

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

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE ORDER
AGAINST C&D MANAGEMENT COMPANY, D/B/A FREEDOM
VENTURES COMPANY, EDDY COUNTY, NEW MEXICO

Case No. 14055

APPLICATION OF THE BOARD OF COUNTY
COMMISSIONERS OF RIO ARriba COUNTY FOR
CANCELLATION OR SUSPENSION OF APPLICATIONS FOR
PERMITS TO DRILL APDs FILED BY APPROACH OPERATING, LLC,
RIO ARriba COUNTY, NEW MEXICO

Case No. 14134

APPLICATION OF APPROACH OPERATING, LLC,
FOR APPROVAL OF SIX APPLICATIONS FOR PERMITS
TO DRILL, RIO ARriba COUNTY, NEW MEXICO

Case No. 14141

APPLICATION OF APPROACH OPERATING, LLC,
FOR APPROVAL OF 14 APPLICATIONS FOR PERMITS TO
DRILL, RIO ARriba COUNTY, NEW MEXICO

Case No. 14278

Case No. 14041: Continued to November 4, 2009
Case No. 14365 and Case No. 14366: Continued to
December 16, 2009

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

October 7, 2009
Santa Fe, New Mexico

1 This matter came on for hearing before the New
2 Mexico Oil Conservation Commission, MARK E. FESMIRE,
3 Chairman, on Wednesday, October 7, 2009, at the New
4 Mexico Energy, Minerals and Natural Resources Department,
5 1220 South Saint Francis Drive, Room 102, Santa Fe, New
6 Mexico.

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A P P E A R A N C E S

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ALSO PRESENT:

Florene Davidson

REPORTERS CERTIFICATE

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1 CHAIRMAN FESMIRE: The record should
2 reflect that it's 9:00 a.m. on October 7th, 2009, that
3 this is the regulary-scheduled New Mexico Oil
4 Conservation Commission meeting. The record should also
5 reflect that Commissioners Bailey, Olson and Fesmire are
6 all present. We, therefore, have a quorum.

7 And the first order of business before the
8 Commission today is to the minutes of the September 9th,
9 2009 Commission meeting. Have the Commissioners had the
10 opportunity to review those minutes as presented by the
11 secretary?

12 COMMISSIONER BAILEY: Yes, I have, and I
13 move we adopt them.

14 COMMISSIONER OLSON: I guess I'll second
15 that, but I wasn't here, so I'll probably abstain from
16 voting on that.

17 CHAIRMAN FESMIRE: I will second the
18 motion. All those in favor of adopting the minutes as
19 presented by the secretary, signify by saying aye.

20 Let the record reflect that two Commissioners
21 who are present voted to adopt the minutes as presented,
22 that they were signed by the Chairman and transmitted to
23 the secretary.

24 COMMISSIONER OLSON: Let the record
25 reflect that I'll abstain because I wasn't here for that

1 meeting.

2 CHAIRMAN FESMIRE: The record shall so
3 reflect.

4 The next order of business before the
5 Commission is Case Number 14055, the application of the
6 New Mexico Oil Conservation Division for a compliance
7 order against C&D Management Company, doing business as
8 Freedom Ventures Company. Are the attorneys present?

9 MR. SWAZO: Sonny Swazo for the Oil
10 Conservation Division.

11 MR. PADILLA: Earnest Padilla for C&D
12 Management.

13 CHAIRMAN FESMIRE: Mr. Swazo, I understand
14 that we have some motions before the Commission.

15 MR. SWAZO: That's correct, Your Honor.
16 C&D Management has filed two motions. One is asking for
17 a continuance, another is asking for an extension of
18 time to file proposed findings of facts and conclusions
19 of law.

20 CHAIRMAN FESMIRE: Mr. Padilla, since
21 they're your motions, is that your understanding?

22 MR. PADILLA: Yes, they are.

23 CHAIRMAN FESMIRE: Mr. Swazo, do you have
24 anything else to add?

25 MR. SWAZO: Yes. I have filed a motion in

1 response -- a response -- I had filed a response in
2 opposition to C&D's motion for the continuance. The
3 continuance is asking for additional time to conduct
4 additional discovery related to the plugging costs
5 associated with the five wells that the OCD plugged.
6 It's my contention that -- well, the motion touches upon
7 this whole Rule 5.9 order. It's part of the 5.9 order
8 that I had raised, that I had asked the Commission to
9 issue at the last hearing, at the conclusion of the last
10 hearing. I believe I may have confused the Commission,
11 so I'd like to go ahead and try and clarify my position.

12 CHAIRMAN FESMIRE: In the context of
13 arguing Mr. Padilla's motion?

14 MR. SWAZO: My position is that this case
15 does not have to be continued. It's my contention that
16 Mr. Padilla misinterprets or misconstrues the whole point
17 of Rule 5.9, and I'd like to clarify that with the
18 Commission before we start going on to another protracted
19 hearing that may all be for nothing.

20 CHAIRMAN FESMIRE: Mr. Padilla, do you
21 mind if he --

22 MR. PADILLA: No. Go ahead.

23 CHAIRMAN FESMIRE: You may proceed, Mr.
24 Swazo.

25 MR. SWAZO: At the conclusion of the

1 hearing, I asked the Commission to issue a Rule 5.9
2 order. Rule 5.9 is an enforcement tool. In order for an
3 operator to receive certain privileges, the operator
4 needs to be in compliance with Rule 5.9. One of ways an
5 operator is not in compliance with Rule 5.9 is if there
6 is an order finding an operator in violation of an order
7 requiring corrective action. That's what I was asking
8 the Commission to issue at the last hearing.

9 I wasn't asking to go into this whole hearing
10 into plugging costs or invoices. I was simply asking the
11 Commission to make a determination based on the facts
12 that were presented to it that Mr. -- that C&D Management
13 was in violation of a compliance order, the Commission's
14 order.

15 The evidence that I presented -- well, let me
16 back up. I was asking for that order because the
17 Commission had ordered C&D Management to plug five
18 inactive wells or otherwise bring them into compliance by
19 either bringing them back into production or TA'ing them
20 by September 14th, 2008. C&D Management did not do that,
21 and as a result, the Division eventually ended up
22 plugging those wells. So it's my contention that C&D
23 Management is in violation of Rule 5.9 simply because it
24 is in violation of the Commission's order requiring it to
25 bring those five inactive wells into compliance.

1 CHAIRMAN FESMIRE: The Commission hasn't
2 ruled on that yet. One of the things that they asked for
3 was the compilation of the costs incurred by the OCD in
4 plugging those wells. It's my understanding that there
5 have been -- that Mr. Padilla's client wants to challenge
6 some of those costs; is that correct?

7 MR. SWAZO: That's correct. I will
8 address that, as well.

9 CHAIRMAN FESMIRE: Are we going to get
10 into the substance of the motions? I think Mr. Padilla
11 is entitled to the first bite of the apple, if we are.

12 MR. SWAZO: Yes. If you want to go to
13 Padilla first, that's fine.

14 CHAIRMAN FESMIRE: Mr. Padilla?

15 MR. PADILLA: Yes. Mr. Chairman, members
16 of the Commission. We filed a motion because, after
17 looking at some of the -- well, the invoices, we felt
18 that there were some costs there that were duplicated.
19 One particular one -- two invoices contained an entry for
20 April 7th, I believe, of 2009, where a rig is located on
21 two different wells. That's one. And there are other
22 things, such as daily reports for a drilling crew as to
23 what was being done on the leases.

24 I think that somebody has got to audit the
25 invoices. Now, Mr. Swazo, in his closing argument at the

1 last hearing, stated they should be required to pay --
2 C&D Management should be required to pay. So my response
3 at that time was, pay what? And so the Commission, then,
4 came back and said, okay, we're going to continue this
5 hearing until another time. In the meantime, Mr. Swazo
6 was to give us the invoices. We looked at the invoices.
7 We found some, what appeared to be discrepancies, so
8 we're simply trying to get additional information on the
9 underlying costs that constitute the invoices.

10 We have not had enough time to get into that,
11 and probably the best way to do it, as far as I know, is
12 to take a Deposition Duces Tecum, have the drilling
13 company submit their invoices, or a request for
14 production of those documents, so we can examine them to
15 see if there are any discrepancies and compare that with
16 what they're allowed to charge under the contract the
17 state has with the plugging company.

18 I don't think that just because a plugging
19 company submits an invoice to the OCD that has been
20 approved, that we're not allowed to challenge some of
21 those costs. And so that's all that we're asking for, is
22 additional time with which to have our expert examine the
23 invoices and the underlying costs to see whether or not
24 there's a challenge to the \$170,000 that constitute the
25 total sum of the invoices, and I think that's fair.

1 I don't think that there's any other issues of
2 dire need here that need to be addressed, like leaking
3 wells or something. The wells have already been plugged.
4 At this point, we're arguing about how much C&D
5 Management is going to have to pay or reimburse the
6 Division for well costs.

7 CHAIRMAN FESMIRE: Mr. Padilla, if I
8 remember correctly, there was a period of time before
9 this hearing where the OCD was to make those invoices
10 available to your client. Did they do that?

11 MR. PADILLA: They did that. The letter
12 is dated -- I don't know when we received it in our
13 office, but it's dated -- the letter is dated August
14 26th, and I informed my client that we needed to have
15 somebody here to look at this. My client got somebody,
16 and when they looked at the invoices, they said that we
17 need additional data, so that's where we're at, at this
18 point.

19 I don't think that we've been dragging our
20 feet on this thing, but I think that -- then, in addition
21 to that, as I explained before the hearing started, Mr.
22 Kaiser became sick on the way here, and that's an
23 additional reason that we asked for the continuance.

24 CHAIRMAN FESMIRE: Okay. Anything
25 further?

1 MR. PADILLA: Nothing.

2 CHAIRMAN FESMIRE: Mr. Swazo?

3 MR. SWAZO: Yes. Well, these plugging
4 invoices really have no bearing on whether or not C&D
5 Management is in violation of the Commission's order. I
6 merely suggested that that's one way that they could
7 satisfy and comply with the Commission's order. The way
8 that --

9 CHAIRMAN FESMIRE: Mr. Swazo, if I
10 remember the rule correctly, one of the ways that they
11 can get out from under that order is to pay the costs
12 incurred by the state for the plugging; is that correct?

13 MR. SWAZO: That's not explicitly stated
14 in the rule. That was what I was suggesting as far as
15 what they could do to satisfy the Commission's order.
16 It's not articulated in the rule. It's not even
17 specified in the rule. The rule provides that if there's
18 an order finding the operator in violation of an order
19 requiring corrective action, the burden then becomes the
20 operator's burden to file a motion with the Commission
21 explaining that it has satisfied the Commission order.
22 At that point, the Commission can either rule on the
23 motion without a hearing or can have a hearing and make a
24 ruling on the motion.

25 CHAIRMAN FESMIRE: Are you asking us to

1 issue a partial order to comply with 5.9, without the --

2 MR. SWAZO: No. What I'm asking you folks
3 for is an order finding C&D Management in noncompliance
4 with the Commission's order. There was testimony at the
5 hearing from Daniel Sanchez that C&D Management was under
6 the Commission's order to bring five inactive wells into
7 compliance with the Inactive Well Rule by September 14th.
8 They did not do it. As a result, the Division had to
9 plug these four wells. That's enough to find C&D
10 Management in violation of this Commission's order. It's
11 then C&D Management's burden -- under the rule, it then
12 becomes their burden to file a motion indicating that
13 they have satisfied the Commission's order.

14 One thing that I'm concerned about, of course,
15 is that we could have another protracted -- we've already
16 had several days of hearing, and we could have a
17 protracted hearing on nothing but just plugging costs.
18 From the information that I saw, C&D Management intends
19 to scrutinize everything. They asked for the bid
20 contract --

21 CHAIRMAN FESMIRE: Aren't they entitled to
22 do that?

23 MR. SWAZO: Not for purposes of Rule 5.9.
24 Plus, Mr. Kaiser indicated that he wasn't even sure that
25 he was going to reimburse the state for its plugging

1 costs. So the hearing -- if you folks decide to go
2 forward with this hearing, which isn't required under
3 Rule 5.9, could be a waste of time and all for nothing.
4 Because, at the end of the day, Mr. Kaiser could walk
5 away.

6 My whole point is that there's enough
7 evidence. I simply asked the Commission to issue an
8 order finding C&D Management in violation of the
9 Commission's order. There was evidence to support that.
10 There's no reason for this case to be continued, and
11 that's why I oppose this motion.

12 CHAIRMAN FESMIRE: So it's your contention
13 that we don't have to have that -- let's call it the
14 terminus amount that he would have to pay to complete the
15 order?

16 MR. SWAZO: That's correct. It's not
17 required under the rule. I was merely suggesting that if
18 C&D intends to comply with the Commission's rule, then
19 they can go ahead and reimburse the state for the
20 plugging costs, but it's not required under the rule.

21 CHAIRMAN FESMIRE: What's the danger to
22 the state if this Commission goes ahead and grants the
23 continuance?

24 MR. SWAZO: Well, if you grant the
25 continuance, does that mean you're going to require

1 another hearing on the plugging process, or --

2 CHAIRMAN FESMIRE: His client isn't here.
3 They do have some challenges to the amount. Don't you
4 think they're entitled to that hearing?

5 MR. SWAZO: No, I don't, not for purposes
6 of a Rule 5.9 hearing. That's not what the rule
7 provides.

8 CHAIRMAN FESMIRE: So we can find them in
9 violation of 5.9 because they -- the state has incurred
10 costs to do this plugging and not have on the record
11 exactly what those costs are?

12 MR. SWAZO: That's correct. They would be
13 entitled to that hearing once they have filed their
14 motion indicating they have satisfied this corrective
15 action.

16 CHAIRMAN FESMIRE: Okay. Mr. Padilla?

17 MR. PADILLA: First of all, let me address
18 this 5.9 order request. That request was never in the
19 initial application when this case was reopened. It was
20 only in closing arguments that Mr. Swazo brought up the
21 request for a 5.9 order. We went through two days of
22 hearing. At the end of the day, he's asking for a 5.9
23 order and requesting that the Commission order C&D
24 Management to pay.

25 As I said before, my response was, to pay

1 what? It wasn't our directive. It was the Commission's
2 directive to look into the invoices and look at the
3 correct amount that C&D Management had to reimburse the
4 Division for. And so he never brought it up. We never
5 requested that. It was the Commission who directed that
6 those invoices be provided to us.

7 We looked at the invoices, and we have some
8 questions and simply want additional time. I think if
9 the Commission is going to issue an order, I think it
10 should issue the order for the \$170,000, or a lesser
11 figure, if there is some correction to those invoices.
12 And I think at that point, the Division's plugging
13 contractor would be required to reimburse the Division
14 for a portion of the invoices, if these invoices
15 contained overcharges. That's all we're saying.

16 CHAIRMAN FESMIRE: Commissioner Bailey?

17 MR. SWAZO: Chairman Fesmire, can I go
18 ahead and correct some factual statements that Mr. --

19 CHAIRMAN FESMIRE: We're getting into
20 testimony here.

21 MR. SWAZO: I just want to clarify that
22 Mr. Padilla claims it's a big surprise, that we just
23 sprung Rule 5.9 on him at the last minute at the end of
24 the hearing. That's not true. In my July 9th, 2009
25 prehearing statement, I clearly indicated that I was

1 going to ask for a Rule 5.9 order. I laid out what the
2 Rule 5.9 was. I explained how -- the basis for the order
3 in this case. We had a hearing on July 16th. At that
4 time the OCD presented its case, and the case was
5 continued to August 13th, 2009.

6 At that time, that's when C&D Management had
7 the opportunity to present their case, and they did
8 present their case. To claim undue surprise at the last
9 minute is just not true.

10 CHAIRMAN FESMIRE: Commission Bailey, do
11 you have any questions?

12 COMMISSIONER BAILEY: I don't have any
13 questions. I just have some thoughts, that there is no
14 environmental concern to the state, that the only issue,
15 really, is whether or not we want to have another day
16 spent listening to the audit of the invoices. And I
17 think that the company is entitled to that day in order
18 to clarify their costs.

19 CHAIRMAN FESMIRE: Commissioner Olson?

20 COMMISSIONER OLSON: I guess I kind of
21 thought we got where we are because the Division had
22 requested the payment of their costs in plugging, and
23 there was no cost of plug provided, so that's how we
24 moved it forward, so they would be able to provide that,
25 and they should get a chance to question that. I thought

1 we set that out last time. So I don't know if we're now
2 going to change that concept of what we did last time, if
3 they're allowed to question the costs. I don't know what
4 other mechanism there is. Maybe Mr. Swazo can address
5 that. What mechanism is there for them to challenge the
6 costs? How would they do that?

7 MR. SWAZO: I would even go so far as to
8 suggest that they could -- I mean, like I said, the cost
9 really has no bearing on whether or not they are in
10 violation of the Commission's order. It's clear that
11 they are in violation of the Commission's order.

12 I would go so far as to even suggest that even
13 if they had a good-faith basis -- or even to make a
14 good-faith effort to reimburse the OCD for its plugging
15 costs, then they could go ahead and even meet with OCD
16 representatives once the Commission issues an order, and,
17 perhaps, we can come to some type of resolution. You
18 know, once they have -- once they feel that they have
19 satisfied the Commission's order, they can go ahead and
20 file a motion, they can have the hearing or not, and it
21 can be addressed at that time.

22 CHAIRMAN FESMIRE: Mr. Swazo, I see your
23 point, and I understand what you're arguing here, but
24 don't you think it would be better -- I think we have to
25 go under the premise that if C&D Management complies with

1 the order, that they will be able to come back into
2 operatorship in good standing, as long as they comply
3 with everything, including the reimbursement of the
4 costs. But don't you think it would be better to
5 establish what those costs are now, while the memories
6 are fresh and the witnesses are available, rather than at
7 some point in the future when that may not be true?

8 MR. SWAZO: I think the costs are
9 established in the invoices, and the invoices have been
10 provided to Mr. Padilla. We've been going through this
11 for several years now, and we can't even get Mr. Kaiser
12 to file correct C-115s. As of this date, he still has
13 not filed C-115s. We've had -- how many hearings have we
14 had? Two hearings, not including the one from last year.
15 This case has been dragging on for two years. He still
16 hasn't filed his C-115s. He hasn't complied with the
17 Commission's order. I really doubt that he's even going
18 to make any kind of good-faith effort to reimburse the
19 state for the plugging costs that the state paid to plug
20 these wells. I just think that having an additional
21 hearing is unnecessary under the rule, and I think it's
22 going to end up being a waste of time.

23 CHAIRMAN FESMIRE: The danger is -- I
24 think the evidence was pretty -- you know, the Commission
25 hasn't ruled on this yet. But the evidence was pretty

1 clear that he violated and probably should be under a 5.9
2 order. But that having been said, what is the danger to
3 the state of waiting another month until he can examine
4 the invoices and present evidence on those that he thinks
5 are, perhaps, not applicable?

6 MR. SWAZO: I just think that it's going
7 to end up being a waste of time. There's going to be
8 increased costs, expenses. These things are not cheap.
9 These hearings are not cheap. It's not necessary under
10 the rule.

11 CHAIRMAN FESMIRE: We would also be
12 setting a precedent that we would have to establish the
13 costs of the state in every one of these hearings,
14 wouldn't we?

15 MR. SWAZO: That's true.

16 COMMISSIONER OLSON: I guess I kind of
17 still come back to the problem that started this. The
18 Division asked for us to issue an order that directed
19 them to pay the costs. So without having some mechanism
20 for them to be able to challenge the Division costs, I
21 don't -- I guess it's a procedural thing. I'm not quite
22 sure how that's done. I'm going based upon what the -- I
23 think what we acted on was on what the Division had asked
24 of us, so we were just asking for additional information
25 at that point. I'm not quite sure how to resolve that.

1 I don't know if our counsel has got any input.

2 MR. SMITH: Could I ask a couple of
3 questions?

4 CHAIRMAN FESMIRE: Ask Bill.

5 Mr. Padilla, could your client be ready by the
6 next regularly-scheduled Commission meeting?

7 MR. PADILLA: He's going to have to be.

8 CHAIRMAN FESMIRE: When is it?

9 MS. DAVIDSON: November 4th.

10 MR. SWAZO: I'm not sure -- I may be on
11 vacation November 4th. I'll have to check my calendar.

12 MR. PADILLA: Then we'd require Mr. Swazo
13 to be here. He could ask for a continuance and I'd grant
14 it.

15 CHAIRMAN FESMIRE: Mr. Swazo, is there
16 anybody else in your office that could handle that?

17 MR. SWAZO: I'll have to check. I was
18 planning on taking the Veteran's Day and the two
19 preceding days, and I don't know if one of those days is
20 November 4th.

21 COMMISSIONER OLSON: Mr. Swazo, I guess
22 let me try and clarify something. This is what I was
23 trying to get at before, as well. Are you saying that
24 what you really need to do at this point, in the context
25 of the hearing we've just had, is that the Commission

1 needs to issue a 5.9 order, and you can't go forward on
2 reimbursement until there's a procedural action that's
3 then taken by the applicant to satisfy -- right now we're
4 just looking at, is there a 5.9 order and should costs be
5 reimbursed? That's why -- it's a procedural issue here.
6 Maybe you can try to clarify that.

7 MR. SWAZO: I apologize for the confusion.
8 I think it's apparent that I was the source of the
9 confusion at the last hearing. Yes. What I'm simply
10 asking is the Commission to issue an order finding C&D
11 Management in noncompliance. Procedurally, once that
12 happens, the burden then becomes C&D Management's to file
13 a motion indicating that they have satisfied the
14 requirements of the corrective action.

15 COMMISSIONER OLSON: When they file that,
16 is that the procedural mechanism under the rules for
17 challenging costs associated with the plugging? Where do
18 they get to challenge that?

19 MR. SWAZO: It could be, yes. I mean,
20 this is not -- procedurally, this is not where it would
21 happen. It would happen at that point.

22 COMMISSIONER OLSON: I guess that's my
23 concern, is that they do have a procedure to be able to
24 challenge costs. Admittedly, I don't know that I want to
25 have more hearings, because we've had a lot on this

1 already. They do have a right, though, to challenge
2 these costs and, if necessary, potentially have a hearing
3 on it. How we do that, I think, is what you need to help
4 clarify for us.

5 MR. SWAZO: That would be their
6 opportunity to challenge the costs.

7 CHAIRMAN FESMIRE: At that point in the
8 future?

9 MR. SWAZO: Yes. So they would have -- I
10 mean, that would be their option to challenge the costs.

11 COMMISSIONER OLSON: So let me ask another
12 question. Would the 5.9 order still direct them to
13 pay -- that was what you requested at the last hearing,
14 is that they be directed to pay the reasonable costs of
15 the plugging of those wells.

16 MR. SWAZO: Again, I apologize for the
17 confusion. I wasn't asking the Commission to issue an
18 order requiring them to pay the costs. I may have -- I
19 misspoke on that. What I'm simply suggesting is once the
20 Rule 5.9 order has been issued, I'm suggesting that C&D
21 Management could satisfy the requirements of the order by
22 reimbursing the OCD for the plugging costs.

23 CHAIRMAN FESMIRE: That's one of several
24 conditions that would have to be met; right?

25 MR. SWAZO: Yes. In order to comply

1 with -- satisfy the order that the Commission issued,
2 that's how I'm suggesting that they can do it, is by
3 reimbursing the state for plugging costs that OCD paid on
4 behalf of C&D Management in order for them to -- just
5 reimburse the plugging costs.

6 CHAIRMAN FESMIRE: I'm, sort of, of the
7 opinion that the final order needs to include those costs
8 and their attest to those costs. I see your point that
9 we need a 5.9 order, and there are certain things that
10 between now and the next hearing date that they might
11 request without a 5.9 order.

12 I think, perhaps, the way to do it is to go
13 ahead and grant the continuance, and at the same time,
14 request the OCD not to approve any pending applications
15 from C&D for additional wells pending the outcome of the
16 hearing.

17 COMMISSIONER BAILEY: I would certainly
18 agree with that.

19 COMMISSIONER OLSON: I don't have a
20 problem with that.

21 CHAIRMAN FESMIRE: Counsel Smith, is that
22 kosher? Perhaps we need some deliberation on this case.

23 MR. SMITH: Yes.

24 CHAIRMAN FESMIRE: At this time counsel
25 has requested that we go into executive session. He

1 estimates the time to be about five minutes to discuss
2 the decision of this case.

3 (The Commission went into executive session.)

4 CHAIRMAN FESMIRE: Let's go back on the
5 record. The record should reflect that the Oil
6 Conservation Commission has come out of executive
7 session. During the executive session they considered
8 Case Number 14055, including the motion for a
9 continuance.

10 The Commission has decided to deny the motion
11 for continuance. We have reached a decision in the case.
12 We've directed counsel to begin drafting an order that
13 reflects the Commission's decision. We are also
14 directing the attorneys to draft proposed findings and
15 conclusions and order language and submit it to counsel
16 two weeks from today by the close of business.

17 Ernie, does that give you time to get your
18 stuff --

19 MR. PADILLA: Yes.

20 CHAIRMAN FESMIRE: The order will
21 include -- the orders will include a provision that C&D
22 pay the reasonable costs incurred in plugging the wells,
23 and that we will proceed under Rule 5.9. The Commission
24 will issue two orders: One denying the motion, the other
25 one complying with the requirements of Rule 5.9

1 MR. PADILLA: Let me clarify, if I may.
2 You now have decided we're done with this hearing? Is
3 that --

4 CHAIRMAN FESMIRE: Yes, we're done with
5 this hearing. If, at some point, your client has been
6 able to reimburse OCD for the costs of plugging, they can
7 request a hearing under 5.9 to make that determination
8 and to, at that point, attest any costs.

9 MR. PADILLA: Now, the order will reflect
10 reasonable costs, so it's not going to contain the full
11 amount of the invoices as they currently stand?

12 CHAIRMAN FESMIRE: That's correct.

13 COMMISSIONER OLSON: Yeah. They were
14 looking at what the costs of plugging are, so not
15 specifying the amount, the reasonable costs of plugging.

16 CHAIRMAN FESMIRE: Okay. And the order
17 will include payment of the costs of plugging. Is that
18 clear?

19 MR. PADILLA: It's clear, but I'm confused
20 about the mechanism for how we can get to challenge those
21 well costs. In other words, how we obtain through some
22 formal procedure, either subpoena records or -- in other
23 words, we may have to go outside the Commission just in
24 order to get these well costs.

25 CHAIRMAN FESMIRE: Rule 5.9 sets out the

1 procedure where that -- a way by which that can be
2 accomplished. Once you have complied -- under D(3), "An
3 operator who completes the corrective action the order
4 requires, may file a motion with the order's issuer to
5 declare the order is satisfied. The Division or
6 Commission, as applicable, may grant the motion without
7 hearing or may set the matter for hearing."

8 MR. PADILLA: I understand the ruling.
9 I'm just -- I'm sure we'll work it out either through a
10 motion or some other way.

11 CHAIRMAN FESMIRE: Anything further in
12 Case Number 14055? Mr. Swazo?

13 MR. SWAZO: Yes, I have some questions. I
14 neglected to point out that there was prior Commission
15 precedent with the same exact issue. My recommendation
16 is that we use actual costs, because that's what the
17 Commission issued in the order. And I actually attached
18 the prior precedent to the response in opposition. So
19 I'll draft the order denying the motion for continuance.

20 CHAIRMAN FESMIRE: You will draft a
21 version. Mr. Padilla will have the same opportunity to
22 draft an order that complies with the Commission's
23 decision. Mr. Smith will then compile those for
24 presentation to the Commission.

25 MR. SWAZO: Is there a deadline? The

1 reason I'm asking is because I'm going to be out of the
2 office for a week starting tomorrow.

3 CHAIRMAN FESMIRE: How long will it take
4 you to do this?

5 MR. SWAZO: I plan to do it immediately.

6 CHAIRMAN FESMIRE: We're asking for two
7 weeks from today, the deadline.

8 MR. SWAZO: That's for the proposed order
9 denying their motion to continue?

10 CHAIRMAN FESMIRE: That's correct.

11 COMMISSIONER BAILEY: No.

12 MR. SMITH: It's for both orders and
13 findings and conclusions.

14 CHAIRMAN FESMIRE: That's for both orders
15 and the findings and conclusions.

16 MR. SWAZO: Okay. You had indicated that
17 you were denying the motion to continue --

18 CHAIRMAN FESMIRE: We're denying the
19 motion for continuance.

20 MR. SWAZO: -- granting the 5.9 motion.

21 CHAIRMAN FESMIRE: We're granting the 5.9
22 motion. Those are the two different orders.

23 MR. SWAZO: I did ask for, at the
24 conclusion of the last hearing, for a plugging order
25 pursuant to 70-2-14(B) to plug all of C&D's wells for

1 their noncompliance with reporting requirements. I'm
2 going to submit findings of fact and conclusions of law
3 on that point. I want to make it clear that I'm still
4 pursuing that, and I haven't abandoned that.

5 MR. SMITH: You haven't made a decision on
6 that.

7 CHAIRMAN FESMIRE: We still have a little
8 bit of deliberation to do on that. We will handle that
9 at the end of today's meeting. We will finish that
10 deliberation. I wasn't aware that we had an issue
11 hanging.

12 Mr. Padilla, you understand that you, too,
13 have the same opportunities when you draft --

14 MR. PADILLA: Let me make sure I
15 understand. An order denying the motion for continuance,
16 and an order granting the 5.9?

17 CHAIRMAN FESMIRE: An order compliant with
18 5.9.

19 MR. PADILLA: And requested findings of
20 facts and conclusions?

21 CHAIRMAN FESMIRE: Yes. By the close of
22 business two weeks from today.

23 Mr. Swazo, you're capable of complying with
24 that, are you not?

25 MR. SWAZO: Yes.

1 CHAIRMAN FESMIRE: Now, is there anything
2 further in 14055?

3 MR. SWAZO: No, sir.

4 CHAIRMAN FESMIRE: The next case before
5 the Commission is 14041, the application of New Mexico
6 Oil Conservation Division for a compliance order against
7 Marks and Garner Production, Ltd., and request for
8 determination of noncompliance with OCD Rule 19.15.5.9
9 NMAC for a violation of an order requiring corrective
10 action. Are the attorneys present?

11 The Chair has granted a motion for a
12 continuance, and it will be continued to the next
13 regularly-scheduled meeting of the New Mexico Oil
14 Conservation Commission, which I understand is November
15 4th.

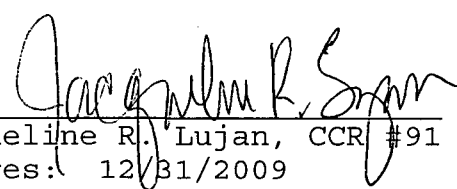
16 The next case before the Commission is Case
17 Number 14134, the application of the Board of County
18 Commissioners of Rio Arriba County for cancellation or
19 suspension of applications for permits to drill APDs
20 filed by Approach Operating, LLC, in Rio Arriba County,
21 New Mexico. That case is consolidated with Case Number
22 14141, the application of Approach Operating, LLC, for
23 approval of six applications for permits to drill, Rio
24 Arriba County, New Mexico, and Case Number 14278, the
25 application of Approach Operating, LLC, for approval of

REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on October 7, 2009, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 21st day of October, 2009.



Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009