing and, pursuant to the Commission's discretion, as an intervenor, the SJCA has no basis to make application to the Commission for rehearing. It is not a party. The SJCA avoids addressing this procedural

limitation in its motion and fails to offer an argument for why the Commission should nevertheless consider its application for rehearing. The Commission's rules and the Oil and Gas Act are clear—only “a party of record” may file an application for rehearing. The SJCA is not a party of record. It's motion for rehearing must be denied.

II. SJCA Raises No New Facts or Legal Arguments to Support its Request for Rehearing.

Unable to identify new facts or legal arguments to support a rehearing, the SJCA instead relies on its previously filed briefs, affidavits, and exhibits to rehash the same general fears, concerns, and legal arguments already presented to the Commission at the September 13th and November 19th hearings. The Commission is fully apprised of these arguments and has given them due consideration.

In its Motion, the SJCA highlights its inability to offer expert testimony on geologic characteristics, reservoir engineering, gas drainage or other technical issues raised by Hilcorp's application and addressed by the Commission and Hilcorp's witnesses at hearing. Instead, SJCA confirms that its proposed testimony and evidence—and cross-examination of Hilcorp's witnesses—would be limited to potential soil erosion, loss of grazing forage, air emissions, mishandling of oilfield waste, and similar surface issues from the drilling and production of oil and gas wells. At two separate hearings, the Commission applied its particular expertise to these fears and concerns and concluded the issues raised by the SJCA do not fall within the scope of the underground reservoir management case before it; rather, they are addressed by other proceedings and rules governing the actual drilling, recompletion, operation, and production of oil and gas wells. The Commission succinctly made this clear in its order:

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.
24. The SJCA has not established a proper basis for intervention in this case. The Motion for Continuance filed by the SJCA is denied. The SJCA is not a party to this proceeding, the motion is untimely and does not provide justification for a continuance.

Order R-10987-A(2) at p. 5. Commission Chair Heather Riley reiterated these points prior to entertaining arguments on SJCA's second motion for intervention, stating:

To the extent that there are surface considerations, those are considered and regulated by the relevant surface owner or manager, BLM, State Land Office and fee owners and managers. If the Commission were to approve the application being considered today, that would not mean that the Applicant had the necessary approvals and permits to drill any well. Rather, an approval would simply mean that the pool in question is able to effectively drain by the well density approved by the Commission. It is not the jurisdictional charge of the Commission to waive [sic] potential surface issues against subsurface resource recovery management considerations. Those considerations are for another day and would be before the relevant surface owner or manager, not the OCD or the OCC.

Hrg. 11/19/18, Tr. 10:2-16. Rather than reflecting a “predetermined decision,” as the SJCA contends, these comments merely reflect the Commission Chair’s position at the outset of the November 19th hearing in response to extensive legal briefs filed on the issue. *See also* Hrg. 11/19/18, Commission Chair Riley, Tr. 33:12-15 (“I’d like to hear some discussion about what type of hearing this is. I personally don’t believe it’s a rulemaking, but I would like to hear arguments to the contrary.” (emphasis added)). The SCJA was given ample opportunity to address the Commission’s concerns but chose to rest on the same standing and intervention arguments that it raises again in this motion.

In essence, the SJCA simply seeks to impose its judgment for that of the Commission in determining when the fears and concerns of its citizen group should be addressed by the governing body. *See* Mot. at 10 (suggesting without authority that is improper to address these fears and concerns when particular wells are proposed at particular surface locations with particular surface equipment). The SJCA wrongly contends the Commission has no discretion and was required to permit the SJCA to intervene as a party. *See* Mot. at 11. That is wrong. Having determined that the SJCA’s contributions would not be helpful to the underground reservoir management issues before it, the Commission exercised its discretion to deny SJCA the right to participate as an intervenor.

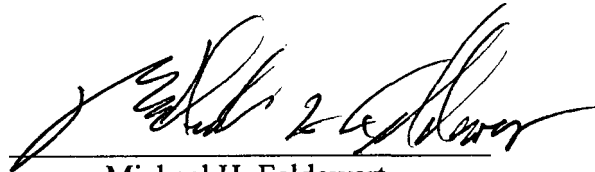
Similarly, the SJCA’s arguments suggesting that Hilcorp’s application should be considered a rulemaking rather than an adjudication are a rehash of the same arguments previously rejected by the Commission. The SJCA contends the Commission acted arbitrarily and capriciously by treating Hilcorp’s application as an adjudication rather than a rulemaking because doing so - in SJCA’s subjective view - “was not in the interest of fairness.” *See* Mot. at 15. But the fact that the Commission’s decision did not comport with the SJCA’s subjective view

of a “fair outcome” does not establish that the Commission erred as a matter of law, or acted arbitrarily or capriciously, in treating the proceedings as an adjudication. Longstanding Commission rules (NMAC 19.15.3.8(D)) and New Mexico Supreme Court authority (*Udden v. New Mexico Oil Conservation Commission*) makes it clear that special pool orders are adjudicatory proceedings and not statewide rulemaking proceedings. The SJCA subjective contention as to what is “fair” (Motion at p. 15-16) does not even come close to addressing these authorities, and its remaining arguments were fully addressed in the briefs preceding the November 19th hearing. *See* Hrg. 11/19/18, Tr. 33:12-48:19.

CONCLUSION

For the reasons stated, SJCA’s Motion should be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael H. Feldewert', is written over a horizontal line.

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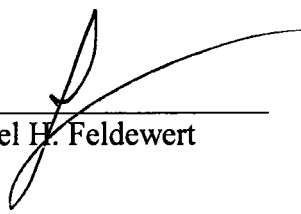
I hereby certify that on December 27, 2018 I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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