

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

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**IN THE MATTER OF THE APPLICATION OF THE BOARD  
OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY  
FOR CANCELLATION OR SUSPENSION OF APPLICATIONS  
FOR PERMITS TO DRILL (APD'S) FILED BY APPROACH  
OPERATING, LLC, RIO ARRIBA COUNTY, NEW MEXICO**

2009 OCT -6 P 2: 21

**CASE NO. 14134**

**IN THE MATTER OF THE APPLICATION OF  
APPROACH OPERATING, LLC FOR APPROVAL  
OF SIX APPLICATIONS FOR PERMITS TO DRILL,  
RIO ARRIBA COUNTY, NEW MEXICO**

**CASE NO. 14141**

**IN THE MATTER OF THE APPLICATION OF  
APPROACH OPERATING, LLC FOR APPROVAL  
OF FOURTEEN APPLICATIONS FOR PERMITS TO DRILL,  
RIO ARRIBA COUNTY, NEW MEXICO**

**CASE NO. 14278**

**MOTION TO STRIKE**

Approach Operating, LLC, ("Approach"), through its counsel, Montgomery and Andrews, P.A., (J. Scott Hall), moves that the Commission or Commission Chair enter an order striking the Notice of Intervention and Amended Notice of Intervention filed in these matters on behalf of Proposed Intervenor Dwight E. Rice, Trustee, Rice Family Living Trust. As grounds for this motion, Approach states:

Proposed Intervenor does not have standing. To acquire standing, a party must demonstrate "(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *John Does I Through III v. Roman Catholic Church of The Archdiocese, Inc.*, 1996-NMCA-094, 122 N.M. 307, 924 P.2d 273. Mr. Rice has demonstrated none of these required components.


In this case, there is neither injury in fact nor even the threat of injury. The APD's for two alternate locations on the Rice Trust's surface have been withdrawn (Rice No. 1 and Rice

No. 2 Wells).<sup>[1]</sup> Consequently, there is no APD currently pending before the Commission for review and approval. Hence the "challenged conduct" component for standing does not exist. At such time in the future as an APD on the Proposed Intervenor's surface may be submitted for approval, Mr. Rice can seek to invoke the Division's procedural rules in order to establish standing and have an APD reviewed for compliance with the Division's rules and regulations. Until then, there is no case or controversy pending before the Commission which justifies an adjudicatory hearing to address Proposed Intervenor's hypothetical and at best, premature, cause of action.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: \_\_\_\_\_

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on this 6<sup>th</sup> day of October, 2009 as follows:

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J. Scott Hall

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<sup>[1]</sup> In this regard, please refer to the Response To Proposed Intervenor's Motion For An Order Requiring Production Of Information Relating To The Pending Applications.